



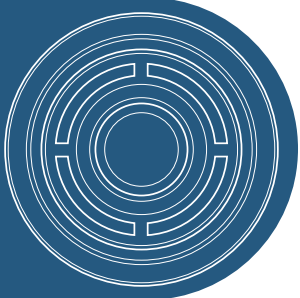
WITHOUT WITNESS

PUBLIC PROTECTION INSPECTION I:

A THEMATIC INSPECTION OF THE HANDLING OF
SEXUAL VIOLENCE AND ABUSE CASES BY THE
CRIMINAL JUSTICE SYSTEM IN NORTHERN IRELAND

November 2018





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November 2018



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List of abbreviations

ABE	Achieving Best Evidence (interview technique)
CJI	Criminal Justice Inspection Northern Ireland
CPS	Crown Prosecution Service (in England and Wales)
CRU	Central Referral Unit (within PSNI)
CSE	Child Sexual Exploitation
DIR	Decision information request
DoH	Department of Health
DoJ	Department of Justice
FSNI	Forensic Science Northern Ireland
ISVA(s)	Independent Sexual Violence Advocate(s)
HMCPSP	Her Majesty's Crown Prosecution Service Inspectorate (in England and Wales)
HMICFRS	Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services
NICTS	Northern Ireland Courts and Tribunals Service
OCMT	Occurrence Case Management Teams
PCSP(s)	Policing and Community Safety Partnership(s)
PEEL	Policing Effectiveness, Efficiency and Legitimacy inspection programme (HMICFRS)
PPS	Public Prosecution Service for Northern Ireland
PSNI	Police Service of Northern Ireland
RASSO	Rape and Serious Sexual Offence
RCU	Rape Crime Unit (within PSNI)
UK	United Kingdom
VAWG	Violence against Women and Girls
WHO	World Health Organisation



Terminology

'Prosecution team'

This refers to the joint investigation and prosecution team involved in the case. It would therefore include police officers and staff involved in the investigation stage, prosecutors making decisions on the case and appearing before the court and others involved in advising on or dealing with the case, for example forensic staff, prosecution counsel etc.

'Violence and abuse'

In undertaking this inspection CJI mirrors the use of the terms 'violence' and 'abuse' as outlined in the Department of Health (DoH)/Department of Justice (DoJ) Strategy; that is intended to encompass all forms of abusive behaviour.*

'Victim'

Similarly CJI uses the term 'victim' to describe anyone who has been subjected to a sexual offence but this also encompasses anyone described as a 'survivor', 'injured party', 'complainant' or 'witness'.

* This is the 'Stopping Domestic and Sexual Violence and Abuse in Northern Ireland: A Seven Year Strategy' document.



Chief Inspector's Foreword

Changes to social attitudes and norms across the developed world have supported the increased reporting of sexual violence and abuse and globally, criminal justice systems are struggling to provide an effective response. It is fast becoming one of the most serious social issues for this generation.

The challenge of investigating and prosecuting cases of sexual crime where there is often little by way of corroborating evidence is significant. This is particularly the case where the issue is one of consent or where the offences are historical. The ever increasing presence of digital technology and social media add to the difficulties of evidence gathering, to the increasingly problematic area of disclosure and the ongoing impact on the victim and suspect. This report concludes that the criminal justice processes in Northern Ireland for handling these cases take too long, are too expensive and conclude with, all too often, a failure to deliver an acceptable outcome for victims.

The seriousness of some of these offences means that when the suspect is identified and the evidential test is met, a trial in the Crown Court will normally follow. The criminal sanctions that can be imposed after a guilty verdict together with the licence conditions and/or restrictions, monitoring on release and the social stigma around sexual offending, create a high stakes

situation for those accused. This may be reflected in the high numbers of adjournments at court and low levels of guilty pleas. This ultimately causes delay, prolongs the trauma on victims and potentially leads to their withdrawal from the case.

The adversarial nature of the criminal proceedings means that victims become witnesses for the prosecution. They are subjected to intensive cross examination where their most intimate behaviours and actions are examined and in the case of rape, the issue of consent becomes central to the outcome of the case.

This report makes three strategic recommendations and six operational recommendations which are designed to make improvements to the current processing of cases through the criminal justice system. Some of them are not new and have been highlighted in the past to both the police and prosecution services.

A faster, more efficient justice system - where victims are supported appropriately to give their best evidence - is in the best interests of everyone.

It is clear from our engagement with victims and victims groups, that one of the most important things for them in choosing to report the offences, is that they want their experience to be heard and to be believed and for the perpetrator to understand and accept what they have done is wrong. The criminal justice system, as it stands currently, frequently does not provide a satisfactory outcome for victims on any level.

This inspection and recent public debate about rape cases has raised wider issues about the societal approach to sexual relationships, consent and the media attention on cases which come to trial. There is more to be done to prevent these offences occurring in the first place by providing better education for children and young people about healthy relationships, changing societal behaviours and attitudes and early interventions for those at risk.

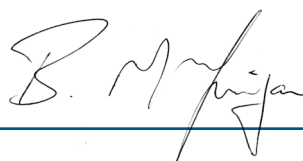
I believe the time is right for a more informed political and public debate on the role of the justice system in dealing with these complex issues.

We need a more creative approach incorporating restorative justice practice and, in appropriate cases, educational programmes for un-adjudicated perpetrators. Any change in approach must meet the needs of victims and keep them, and the public, safe. I welcome Lord Justice Gillen's review of the conduct of Rape Trials as an important step on this journey.

This inspection was led by Rachel Lindsay, David MacAnulty and Roisin Devlin. I am grateful for the assistance received from Her Majesty's Inspectorate of Constabulary and Fire and Rescue

Services (HMICFRS) and Her Majesty's Crown Prosecution Service Inspectorate (HMCPPI), particularly Di Hurley, in conducting this inspection.

I am also grateful to all those victims and survivors of sexual violence and abuse who shared their experiences of the criminal justice system with us.



Brendan McGuigan CBE
Chief Inspector of Criminal Justice
in Northern Ireland

November 2018

Criminal Justice Inspection
Northern Ireland
a better justice system for all





Executive Summary

The issue of sexual violence and abuse in Northern Ireland

Sexual violence and abuse is a global problem as well as an increasing issue in Northern Ireland, as in the rest of the United Kingdom (UK). Crime figures for 2016-17¹ report the highest level of sexual offences recorded by the Police Service of Northern Ireland (PSNI) since 1998-99. These figures were against a backdrop of falling recorded crime overall, so that sexual offences and offences with a domestic motivation were an increasing proportion of the work of the criminal justice system. At the launch of the *'Stopping Domestic and Sexual Violence and Abuse in Northern Ireland: A Seven Year Strategy'* published in March 2016² it was noted that *'Victims and society need to be assured that the serious nature of this abuse is recognised, and that perpetrators will be held accountable for their actions'*³. Outcome rates for sexual offences, as calculated for the purposes of this inspection, were low across the UK, but lowest in Northern Ireland. This inspection considered the approach of the criminal justice system in Northern Ireland to handling sexual violence and abuse cases.

Strategy, governance and prevention

The *Stopping Domestic and Sexual Violence and Abuse Strategy* included a strand on protection and justice, with actions for the criminal justice organisations and the Department of Justice (DoJ) within the implementation plan. The PSNI had strategic outcomes for policing which included reference to protecting the most vulnerable. The Public Prosecution Service for Northern Ireland (PPS) annual business plans made reference to the work of the organisation in relation to sexual crime, but did not include any priorities in relation to particular crime types. The PPS should reflect the priority they place on dealing with domestic and sexual violence and abuse in future plans. The PSNI and Policing and Community Safety Partnerships (PCSPs) were involved in prevention work and the criminal justice system have an important role, as well as those working in education, health and social services, in educating the public about sexual and domestic violence and abuse.

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- 1 PSNI, *Police Recorded Crime in Northern Ireland: Monthly Update to 31 March 2017 (Providing final figures for 1st April 2016 to 31st March 2017)*, May 2017. Available online at: https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/police-recorded-crime-statistics/2017/march/monthly-crime-bulletin-apr-mar-16_17.pdf and PSNI, *Trends in Police Recorded Crime in Northern Ireland 1998-99 to 2016-17: Annual Bulletin*, 12 January 2018. Available online at <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/police-recorded-crime-statistics/documents/police-recorded-crime-in-northern-ireland-1998-99-to-2016-17.pdf>
 - 2 Available online at <https://www.justice-ni.gov.uk/sites/default/files/publications/doj/stopping-domestic-sexual-violence-ni.pdf>
 - 3 See <https://www.health-ni.gov.uk/news/step-forward-tackling-domestic-and-sexual-violence-and-abuse>

PSNI first response, investigation and case building

The creation of C7 Public Protection Branch by the PSNI in 2015 had brought together investigators in public protection roles including rape crime, child abuse and domestic abuse. The establishment of a Central Referral Unit (CRU) to assess and manage referrals was a positive development. There had been, and continued to be, significant staffing challenges in the Branch, including high staff turnover at its inception, sickness absence and ensuring officers had the appropriate skills for the roles. The PSNI had recently received confirmation of additional resources to increase the staffing levels. The PSNI needs to continue to have a focus on this and ensure that resource distribution across the investigation teams is proportionate and sufficient to manage demand and victim confidence effectively.

The handling of requests for service from the PSNI contact centres and the first response to sexual offences from PSNI officers was generally effective and timely. The opening of The Rowan Sexual Assault Referral Centre was a positive development. There was evidence that suspects were arrested and interviewed promptly. Assessments of risk and vulnerability and consideration of victim safety were dealt with effectively in most cases, but there was scope to improve this, particularly as the case progressed. Delays were evident in some cases at various stages in the process including in recording initial statements from or conducting video interviews with victims; dealing with digital and medical evidence; and in dealing with digital evidence at court. The PSNI and the PPS should address this latter issue by engagement in the Northern Ireland Courts and Tribunals Service (NICTS) digital strategy.

Where pre-prosecutorial advice was requested and provided by the PPS this was generally completed in a timely and effective manner. There was evidence that there continued to be delays in submitting files to the PPS and that, at the time of the inspection, the efforts of the PSNI and the PPS to address the issues raised in previous Criminal Justice Inspection Northern Ireland (CJI) reports of file quality, disclosure, supervision of investigating officers and avoidable delay, had not yet led to significant improvements.

PPS decision making and case building

The PPS had established the Serious Crime Unit in 2016 which brought the direction and prosecution of all cases involving sexual offences into one team. There continued to be challenges in managing the workload against the resources available. A review was underway and CJI would hope that this would address the ongoing issues highlighted to Inspectors.

The Code for Prosecutors was applied correctly in most cases but Inspectors found there were improvements needed in the application of the Public Interest Test and adherence to the Rape Policy. Improvements are also needed in the handling of myths and stereotypes in cases involving sexual offences. There is an opportunity for the PSNI and the PPS to further build upon the structural changes that have been made in both organisations. The PSNI and the PPS should therefore develop an implementation plan to further develop the prosecution team approach for cases involving sexual offences to address the issues raised in this report.



Record keeping by prosecutors had been raised in previous CJI reports and there was evidence that the PPS still had more work to do to implement their own guidance in this area. There remains a need to ensure that the analysis of the case and rationale for decision making was recorded and was able to be quality assured. This should be addressed in the next six months. There continued to be challenges for the PPS in terms of victim withdrawal and the handling of disclosure and third-party evidence. Communication and consultation with victims was also found to be an area which the PPS need to undertake further work on in order to fully deliver the required standards. Whilst the PPS had allocated additional resources to the Serious Crime Unit and introduced a sexual assault prosecution clinic to speed up decision making for certain cases, avoidable delay continued to be a significant issue.

Trial and court process

Committal proceedings were in the process of being reformed but at the time of the inspection cases of serious sexual offences and child abuse were still required to be transferred to the Crown Court by a District Judge. Inspectors recommend that plans for direct transfer should include rape, serious sexual offences and child abuse at the earliest opportunity. Avoidable delays were also a significant feature of these types of cases where they were not ready to proceed at court, leading to high numbers of adjournments. This was compounded by low numbers of guilty pleas.

The PPS had made efforts to ensure that Counsel prosecuting cases involving sexual offences were appropriately trained and skilled and delivered an effective service on behalf of the PPS. Inspectors however identified areas where there was further scope to ensure the level of Counsel was appropriate for the type of case and that victims of sexual crime are treated sensitively.

The PPS should develop an action plan to set out how they intend to deliver improvements in this area.

The application of policy regarding victims and witnesses was complied with in just over half the cases in the prosecution sample and there is more to do to ensure all victims can access special measures, as is their entitlement. The support for victims at court from the two witness services was viewed positively by victims and victims' organisations.

In other jurisdictions there was guidance or legislation regarding the guidance given to juries about myths and stereotypes in sexual offences cases, which aids openness and transparency. Inspectors believe this type of legislation could provide similar benefits in Northern Ireland and should be included in the strategy implementation plan. Work by probation officers to deliver pre-sentence reports was viewed positively, as were assessments undertaken to make recommendations for sex offender programmes. It was noted that there was a lack of provision for un-adjudicated perpetrators in the community.

Victims' issues

Both the PSNI and the PPS had engaged with victims' organisations at a strategic level, including attending events where they could hear directly from victims about their experiences. Victims were generally positive about the service provided to them by police investigators, although concerns were raised about the turnover of officers and delays in taking statements or conducting video interviews. Victims however felt more disconnected from the directing officer in the PPS and did not appear to understand their role or how they made decisions.

Victims who remained engaged in the process had an over-riding desire to be able to tell their story and some went to great lengths to ensure that their voices were heard by the criminal justice organisations. There was an absence of statutory provision of Independent Sexual Violence Advocates (ISVAs) although a pilot programme by Victim Support Northern Ireland was a positive step.

Delay was highlighted as an issue by all victims spoken to, particularly for those reporting historical abuse. Victims with particular needs due to, for example, age or disability were especially impacted by avoidable delay.

The criminal justice agencies must do more to tailor their services to victims' particular needs.



Recommendations

Strategic recommendations

1

The PPS should develop their next and future corporate and business plans to reflect the priority the organisation places on dealing with domestic and sexual violence and abuse, through action planning and key performance indicators specifically related to this area of business (*paragraph 2.20*).

2

The PSNI and the PPS should produce an implementation plan to further develop the prosecution team approach for cases involving sexual offences within three months of this report (*paragraph 4.15*).

3

The Department of Justice (DoJ) should include, in Action 6 of the [Stopping Domestic and Sexual Violence] Strategy implementation plan, legislation which contains a requirement for jury directions to be given in sexual offence cases to enable them to approach court evidence in a more informed way (*paragraph 5.38*).

Operational recommendations

1

The PSNI should continue to assess and evidence that resource distribution across the areas of child abuse, rape crime and domestic abuse and adult safeguarding is proportionate and sufficient to manage demand and victim confidence effectively. The resourcing levels in the Public Protection Branch should be reviewed and re-assessed within a year of the publication of this report (*paragraph 3.16*).

2

The PSNI and the PPS should fully engage in the NICTS digital strategy and collaborate when developing and maintaining their own technology in order to ensure systems for the transfer of digital information across the justice system which are fit for purpose (*paragraph 3.47*).

3

The PPS should issue further guidance for prosecutors on the requirements to record their decision making rationale in a review note when applying the Test for Prosecution. The review note should be proportionate to the complexity of the facts, issues and risks in the case. This should be issued within six months of this report. In addition, the PPS should develop a quality assurance process to assess compliance with this guidance (*paragraph 4.26*).

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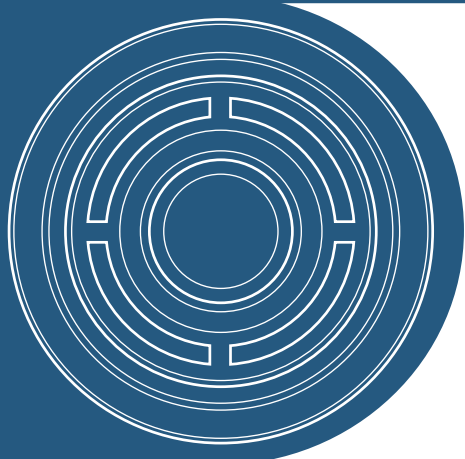
The PPS undertake further work within six months of this report to fully deliver the standards contained in the Victim Charter and in the PPS Victim and Witnesses Policy, to ensure communication with victims is more empathetic, understandable, accurate, consistent and appropriate for the needs of the recipient (*paragraph 4.39*).

5

Once direct transfer to the Crown Court is established for murder and manslaughter cases, the DoJ should ensure that rape, serious sexual offences and child abuse offences be added to the list of specified offences under the Justice Act (Northern Ireland) 2015 (*paragraph 5.5*).

6

The PPS should, within three months of this report, develop an action plan to further improve how Counsel is utilised in cases involving sexual offences (*paragraph 5.19*).



Inspection Report



Introduction

What is sexual violence and abuse?

- 1.1 In March 2016 the Departments of Health, Social Services and Public Safety (now the Department of Health; DoH) and Justice published '*Stopping Domestic and Sexual Violence and Abuse in Northern Ireland: A Seven Year Strategy*'⁴. At the launch of the Strategy Minister for Justice, David Ford MLA, said "*Domestic and sexual violence and abuse are sickening crimes that have a devastating impact on victims and their families*"⁵. The Ministerial Foreword to the Strategy stated that '*At its core this Strategy takes a zero tolerance approach to domestic and sexual violence. Victims and society need to be assured that the serious nature of this abuse is recognised, and that perpetrators will be held accountable for their actions.*'
- 1.2 The Strategy defined sexual violence and abuse as '*any behaviour (physical, psychological, verbal, virtual/online) perceived to be of a sexual nature which is controlling, coercive, exploitative, harmful, or unwanted that is inflicted on anyone (irrespective of age, ethnicity, religion, gender, gender identity, sexual orientation or any form of disability).*'

The reporting of sexual violence and abuse

- 1.3 Sexual offences have historically been a significantly under-reported crime. Crime surveys attempt to give an indication of the true scale of crime, not just that reported to the police. A focused report drawing on data from the Crime Survey of England and Wales for the year ending March 2016 estimated that 2.0% (equivalent to 645,000 victims) of adults aged 16 to 59 had experienced sexual assault (including attempts) in the last 12 months⁶. Since the year ending March 2014 there have been small, but not statistically significant, increases year on year.
- 1.4 This report also stated that '*the increase in police recorded sexual offences is thought to reflect both an improvement in the recording of sexual offences by the police and an increased willingness of victims to come forward to report these crimes to the police. Therefore, it is not thought that these figures currently provide a reliable indication of trends in sexual offences.*

4 Available online at <https://www.justice-ni.gov.uk/sites/default/files/publications/doj/stopping-domestic-sexual-violence-ni.pdf>

5 See <https://www.health-ni.gov.uk/news/step-forward-tackling-domestic-and-sexual-violence-and-abuse>

6 Office for National Statistics, *Focus on violent crime and sexual offences, England and Wales: year ending Mar 2016: Analyses on violent crime and sexual offences from the year ending March 2016 Crime Survey for England and Wales and crimes recorded by police, February 2017*. Available online at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/compendium/focusonviolentcrimeandsexualoffences/yearendingmarch2016>

These figures should be seen in the context of a number of high-profile reports and inquiries, which are thought to have resulted in police forces reviewing and improving their recording practices.'

- 1.5 The Northern Ireland Crime Survey currently only asks respondents about sexual offences in a domestic context. A crime survey report published in June 2017⁷ (based on interviews conducted in 2015-16) estimated a lifetime prevalence of forced sexual activity (including attempts) by a partner among adults aged 16-64 as 1.3% with 0.1% reporting forced sexual activity by a partner in the last three years. In addition the survey reported an estimated lifetime prevalence of forced sexual activity by a family member of 0.7% in 2015-16, with 0.1% reporting this occurring in the last three years.
- 1.6 The PSNI also report the delayed nature of reporting of sexual offences stating that: *'While the majority of rape and sexual assault/sexual activity offences are reported to police within 12 months of the date the offence occurred, up to two out of every five offences of this nature recorded by police are reported more than 12 months after the offence occurred. Nearly 40 per cent of the sexual offences recorded during 2013-14 occurred when the victim was under 18 but were reported to police when the victim was 18 or over, the highest proportion seen in the data series. This compares with 18 per cent in 2007-08 and 29 per cent in 2016-17⁸.*
- 1.7 In Northern Ireland there has likely been a similar increase in reporting in response to the high-profile cases reported on across the UK and the Historical Institutional Abuse Inquiry in Northern Ireland. In addition the Commission to Inquire into Child Abuse (and subsequent 2009 Ryan Report) in the Republic of Ireland and reports by the Catholic Church into child abuse allegations against priests, some of whom were in ministry in Northern Ireland, is likely to have raised awareness and encouraged reporting about historical sexual offences perpetrated against children. It is difficult therefore to estimate the true nature of sexual offences and it is clear that there will always be victims who do not wish to report offences to the police, either at the time of the offence or indeed ever in their lifetime.

International, UK and Republic of Ireland focus on sexual violence and abuse

- 1.8 Internationally, the World Health Organisation (WHO) has a focus on violence and violence prevention, particularly physical and sexual violence against women and girls. The first world report on violence and health published in 2002 noted that *'Sexual violence occurs throughout the world. Although in most countries there has been little research conducted on the problem, available data suggest that in some countries nearly one in four women may experience sexual violence by an intimate partner..., and up to one-third of adolescent girls report their first sexual experience as being forced...'*⁹

⁷ Campbell & Rice, NISRA, *Experience of Domestic Violence: Findings from the 2011-12 to 2015-16 Northern Ireland Crime Surveys, Research and Statistical Bulletin 17/2017, June 2017*. Available online at: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/experience-of-domestic-violence-findings-201112-201516-northern-ireland-crime-surveys.pdf>

⁸ PSNI, *Trends in Police Recorded Crime in Northern Ireland 1998-99 to 2016-17: Annual Bulletin, January 2018*. Available online at <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/police-recorded-crime-statistics/documents/police-recorded-crime-in-northern-ireland-1998-99-to-2016-17.pdf>

⁹ World Health Organisation, *World report on violence and health, October 2002*. Available online at http://www.who.int/violence_injury_prevention/violence/world_report/en/

- 1.9 In England and Wales the focus for addressing domestic and sexual violence and abuse has been through an approach to address violence against women and girls. The first strategy was published by the Home Office in 2010 and in March 2016 the *Ending Violence against Women and Girls Strategy (VWGS): 2016 to 2020* was published¹⁰.
- 1.10 In Scotland a strategy to prevent and eradicate violence against women and girls was also published in March 2016 entitled '*Equally Safe*'¹¹. This included three work-streams to achieve the strategy's aims including primary prevention; capability and capacity; and justice.
- 1.11 In the Republic of Ireland the National Office for the Prevention of Domestic, Sexual and Gender-based Violence 'Cosc'¹² was established in 2007 as an executive office of the Department of Justice and Equality. In 2016 Cosc published the second national strategy in this area¹³.
- 1.12 The first regional strategy for tackling sexual abuse in Northern Ireland was launched in June 2008¹⁴. In 2013 a consultation for a second strategy was published, but it was a joint strategy with the issue of domestic violence and abuse (for which there had also been a previous strategy). The Departments of Health, Social Services and Public Safety (now the DoH) and Justice published '*Stopping Domestic and Sexual Violence and Abuse in Northern Ireland: A Seven Year Strategy*' in March 2016¹⁵.

The prevalence of sexual violence and abuse

- 1.13 The WHO website reports that 35% of women worldwide experience either physical and/or sexual intimate partner violence or non-partner sexual violence in their lifetime and that more than 50% of physically abused women reported that they had never sought help from formal services or authority figures. It also noted that seven per cent of women globally had experienced sexual violence by a non-partner in their lifetime¹⁶.

10 Home Office, *Ending violence against women and girls: Strategy 2016 to 2020*, March 2016. Available online at: <https://www.gov.uk/government/publications/strategy-to-end-violence-against-women-and-girls-2016-to-2020>

11 Scottish Government, *Equally safe: Scotland's strategy for preventing and eradicating violence against women and girls*, March 2016. Available online at: <https://blogs.gov.scot/equally-safe/wp-content/uploads/sites/18/2016/03/ES-update-18-April1.pdf>

12 Cosc is an Irish word meaning "to stop" or "to prevent".

13 Cosc, *Second national strategy on domestic, sexual and gender-based violence 2016 - 21*, January 2016. Available online at: <http://www.cosc.ie/en/COSC/Second%20National%20Strategy.pdf/Files/Second%20National%20Strategy.pdf>

14 Northern Ireland Office and Department of Health, Social Services and Public Safety, *Tackling sexual violence and abuse: A regional strategy 2008-13*, June 2008.

15 Available online at <https://www.justice-ni.gov.uk/sites/default/files/publications/doj/stopping-domestic-sexual-violence-ni.pdf>

16 See WHO website: http://www.who.int/gho/women_and_health/violence/en/

1.14 In Northern Ireland the PSNI's recent publications on analysis of crime figures dating back from 2016-17¹⁷ reported that:

- whilst recorded crime in general had shown an overall downward trend in the last 14 years, sexual offences had shown an upwards trend since 2000-01;
- at 3,158, the figure for 2016-17 was the highest level recorded since 1998-99 and was almost three times the level recorded in 2000-01. Sexual offences represent around three per cent of **all** crimes recorded in 2016-17. However the rate of increase between 2015-16 and 2016-17 was less than was seen in the previous three years;
- in 2016-17 offences of rape increased by 43 to 823, the highest level recorded since the start of the data series in 1998-99. There were 32 more sexual assault offences and sexual activity offences rose by 39; and
- between 1998-99 and 2013-14, sexual offences represented between one and two per cent of **victim-based** crimes. This proportion increased to four per cent in 2016-17.

1.15 Sexual offences, and rape in particular, continue to be significant issues for the PSNI in terms of reported crime. This is similar to the situation in other jurisdictions. For example:

- in Scotland, crimes between 2015-16 and 2016-17 recorded by the police decreased by three per cent. This was the lowest level of recorded crime since 1974. However sexual crimes increased by five per cent during this period. The recording of these crimes in 2016-17 was at the highest level seen since 1971, the first year for which comparable crime groups were available. Since 2007-08 sexual crimes recorded by the police rose by 65%;¹⁸
- in England and Wales there was an increase of 23% in sexual offences recorded between October 2015-September 2016 and October 2016-September 2017. Overall crime had decreased by two per cent since April 2006 but had increased 14% in the past year;¹⁹
- crime statistics from the Republic of Ireland were published as 'Under Reservation' as the quality of the statistics did not meet the standards required of official statistics published by the Central Statistics Office (due to a number of data quality issues identified in relation to data provided by An Garda Síochána). However, the latest recorded crime figures published for Quarter Four of 2017 suggested that sexual offences had risen by 16.9% between 2016 and 2017;²⁰ and
- the incidence of recorded sexual offences is the same in Northern Ireland as in the rest of the UK at two per 1,000 of the population (against an overall figure for total crime per 1,000 of the population of 91 in England and Wales; 44 in Scotland; and 53 in Northern Ireland).

17 PSNI, *Police Recorded Crime in Northern Ireland: Monthly Update to 31 March 2017 (Providing final figures for 1st April 2016 to 31st March 2017)*, May 2017. Available online at: https://www.psnipolice.uk/globalassets/inside-the-psni/our-statistics/police-recorded-crime-statistics/2017/march/monthly-crime-bulletin-apr-mar-16_17.pdf and PSNI, *Trends in Police Recorded Crime in Northern Ireland 1998-99 to 2016-17: Annual Bulletin*, published 12 January 2018. Available online at <https://www.psnipolice.uk/globalassets/inside-the-psni/our-statistics/police-recorded-crime-statistics/documents/police-recorded-crime-in-northern-ireland-1998-99-to-2016-17.pdf>

18 Scottish Government, *Recorded Crime in Scotland, 2016-17, September 2017*. Available online at: <http://www.gov.scot/Resource/0052/00525055.pdf>

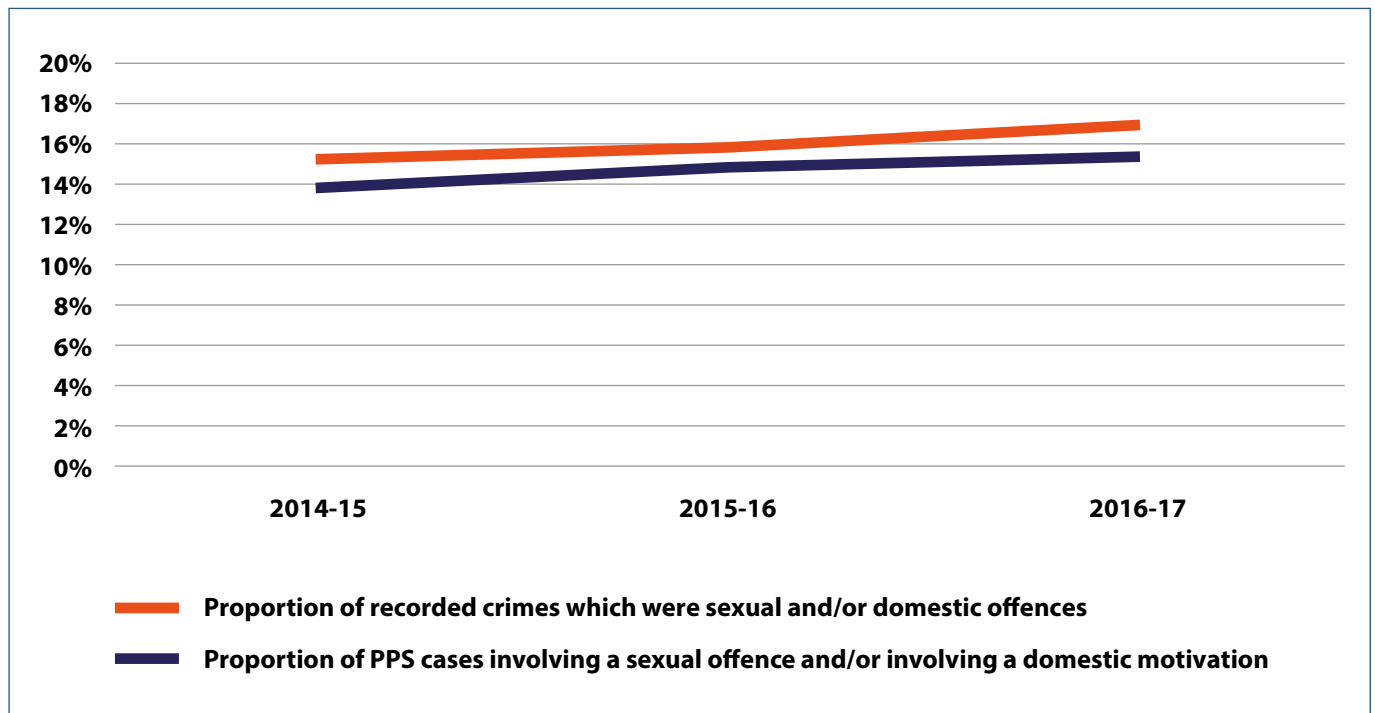
19 Office for National Statistics, *Crime in England and Wales: year ending September 2017*, January 2018. Available online at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingseptember2017>

20 Central Statistics Office, *Garda recorded crime Q4 2017, March 2018*. Available online at: <http://www.cso.ie/en/releasesandpublications/ep/p-rc/recordedcrimeq42017/>

The proportion of the work of the criminal justice system that is sexual and domestic violence and abuse

- 1.16 Overall in recent years crime rates have been falling in Northern Ireland and the rest of the UK as outlined previously. With the rising numbers of reported sexual offences this therefore means that sexual crime makes up an increasing proportion of the workloads of the police, prosecution service and courts. This similarly applies to domestic offences (which will be reported on more fully in the forthcoming CJI report). Given the overlapping nature of these types of cases, with many sexual offences occurring within a domestic context, data on the two types of offences is presented together here to provide a picture of the workloads of the criminal justice agencies.
- 1.17 The PSNI recorded figures showed that the proportions of reported crimes which were sexual offences and offences with a domestic motivation have increased in the last three years. Sexual offences as a proportion of overall reported crime had increased from 2.6% in 2014-15 to 3.2% in 2016-17. Offences with a domestic motivation had increased as a proportion of overall crime from 12.9% in 2014-15 to 14.2% in 2016-17. Overall therefore in 2016-17, sexual offences and offences with a domestic motivation accounted for 16.8% of overall crime, an increase of 1.6 percentage points since 2014-15. The breakdown of these figures is contained in Appendix 1, Table A1:1.
- 1.18 The PPS provided figures for CJI of the number of cases for decision which involved a sexual offence and number of cases which involved an offence with a domestic motivation. The breakdown of these figures can be seen in Appendix 1, Table A1:2. These figures similarly show the proportion of PPS cases for decision which involved a sexual offence was 3.0%. The figures also show that the proportion of cases for direction which were sexual offences and offences with a domestic motivation has increased in the last three years from 14.01% in 2014-15 to 15.38% in 2016-17.
- 1.19 The following graph illustrates the increasing proportion of the workload of both the PSNI and the PPS which relate to sexual offences and crimes involving a domestic motivation and shows that this has increased over the last three years, despite overall falls in recorded crime and the PPS caseload.

Figure 1: Proportion of recorded crime and PPS caseload involving sexual offences and/or a domestic motivation



- 1.20 Data for court figures was only available for sexual offences (as the court systems did not record offences with a domestic motivation specifically). The figures provided show the disposals at both Crown and Magistrates' Courts where at least one offence was a sexual offence. This shows the proportion of these cases was fairly steady at just less than one per cent over the last three calendar years, which suggests that the increase in reports to the PSNI and prosecution cases directed by the PPS had not yet filtered through to the courts. These figures can be seen in Appendix 1, Table A1:3.
- 1.21 Overall the figures available show that sexual and domestic violence and abuse are forming an increasing part of the workload of the criminal justice organisations. This has implications for organisational structures, resources and training of staff. This will be discussed further in Chapter 2.

Victims of sexual violence and abuse

- 1.22 It is clear that sexual abuse is a gendered crime with police recorded crime and data from crime surveys all showing that women are more likely to be victims than men. The focused report of the Crime Survey for England and Wales²¹ reported that sexual assault (including attempts) was where the largest difference between men and women was observed, with women being over five times as likely as men to have experienced this type of abuse since the age of 16 (19.9% of women compared to 3.6% of men); the majority of these were incidents of indecent exposure or unwanted sexual touching, which were experienced by around five times as many women as men (18.6% compared with 3.3%). Women also experienced 12 times as many incidents of rape or assault by penetration (including attempts) than men since the age of 16 (6.0% compared with 0.5%).
- 1.23 This report also highlighted that younger people were more likely to be victims. It stated that *'in particular, young women aged 16 to 19 (11%) were much more likely to be victims of any sexual assault in the last 12 months than women aged 25 to 34 (2.8%), 35 to 44 (1.6%), 45 to 54 (1.6%) and 55 to 59 (0.8%). The only age group which was not significantly different when comparing with women aged 16 to 19 was women aged 20 to 24 (7.6%). The pattern was similar, but less pronounced for men.'*

Inspections of the criminal justice system response to sexual violence and abuse

- 1.24 There have been numerous reports across the UK in relation to the approach of police and prosecuting authorities' response to vulnerable victims and sexual offences. HMICFRS (formerly HMIC) inspected the police response of all 43 forces in England and Wales to child protection and child abuse between 2014 and 2015. The press release of the summary report published in 2015 commented that *'Although all forces have strategies and policies in place that are designed to ensure children are effectively protected and safeguarded (i.e. protected from further harm), and senior leaders are clear in the priority they place on this area of policing, HMIC's inspections found that the plans articulated by senior officers have failed as yet to result in consistently good services for children. On too many occasions HMIC found that investigations into child abuse or neglect were poor and plagued by delay, and the response to reports of offences against children - ranging from online grooming to domestic abuse - was inadequate. HMIC concluded that pockets of excellent practice observed across all inspections were the result of dedicated and professional individuals and teams, rather than a united, understood and applied focus on protecting children at force level²².*

21 Office for National Statistics, *Focus on violent crime and sexual offences, England and Wales: year ending Mar 2016: Analyses on violent crime and sexual offences from the year ending March 2016 Crime Survey for England and Wales and crimes recorded by police, February 2017*. Available online at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/compendium/focusonviolentcrimeandsexualoffences/yearendingmarch2016>

22 HMICFRS, *The police service must reassess their approach to child protection - or risk failing a new generation of children*, press release for three child protection reports, July 2015. Available online at: <https://www.justiceinspectorates.gov.uk/hmicfrs/news/news-feed/the-police-service-must-reassess-their-approach-to-child-protection/>

- 1.25 Inspections conducted by HMIC (now HMICFRS) under their Policing Effectiveness, Efficiency and Legitimacy (PEEL) programme have included a focus on how effectively police forces deal with victims of crime. The 2016 PEEL effectiveness inspection focused on how the PSNI and other police forces dealt with vulnerable victims, particularly missing children and victims of domestic abuse as well as how prepared it was to deal with child sexual exploitation. Overall, the PSNI was assessed as requiring improvement²³. The 2017 PEEL effectiveness inspection assessed the PSNI's ability to keep people safe and reduce crime as 'good'²⁴.
- 1.26 In February 2016 HMCPsi published a report on a thematic review of the Crown Prosecution Service (CPS) Rape and Serious Sexual Offence Units²⁵. Whilst this highlighted positive outcomes as a result of the introduction of the Rape and Serious Sexual Offence (RASSO) Units, including sound policy and legal guidance, increased numbers of prosecutions and convictions it raised concerns about the compliance with the minimum operating standards, the standard of casework and level of care for victims and witnesses. The rolling programme of HMCPsi Area Assurance Inspections which commenced in 2016-17 included consideration of the work of the RASSO Unit in each CPS Area. The Annual Report of the Chief Inspector highlighted issues with sufficiently staffing the RASSO Units in each area and the knock-on problems resulting from this²⁶.
- 1.27 In November 2017 the Inspectorate of Prosecution in Scotland published a Thematic Review of the Investigation and Prosecution of Sexual Crimes²⁷. This report highlighted the increase in reporting of sexual crimes but noted that *'while there has been an increase in the reporting of such crimes, the high rate of attrition (the process whereby cases drop out of the criminal justice system at any point) and the low conviction rate, particularly for offences of rape and attempted rape, remain a source of concern'*.
- 1.28 In July 2010 CJI published its first thematic inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland²⁸. This report made four strategic and eight operational recommendations for improvement. In October 2013, CJI published a follow-up review of the inspection recommendations²⁹. This found that seven of the original inspection recommendations were assessed as achieved; three were found to be partially achieved; and two were not achieved.

23 HMIC, *PEEL: Police efficiency: An inspection of the Police Service of Northern Ireland, 1–5 February 2016*, August 2016. Available online at: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/psni-peel-efficiency.PDF>

24 HMICFRS, *PEEL: Police effectiveness 2017: An inspection of the Police Service of Northern Ireland, March 2018*. Available online at: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/peel-police-effectiveness-2017-psni.pdf>

25 HMCPsi, *Thematic Review of the CPS Rape and Serious Sexual Offences Units, February 2016*. Available online at: https://www.justiceinspectorates.gov.uk/hmcpsi/wp-content/uploads/sites/3/2016/02/RASSO_thm_Feb16_rpt.pdf

26 HM Chief Inspector of the Crown Prosecution Service, *Annual Report 2016-17, July 2017*. Available online at: https://www.justiceinspectorates.gov.uk/hmcpsi/wp-content/uploads/sites/3/2017/07/HMCPsi_CJAR_2016-17_rpt.pdf

27 Available online at: <https://beta.gov.scot/publications/thematic-review-investigation-prosecution-sexual-crimes/>

28 CJI, *Sexual violence and abuse: A thematic inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland, July 2010*. Available online at: <http://www.cjini.org/getattachment/0ad6b7e4-0810-4151-8bb0-e28789591efc/picture.aspx>

29 CJI, *Sexual violence and abuse: A follow-up review of the inspection recommendations, October 2010*. Available online at: <http://www.cjini.org/getattachment/d1c3dab5-25f3-45a4-9e19-4f7ed8a0c9fc/picture.aspx>

- 1.29 In May 2015 Sir Keir Starmer KCB, QC published findings of an independent review of three interlinked cases handled by the PPS involving sexual offences and terror-related charges³⁰. The recommendations in this report included improvements to policy, management processes, training for staff and working practices. A review was undertaken by CJI of the implementation of the recommendations which was published in October 2017³¹. This recognised the work done by the PPS to address the recommendations, including the development of procedures to deal with serious and complex cases, but highlighted areas where there was still some work to be done to fully implement the recommendations.

Outcomes

- 1.30 In January 2018 the PSNI published an Annual Bulletin on the outcomes of crimes recorded by the police between 2015-16 and 2016-17³². This bulletin showed the impact that delay has on concluding sexual offence cases and therefore an inability to report on outcomes. It also showed the high proportion of sexual offences where the case had not been progressed further than the police investigation or prosecution decision. Table A1:4 in Appendix 1 below shows the PSNI outcome figures for overall crime and sexual offences including rape. The data shows significant differences between the outcome rates for crime overall and for rape and sexual offences.
- 1.31 The figures indicate that sexual offences, especially rape offences, showed the highest proportion of crimes for which an outcome had yet to be assigned (i.e. were still under investigation at the time the bulletin was published). Figures for 2015-16 showed that nearly one in five rape offences had yet to be assigned an outcome (versus two per cent for all crimes), while 63.2% of rape offences had been assigned an outcome code relating to evidential difficulties (versus 27.8% all crimes). More than two in five rape offences recorded during 2016-17 had not been assigned an outcome by January 2018 (versus five per cent of all crimes). The proportion of crimes in which prosecution was prevented (for example, the offender had died) or prosecution was not in the public interest, was just less than four times as high for sexual offences than for all crime (4.2% versus 1.1%) in 2016-17.
- 1.32 The prosecution case file review for this inspection recorded the final outcome of the case, where it had concluded by the time of the review. These figures are outlined in Table 1. This illustrates that 41.9% of cases that were finalised did not meet the Test for Prosecution and around 36.5% of all finalised cases resulted in a conviction (either after trial or by way of a guilty plea). When considering only the cases that met the Test for Prosecution the case file data indicates that 63% of cases resulted in a conviction.

30 Sir Keir Starmer KCB, QC & Katherine O'Byrne, *Independent Review of the prosecution of related sexual abuse and terrorism cases*, May 2015. Available online at <http://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/PPS%20Press%20Office/StarmerReview.pdf>

31 CJI, *Review of PPS response to the review of related Sexual Abuse and Terrorism Cases*, October 2017. Available online at: <http://www.cjini.org/TheInspections/Inspection-Reports/2017/October-December/The-Starmer-Review>

32 PSNI, *Outcomes of Crimes Recorded by the Police in Northern Ireland 2015-16 and 2016-17: Annual Bulletin*, January 2018. Available online at: <https://www.psnipolice.uk/globalassets/inside-the-psni/our-statistics/police-recorded-crime-statistics/documents/police-crime-outcomes-in-northern-ireland-2015-16-to-2016-17.pdf>

Table 1: Prosecution case file review outcomes

Case outcome	Number	Percentage
Timely guilty plea	4	5.4%
Late guilty plea	16	21.6%
Conviction after trial	7	9.5%
Acquittal after trial	7	9.5%
Discontinuance	9	12.2%
No prosecution directed	31	41.9%
Total finalised cases	74	100%
Cases not finalised	3	

- 1.33 These figures are similar to those published by the PPS bulletin regarding statistics on sexual offences³³. This bulletin reported that overall the conviction rates for all sexual offences cases (where the defendant was convicted of at least one sexual offence) was 67.4% in the Crown Court and 54.1% in the Magistrates' and Youth Courts. In rape cases in 2016-17 just under a quarter (23.4%) of defendants were convicted of a sexual offence including rape; in 2015-16 this figure was slightly higher at just over a quarter (25.7%). In cases of other sexual offences in the Crown Court 72.9% of defendants were convicted of at least one sexual offence (excluding rape). In England and Wales the most recent CPS Violence against Women and Girls report³⁴ also referenced official statistics sourced from the Ministry of Justice National Statistics. These report a conviction rate of 36% for rape in England and Wales in 2016.
- 1.34 Across the UK there are different processes and responsibilities on criminal justice organisations to pass cases through the system. For example, in Northern Ireland, the PSNI will prepare a file on every case where a crime has been detected to forward to the PPS, whereas in England and Wales forces apply much greater discretion in decision making. Hence it would be expected that the Test for Prosecution would be met in less cases in Northern Ireland than in England and Wales. It is difficult therefore to compare prosecution rates across the different jurisdictions taking account of these differences.

33 PPSNI, *Statistical bulletin: Cases involving sexual offences 2016-17, April 2018*. Available online at: https://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Stats%20and%20Research/Sexual%20Offences/Statistical%20Bulletin_Cases%20Involving%20Sexual%20Offences%2016-17.pdf

34 CPS, *Violence against Women and Girls Report: 10th edition 2016-17, October 2017*. Available online at: https://www.cps.gov.uk/sites/default/files/documents/publications/cps-vawg-report-2017_0.pdf

- 1.35 In order to provide some level of comparison Table A1:5 in Appendix 1 reports the number of sexual crimes recorded by the police in each jurisdiction and the conviction rate at Court. This shows differences in 2016-17 between the estimated overall outcome rates as calculated by CJI across Northern Ireland (rape 1.8% and other sexual offences 9.8%) and England and Wales (rape 3.3% and other sexual offences 13.4%). In Scotland published figures include cases of rape and attempted rape as well as other sexual offences and estimated outcome rates are calculated as 5.2% (rape/attempted rape) and 10.5% (other sexual offences). There will be a variety of reasons for this as attrition occurs at many stages through the system as highlighted in this report. In order to affect real change, it is important that the criminal justice organisations understand the different attrition points through the system and take steps to address each one. This report aims to try and explain the reasons for the attrition of cases through the system and highlight what the agencies of the criminal justice system can do to address these.

The CJI 2017-18 inspection

- 1.36 This inspection aimed to investigate how the criminal justice system deals with sexual violence and abuse in Northern Ireland. The methodology for the inspection is contained in Appendix 2. The inspection fieldwork consisted of interviews with stakeholders from community and voluntary organisations who represented, supported or provided services to victims, meetings with representatives of the criminal justice agencies (from the DoJ, the PSNI, the Forensic Science Northern Ireland (FSNI), the PPS and the NICTS) as well as meetings with representatives from the Judiciary and legal profession, Northern Ireland Policing Board and Health and Social Care Trusts. Inspectors also met with a number of victims who had been subjected to sexual offences, in some cases in the context of a domestic relationship.
- 1.37 Two case file reviews were conducted during the fieldwork; one of a sample of police investigation files and one of a sample of PPS prosecution files with support from HMICFRS and HMCPSI respectively. Further details on the case file reviews in terms of the types of cases, victim and suspect/defendant background characteristics and outcomes can be found in Appendix 3.
- 1.38 The police file review examined 52 sexual offences case files, just over half of which were child sexual abuse files and just under half which were files investigating rape and attempted rape against adults. The methodology for this file review was based on that used by HMICFRS during its PEEL inspections and covered the life of the case from first response, vulnerability, file submission, investigation and victim care. The cases had all come to the attention of the PSNI (either by a report from the victim or reporting from another source for example, from social services) between 1 January 2016 and 1 July 2017.

- 1.39 The PPS case file review similarly examined 77 case files which had been received by the PPS from the PSNI between 1 January 2016 and 31 March 2017. Because of the time taken to submit a file to the PPS the files could not be the same files as those in the police review. Of these 33% were rape files, seven per cent were child abuse files and 61% other sexual offences. The methodology was based on that used by HMCPSP to inspect the RASSO Units in England and Wales but tailored for this inspection. The questions covered the life of the prosecution case including pre-decision advice, decision making, case progression, policy and victim and witness care.
- 1.40 Analysis was undertaken of the data for both file reviews and assessed in terms of other findings from the fieldwork for this inspection and other sources of evidence (for example, previous CJI reports). Where relevant data from the case file reviews will be highlighted in the report to give an indication of the quality of the handling of sexual offences cases.
- 1.41 The inspection was undertaken in parallel with an inspection of how the criminal justice system deals with domestic violence and abuse in Northern Ireland because of the joint strategy, large overlaps between the two areas in terms of the criminal justice system's approach and the fact that the same victims often suffer both types of offence. The Terms of Reference (see Appendix 4) therefore reflects this approach. Where issues have arisen and recommendations are made which impact on both topics, they will be covered in this report. The inspection report on how the criminal justice system deals with domestic violence and abuse will be published following this report.



Strategy, governance and prevention

Strategy and governance

2.1 The 'Stopping Domestic and Sexual Violence and Abuse in Northern Ireland: A Seven Year Strategy' was published in March 2016³⁵. This replaced the previous two separate strategies for tackling domestic violence and abuse, (published in 2005) and sexual violence and abuse (published in 2008) and brought them together into one Strategy with associated action plan. The Strategy contained five strands:

- driving change through co-operation and leadership;
- prevention and early intervention;
- delivering change through responsive services;
- support; and
- protection and justice.

2.2 The aim of the protection and justice strand was: '*Victims of domestic and sexual violence and abuse will have more confidence in engaging with the justice system as a direct result of more effective, supportive, responsive and timely protection. Perpetrators will be challenged and held accountable for their behaviour*'. The three priorities in this strand were:

1. Focused protection, support and information will be available for all victims throughout their engagement with the justice system.
2. Ongoing assessment of the capacity of the justice system to respond to current, new and emerging issues will be undertaken in relation to both the protection of victims, and in responding to harmful and violent behaviour.
3. Continue to develop and deliver practices and interventions, based on best practice, to effectively address harmful, violent and abusive behaviour.

A Year One implementation plan was published in May 2016³⁶. This contained 13 outcomes and actions, of which DoJ was a lead in 11. At the time of writing there was no subsequent implementation plan published for Year Two.

35 DHSSPS and DoJ, *Stopping Domestic and Sexual Violence and Abuse in Northern Ireland A Seven Year Strategy*, March 2016. Available online at <https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/stopping-domestic-sexual-violence-ni.pdf>

36 DoH and DoJ, *Stopping Domestic and Sexual Violence and Abuse Strategy Year One Implementation Plan*, May 2016. Available online at <https://www.health-ni.gov.uk/sites/default/files/publications/health/DSVA-strategy-year-one%20implementation-plan-updated-17%20May%202016.pdf>

- 2.3 In supporting the Strategy (and specifically Strand 1) there was a governance and delivery structure created consisting of an Inter-Ministerial Group, a Strategy Delivery Board (to monitor progress and report to the Inter-Ministerial Group as well as quality assure project level output) and finally, a Stakeholder Assurance Group and associated ad-hoc project groups. Membership of the Stakeholder Assurance Group included representatives of statutory agencies as well as members from key voluntary and community organisations including Women's Aid, Nexus, Men's Advisory Project, Men's Action Network, Victim Support Northern Ireland and The Rainbow Project.
- 2.4 CJI consulted with stakeholders to seek their views on the quality of the Strategy and implementation plan and the contribution they were able to make through the Stakeholder Assurance Group. Some stakeholders commented that the Strategy was focused predominantly on the needs of female victims, although other stakeholders who mainly supported female victims felt that there had been an attempt to 'gender neutralise' the Strategy to such an extent that it did not sufficiently serve to address the issues of either gender. It is clear that domestic and sexual violence and abuse are gendered offences, with the majority of victims being female (just below 80% for sexual offences and just below 70% for domestic abuse offences in 2016-17³⁷), but it is important that services provided for victims are tailored to the needs of that individual, whatever their gender, sexuality, age, ethnicity or if they have a disability or not. The provision of these services should therefore be evidence-based and developed in consultation with victims and their advocates. The interface between statutory agencies and voluntary and community organisations will be discussed further in a forthcoming inspection report by CJI on this area.
- 2.5 Stakeholders also commented that the implementation plan was focused more on the issue of domestic violence and abuse rather than sexual violence and abuse. Some felt the bringing together of the two strategies had reduced the focus on sexual violence and abuse. Given the overlap of these two types of offences, as well as the many similar issues for health and justice agencies in addressing the issues arising from them, it is understandable why a unified strategy was developed but it is important that issues in dealing with cases of sexual offences outside of a domestic context remain a focus.
- 2.6 One issue raised in regard to the Strategy and implementation plan, as well as to various actions within it, was the lack of associated funding for the work. Some examples of actions under the previous Strategy were given which had made little progress, such as programmes for un-adjudicated perpetrators (see Chapter 5) and the development of an Independent Domestic Violence Advisor scheme (see Chapter 6). Inspectors were advised this was partly due to a lack of specified funding.

37 See PSNI, *Financial year trends in police recorded crime dating back to 1998-99 Latest annual trends bulletin, period ending 2016-17*, January 2018. Available online at: https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/police-recorded-crime-statistics/documents/police-recorded-crime-in-northern-ireland-1998-99-to-2016-17_pivot-tables-victim-characteristics.xls

- 2.7 Despite the joint nature of the strategy and the focus on the departments and their agencies working together, there was still no information sharing agreement in place between the PSNI and Social Services, albeit this work was in progress. Information was therefore being shared under Article 2 obligations³⁸. This was a cause for concern for PSNI senior managers and caused some operational difficulties for investigators, with some delays in information being shared appropriately. This should be a matter of priority for both organisations.
- 2.8 Claire Sugden MLA, who became Minister of Justice in May 2016, included addressing domestic violence as one of her key priorities.³⁹ The Committee for Justice also held a series of evidence sessions regarding domestic and sexual violence during 2016 and 2017, particularly regarding legislation and victims' issues. Whilst most of these discussions focused mainly on legislation and protective activities for victims of domestic violence and abuse, these would provide benefits for victims of sexual violence and abuse, suffered in the context of a domestic relationship. These will be discussed further in the forthcoming CJI report on the criminal justice system's approach to dealing with domestic violence and abuse. Inspectors were unable, however, to ascertain whether sexual and domestic violence and abuse had featured in discussions at the Criminal Justice Board.
- 2.9 The launch of the Strategy in March 2016 noted that *'The publication of the Strategy contributes to the DoJ Programme for Government Commitment 54 to tackle and reduce the level of serious crime and also DHSSPS [now DoH] Commitment 61, which highlights the need to introduce a package of measures aimed at improving safeguarding outcomes for children and vulnerable adults across Northern Ireland.'*⁴⁰
- 2.10 Domestic and Sexual Violence Partnerships which operated in each Health and Social Care Trust area had been re-established under the new Strategy (previously they had only focused on domestic violence). These provided local strategy and governance arrangements bringing together statutory partners from health and social care, education, housing, policing, probation and courts with voluntary and community organisations representing male and female victims and children among others.
- 2.11 A Victim Charter⁴¹ had been published in 2015 which set out how victims of crime should be treated and what advice, support and practical information they can expect to receive. This listed the support and information standards a victim could expect from the justice system, stating that victims were *'entitled to:*

38 Article 2 of the Human Rights Act, 1998, protects the right to life.

39 Northern Ireland Assembly, Committee for Justice, Official Report (Hansard), *Key Issues and Priorities: Ms Claire Sugden MLA (Minister of Justice) and DoJ Officials*. Available online at: <http://data.niassembly.gov.uk/HansardXml/committee-18643.pdf>

40 Department of Health, *A Step Forward in Tackling Domestic and Sexual Violence and Abuse*, news article March 2016. Available online at: <https://www.health-ni.gov.uk/news/step-forward-tackling-domestic-and-sexual-violence-and-abuse>

41 Department of Justice, *Victim Charter Summary: A Charter for victims of crime, December 2015*. Available online at: <https://www.justice-ni.gov.uk/sites/default/files/publications/doj/victim-charter-summary-oct-2015.PDF>

- *be recognised and treated fairly, professionally, and with dignity and respect;*
- *be understood and to understand - in your first language if necessary;*
- *be updated at key stages and given relevant information;*
- *have your needs considered by service providers;*
- *be told about available support and bring someone with you to give support;*
- *apply for compensation, if you were a victim of a violent crime;*
- *ask for a Court familiarisation visit and be kept separate from the accused as much as possible at Court;*
- *have the opportunity to tell the Court how the crime has harmed you, where the case is to go to Court;*
- *ask to be told how the offender's sentence is managed; and*
- *let service providers know if you are unhappy with the service provided.'*

Each organisation in the criminal justice system was required to adhere to the standards in the Charter and adopt these into their own organisational documents relating to victims.

Organisational Business Plans

PSNI

2.12 The 2016-20 Strategic Outcomes for Policing⁴² set the following strategic outcomes which are relevant to this area of policing, although again the focus was explicitly on domestic abuse:

- *'Strategic Outcome 2.1: 'Reducing harm caused by crime and anti-social behaviour with a focus on protecting the most vulnerable (with a specific reference to domestic abuse)'; and*
- *Strategic Outcome 2.2: 'Protecting and supporting repeat victims (again with domestic abuse being specifically referenced).'*

2.13 The Annual Policing Plan for Northern Ireland 2016-17 did not make a reference to specific measures regarding sexual offences but the 2017-18 Policing Plan⁴³ addressed this: (Measure 2.1.2) *'Improve the service to vulnerable groups in collaboration with partners in relation to: hate crime, crimes against older people, sexual offences, mental health'*.

2.14 Whilst the focus for the Northern Ireland Policing Board, and recent Policing Plans has been mainly around vulnerability this has been supplemented in the past year with a specific mention of sexual offences in the 2017-18 Policing Plan. The PSNI has clearly had a focus on vulnerable victims in recent years and the 2016-20 Strategic Outcomes reflect this. The impact of this focus on operational delivery will be discussed later in this report.

42 Northern Ireland Policing Board, *Strategic Outcomes for Policing 2016-20*, 2016. Available online at: <https://www.nipolicingboard.org.uk/sites/nipb/files/media-files/Strategic-outcomes-for-policing-2016-2020.pdf>

43 Northern Ireland Policing Board, *Annual Policing Plan for Northern Ireland 2017-18*. Available online at: <https://www.nipolicingboard.org.uk/sites/nipb/files/media-files/nipb-annual-policing-plan-2017-2018.PDF>

PPS

- 2.15 Both the 2016-17⁴⁴ and 2017-18⁴⁵ PPS Annual Business Plans specifically made reference to the implementation of a centralised Serious Crime Unit, whose work included sexual offences. Sexual offences were mentioned in the plans as one example of where lessons could be learnt from court proceedings:

'Strategic Priority 1: Providing a high quality prosecution service

Objective 1.1: To promote the highest standard of decision-making, case preparation and advocacy, applying our Quality Standards on a fair and consistent basis.

Certain classes of crime, such as serious sexual offences, are of particular concern to the public. We will review all cases where there has been a 'No Bill' or Acquittal by Direction in the Crown Court to ensure that any lessons learned are used to deliver improvements.'

In addition the Plans highlighted the PPS's intention to respond to areas for improvement highlighted by CJI in respect of The Starmer Review⁴⁶.

- 2.16 The PPS did not, however, specify any priorities about particular types of offences nor mention the increasing impact of dealing with sexual and/or domestic abuse offences on their workload. As can be seen in the introduction to this report, the numbers of recorded and prosecuted sexual offences and crimes with a domestic motivation had increased in recent years and, with overall crime and the subsequent PPS caseload falling, the proportion of these types of cases received by the PPS was increasing. It could only be assumed that this trend was set to continue considering the inevitable time-lag between cases being reported to the PSNI and a file being sent to the PPS in the context of police crime statistics (as reported previously). Current trends suggest that in the next couple of years, one fifth of the PPS workload could involve cases either of sexual offences and/or offences in a domestic context.
- 2.17 A similar picture was evident in England and Wales where sexual and domestic offences had been rising in contrast to falling overall crime rates (see Chapter 1). The 2016-17 CPS Annual Report and Accounts⁴⁷ contained a section on '*Violence against women and girls (VAWG) offences (in support of the Home Office strategy to end violence against women and girls*⁴⁸)'. In this section the CPS noted: '*VAWG prosecutions account for almost 19% of the CPS' overall caseload, so it is logical that we continue to focus on our performance in this area.*' The report then highlighted a number of actions the CPS had taken in this area.

44 PPSNI, *Annual Business Plan 2016-17*, April 2016. Available online at: <https://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Publications/PPS%20Annual%20Business%20Plan%202016-17.pdf>

45 PPSNI, *Annual Business Plan 2017-18*, August 2017. Available online at: <https://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Publications/Corporate%20and%20Business%20Plans/Annual%20Business%20Plan%202017-18.pdf>

46 CJI, *Review of PPS response to the review of related Sexual Abuse and Terrorism Cases*, October 2017. Available online at: <http://www.cjini.org/TheInspections/Inspection-Reports/2017/October-December/The-Starmer-Review>

47 CPS, *Annual Report and Accounts 2016-17 (for the period April 2016 – March 2017)*, July 2017. Available online at: <https://www.cps.gov.uk/publication/cps-annual-report-2016-2017-pdf-approx-48mb>

48 Home Office, *Ending violence against women and girls strategy: 2016 to 2020*, March 2016. Available online at: <https://www.gov.uk/government/publications/strategy-to-end-violence-against-women-and-girls-2016-to-2020>

- 2.18 The CPS 2016-17 Business Plan⁴⁹ contained specific indicators and measures relating to sexual offences to *'ensure that all RASSO cases are reviewed and presented in court by a specialist trained sexual offences prosecutor'* and *'fewer than 250 RASSO cases waiting more than 28 days for pre-charge advice or decision'*. The CPS 2017-18 Business Plan⁵⁰ reduced this latter target to *'fewer than 120 RASSO cases waiting more than 28 days for pre-charge advice or decision'*. It also included an action to *'continue to improve the quality and timeliness of RASSO decisions'*.
- 2.19 The CPS therefore goes further in its corporate documents than the PPS in describing the priority it places on sexual and domestic offences and in outlining actions and measures to demonstrate how it will deliver on this. Whilst the PPS has highlighted in its corporate reports and plans the setting up of a specific section which will address serious crimes, including sexual offences (the Serious Crime Unit), it does not indicate how the performance of the Unit will be measured longer-term nor inform the public of the specific business improvement actions the Unit is tasked with.
- 2.20 CJI believe that the setting up of the Serious Crime Unit provides an opportunity for the PPS to demonstrate to the public, partners and victims of crime that it prioritises sexual offences and serious offences of violence in a domestic context through its business and corporate plans and performance review processes. It also demonstrates how the PPS will improve the confidence of victims in how these types of offences are dealt with. This is particularly critical in the context of evidence that these types of offences represent an increasing proportion of the PPS caseload.

Strategic recommendation 1

It is recommended that **the PPS should develop their next and future corporate and business plans to reflect the priority the organisation places on dealing with domestic and sexual violence and abuse, through action planning and key performance indicators specifically related to this area of business.**

Prevention, education and awareness raising

- 2.21 Prevention and early intervention was one of the five strands of the *Stopping Domestic and Sexual Violence and Abuse Strategy*⁵¹. This aimed to *'reduce the incidence of domestic and sexual violence and abuse through effective preventative educational programmes, national training standards, promotion of a culture of prevention and earlier intervention at societal, governmental and local levels'*. The priorities in relation to this strand did not specifically reference the

49 CPS, *2016-17 Business Plan and CPS 2020*, October 2016. Available online at: https://www.cps.gov.uk/sites/default/files/documents/publications/cps_2020.pdf

50 CPS, *2017-18 Business Plan and CPS 2020*, September 2017. Available online at: <https://www.cps.gov.uk/publication/cps-2020-and-2017-18-plan>

51 DHSSPS and DoJ, *Stopping Domestic and Sexual Violence and Abuse in Northern Ireland: A Seven Year Strategy*, March 2016. Available online at <https://www.justice-ni.gov.uk/sites/default/files/publications/doj/stopping-domestic-sexual-violence-ni.pdf>

responsibilities of criminal justice agencies, and during this inspection, the question arose as to what each of the criminal justice organisations could do to educate the public, particularly young people, about sexual offending and offences in a domestic context and prevent them becoming offenders.

- 2.22 It is clear that police have a key role in preventing offending, both in terms of awareness raising of when offences are committed and giving safety advice to the public and victims. On a more subtle level however, all the agencies of the criminal justice system send an important education message when they take action to address offending by people engaged with sexual crime or in a domestic context. Every arrest, charge, prosecution file prepared, direction to prosecute a case, case brought to trial and conviction and sentencing of a defendant sends a message to a suspect/offender, victim, witness and member of the public that sexual and domestic violence and abuse is taken seriously and offences committed will be dealt with robustly, within the law.
- 2.23 The PSNI had been engaged in prevention work to address sexual offending through awareness campaigns and information messages. In recent years the PSNI had increasingly utilised social media to share messages and inform the public about keeping themselves safe and in order to try and prevent rape and sexual assaults (for example, the 2016 *'Without Consent it is Rape'* campaign). In doing this work, the PSNI had engaged with partners such as PCSPs, Nexus, Women's Aid and the Rainbow Project. The PSNI had an area of its website specifically for sexual violence and abuse with information for the public on what sexual assault is, what to do about it and support agencies that could be contacted.
- 2.24 *The Northern Ireland Community Safety Strategy*⁵² referenced the need to tackle domestic and sexual violence in its aim to help to build safer communities. At a local level PCSPs had a key role in prevention of crime and had engaged with other partners to highlight sexual crime. One example is the #BreakTheSilence campaign run by Nexus, which originally began in 2014, funded by Coleraine PCSP and had since been funded by other local partnerships. A number of PCSPs highlighted other sexual and domestic violence awareness raising events in their Action Plans or Annual Reports including the policing districts visited as part of this inspection (Belfast City PCSP; Derry City and Strabane PCSP, Fermanagh and Omagh PCSP). Inspectors were advised however that there was inconsistency amongst the PCSPs as to which had a focus on sexual and domestic violence and abuse and it was more likely to be included in their Action Plan if a member of the PCSP had a specific interest in this area. The DoJ advised that 10 out of 11 PCSPs had domestic/sexual violence in their 2017-18 action plans based on evidence that this was a priority issue to be addressed, and that 10 of 11 PCSPs had this as a theme in their 2018-19 action plan. However this was not apparent to Inspectors when looking at PCSP action plans on the websites of the various PCSPs.

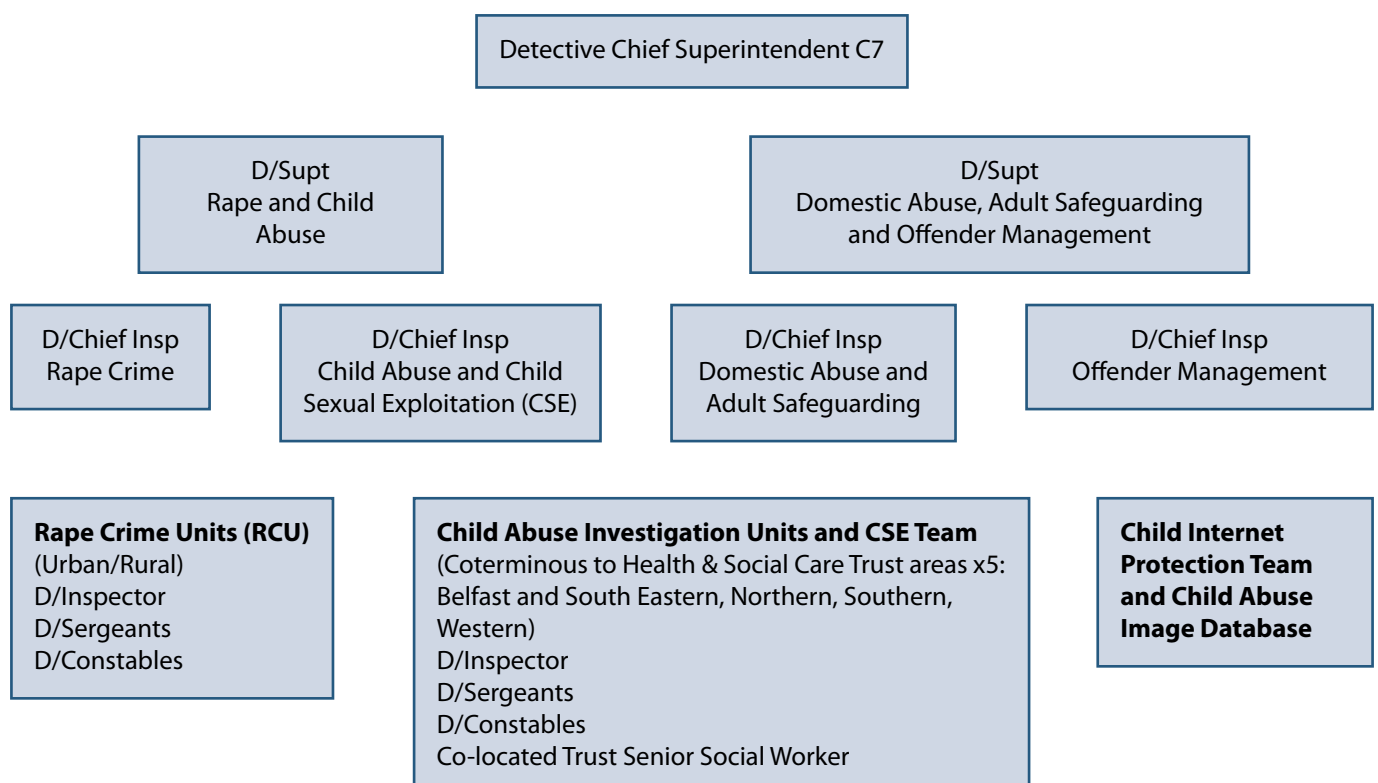
52 DoJ, *Building Safer, Shared and Confident Communities, A Community Safety Strategy for Northern Ireland 2012 - 2017*, July 2012. Available online at: <https://www.justice-ni.gov.uk/publications/community-safety-strategy-2012-2017>



PSNI first response, investigation and case building

Structures, staffing and training

- 3.1 In April 2015, the PSNI established C7 Public Protection Branch as part of Crime Operations Department. In doing so it brought together teams of detectives and police staff who were previously spread across Serious Crime Branch and Public Protection Units in District Policing. The Branch therefore had overall responsibility for operational activity, as well as policy and practice, in relation to domestic abuse, child abuse, child sexual exploitation (CSE), sex and violent offender management, adult safeguarding, rape, child abuse imagery, e-safety and all associated control strategies.
- 3.2 At the time of the fieldwork the structure of the Branch, as related to the investigation of sexual offences, was as outlined in the diagram below. Since the conclusion of the fieldwork for this inspection, a fifth Detective Chief Inspector has been appointed to Public Protection Branch with responsibility for the Central Referral Unit (CRU) and service delivery.



- 3.3 Local Policing Teams within geographical police districts continued to have a role in the response to, and investigation of, sexual offences. Local Policing officers were first responders in the case of 999 or 101 calls where an immediate response was required or an initial statement of the evidence was recorded. On the basis of this and the offences disclosed, a decision was made as to whether an investigation would be passed to Rape Crime or Child Abuse officers or remain with local police. Student Officers received a lesson on sexual offences, including three sexual crime scenarios, as part of Foundation Training which included an input from Nexus. Local Policing officers had responsibility for investigating sexual offences in accordance with the Case Allocation Policy, which did not meet the threshold for Rape Crime.
- 3.4 The Branch also had a Central Referral Unit (CRU) which received referrals about suspected abuse in relation to a child or adult in need of protection from a variety of sources including Social Services Gateway teams, health professionals, education professionals and members of the public. The Unit would then undertake an information assessment and discussion with Social Services to agree an outcome in accordance with the relevant Joint Protocol⁵³ (either a single agency outcome where police or Social Services took the lead or a Joint Protocol investigation).
- 3.5 All those spoken to during the inspection were agreed that the re-structuring of the different elements of investigation into child abuse and adult sexual offences into one Branch within Crime Operations Department was a positive move. Benefits cited included: the professionalisation of the specialisms and officers in them; the ability to share resources across the crime family; the increased consistency of delivery and decision making; and the ability to raise the awareness of the public about the PSNI's work in the area of public protection. Some areas had co-located Senior Social Workers to work with police on child abuse and adult safeguarding cases.
- 3.6 The setting up of the CRU was also cited as a positive development in principle, with the assessment of referrals being conducted at an earlier stage in a more consistent manner with input from social services. Inspectors were told this freed up time for child abuse officers, and particularly their Sergeants, to focus on investigations.
- 3.7 Officers in child abuse investigation and rape crime spoke positively about the specialist training received from Investigative Training although they cited difficulties in getting released to attend the courses available due to the high workloads and resource pressures. Training for child abuse investigation officers and those involved in adult safeguarding was delivered jointly to police and Social Services. Prosecutors from the PPS Serious Crime Unit provided an input to training for Senior Investigating Officers and Investigating Officers on a regular basis. A mentoring scheme for Trainee Investigators had been established.

53 Two Joint Protocols existed at the time of the inspection fieldwork; one relating to children (the '*Protocol for joint investigation by social workers and police officers of alleged and suspected cases of child abuse - Northern Ireland*'; available online at <http://www.hscboard.hscni.net/download/PUBLICATIONS/policies-protocols-and-guidelines/Protocol-for-joint-investigation-by-social-workers-and-police-officers-of-alleged-and-suspected-cases-of-child-abuse-NI.pdf>) and one relating to adults (the '*Protocol of joint investigation of adult safeguarding cases*'; available online at <http://www.hscboard.hscni.net/download/PUBLICATIONS/safeguard-vulnerable-adults/niasp-publications/Protocol-for-joint-investigation-of-adult-safeguarding-cases.pdf>).

- 3.8 Inspectors were told however of significant challenges which had arisen during the establishment of the Public Protection Branch, which continued to have an impact during the time of the fieldwork for this inspection. There had been a large turnover of investigators when the Branch was established, due to officers wanting to move into other roles. This had led to a knowledge and experience gap with subsequent pressures on human resources, management and training to replace officers who had left, ensure new officers were appropriately skilled to perform the role effectively and deliver against a substantial workload during periods of vacancies, abstraction and sickness absence.
- 3.9 Similarly in setting up the CRU, officers had been recruited who had limited or no investigative experience in child abuse investigations and therefore required a substantial investment in training, development and supervision to perform the role effectively. There had also been issues with the operation of the CRU initially in terms of appropriately making referrals to Social Services, although this appeared to have been addressed at the time of the inspection.
- 3.10 There appeared to be no career pathway in the PSNI for officers in Detective roles; for example progressing from uniform policing to general crime investigation and on to specialist roles in public protection, serious crime or intelligence. Whilst the situation at the time of the inspection had stabilised with most officers trained, there was an ongoing risk that officers would request to move roles into another Detective discipline, which was perceived to be less stressful or had a less demanding workload, once they had completed the required period of time in the role and problems would arise again.
- 3.11 At the time of the inspection Inspectors were advised that officers in both Rape Crime and Child Abuse continued to have high caseloads, particularly compared to other forces, and as a result, there was a continuing challenge in managing sickness absence, significant delays in progressing investigations and potential issues in retaining officers once they had achieved their substantive Detective status. This was also the case for the Detective Sergeants and Detective Inspectors. For example, the Detective Inspectors working in child abuse described teams which were below strength due to sickness absence, ongoing vacancies and maternity leave and which had an average of approximately 250 open cases each, including all types of child abuse (physical, sexual, emotional and neglect) as well as CSE.
- 3.12 There were emerging issues that required Public Protection Branch to monitor and develop new processes. CSE had become a focus in recent years, particularly in light of the Marshall Review⁵⁴, and one which will be the subject of a forthcoming CJI inspection report. Female Genital Mutilation was an issue about which the PSNI was developing its approach. Finally, there had been recent media focus, and ongoing police investigations, into activity by community activists (so-called 'paedophile hunters') against those suspected of being involved in child abuse. The police believed that this diverted police resources from dealing with offences appropriately and risked damaging evidence gathered in child abuse investigations.

54 Marshall, *Child Sexual Exploitation in Northern Ireland: Report of the Independent Inquiry*, November 2014. Available online at: <http://www.cjini.org/getattachment/f094f421-6ae0-4ebd-9cd7-aec04a2cbafa/picture.aspx>

- 3.13 Public Protection Branch had, with the support of the Police Federation for Northern Ireland, developed a resilience and wellbeing programme for officers in an attempt to address this but sickness levels remained high during the fieldwork for this inspection. Officers suggested to Inspectors that while the perception may be that it would be the nature of the work that was stressful, it was actually the volume of work that was the cause of wellbeing issues. Support for officers working in this area of policing needs to be a continuing focus for senior managers.
- 3.14 The HMICFRS PEEL: Police effectiveness 2017 report⁵⁵ commented on the offender management element of Public Protection Branch and made a recommendation regarding the matching of resource to demand across the five area public protection units. This recommendation is also relevant to the Rape Crime, Child Abuse and Domestic Abuse and Adult Safeguarding parts of Public Protection Branch, given the increasing numbers of reported cases which require a response from these specialisms and the already high workloads as outlined above.
- 3.15 As the fieldwork for this inspection was concluding Inspectors were advised that the Public Protection Branch had successfully bid for additional staffing resources at the January 2018 Priority-Based Resourcing Programme Board. This would provide the Branch with an additional 93 staff across the branch (some to replace current vacancies) with 48 of those working in the areas of CRU, child abuse investigation and rape crime. At the time of writing the Branch had been increased by an additional 37 police officers and three police staff. Inspectors were advised that the Branch had been encouraged to review the structures and processes within the Branch and to make a further bid for additional resources should this be required.
- 3.16 Given the recent increases in referrals and reports to police and continuing challenge to manage the caseloads arising from this, it is imperative that the PSNI maintain a focus on balancing the demand and workload. The Public Protection Branch Business Plan incorporated this area and it was monitored via the overview system. CJI believe there should be a continuing focus from Senior Management of Public Protection Branch on:
- ensuring caseloads of both investigating officers and their supervisors are manageable and enable investigations to be carried out in an effective and timely manner;
 - a focus on succession planning to develop replacements for officers who chose to leave Public Protection Branch; and
 - further consideration as to how resources can be better shared to meet demand peaks across the various branches of Crime Department.

55 HMICFRS, *PEEL: Police effectiveness 2017: An inspection of the Police Service of Northern Ireland, March 2018*. Available online at: <https://www.justiceinspectorates.gov.uk/hmicfrs/publications/peel-police-effectiveness-2017-police-service-of-northern-ireland/>

Operational recommendation 1

Inspectors therefore recommend that **the PSNI should continue to assess and evidence that resource distribution across the areas of child abuse, rape crime and domestic abuse and adult safeguarding is proportionate and sufficient to manage demand and victim confidence effectively. The resourcing levels in the Public Protection Branch should be reviewed and re-assessed within a year of the publication of this report.**

Police response to calls for service

Call handling

- 3.17 The 2016 HMIC (now HMICFRS) PEEL: Police effectiveness report⁵⁶ noted the following Area for Improvement: *'The PSNI should improve its initial assessment of risk and response to vulnerable people by ensuring all its staff in the contact management centres and who work at front counters of police stations are appropriately trained to: identify the full range of vulnerability; advise callers on initial safeguarding measures; and record why an incident is given a particular grade of response, based upon information provided by callers and held on police systems.'* At the time of the current inspection, the PSNI was in the process of finishing the rolling out of THRIVE⁵⁷ training to its contact management staff. Staff in the contact centres were able to describe the process of assessing the call using THRIVE and the benefits of this. Findings from the file review, albeit limited because of the methodology used, also suggested an increasing use of THRIVE. The PSNI therefore appeared to have responded to the recommendation in the 2016 PEEL report.
- 3.18 In addition staff confirmed there was a focus on safety advice and keeping vulnerable callers on the line where they were at risk. They also confirmed that they had access to a number of systems to assist them to identify repeat callers, suspects and addresses, Non-Molestation Orders in place, victims or addresses linked to them who had been identified as high-risk and firearms registered at a property.

First response

- 3.19 The file review found that the PSNI was quick to respond to calls for service in accordance with the Call Allocation Policy and appeared to treat reporting of sexual offences with appropriate seriousness. There was evidence that officers attended most calls in a timely fashion in that 81% (17) of the 21 relevant cases were attended within the PSNI's target time and the attendance time was assessed to be appropriate in 96% of cases (21 of 22). In 94% of relevant cases (30 of 32) there was no evidence that the attendance time or non-attendance had any adverse effect on the victim or investigation.

56 HMIC, PEEL: Police effectiveness (vulnerability): An inspection of the Police Service of Northern Ireland 1–5 February 2016, August 2016. Available online at: <https://www.justiceinspectorates.gov.uk/hmicfrs/publications/peel-police-effectiveness-police-service-of-northern-ireland/>

57 THRIVE (Threat, Harm, Risk, Investigation, Vulnerability and Engagement) is a model used to assess the appropriate initial police response to an emergency call

Early evidence preservation

- 3.20 Student Officers received a lesson in the Police College on how to deal with sexual offences. This covered three example scenarios as well as how to deal with the preservation of evidence, early evidence kits, the use of the sexual crime log and the role of The Rowan. In general, those spoken to were positive about the competence of Local Policing Teams in providing first response at sexual offences and no issues were raised about the securing of evidence or officers' understanding of their role. In some cases victims raised concerns about having to give an initial statement to local police, before their case was passed onto the RCU or the Child Abuse Investigation Unit. They felt this created additional stress for them and some commented that the way they were dealt with by specialist officers was more sensitive and made them feel more reassured.
- 3.21 Since the last CJI inspection of sexual violence and abuse The Rowan, the regional Sexual Assault Referral Centre, had opened in 2013 as a joint venture supported by the Department of Health and Social Services and Public Safety (DHSSPS, now DoH) and the PSNI with input from other organisations⁵⁸. This was an excellent purpose built facility which delivered a range of support and services 24 hours a day, 365 days a year to children, young people, women and men who had been sexually abused, assaulted or raped, whether this happened in the past or more recently and whether or not they had reported the incident to police.
- 3.22 All those spoken to were positive about The Rowan and police officers in particular noted great improvements in the early response to victims. Where police were involved in responding to a call for service, the victim was usually taken to The Rowan by officers from the Local Policing Team but appointments could be arranged in cases where the assault had not just occurred or victims could self-refer without reporting to the police. Some difficulties were raised about the availability of Forensic Medical Officers and Consultant Paediatricians to staff The Rowan but this was an issue for the DoH and the Health and Social Care Trusts to address.

Dealing with suspects

- 3.23 In 36 cases in the file review there was a suspect who was known to police and a power of arrest in the case. The suspect was arrested in 58% of the relevant cases (21). Where the suspect was arrested the majority (76%; 16) were arrested within one day of the report to police with 95% of suspects (20 of 21) arrested within a week. In nine of the 15 relevant cases where the suspect was not arrested, a voluntary interview was arranged instead. In the cases where there was no arrest made or a voluntary interview arranged, the vast majority of these were closed by police as the victim did not wish to support a prosecution or engage with police. In some, the offender was believed to have deceased and in some others, the case was assessed by police and Social Services and a decision was made that Social Services should deal with the case in accordance with Joint Protocol. However, in three cases there was evidence that the police could have done more to investigate the alleged offences which may have led to an arrest.

58 See <http://therowan.net/>

- 3.24 In the nine cases where a voluntary interview was used to interview the suspect, six of these (67%) were completed on the first occasion it was arranged. The other three interviews took place on the second occasion they were arranged. The use of a voluntary interview was assessed as an appropriate course of action in all of the nine cases (100%). Seven of the eight interviews (88%) that were actually completed were conducted more than a month after the incident.

Victim non-engagement and non-criminal justice interventions

- 3.25 It should be highlighted at this stage that a large number of referrals to the police never lead to any significant level of investigation. Firstly the victim in the case may not wish to engage and, particularly if the referral is made by a third party, may never have intended the police to become involved. Examples of this were evident in the case file review, particularly where cases involved historical abuse allegations. Of 47 relevant cases in the file review, the victim supported the investigation and prosecution in just under half the cases (49%; 23). In 24 cases where the victim did not support the prosecution they did not support it from the outset in 50% of cases (12), then in the remaining cases the victim withdrew their support after the report was made to the police but before arrest in 8% (2), after arrest but before charge in 38% (9), and after charge but before trial in 4% (1).
- 3.26 In these cases where the victim declines to give a statement to police or where offences occurred decades previously and victims cannot recall evidential details of names, dates or locations, there is little the police can do to progress the case. There will continue to be a significant proportion of those who have been sexually assaulted who do not wish to engage in a criminal justice process. Provided that there are no ongoing risks to themselves or other potential victims, they should be signposted to support organisations and encouraged to make a report to police in future should they change their mind. In just over half the 40 relevant cases in the file review (22; 55%) there was evidence that police had made a referral to an organisation that supported victims of crime (in line with the Victim Charter). In 10% of the relevant cases (4) there was evidence that the victim declined this offer.
- 3.27 In other cases there was an initial assessment of the case and a decision was made that, in line with Joint Protocol, Social Services should take the case forward without police involvement. This was usually the case where the suspect was a child or had significant learning difficulties. Some examples of cases which did not proceed to a full police investigation and a file to the PPS are given on the following page.

Example 1

An allegation of historic child abuse was received going back over 60 years. The victim was receiving ongoing treatment and support for mental health issues. During one session with a psychiatrist he disclosed that as a young boy he had been physically and sexually assaulted by “one of the brothers” at a Roman Catholic Children’s school. The victim alleged that the abuse started when he was five or six years old; at the time of the report he was 71 years old. The allegation was referred to the PSNI as suitable for a police only investigation and was allocated to the Child Abuse Investigation Unit. The victim declined to engage with the police, saying he could not bear to talk about it. He was referred for counselling and encouraged to contact the police should he wish to pursue the allegation.

Example 2

A call was received from a mother to Social Services to say that her daughter, aged 12 years old, had inappropriately touched her brother, aged seven, whilst bathing him, on two occasions. Social Services were already dealing intensively with this family and a Joint Protocol investigation was established from the outset of the referral. After an initial investigation Social Services and PSNI made a joint report seeking to end the investigation as it had established the reason for the daughter’s behaviour was curiosity. A programme was put in place to address the daughter’s behaviour with ongoing support from her mother. The case was closed and the mother was kept informed of the outcome.

Risk assessment and safeguarding

- 3.28 The CRU provided a key role in undertaking initial assessment of referrals regarding child abuse and adult safeguarding cases and in making decisions about the course of action that should be taken. Officers in Child Abuse Investigation Units welcomed the establishment of the Unit, although cited difficulties in its establishment (as outlined previously) and ongoing staffing issues which meant weekend cover had been reduced. Public Protection Branch senior leadership had been aware of ongoing resourcing pressures around the CRU and at the time of the inspection, there was a commitment to resource the CRU to an effective level to allow evening and weekend cover.
- 3.29 The file review considered the approach of the PSNI to the vulnerability of the victim in each case. There was evidence that the vulnerabilities of the victim were appropriately identified in all but seven cases (45; 87%), by either the investigation lead, the call handler or the first responder. Similarly in the majority of relevant cases (34), there was evidence that the risks to the victim were appropriately assessed and identified by the investigation lead (23; 68%). In nine cases (17%) however the risks to the victim were not appropriately assessed and identified.

- 3.30 In just under three quarters of the 39 applicable cases (29; 74%) there was evidence that victim safety measures, beyond initial safeguarding, were appropriately considered and documented on the log or case file. There was evidence on the file of support, including special measures, being offered to the victim or witnesses (either by police or a partner agency) in 66% of the applicable cases (21). In three cases (9%) the victim declined this support. It is possible that the real total of this is greater but that officers did not record this.
- 3.31 In just under two-thirds of 40 applicable cases (60%; 24) Inspectors assessed that the vulnerability (of all parties involved in the investigation) was dealt with well in the enquiry. In some cases this involved early liaison with Social Services to identify vulnerabilities, good consideration of safeguarding at the outset of the investigation and regular reviews by the Investigating Officer and their supervisor.

Example 3

The police were made aware of an allegation of historical institutional sexual abuse by a 64-year-old man which had occurred when he was 13 years old. Contact with the 67-year-old suspect, who was 18 at the time of the offence, was made and he was informed of the allegation of abuse via telephone. No details of any risk assessment around this were recorded on the file. Three weeks after this contact it is believed the suspect took his own life, although factors contributing to the suspect's death are not documented.

Example 4

A woman called the police and explained that her husband had raped her two years previously and, with two others, sexually assaulted her the previous year. An Achieving Best Evidence (ABE) interview was conducted at The Rowan in which she described the offences against her. The woman indicated that she had mental health issues and was very concerned about losing her children at this time as Social Services were involved with the family.

The husband was interviewed, with his version of events confirming the majority of the interview with his wife but the most significant difference being consent and his denial of the rape.

There was a very good risk assessment on file. The investigator from the RCU had recorded details of their risk assessment and outlined an initial plan early on to deal with this case. Women's Aid and Social Services were involved at the outset. There were good review notes on the Occurrence Entry Log and good ongoing attempts to communicate with the victim. There was evidence of good communication with Social Services discussing vulnerability and whether mental health concerns (possible undiagnosed bi-polar disorder) would have an impact on giving an ABE interview or evidence.

There were various notes and conversations with Social Services regarding the safeguarding of the children in the case and this case appears to be an example of good communication.

- 3.32 In the case file review there was evidence that a risk assessment was being re-considered and updated as the investigation progressed fully in 60% (24 of 40) of relevant cases and partially in 10% (4 of 40). There was evidence that safeguarding the victim was considered (for example, Multi-Agency Risk Assessment Conference (MARAC), Victim Support Northern Ireland, Women's Aid) in 76% of relevant cases (32).
- 3.33 There was also evidence in the file review that appropriate action was taken by police to successfully mitigate the risks to the victim in 64% of relevant cases (21 of 33). There was partial mitigation of the risks in 21% of relevant cases (7) and in nine percent of cases (3) there was evidence that police took action to mitigate the risks, but that the victim was not supportive of these actions. In only six per cent of cases where there were risks to the victim (2 cases) these risks were not mitigated.

Investigation

- 3.34 The investigation of cases involving suspected child abuse or adult safeguarding cases was outlined in the two Joint Protocols (child and adult)⁵⁹. In general these appeared to be working well from a police point of view. The adult safeguarding Joint Protocol was more challenging but some of these issues were suggested to be a lack of familiarity as this had been in place for a shorter period of time than the child abuse Joint Protocol.
- 3.35 In the file review in 70% (32) of the 46 relevant cases, there was evidence that all appropriate investigative opportunities had been undertaken in a timely fashion from the onset of the investigation (for example, without unexplained delays). The investigative opportunities in the cases reviewed included attendance of a crime scene investigator or photographing of injuries, utilisation of CCTV body worn video camera footage, examination of electronic or telephone evidence, obtaining of medical consent or medical notes and records, house to house enquiries and identification of key witnesses, research of social media, intelligence databases or previous incident logs and suspect identification procedures.
- 3.36 Social media was cited as a particular problem in the investigation of sexual offences. This related initially to the gathering of early evidence and communication between the defendant, victim and third parties prior to and around the time of the alleged offence, which may or may not support the allegations. It also however related to the continuing use of social media by the victim and defendant as the case progressed with again, the potential to support or undermine the prosecution case. There appeared to be a lack of strategy or planning in relation to dealing with social media and digital evidence. These issues particularly relate to difficulties with disclosure, as has been seen in recent high profile cases in England and Wales where there had been recent media focus on rape cases where evidence had only been disclosed as cases

59 Health and Social Care Board, *Protocol for joint investigation by social workers and police officers of alleged and suspected cases of child abuse - Northern Ireland, March 2016*. Available online at <http://www.hscboard.hscni.net/download/PUBLICATIONS/policies-protocols-and-guidelines/Protocol-for-joint-investigation-by-social-workers-and-police-officers-of-alleged-and-suspected-cases-of-child-abuse-NI.pdf>) and Health & Social Care Board, *Protocol for joint investigation of adult safeguarding cases, August 2016*. Available online at <http://www.hscboard.hscni.net/download/PUBLICATIONS/safeguard-vulnerable-adults/niasp-publications/Protocol-for-joint-investigation-of-adult-safeguarding-cases.pdf>).

had come to trial. As a result a review of all current rape and serious sexual assault cases was announced by the Director of Public Prosecutions in England and Wales in January 2018⁶⁰. These issues are further discussed in Chapter 4.

- 3.37 In the cases in the file review where an investigation plan was required for the case there was evidence of a clear plan in 21 (50%) of 42 relevant cases and an un-tailored plan in 33% of cases (14). There was no evidence of an investigation plan in 17% of cases (7). There was evidence that the investigation plan was followed fully in 71% of cases (25) and partially in 26% of cases (9). There was no evidence that the investigation plan was followed in three percent of these cases (1). This also relates to the need for effective supervision, which is covered in more detail later in this chapter.

Victim statements and interviews

- 3.38 In the case file review there was evidence that a victim statement was taken by the police in 26 cases. Of these, just over a third (35%; 9) were taken within a day of the report to police. In four cases (15%) the statement was taken between two and seven days after the report to police and in five cases (19%) the statement was taken between a week and a month after the initial report. In the final eight cases (31%) it took over a month to take a statement. In cases where a statement was taken, the timing of the statement taking was assessed to be appropriate in 62% of relevant cases (18). There was evidence on the case files reviewed that the police progressed or tried to progress the case without the support of the victim in the majority of the cases in the file review. This is positive in terms of progressing the case but, in some cases, may not be needed if the case was handled with less delay.
- 3.39 Some victims who met with Inspectors during the inspection described delays in having an initial statement taken or in a video interview being arranged. In some cases in the file review the delay in taking a statement or arranging an interview inevitably contributed to the decision of the victim to withdraw from the case and ultimately, made the job of the Investigating Officer much more difficult. One such example is outlined on the next page.

60 BBC news, *All current rape cases to be 'urgently' reviewed over disclosure fears*, 27 January 2018. Accessed online at: <http://www.bbc.co.uk/news/uk-42841346>

Example 5

In February 2016 a woman walked into a police station and reported that 13 years previously she had been drugged, raped and forced to carry out explicit sex acts whilst being videoed by her then husband. This sometimes involved other men being brought into the house to have sex with her against her will. Her husband demanded money or he said he would share the images which she refused. She left him and stated that she believed that he had shared the footage with friends and previous employers. The responding officer called the RCU who advised on risk and priority level and a sexual crime log was opened. The RCU indicated that demands prevented them from dealing with this case immediately. The Investigating Officer spoke with the victim for the first time in mid-March 2016 (three weeks after her report) to arrange an appointment to see her. The Occurrence Enquiry Log entry indicated that the officer gave the victim some time to consider what she wished to do.

In mid-June 2016, four months after the victim walked into the police station to make a complaint, the Investigating Officer made contact with the victim who said she wished to proceed and give a statement. When the officer spoke to her four days later, the victim indicated she no longer wished to proceed and made a withdrawal statement. In this she indicated that she was terrified of her ex-husband. She stated that he had sent naked photos of her to two previous employers and because he had drugged her and raped her, she was afraid of what he may do to her or the children. She indicated that the case was having a significant impact on her mental health which had manifested in her physically collapsing. She asked the police not to speak with the suspect 'because I know what he is like and I am terrified of the consequences of him knowing.' The police officer told her that they would be available if she changed her mind.

After some further enquiries in early 2017 (including speaking to the ex-husband) the case was presented to the PPS sexual offences no prosecution clinic in April 2017 and no prosecution was directed.

- 3.40 In the cases in the file review where statements were taken, the police officers involved provided relevant and comprehensive witness statements in the majority of the 20 relevant cases (80%; 16).

Digital technology

- 3.41 Several issues were raised about the use of digital technology in investigations and subsequent transfer through the justice system as the case progressed. Firstly delays were common in examining digital devices, particularly laptops, by the PSNI's Digital E-Crime Support Units and Cyber Crime Branch. In 2017 CJI published a report on an inspection of cyber-crime⁶¹ which considered in depth the PSNI's approach to dealing with the examination of digital devices. The use of social media by the public raises a number of issues for police investigations. Firstly issues can arise in terms of the victim and suspect's account at the time of the offence. Subsequently issues can arise after the offence is reported, with implications for further disclosure as the case progresses.

61 CJI, *Cyber-crime: An Inspection of how the Criminal Justice System deals with Cyber Crime in Northern Ireland*, June 2017. Available online at: <http://www.cjini.org/getdoc/72f540b8-abb6-4e47-813c-78c99aeb4f0e/Cyber-Crime>

- 3.42 The CJI cyber-crime report raised concerns about the PSNI's ability to respond to the increasing demand for examination of digital devices and made the following recommendation which is relevant to the findings of this inspection: *'The PSNI should reduce the backlog of digital forensic examinations to an acceptable level. This should be based on an assessment of potential future demand and consideration of all options including:*
- *the resourcing requirements to meet demand;*
 - *the potential for outsourcing;*
 - *the roll-out of NUIX;*
 - *the potential for use of automated technology;*
 - *the scope for civilianisation; and*
 - *the training and awareness provided to officers about seizure and examination of technological devices.'*
- 3.43 Secondly, the PSNI had introduced digital interview recording for both suspect interviews and ABE interviews as part of its previous ICT Strategy⁶². In addition under this ICT Strategy and under the PSNI's current digital strategy⁶³ body-worn video had been rolled out across the Service, which led to digitally recorded video evidence being included in case files to the PPS and available for the Court.
- 3.44 Issues were raised by both police and staff from other justice organisations that there had been compatibility issues between police digital records and the systems used by the PPS and the Courts. This led to delays and inefficiencies in case files being transferred to the PPS and when evidence was being heard at Court. Police officers told us of occasions where there were issues with the quality of the ABE interview recording once it was played on the Court screens. Inspectors were told of occasions where the sound was too quiet, where there was sound interference either from apparent technological issues or background noises or where the discs would not play at all on Court systems. In the worst example, a jury was discharged in a case at Dungannon Crown Court because of issues with the quality of the ABE interview footage.
- 3.45 Whilst police officers felt they were unfairly blamed for these issues arising, there appeared to be a lack of clarity as to whose responsibility it was to check the compatibility prior to the Court commencing. Inspectors were advised that the Crown Court Evidence Protocol, agreed and signed by representatives of the PSNI, the PPS and the NICTS in 2013 and agreed again in 2017, covered the roles and responsibilities of each organisation in respect of presenting evidence in Court. However the fieldwork for this inspection suggests that this protocol was not understood or applied by those working in operational roles.
- 3.46 In relation to the submission of body-worn video evidence, encrypted discs had to be hand-delivered by Investigating Officers to the offices of the PPS with passwords being sent

62 PSNI ICT Strategy 2014: 1 April 2014 – 31 March 2017. Available online at: https://www.psnipolice.uk/globalassets/inside-the-psni/our-departments/finance-and-support-services/documents/ict_strategy_2014_15custom.pdf

63 PSNI, *Digital Strategy to 2020 and Beyond*, 2017. Available online at: <https://www.psnipolice.uk/globalassets/inside-the-psni/our-departments/finance-and-support-services/ics/digital-strat-2020/psni-digital-strategy-a4-document-v9.2.3-external.pdf>

through the electronic system. The discs were not compatible with Court systems and indeed Inspectors witnessed a case in the Domestic Violence Court in Derry/Londonderry where the case was adjourned for a period of time while the Investigating Officer was dispatched to acquire a police laptop on which to play the footage for the District Judge.

- 3.47 The NICTS advised that they had not been consulted upon or informed of the changes by the police to digital technology. Short-term solutions had been found to attempt to address the issues which had arisen, such as the PSNI supplying police laptops to the PPS and the NICTS on which to play the discs. However it is concerning that in this age of digital technology, these issues are still arising causing delay, inefficiency and anxiety to police officers, prosecutors and victims. The NICTS Annual Report 2016-17⁶⁴ indicated the intention of the Agency to publish a five-year digital strategy within 2017-18. Inspectors were informed that the NICTS intended to address the issues outlined above and the transferring of digital information to the Courts by police and PPS as part of this strategy.

Operational recommendation 2

Inspectors recommend therefore that the **PSNI and the PPS should fully engage in the NICTS digital strategy and collaborate when developing and maintaining their own technology in order to ensure systems for the transfer of digital information across the justice system which are fit for purpose.**

Medical records and evidence

- 3.48 Obtaining medical evidence often caused significant delays in the investigation process. Police would request copies of medical notes from Emergency Departments, General Practitioners and other counselling services but these could be very slow to be provided or difficult to access due to doctors moving to other areas. This issue was raised over a decade ago in CJI's first report on avoidable delay.⁶⁵ Again this was an area where justice organisations had little influence.
- 3.49 The PPS Serious Crime Unit had introduced a policy of requesting all third-party evidence in rape cases where a prosecution is recommended by police at the onset of a case, in the assumption that the defence would request it if the case reached a trial. This was an attempt to reduce delays but this appeared to have made little impact and in fact, increased the workload of PPS prosecutors. This is discussed further in Chapter 4.

64 NICTS, *Annual report and accounts 2016-17*, June 2017. Available online at: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/Final%20Annual%20Report%202016-17%20to%20printers%20210717.pdf>

65 CJI, *Avoidable delay: A thematic inspection of delay in the processing of criminal cases in Northern Ireland*, May 2006. Available online at: <http://www.cjini.org/getattachment/ed9d97d7-a15f-4fa5-90d1-3e3867124c21/Avoidable-Delay-May-2006.aspx>

Forensic evidence and submissions

- 3.50 Forensic evidence could be obtained from either a medical examination conducted at The Rowan or samples taken from the suspect or scene by crime scene investigators. There may also be evidence recovered either at the scene or in the laboratory by specialist FSNI scientists, including in FSNI's dedicated Sexual Offences Suites. This includes body fluid identification, recovery and pattern analysis, DNA profiling, damage analysis to garments, other trace evidence such as fibres or latent fingerprints. In many cases it must be highlighted there are either no forensic opportunities available (for example in historical cases where a long period of time has passed) or, in some cases where the issue is one of consent, the forensic evidence would not assist in proving or disproving the prosecution case. There are however some occasions when the question of consent can be assisted by forensic examinations. This can include damage to garments and corroboration of suspects' and victim's stories as to the sequence and location of events, degree of penetration etc. This may be particularly important in cases of child abuse. There was evidence that forensic opportunities were considered as part of the investigation in 20 (39%) of the 48 applicable cases. Forensic opportunities were used effectively and appropriately in 19 of the 21 relevant cases (91%).
- 3.51 CJI has published several reports on the topic of forensic science in the criminal justice system in Northern Ireland⁶⁶ the latest of which in 2014 called for the criminal justice system to develop a more joined-up approach to forensic services to meet current and future forensic requirements. This recommended the development of a strategy to support the provision of a seamless service which addressed the funding and delivery of forensic services from crime scene to court.
- 3.52 The Forensic Services Strategy 2016-19⁶⁷ was published in June 2016 which noted that proportionate forensic reporting had been introduced. The Strategy stated: *'In the interests of delivering the most efficient and effective forensic service, and speeding up the justice system, it is critical that the opportunity to maximise the potential of proportionate forensic reporting is realised. Proportionate forensic reporting has the potential to significantly impact on forensic service delivery.'* Inspectors were advised during this inspection that in support of this, requests for forensic submissions had to be made by the Investigating Officer to a Forensic Manager in the PSNI. Inspectors were also advised by FSNI that, at the time of the inspection, proportionate reports were yet to yield any significant benefits except in the case of negative reports (i.e. no evidence found) or in straightforward/factual analyses such as drugs. Body fluid examinations and reports are usually more complex in terms of the evaluation for the Courts and the final stage reports were therefore still virtually always used.

66 See CJI, *Forensic Science Northern Ireland, February 2014*; CJI, *Inspection of Forensic Science Northern Ireland, July 2009*. Available online at: www.cjini.org

67 FSNI, *Forensic Services Strategy 2016-19, June 2016*. Available online at: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/forensic-services-strategy-2016.pdf>

3.53 FSNI staff confirmed that they rarely contributed to discussions about the forensic strategy for rape and sexual abuse cases with the police or the PPS. There was the potential that reductions in levels of submissions would lead to forensic gaps appearing which may not be picked up until late in Court process by the PPS or Counsel. The CJI inspection of FSNI 2009 stated: *'The concept of a forensic strategy for individual cases - where decisions are taken on what tests are conducted, to what depth and in which sequence - is supported by Inspectors.'* Whilst there has clearly been a need to have a more proportionate approach there is also a need to balance this with ensuring appropriate evidential opportunities are explored at an early stage as part of a prosecution strategy. This will be discussed further in Chapter 4.

Victim communication and support

3.54 There was evidence of good engagement between police and victim organisations at both a partnership level and regarding signposting for individual cases. Evidence was found in the case file review of victims being supported by organisations such as Women's Aid, Nexus and Victim Support Northern Ireland. Victims whose case had been dealt with by the RCU in the main spoke positively about the Investigating Officer who had dealt with their case. Where concerns were raised this tended to be about delays in the process, the way they were dealt with by first response officers or Rape Crime officers with whom they had built a rapport moving on to other roles and them having to build a relationship with a new Investigating Officer. In one case a victim told us that her case had been dealt with by three Investigating Officers in one year although the last one of these had taken her case with them when they had moved to a new department to avoid causing her further difficulties.

File preparation

Pre-prosecutorial advice

3.55 In the police case file review pre-charge advice was sought from the PPS in 13 (25%) of the 46 relevant cases. In six of these cases (86%) there was evidence the advice was acted upon appropriately and in one case it was not acted on appropriately. In five cases advice was not given for the Investigating Officer to act upon (in some cases it was noted that the PPS would not give advice as the investigation was at an early stage).

3.56 In the file review of PPS cases there were 12 cases where pre-prosecutorial advice was provided to the PSNI and one case where it was required, requested and not provided; the PSNI were told to submit complete file for a decision and advice on that point would be provided at that time although ultimately, the point was never actually advised upon. The prosecution advice was timely in 11 of the 12 applicable cases (91.7%) and in all 12 cases it resulted in the prosecution reaching a proper and timely conclusion. All 12 complied with the Code for Prosecutors although in one case there was no record of the decision. In six of the nine cases (67%) where there was initial pre-charge advice from the PPS or police bail was used, there was evidence of further enquiries to improve the case.

- 3.57 Police officers told Inspectors that there was a good working relationship between rape crime and child abuse teams with the PPS Serious Crime Unit, with more open communication between them. It was also indicated that there was a greater willingness to work closer together. PSNI officers appreciated the concept of the Serious Crime Unit and having specialist prosecutors available, including through the duty prosecutor scheme. Relationship building was aided by the continuity of prosecutors working in the Unit.

Timeliness and quality of police files

- 3.58 CJI have published a number of inspection reports dating back over 10 years which have considered the topic of avoidable delay including the quality and timeliness of police files⁶⁸. These have continued to raise concerns about avoidable delays in the criminal justice system. In an attempt to address this ongoing issue, the Lord Chief Justice asked CJI to examine a group of Crown Court cases to identify the reasons for delay. The report provided to the Lord Chief Justice in 2014 found that while there were issues at each stage in criminal proceedings, the majority of delay occurred during the investigation and case preparation stages. Following this the 'Indictable Cases Pilot', (often referred to as the Ards pilot) was developed and operated in Ards County Court Division. The Pilot operated during 2015 and significant positive outcomes were achieved, notably approximately a 30% reduction in time from report of crime to the court disposal. This Pilot led to the roll out of the Indictable Case Process to a selected range of offence types – namely attempted murder, Section 18 and Section 20 assaults⁶⁹ and indictable drugs cases.
- 3.59 The 2015 CJI inspection report on police file quality⁷⁰ called for greater collaboration between the PSNI and the PPS, to address significant failings in the preparation of case files and the standards applied around disclosure. The inspection found one third of case files (which came from a broad range of case types coming before the Magistrates' and Crown Courts) were either of an unsatisfactory or poor standard. The report recommended *'The PSNI and the PPS should immediately establish a 'Prosecution Team' which will work collaboratively to deliver a Joint Transformation Programme to deal with investigative standards, bail management and forensic strategy, case management and disclosure. Governance and accountability should rest with an Assistant Chief Constable together with a Senior PPS Director'*. It also recommended that *'The Prosecution Team should scope and deliver new protocols on:*
- *early prosecutorial advice (PSNI requests/PPS responses);*
 - *PSNI decision-making and PPS pre-charge advice; and*
 - *proportionate case-file building based on agreed evidential, technical and presentational standards. This should be delivered by December 2016.'*

68 See CJI reports: *An inspection of the quality and timeliness of police files (incorporating disclosure) submitted to the PPS, November 2015*; and reports on avoidable delay published 2012; 2010; and 2006 available on CJI website www.cjini.org

69 Section 18 and Section 20 assaults refer to assaults where a victim/s suffers grievous bodily harm or injury/ies either with or without prior intent.

70 CJI, *An inspection of the quality and timeliness of police files (incorporating disclosure) submitted to the PPS, November 2015*. Available online at: <http://www.cjini.org/TheInspections/Inspection-Reports/2015/October---December/File-Quality-and-Disclosure>

- 3.60 In the review of police files for this inspection, the submission of the file to the PPS was in accordance with PSNI time limits in 41% of cases (seven of 17) with one file not yet submitted but still within timescales. The PSNI acknowledged that delay was a significant issue for the Public Protection Branch.
- 3.61 The file reviews also considered whether there was a need for a Decision Information Request (DIR) prior to the direction on the case by the prosecutor (a request for additional information from the police before a decision could be made on whether or not to direct a prosecution). In the police file sample in just over a fifth of relevant cases (21%, six of 14 cases) a DIR was required before a decision could be made and in the prosecution file samples, this figure increased to just over a third (33%, nine of 27 cases).
- 3.62 Overall the review of police files found that all lines of enquiry were identified and pursued in 74% of relevant cases (28 of 38 cases) and that the investigators were focussed on identifying and bringing to justice those who had committed the offence in 68% of relevant cases (27 of 40 cases). This suggests that around three-quarters of cases were dealt with adequately or well. The assessment that around a quarter of cases contained areas for improvement is in keeping with other findings as outlined in this report.
- 3.63 The review of prosecution case files considered the quality of the police file received by the PPS and the findings replicated the judgements of the 2015 CJI inspection. Of the 77 PPS files, 13% were assessed as good, 58% were fair and nearly a third of files (29%) were assessed to be poor. The quality of the police file post the direction was slightly better with eight per cent good, 77% fair and 19% poor, although this was applicable in only 31 of the 77 cases.
- 3.64 Following the publication of the 2015 CJI report on file quality the PSNI and the PPS set up the *Working Together* Project in response to the first recommendation highlighted above. The Northern Ireland Policing Board Strategic Outcomes for Policing 2016-20 also included the issues arising from the CJI report as Strategic Outcome 4.1 '*Delivering significant improvement in the quality of files and disclosure to the Public Prosecution Service*'.
- 3.65 This inspection did not attempt to replicate the previous in-depth work done by CJI and therefore, apart from the specific questions included in the file reviews, focused on what improvements had been made since the publication of this report and the setting up of the *Working Together* Project. Inspectors found that only two new forms had been developed, agreed and rolled out (the 'Structured Outline of Case' form and 'Prosecutor Information Form') which aimed to enable officers to provide the PPS prosecutor with an outline of the case in a pre-determined format more efficiently and effectively than had been done previously.
- 3.66 Unfortunately Inspectors were advised by PPS prosecutors that these forms were often not completed appropriately, with details missing or scant information provided or that one or other, or in some cases both forms, were not completed at all. Police officers did not appear to understand the purpose or need for these forms, or appreciate that they were intended to enable them to submit a file in a more effective manner, cutting down on requests for further information from the prosecutor.

- 3.67 The *Working Together* Project seemed to have had limited impact to date and the impetus for it appeared to have stalled with key individuals changed and less of a focus by Senior Officers on these issues. The file reviews for this inspection suggest that between a quarter and a third of files are still in need of improvement. Due to the timescales of the inspection and the file sample, it is likely that some of these files pre-dated the final publication of the CJI report and recommendations on file quality, but the findings of the file reviews overall and feedback from representatives of the PSNI and the PPS further emphasises the need for the PSNI to address the quality issues.
- 3.68 It is disappointing that the *Working Together* Project has not yet resulted in any significant improvements in file quality or a noticeable culture change and understanding about the need to 'get it right first time'. Inspectors would encourage the PSNI and the PPS to re-focus on the Project in order to address the issues raised in the 2015 CJI inspection report and fulfil the recommendation regarding the Joint Transformation Programme.

Supervision of investigations and file preparation

- 3.69 The 2015 CJI report on file quality and disclosure⁷¹ considered the issue of supervision and quality assurance of police files. The report noted the following: *'Inspectors found that there were notable weaknesses at this critical point. Many of the Officers at this level to whom we spoke, candidly conceded that they were unable to devote time to this area and that it was not a high priority.'* The report made the following recommendation:

'The PSNI should provide further support (including training and mentoring) to supervisors whose role it is to approve the forwarding of case files to the PPS. This could take a range of forms including:

- *regular structured training (including District training) which includes input and learning primarily from the PPS, but also from others such as 'Gatekeepers';*
- *extending the role of the OCMTs [Occurrence Case Management Teams] to address aspects of quality assurance in support of front line supervision;*
- *extending the role of police liaison staff;*
- *additional directed quality assurance checks by more senior Officers (Inspector and above) at local District level;*
- *attention to the re-skilling of Officers who may transfer from roles which did not include case file completion;*
- *acknowledgement and investment of resource (time) in this work; and*
- *dealing with the range of operational barriers highlighted elsewhere in this report.'*

71 CJI, *An inspection of the quality and timeliness of police files (incorporating disclosure) submitted to the PPS, November 2015.* Available online at: <http://www.cjini.org/getattachment/9faaa7ad-b1a9-4d66-bd35-79ff20848c7c/picture.aspx>

3.70 In this inspection, the police file review assessed the quality of supervision at several key points during the lifetime of the case. Overall the investigation was supervised effectively in 24 (53%) of relevant cases (45); there was limited but appropriate supervision in 16% of cases (7); there was ineffective supervision in 29% of cases (13) and there was no evidence of supervision in 2% of cases (1). A more recent report by HMICFRS published in 2018 regarding the effectiveness of the PSNI⁷² also raised an Area for Improvement that: *'The PSNI should improve its supervision of crime investigations, particularly in those cases investigated by uniformed officers'*. Inspectors would emphasise again the need to address the recommendation above that the PSNI should provide further support (including training and mentoring) to supervisors whose role it is to approve the forwarding of case files to the PPS.

72 HMICFRS, PEEL: Police effectiveness 2017: An inspection of the Police Service of Northern Ireland, March 2018. Available online at: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/peel-police-effectiveness-2017-psni.pdf>



PPS decision making and case building

Serious Crime Unit

- 4.1 On 1 January 2016 the Serious Crime Unit of the PPS became operational. The Unit was established to deal with a range of the most serious offences including murder/manslaughter, rape and serious sexual offences, human trafficking, prostitution and related offences. It also had the responsibility for the PPS Policy on Prosecuting Cases of Rape⁷³ which had been last updated in 2010. The Unit was led by an Assistant Director and staffed by 10 Senior Public Prosecutors, based in Belfast Chambers. The PPS website⁷⁴ stated that: *'Prosecutors will work in teams of two in order to provide continuity and to ensure that cases are progressed without delay. It is intended that the section will enable greater resilience and consistency of approach as well as increasing the scope for specialisation and sharing of best practice in relation to the management of these cases'*
- 4.2 CJI consider the setting up of the Serious Crime Unit to be a positive development in prioritising and focusing on the most serious crimes. The specialisation and investment in training staff working in this Unit is also to be welcomed. However issues had arisen in the setting up of the Unit which continued to have an impact at the time of this inspection. They included:
- prosecutors had brought with them a significant workload of cases from their previous post which prevented them from taking on and focusing on newly allocated files;
 - although the intention was that the Unit would have an establishment figure of 9.6 full-time equivalent staff, it was not fully resourced from the outset and continued to be under-staffed with absences and vacancies;
 - some staff who had previously been sexual offences specialists in the regional offices could not or did not wish to relocate (the Unit was based in Belfast) and therefore skills which had been developed previously were lost, resulting in staff without this experience needing to be trained and developed to deal with these types of cases;
 - cases where the defendant was a child or young person, whilst low in numbers, still required input from a youth specialist prosecutor who were still based in the Regional Offices. These cases were therefore directed by a member of the Serious Crime Unit but then passed back to the youth specialist in the Region for Court; and

73 PPS, *Policy for Prosecuting Cases of Rape*, December 2010. Available online at: <https://www.ppsni.gov.uk/SiteDocuments/PPS%20Press%20Office/PPSNI%20RAPE.pdf>

74 See <https://www.ppsni.gov.uk/Structure-5028.html>

- prosecutors were required to deal with a significant case workload of lower level sexual offences or cases sent for advice when there was clearly no evidence (which would not previously have been dealt with by a sexual offences specialist or senior prosecutor or which, in other jurisdictions, would be dealt with by the police). This left them less time to focus on complex and significant cases, resulting in substantial delays in the prosecution process (see below).

4.3 The PPS had recognised the issues that were ongoing and, at the time the fieldwork for this inspection was concluding, were commencing a review of the Serious Crime Unit, two years after its establishment. As an interim measure to address some of the issues in the short term, there had been an increase in Senior Public Prosecutors working in the Unit and a number of Public Prosecutors had been appointed to deal with lower level offences and some of the case progression issues such as dealing with applications to the court. Inspectors welcome the PPS's decision to undertake a review of the Serious Crime Unit and assess what benefits have been realised by this new approach. In considering the structures of the Unit in the future, CJI would suggest that the PPS consider the following issues:

- matching the workload of the Serious Crime Unit to the available resource by either amending the case allocation so that lower level sexual offences are dealt with in the regional offices or, ensuring an appropriate staffing level and mix of Senior Public Prosecutors and Public Prosecutors, including input from a youth specialist, to deal with the workloads associated with the current case allocation;
- developing a succession planning process for the Serious Crime Unit at both Public Prosecutor and Senior Public Prosecutor level;
- developing a satellite office outside Belfast to assist with succession planning, the opportunity for specialisation of staff across the PPS workforce and reduced travel time for prosecutors and victims to attend consultations; and
- reviewing and updating the PPS Policy for Prosecuting Cases for Rape to reflect the changes made since the establishment of the Serious Crime Unit and its working practices.

Case management

4.4 In CJI's review of the PPS implementation of the recommendations of The Starmer Review it was reported that the PPS had developed Case Management Procedures to assist the organisation in dealing with serious and complex cases. This included the implementation of risk registers, prosecution strategy documents, case strategy meetings with police and Counsel and case management panels to brief senior management. The report confirmed that substantial progress has been made in addressing the detail of the recommendations, however encouraged the PPS to continually quality assure the new processes to ensure both compliance and consistency.

- 4.5 Much of the work of the Serious Crime Unit would require some or all of the case management procedures to be applied, given the complex and serious nature of much of its work, particularly in sexual offences. The formation of the Serious Crime Unit in the PPS and the Public Protection Branch in the PSNI means that, for the first time, there are clear dedicated staff in both organisations working on sexual offences. These structures and the PPS procedures, form the foundation on which the PPS should now work together with the PSNI and other partners on serious and complex sexual offences to focus on ways to properly develop case strategy as a prosecution team, encompassing all aspects of the investigation and prosecution of the case.

Decision making by the PPS

- 4.6 In making a decision about whether to initiate or continue with a prosecution, the prosecutor applies a two stage test, known as the Test for Prosecution, as set out in the Code for Prosecutors⁷⁵. Each stage of the test must be considered separately and passed before a decision to prosecute can be taken. The Test for Prosecution is met if:
- (i) the evidence which can be presented in court is sufficient to provide a reasonable prospect of conviction – the Evidential Test; and
 - (ii) prosecution is required in the public interest – the Public Interest Test.
- 4.7 The Code for Prosecutors sets out the responsibilities of the prosecutor in all aspects of the case and explains in detail the application of the two stages of the Test. In terms of the Public Interest Test there are a number of factors the prosecutor may consider either for or against prosecution. Some factors are particularly relevant to offences of a sexual nature, for example in relation to the seriousness of the offence, where the suspect was in a position of authority or trust and the offence is an abuse of that position and where the victim had been put in fear or suffered personal attack and is vulnerable.
- 4.8 The PPS Policy on Prosecuting Cases of Rape⁷⁶ also sets out the responsibilities of the prosecutor at each stage of the prosecution process including the Test for Prosecution. In respect of Public Interest the Policy notes: *'If the Evidential Test is passed, whilst each case must be considered on its own merits and particular circumstances, rape is considered so serious that it is likely that prosecution is required in the public interest.'* It also sets out the views and interests of the victim and the action to be taken if a victim withdraws support for the prosecution noting that: *'Sometimes a victim will ask the police not to proceed any further with the case or will ask to withdraw the complaint or, where he/she has made a statement, indicate that they no longer wish to give evidence. This does not necessarily mean that the case will be stopped.'*

75 PPS, *Code for Prosecutors*, July 2016. Available online at: [https://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Code%20for%20Prosecutors/Code%20for%20prosecutors%20\(Interactive\)%20v3.pdf](https://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Code%20for%20Prosecutors/Code%20for%20prosecutors%20(Interactive)%20v3.pdf)

76 PPS, *Policy for Prosecuting Cases of Rape*, December 2010. Available online at: <https://www.ppsni.gov.uk/SiteDocuments/PPS%20Press%20Office/PPSNI%20RAPE.pdf>

- 4.9 The PPS published a bulletin in April 2018 regarding statistics on sexual offences⁷⁷. This bulletin reported that 1,087 decisions were issued by the PPS during 2016-17 in sexual offences cases and that the Test for Prosecution was met (i.e. a prosecution or diversion was directed) in respect of 36.7% of these decisions. The percentage of decisions meeting the test was higher than in 2015-16 (33.7%). It would be helpful for the PPS to further explore the reasons behind this difference.
- 4.10 The bulletin also reported the reasons for no prosecution in sexual offences cases in 2016-17 and 2015-16. For sexual offences overall in 2016-17, 96.5% of cases directed as no prosecution did not pass the Evidential Test (compared to 93.9% in 2015-16). In 2016-17, 3.5% of cases directed as no prosecution did not pass the Public Interest Test (versus 6.1% in 2015-16).
- 4.11 In considering the decisions made by prosecutors in the case file review, Inspectors assessed whether the Code for Prosecutors was applied correctly. Inspectors believed that the Code was applied correctly at the decision stage in 87% of cases (67 of 77 cases). In some cases there appeared to be a lack of clarity about the application of the Public Interest Test, where prosecutors appeared to prioritise this ahead of the Evidential Test. This was also borne out by training attended by Inspectors regarding domestic violence and abuse in which there was confusion about the effect of victim withdrawal on the Public Interest Test rather than the Evidential Test⁷⁸.
- 4.12 Whilst the Rape Policy clearly sets out the fact that, given the nature of rape cases, it is likely that prosecution is required in the public interest, the evidence contained in the case files suggests that this is not always being adhered to in practice. This approach, in common with that of the CPS in England and Wales, should be taken to safeguard not just the victim in the individual case being considered but also other victims, particularly when the suspect could potentially be a sexual predator, preying on the vulnerabilities of the victim and re-offending against this or future victims. At times the public interest therefore on balance outweighs the views of the individual, and cases should proceed regardless of victims' wishes. One example from the case files illustrates the difficult nature of these types of cases. In this case there were significant and complex challenges facing the PPS, but Inspectors believe prosecutors should have continued with a charge of rape, rather than accepting a plea to a lesser charge, despite the views of the victim.

77 PPSNI, *Statistical bulletin: Cases involving sexual offences 2016-17, April 2018*. Available online at: https://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Stats%20and%20Research/Sexual%20Offences/Statistical%20Bulletin_Cases%20Involving%20Sexual%20Offences%2016-17.pdf

78 The withdrawal of the support for the prosecution by the victim is an evidential issue whereas the public interest decision lies in whether or not to compel the victim to give evidence.

Example 6

In November 2015 a foreign national woman was found in a distressed state in the street with bad facial injuries and said she had been assaulted by a man (the defendant) who was staying in her home. At the Emergency Department whilst police officers were completing a risk assessment she reported she had been raped whilst tied up. She had also suffered a broken eye socket and ligament tear to her eyeball requiring surgery. She described the brutal nature of the physical and sexual assault, including a rape which left her with significant internal injuries. The victim described that she had been similarly assaulted by him in their home country, which she had reported to the police there, but that no action had been taken as it was considered to be a 'domestic'. She also suggested the defendant had assaulted other women in their home country and described how he viewed sadistic and rape pornography, which was confirmed to be on his computer.

After some initial advice was sought from the PPS about the international elements of the case a file was sent to the PPS. Initially the victim declined to engage and in the withdrawal statement confirmed she was sending the defendant clothes and money in prison (where he was on remand) due to pressure from his family. It appeared the defendant was her husband/fiancé from whom she was seeking a separation in their home country and she did not want him to resist this.

The victim then re-engaged with the case. The risk assessment by police suggested that the defendant was a high risk to the victim and any women he had a relationship with and wanted a life Sexual Offences Prevention Order against him.

A decision was made to prosecute the case and the victim was required to attend Committal Proceedings to commit the case to the Crown Court. The PPS were reluctant to compel the victim to give evidence but she was brought into PPS Offices in Belfast Chambers to meet the Investigating Officer and Senior Public Prosecutor in April 2016. Following this meeting the victim withdrew her support for the prosecution for various reasons including being worried for the mental health of the defendant and herself. She was not involved with any support organisations at this time. She stated she did not want the PPS to continue with the case. An additional risk assessment was undertaken by the PSNI and there was further consideration given as to whether to continue with the case and compel the victim to give evidence. The case was committed to the Crown Court on the basis of a hearsay application and the defendant offered to plead guilty to a Section 20 assault. The PPS decided to continue with the rape charges as it was in the public interest to do so.

A letter was sent from a solicitor acting on behalf of the victim to the defendant's solicitor stating she would not attend court voluntarily. The PPS sought advice from Counsel about the facts of the case and the decision to continue with the charge of rape was reviewed. After considering the various factors in the case, the PPS decided to offer no evidence at Court in relation to the rape charge. This decision was based on the victim's withdrawal, the risk assessment in terms of harm to victim if she was compelled to give evidence, the letter from the victim's solicitor, the opinion of counsel, that the trial would be detrimental to the victim's health if she was summonsed to Court and that without the victim's evidence, they could not proceed on the rape charge.

There was also consideration given to the fact the defendant was likely to be deported if the PPS accepted a plea to the Section 20 assault for severe facial injuries on his admissions.

Ultimately a decision was made that it was no longer in the public interest to proceed with the charge of rape. The plea was accepted and the defendant received a sentence of two years and three months in March 2017 with half to be served on licence. He had already served his time on remand but his remand was to be continued until he was deported. Whilst this case clearly illustrates the significant challenges when a victim withdraws support for the prosecution, Inspectors believe that the rape charge should have proceeded in the public interest, even by compelling the victim to give evidence, considering the very dangerous nature of the defendant and the very high likelihood that he would offend again, in Northern Ireland or any other jurisdiction. In the Inspectors' view, the plea to a lesser charge should not have been accepted.

- 4.13 The PPS Rape Policy also listed some myths and stereotypes which exist surrounding the offence of rape and noted that *'The PPS does not allow these myths and stereotypes to influence decisions'*. There were 21 cases where myths and stereotypes of sexual behaviour were relevant to the case. In only three of these (14%) Inspectors were able to ascertain from information available on the file that these were considered and dealt with appropriately and a further two where it was not known due to the absence of a record of review or case strategy. In the information available on the other files (albeit that this was limited in some cases) there were issues in the case which were examples of potential myths and stereotypes, but no evidence that the prosecutor had considered how these could be addressed in presenting the case. The following example highlights an issue relating to the myth that *'only gay men get raped'* (as listed in the PPS Rape Policy) i.e. that a man cannot be sexually assaulted by a woman.

Example 7

A man and woman had been in a relationship for three to four years. Due to on-going problems the relationship had cooled to the point where they were not having a sexual relationship. The woman turned up at the home of the man demanding to have sex. He refused, they argued but she stayed over. The next morning she turned up at his office next to his house demanding to know why they were not having sex. She struck him a number of times on the head. She then lifted her top a couple of times saying to him "Do you not want this?" She grabbed and squeezes his testicles so hard that he felt pain and tried to pull him onto her. The woman was charged with sexual assault and a file was sent to the PPS. A decision was made to prosecute for common assault rather than sexual assault with a note on the file to the police officer who charged sexual assault and to the prosecutor at Court stating 'I consider the grabbing of the testicles was a common assault and the touching was not sexual in nature'. There was nothing on the file to suggest that the police or victim were consulted in relation to this decision.

- 4.14 Inspectors considered when reviewing the files whether the relevant policies were applied at the decision stage, for example the PPS Rape Policy, the PPS Victims and Witnesses Policy, the Victim Charter etc. Inspectors assessed that the relevant policy or policies were applied at the decision stage in 60% of cases (42 of 70) but there was a further 5.7% (four) where it was not known due to the absence of any record. There was sufficient relevant material provided by the police on the file to make a decision in 46.3% of cases (31). A request for further information was made by the prosecutor in 19 (59.4%) of the 32 relevant cases.
- 4.15 Overall Inspectors assessment at this stage is that there needs to be more progress made by the PPS and the PSNI towards adopting a case building approach whereby there is a focus on working together as a prosecution team to build the case from the outset (for example considering *res gestae*⁷⁹, first complaint, medical evidence, the actions of the defendant on CCTV etc.). As the CPS Rape Policy⁸⁰ states: '*Prosecutors will look for evidence such as injury, struggle, or immediate distress to help them prove that the victim did not consent.*'

Strategic recommendation 2

Inspectors therefore recommend that **the PSNI and the PPS should produce an implementation plan to further develop the prosecution team approach for cases involving sexual offences within three months of this report.**

- 4.16 Inspectors would suggest the following elements form part of the implementation plan:
- building the case from the outset, fully implementing the PPS Policy for Prosecuting Cases of Rape;
 - early and ongoing consideration of evidence gathered from social media and digital technology;
 - utilising early advice and input from the PSNI Lead Scientist where appropriate;
 - fully applying the PPS Case Management Procedures in serious sexual offence cases, including developing appropriate case strategies in serious or complex cases; and
 - ensuring there is a joint process for learning lessons from serious or complex cases, particularly those that result in a no-prosecution decision or an acquittal at Court.

⁷⁹ '*res gestae*' is a Latin term which refers to 'a statement was made by a person so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded', as set out in the common law exceptions retained under s118 of the Criminal Justice Act 2003.

⁸⁰ CPS, *CPS Policy for Prosecuting Cases of Rape*, September 2012. Available online at: <https://www.cps.gov.uk/publication/cps-policy-prosecuting-cases-rape>

Record keeping and quality assurance

- 4.17 In examining the files during the file review it was evident there was a lack of record keeping within them setting out the rationale for the decision whether or not to prosecute. This made it difficult for Inspectors to assess the files thoroughly but more importantly, means it would be difficult for PPS managers to quality assure the decision making of the prosecutor or for prosecutors to evidence the rationale for their decision making. Where decisions were made not to prosecute notes on the file appeared to be more thorough, in some cases because the prosecutor needed to be able to explain the rationale for the decision to the victim and/or the Investigating Officer. In cases where a decision was made to prosecute there was not, in all but a few cases, a detailed review of all aspects of the case setting out the strengths and weaknesses of the evidence and explaining the prosecutors thought processes in coming to a decision. This was often despite considerable effort being taken on making a decision on complex files with large amounts of evidence.
- 4.18 As part of the case review Inspectors carried out an overall assessment of the quality of decision-making and post decision review, by the prosecutor, as based on the records and notes made on the file. Overall the quality of the decision-making and post decision review was found to be good in 2.6% of cases (two cases), fair in 43.4% (33 cases) and poor in 53.9% (41 cases), primarily due to the absence of any record outlining the rationale for decisions made whether or not to prosecute the case, for example analysis of the evidence or the case strategy to prosecute the case.
- 4.19 The issue of record-keeping by prosecutors has been highlighted in previous CJI reports. The 2013 inspection of PPS Corporate Governance⁸¹ stated '*A transparent decision making process should include the recording of decision making at all key stages of the case. In Northern Ireland's challenging criminal justice environment it is important that Prosecutors are able to authoritatively justify their decisions, which may be some years after the event.*' The assessment of files found however '*What is not in question is the need to improve the recording of prosecution decisions that could provide some insight into the thinking behind the Directing Officers' decisions.*' This inspection report noted the following issues in relation to the lack of recording:
- decisions often poorly recorded and not setting out the rationale or thought processes underpinning decisions to prosecute or selection of charges;
 - a general lack of case reviews;
 - few examples of notes explaining decisions to accept pleas or alternative charges, decisions to withdraw or otherwise terminate live cases;
 - a lack of consistency as to where a review was documented (in different sections of the Case Management System (CMS) or on the physical file); and
 - rarely any documented consideration of ancillary aspects, including assessments of victim and witness issues and the use of special measures.

81 CJI, *A corporate governance inspection of the Public Prosecution Service for Northern Ireland, April 2013*. Available online at: <http://www.cjini.org/TheInspections/Inspection-Reports/2013/A/A-corporate-governance-inspection-of-the-Public-Pr>

The report recommended that *'The PPS should monitor the quality of recording of decisions and instruct Prosecutors to use the appropriate facility on the CMS.'*

- 4.20 In more recent work similar issues regarding the quality of recording of decision making, after the decision was made to prosecute, were identified in the Starmer Review⁸² and in CJI's review⁸³ of the implementation of the recommendations contained in it. The latter report in 2017 noted *'There was evidence of improvement in this area since the Starmer Review and previous CJI inspections, but Inspectors would still urge the PPS to ensure consistency of practice in the location where decisions and consultations are recorded.'*
- 4.21 A PPS Staff Instruction was issued in July 2014 entitled 'Maintenance of Case Files'. This document notes: *'The importance of recording and filing notes in relation to all key actions taken on a case cannot be over-emphasised. **Such notes must always be dated and signed by the maker...Examples of instances where notes must be made and filed are....(ii) rationale for decisions as to prosecution.'*** Appendix 2 of the document gave step by step guidance as to where these notes should be recorded on the Case Management System. This Staff Instruction therefore quite clearly set out the requirements for recording decisions made and the rationale for them, which addressed the issues raised in the 2013 CJI Corporate Governance report.
- 4.22 The findings of the case file review in this inspection however indicate that these deficiencies and inconsistencies in recording practice continue to exist. Prosecutors advised Inspectors that there was no expectation on them to record the rationale for decision making in cases where the decision was to prosecute. It was suggested to Inspectors by prosecutors and managers that doing so would be time-consuming, would add little value to the case and that providing this decision making to other prosecutors or to Counsel would be unnecessary, in many cases because *'it would be obvious'*.
- 4.23 PPS Assistant Directors undertook quality assurance of decisions made by prosecutors through a dip sampling process. When the Serious Crime Unit was initially established there was also a 'buddy' process created whereby prosecutors were paired together to enable greater knowledge of the case and therefore continuity of prosecutor in the event of queries when on leave etc. The 'buddy' system (which was in operation between January and September 2016 when the Serious Crime Unit was first established) also included a process of peer review in no prosecution decisions. This approach is to be welcomed and the case file showed there was continuity of prosecutor in 57.1% of relevant cases (32 of 56). Where there was a change of prosecutor in some cases this was because staff were on a period of leave, including maternity leave.
- 4.24 The absence of notes recording the rationale for decisions being made suggests however that these quality assurance processes focus more on whether there is an agreement about the

82 Sir Keir Starmer KCB QC & Katherine O'Byrne, *Independent Review of the prosecution of related sexual abuse and terrorism cases*, May 2015. Available online at <http://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/PPS%20Press%20Office/StarmerReview.pdf>

83 CJI, *Review of PPS response to the review of related Sexual Abuse and Terrorism Cases*, October 2017. Available online at: <http://www.cjini.org/TheInspections/Inspection-Reports/2017/October-December/The-Starmer-Review>

ultimate decision, rather than how the prosecutor arrived at that decision and their views about the strengths and weaknesses of the case. There was also evidence in the file review that some cases were sent to Senior Counsel for a second opinion when the quality assurance and peer review processes should help develop the skills of prosecutors to the point where they feel confident in their decision making (this issue is discussed further in Chapter 5).

4.25 In contrast to the views expressed to Inspectors, it is the view of CJI that recording of decisions and the rationale for them in a proportionate manner offers a number of significant benefits, including:

- a written record of a full analysis and assessment of the case from the outset and as it progresses, including issues regarding case strategy/evidence, public interest, the mode of trial, human rights, charges/pleas, victims and witnesses and instructions to the court prosecutor etc.;
- reduced time re-reading the whole file during the lifetime of the case when reviewing the Test for Prosecution or preparing for Court;
- a more efficient approach to populating other documents with key issues in the case such as the Risk Register, Prosecution Strategy Document, written communication to the victim, Investigating Officer and instructions to the court prosecutor/Counsel;
- more effective and efficient quality assurance of decision making; and
- the ability to respond more effectively to complaints, requests for review from victims, judicial reviews and any other legal challenges and ultimately providing an assurance to the public of a transparent and accountable system of prosecution.

4.26 Whilst the introduction of Case Management Procedures in response to the Starmer Review has led to an increase in the recording of decisions, the evidence from this inspection suggests that the PPS still have a way to go to ensure that the requirements of the Staff Instruction in relation to the Maintenance of Case Files are met. In the CPS an aide memoire has been issued to staff as to the factors that should be considered entitled '*A good review on CMS – Aide Memoire*'. This is an approach that the PPS could benefit from.

Operational recommendation 3

Inspectors therefore recommend that **the PPS should issue further guidance for prosecutors on the requirements to record their decision making rationale in a review note when applying the Test for Prosecution. The review note should be proportionate to the complexity of the facts, issues and risks in the case. This should be issued within six months of this report. In addition, the PPS should develop a quality assurance process to assess compliance with this guidance.**

Victim withdrawal

- 4.27 As highlighted above the decision of the victim to withdraw support for the prosecution creates significant challenges for the prosecution case. Prosecutors described the difficulties they faced in deciding whether to take steps to compel the victim to give evidence. In the PPS file review there was compliance with the policy on withdrawal in 60% of cases (six of 10). Of the 10 cases involving withdrawal of victim support, the police provided all pertinent information in seven of these. There were two cases which proceeded against the victim's wishes. There were also two cases where all appropriate applications were not considered for the case to proceed against the victim's wishes i.e. hearsay, bad character etc. and a further case where it was not possible to tell due to the poor quality of record keeping. In the police file review where a file was sent to the PPS and the victim withdrew, there was evidence prosecutors progressed or tried to progress the case without the support of the victim in 14% of relevant cases (3 of 21) although they did not make any progress in these cases. In one case (5%) they did not attempt to progress the case but could have.
- 4.28 As highlighted previously the PPS policy clearly sets out its approach in cases where the victim withdraws their support for the prosecution stating '*Sometimes a victim will ask the police not to proceed any further with the case or will ask to withdraw the complaint or, where he/she has made a statement, indicate that they no longer wish to give evidence. This does not necessarily mean that the case will be stopped. As a general rule the PPS will prosecute all cases where there is sufficient evidence and prosecution is required in the public interest.*' Given the PPS statement that '*rape is considered so serious that it is likely that prosecution is required in the public interest*' it should therefore be unlikely that the views of the victim should stop the prosecution case, provided the Evidential Test can still be met.
- 4.29 In practice however, decisions to stop the prosecution were sometimes taken on the basis that the prosecutor decided that the experience of giving evidence would be too traumatic or damaging to the victim's mental health, without sufficient consideration of how the victim could be supported to give evidence in terms of special measures or support organisations or advocates. As highlighted in the Rape Policy, the views of the victim are only one part of the Test for Prosecution.

Disclosure and third-party material

- 4.30 As noted above a policy had been adopted after the establishment of the Serious Crime Unit that third-party material would be sought at an earlier stage by the prosecutors in cases of rape where there was a police recommendation to prosecute, in the assumption that this would be requested by the defence at a later date. This however placed greater resource pressures on the prosecutors in the Serious Crime Unit having to trawl through large amounts of documentation, which in large parts may be irrelevant or non-disclosable in the case. It also contributed to further delay whilst awaiting this material before making a decision.

- 4.31 The issue of disclosure was covered in detail in CJI's 2015 report on file quality⁸⁴ and this inspection did not therefore seek to replicate that work in depth. The 2015 inspection found that disclosure was dealt with satisfactorily in only four of 17 Crown Court cases (23.5%). The file review for this inspection found that disclosure was not handled well in the 31 cases in the sample where it was applicable; the quality was rated as fair in 9.7% of cases (three) and poor in 90.3% (28). This needs significant improvement. Third party material was dealt with appropriately in two of the 11 relevant cases (18%), with seven where it was not (64%) and a further two (18%) where it was not possible to tell due to the absence of effective records of decisions and actions.
- 4.32 These issues were born out by discussions with prosecutors who raised issues about the challenges of meeting their disclosure obligations and the lack of progress to address the issues raised in the CJI 2015 report. As in 2015, there were a number of factors which needed to be addressed within the disclosure process. This included examples where the police did not properly discharge their responsibilities in relation to revelation and relevance, a lack of challenge and support by the PPS about these issues and a lack of adequate record keeping by prosecutors in relation to the discharge of their own disclosure duties.
- 4.33 The File Quality report made the following recommendation: *'The PPS will provide the PSNI with guidance on Disclosure. The PSNI will scope and deliver a new central Disclosure Unit and enhance the skills of operational Police Officers on the subject of disclosure. A timetable for the delivery of the central Disclosure Unit should be provided to CJI within one month of the publication of this report.'* Inspectors were advised however that this had not been implemented to date due to resourcing issues. The PSNI advised they had not yet made a final decision on the best way to deliver progress against this issue. There is still a pressing need therefore for the PPS and the PSNI to develop a more robust method to deal with disclosure, particularly where large volumes of evidence were involved.

Victim communication and consultation

- 4.34 In 2012 CJI published a report of an inspection of the PPS' giving of reasons for its decisions⁸⁵. The Executive Summary to this report concluded: *'Moving forward, Inspectors consider the main challenge for the PPS is to make further progress towards more full and open engagement with all victims, insofar as might be possible within the limitations of the law. Secondly, to move from perfunctory formal compliance with policy to a greater level of openness, transparency, understanding and engagement in order to further augment trust and confidence. Included here is a greater willingness to meet with individual victims/families to further explain prosecution decisions, while at the same time providing an even more sensitive and compassionate service.'* The report recommendations included that the PPS should offer to meet victims in a range of cases and provide substantive reasons to victims where possible. In response to this report, the PPS

84 CJI, *An inspection of the quality and timeliness of police files (incorporating disclosure) submitted to the PPS, November 2015*. Available online at: <http://www.cjini.org/getattachment/9faaa7ad-b1a9-4d66-bd35-79ff20848c7c/picture.aspx>

85 CJI, *Telling Them Why: An inspection of the Public Prosecution Service for Northern Ireland's giving of reasons for its decisions, May 2012*. Available online at: <http://www.cjini.org/getattachment/53bb5020-386d-4c49-8291-b2dbed285152/picture.aspx>

developed a more detailed giving of reasons letter for use in specified offences, including sexual offences, which encompassed an offer of a meeting with the prosecutor⁸⁶.

- 4.35 Since the publication of these reports, as noted in Chapter 2 of this report, the Victim Charter had been published. The PPS had incorporated the Victim Charter into its own Victim and Witnesses Policy⁸⁷. This highlighted that *'Being the subject of, or witnessing a crime, is often a traumatic experience. Engagement with the criminal justice system can add to the stresses created by this experience. It is vital, therefore, that victims and witnesses are given the support, information and services they need to minimise the disruption and upset caused to them, while enabling them to give the best possible evidence.'*
- 4.36 The issue of communication with victims was also a feature of the Starmer Review⁸⁸, with the report recommending that *'The PPS Victims and Witnesses Policy should be reviewed in light of this report, in particular with a view to improving communications and consultations with victims on major decisions'*. The CJI review of the implementation of the recommendations by the PPS found substantial progress had been made against this recommendation but identified inconsistencies in the quality of letters sent to victims, with just under half the cases not assessed to be sufficiently empathetic.
- 4.37 The file sample for this review inevitably would have covered some of the same letters that were reviewed in the Starmer Review file sample. Similarly therefore in this inspection there were issues about the quality of communications from the PPS including many letters being insufficiently empathetic and containing wording which included legal jargon. There were also letters that contained wording which was inappropriate or contained information which would be confusing to the victim in terms of describing outcomes of the case. There appeared to be an overuse of template paragraphs, which sometimes didn't make sense when used together, for example using phrases in no-prosecution decision letters such as *'I know you will be disappointed in this decision'* when the victim had never supported a prosecution from the outset. These template letters were part of the automated system of letters in the PPS case management system for use by the Victim and Witness Care Unit to issue correspondence to victims. There were some examples of letters however which were empathetic and sensitive, tailored to the circumstances of the case and the needs of the victim and explained decisions in a manner that would be easily understood by the recipient.
- 4.38 In addition, whilst there was evidence that the PPS prosecutors were offering to meet with victims and a significant number of victims were accepting that offer, there were examples in some cases where the venue and nature of the meeting itself (for example held in the formal atmosphere of Belfast Chambers sometimes with the prosecutor, police Investigating Officer and

86 CJI, *A follow-up review of the inspection of the Public Prosecution Service for Northern Ireland's giving of reasons for its decisions*, October 2015. Available online at: <http://www.cjini.org/TheInspections/Action-Plan-Reviews-Inspection-Follow-Up-Review/2015/Telling-Them-Why>

87 PPS, *Victim and Witness Policy*, June 2017. Available online at: [https://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Victims/PPS%20Victim%20and%20Witness%20Policy%20\(June%202017\).pdf](https://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Victims/PPS%20Victim%20and%20Witness%20Policy%20(June%202017).pdf)

88 Sir Keir Starmer KCB QC & Katherine O'Byrne, *Independent Review of the prosecution of related sexual abuse and terrorism cases*, May 2015. Available online at <http://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/PPS%20Press%20Office/StarmerReview.pdf>

one or two Counsel for the prosecution) clearly caused distress to the victim. This, on some occasions, contributed to the case being stopped as a decision was made that the victim would not be able to cope with the process of giving evidence in court. There were however, some examples of prosecutors responding sensitively and empathetically to victims in meetings. Two contrasting examples are highlighted below:

Example 8

In a rape case involving a victim who was deaf, the Serious Crime Unit prosecutor had a very difficult meeting to advise her that the case was to be dropped after contradictory evidence had come to light. She was also to be advised that the defendant was to be released from prison. Whilst a sign language interpreter had been requested they did not attend. In order to communicate with the victim the prosecutor took time to write out the conversation and issues, rather than postpone the meeting. This was a positive example of the prosecutor making significant effort to respond to the needs of the victim.

Example 9

A six-year-old child alleged sexual abuse and an ABE interview was conducted but by the time the file was received by the PPS there were doubts about her initial revelations. A meeting was arranged in the PPS offices with the prosecutor, Senior Counsel, police Investigating Officer, the child and her mother and a Women's Aid representative. During the meeting the child became upset and was unable to engage fully. A decision was made subsequent to the meeting that a no-prosecution would be directed. One of the reasons given was that the child was upset at the meeting. This approach is not in keeping with the principles adopted in the justice system for dealing with children, such as the use of ABE suites and trained ABE interviewers from police and Social Services.

4.39 Whilst the PPS have made improvements, as noted in previous reports, to its approach to dealing with victims and witnesses, the evidence from this inspection shows there is still significant work to be done to fully meet the needs of victims, particularly where they are vulnerable or have been subject to serious offences. Inspectors believe the following could be beneficial in addressing these issues:

- utilising the skills and advice of partner(s) from the victims sector to assist in undertaking a further review of and making improvements to letters sent to victims at each stage of the prosecution process;
- developing a quality assurance process to ensure that letters are understandable to non-legally qualified individuals; and
- ensuring that consultations with child and vulnerable victims are undertaken in an environment and manner which is in keeping with the principles of achieving best evidence in criminal proceedings⁸⁹.

⁸⁹ Department of Justice, *Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, the use of special measures and the provision of pre-trial therapy*, January 2012. Available online at: <https://www.justice-ni.gov.uk/sites/default/files/publications/doj/achieving-best-evidence-a-practitioner-guide.pdf>

Operational recommendation 4

It is therefore recommended that **the PPS undertake further work within six months of this report to fully deliver the standards contained in the Victim Charter and in the PPS Victim and Witnesses Policy, to ensure communication with victims is more empathetic, understandable, accurate, consistent and appropriate for the needs of the recipient.**

Case progression and timeliness of decision-making

- 4.40 As outlined in Chapter 3 addressing avoidable delay has been a substantial challenge to the criminal justice system in Northern Ireland for a significant period of time. The recommendations made by CJI in previous reports on this topic have not, to date, led to any real change in this issue. Whilst it was hoped that one of the benefits of establishing the Serious Crime Unit would be a reduction in avoidable delay and quicker turnaround of decisions, the PPS recognised that this had not yet been borne out in reality.
- 4.41 In the file review for this inspection the directing officer exercised effective case progression in 33% of relevant cases (15 of 46) with a further three cases where it was not possible to tell in the absence of a proper audit trail. Overall the prosecution dealt promptly and efficiently with incoming communications, correspondence and queries in 71.8% of relevant cases (28 of 39). Any decision to discontinue was made and put into effect in a timely manner in 61.5% of cases (eight of 13). The decision on the file was made in accordance with the PPS Key Performance Indicators in Prosecution Decisions in 72.0% of cases (54 of 75). There were eight cases in the sample where the decision had taken longer than 180 days to make.
- 4.42 In an attempt to reduce avoidable delay and ensure more effective decision making, the PSNI and the PPS had developed and implemented sexual assault prosecution clinics for adult sexual offences and for child abuse cases. Police Investigating Officers from the Public Protection Branch identified suitable cases which they believed did not meet the Evidential Test and submitted a streamlined file to the Serious Crime Unit prosecutor. The cases were then reviewed at the clinic and a decision was made either to direct no prosecution or for a full file to be submitted. Inspectors welcome this development to address delay in these types of cases but there are opportunities to make the process more streamlined and less bureaucratic by considering the staffing of the clinic and streamlining the letters sent to the victim.

- 4.43 Not all detected crimes will result in a file being sent to the PPS for decision for a variety of reasons⁹⁰. For those that do, the Investigating Officer makes a recommendation to the PPS directing officer as to whether they believe the case should be prosecuted. PPS figures for 2016-17⁹¹ indicate that the police recommended no prosecution/made no recommendation in 63.8% of rape cases and in 45.9% of cases of other sexual offences. As PSNI officers have little discretion in deciding whether a case should be sent to the PPS for a decision, inevitably Senior Prosecutors will be spending significant periods of time dealing with cases that could be resolved much earlier in the criminal justice process.
- 4.44 In the case file review the overall time of the case from receipt of the file until the eventual outcome was under 15 days in 20% of cases (15 of 77), invariably cases where a decision was made not to prosecute. There were three cases that took between 275 and 365 days and five cases that took longer than 365 days. PPS figures⁹¹ report average days required for the issue of prosecutorial decisions in 2016-17 and 2015-16. In rape cases in 2016-17 this was an average of 334 days for prosecution decisions and 125 for no prosecution decisions (an increase from 198 and 76 respectively in 2015-16). In cases of other sexual offences in 2016-17, this was an average of 198 days for prosecution decisions and 113 for no prosecution decisions (an increase from 184 and 73 respectively in 2015-16). The PPS explained that the increase in the time taken for decisions was due to the increased number of cases being allocated to the Serious Crime Unit, the enhanced prosecution process which was adopted in sexual cases and the insufficient level of resource available from the establishment of the Unit.
- 4.45 The additional resources brought into the Serious Crime Unit in early 2018 were an attempt to bring these figures down and address the backlogs of cases. Generally however delay still remained a significant issue for the PPS and a major concern for victims. This issue of avoidable delay across the criminal justice system is one that CJI will revisit through the work outlined in its 2018-19 inspection programme.

90 For example, in specific cases such as sexual activity between two young persons or sexting these may be dealt with by Social Services under the Joint Protocol agreement. This is so as not to unnecessarily criminalise young persons or have a negative impact on families and is deemed to be in the best interest of the victim. In these cases safeguarding is paramount when arriving at such a decision.

91 PPSNI, *Statistical bulletin: Cases involving sexual offences 2016-17, April 2018*. Available online at: https://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Stats%20and%20Research/Sexual%20Offences/Statistical%20Bulletin_Cases%20Involving%20Sexual%20Offences%2016-17.pdf



Trial and court process

Committal of cases to the Crown Court

- 5.1 Committal is the procedure used to determine whether there is sufficient evidence to justify putting a person on trial in the Crown Court. The issue of committal reform featured in the Justice Act (Northern Ireland) 2015. The explanatory memorandum for the Act outlined the difficulties with the committal procedure in Northern Ireland as follows: *'Proceedings can be in the form of oral evidence, where witnesses can be cross-examined, or as a paper exercise, carried out based on written statements and evidence. The practice of hearing oral evidence, particularly cross-examination, can have a significant impact on victims and witnesses, who may have to give (sometimes traumatic) evidence more than once. Oral evidence hearings can also be very lengthy, with hearings typically lasting 1-2 days, and problems are often experienced in organising witnesses to attend, which can lead to adjournments and consequently increase delay in the Magistrates' Court before the case can be sent to the Crown Court. They can also be costly to the legal aid fund.'*⁹²
- 5.2 Part 2 of the Justice Act (Northern Ireland) 2015 created measures to reform procedures around the taking of oral evidence and cross-examination of witnesses in committal proceedings, so that such evidence was only to be given where, in the opinion of the court, it was required in the interests of justice. Powers were also introduced to allow direct transfer to the Crown Court of cases in which there is a guilty plea as well as direct transfer for certain indictable offences, beginning with murder and manslaughter cases, but including a provision where the DoJ could amend the list of specified offences at a future date.
- 5.3 The NICTS provided data on committal proceedings which can be used to indicate how many exclusively sexual offences cases (where all defendants' offences were sexual offences) were transferred to the Crown Court from the Magistrates' Court for Preliminary Enquiries and Preliminary Investigations. In 2017, 125 of 127 (98%) of such cases were transferred to the Crown Court from the Magistrates' Court. In 2016 the comparable figures were 170 of 171 (99%) and in 2015, it was 164 of 171 (96%). These figures demonstrate that there are limited risks involved in abolishing the committal proceedings in these types of cases, as the vast majority will be transferred anyway. Direct committal would also reduce the anxiety for victims and should reduce delays in case progression.

92 Explanatory Memorandum: Justice Act (Northern Ireland) 2015. Available online at: <http://www.legislation.gov.uk/nia/2015/9/notes/division/3>

- 5.4 At the time of the inspection the required technological and procedural amendments were being worked upon in order to enable the committal reform part of the legislation to be enacted. In December 2016 the then Minister of Justice confirmed to the Justice Committee her intention to bring forward a Bill in 2017 which would give effect to a commitment in the Fresh Start action plan to include provisions on committal reform building on the measures in the Justice Act (Northern Ireland) 2015⁹³. Inspectors were advised by the DoJ during the fieldwork for this inspection in 2017 that they were continuing to develop this proposed Bill, but that this would obviously reach a point at which it could progress no further due to the lack of an Assembly and a Minister.
- 5.5 There was therefore a twin track approach being adopted to committal reform; to enact direct committal for murder and manslaughter under the Justice Act (Northern Ireland) 2015 as well as potentially to have direct committal for all types of cases under a new Bill. It should also be noted that committal proceedings were abolished in England and Wales in May 2013. In the event that, as currently stands, committal proceedings will not be abolished in Northern Ireland, Inspectors recommend that:

Operational recommendation 5

Once direct transfer to the Crown Court is established for murder and manslaughter cases, the DoJ should ensure that rape, serious sexual offences and child abuse offences be added to the list of specified offences under the Justice Act (Northern Ireland) 2015.

Case management and disclosure

- 5.6 As highlighted in the previous chapters in this report, avoidable delay in the criminal justice system, whilst the subject of a number of inspection reports and targeted work programmes, continued to be a feature of criminal cases and a challenge for the agencies involved. The most recent of these reports, published by the Northern Ireland Audit Office in March 2018⁹⁴, noted that 12% of Crown Court cases took over 1,000 days to complete between 2011-12 and 2015-16 and that on average, 6.5 adjournments were experienced by victims, defendants and witnesses in Crown Court cases. In both its 2006 and 2010 Avoidable Delay inspection reports CJI recommended the introduction of statutory time limits and this again was reiterated in the 2012 follow-up review⁹⁵. To date however there has been little progress in this area and this inspection found continuing significant delays in dealing with sexual offences cases.

93 Committee for Justice Official report (Hansard), *Key Issues and Priorities: Ms Claire Sugden MLA (Minister of Justice)*, 1 December 2016. Available online at: <http://data.niassembly.gov.uk/HansardXml/committee-19914.pdf>

94 Northern Ireland Audit Office, *Speeding up justice: avoidable delay in the criminal justice system*, March 2018. Available online at: <https://www.niauditoffice.gov.uk/sites/niao/files/media-files/Speeding%20up%20Justice.pdf>

95 See CJI reports on avoidable delay published 2012; 2010; and 2006 available on CJI website www.cjini.org

- 5.7 An additional feature of these types of cases is that the defendant is less likely than in other types of offences to plead guilty and therefore the case is more likely to proceed to the Crown Court. Judicial statistics⁹⁶ indicate that in 2016, 38% of all defendants made a plea of guilty on all charges whereas PPS statistics provided to CJI regarding Crown Court outcomes for defendants charged with a sexual offence suggest that this figure was only 32% in 2016, and dropped to 21% in 2017. This inevitably means that the prosecutor is preparing the case in anticipation of a contest from the outset.
- 5.8 In the case file review of the 74 finalised prosecution cases there were only four cases (5.4%) where the case was concluded with a timely guilty plea and 16 cases (21.6%) where it was concluded with a late guilty plea. In one of these cases, a case of sexual assault in a nightclub, there were 23 hearings held in the Magistrates' Court before the defendant pleaded guilty on the day of the trial when witnesses had attended to give evidence, some from England. In some cases there was evidence that the case was adjourned to fix a date for the contest. In considering adjournments at Court there is an onus on the PPS to ensure that the case is ready for Court at the earliest opportunity and that requests for adjournments on account of not being ready, are challenged by the prosecutor in the Magistrates' Court or Counsel in the Crown Court.
- 5.9 The issues highlighted in previous CJI reports on the topic of avoidable delay and case management are not unique in cases of sexual offences. However there are features of these types of cases that make them more susceptible to becoming delayed in terms of the complexity and quantity of evidence in some cases, the challenges in accessing the evidence and ensuring it is handled appropriately in line with disclosure guidance (for example, medical and third party evidence and digital forensics) and the reduced likelihood that defendants will plead guilty. These factors mean that it is more likely that cases involving sexual offences will take a significant time to be resolved. The impact on victims is often also greater than in other types of crimes as will be covered in the final chapter of this report.

Role of counsel and advocacy

- 5.10 CJI's report on the corporate governance of the PPS⁹⁷ reviewed the use and management of Counsel by the PPS and the quality of advocacy in court. On observing Advocates and Independent Counsel, the report stated that '*PPS Advocates and Counsel met the required standards with some exceptions*'. The report recommended that '*an effective and objective assessment process of PPS Prosecutors, Counsel (and future Associate Prosecutors) is established by the end of 2013. This should include stakeholder feedback, court observations and management information on Prosecutor performance. The process should complement the appointment of the new panels of Counsel*'. A follow-up review of this recommendation published in 2018⁹⁸ found

96 NICTS, *Judicial Statistics 2016, January 2018*. Available online at: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/Judicial%20Statistics%202016%20-%20revised.pdf>

97 CJI, *A corporate governance inspection of the Public Prosecution Service for Northern Ireland, April 2013*. Available online at: <http://www.cjini.org/getattachment/1b8e142e-9f17-41b5-8674-fec5c0521706/picture.aspx>

98 CJI, *A follow-up review of the Public Prosecution Service for Northern Ireland's response to strategic inspection recommendations made between 2013 and 2015, February 2018*. Available online at: <http://www.cjini.org/getattachment/ca8c5bc9-213d-4756-9eb2-7c5359fce085/PPS.aspx>

that whilst the PPS had refreshed its panel of Counsel, financial pressures had prevented the PPS from realising their ambitions in relation to proper quality assurance of their performance. The recommendation was deemed partly achieved.

- 5.11 CJI also previously commented on the use of Counsel for both prosecution and defence and the cost of legal aid in an inspection of the use of legal services⁹⁹. This reported costs of legal fees to be higher in Northern Ireland than in England and Wales for comparable cases as well as different fee arrangements for the defence and prosecution. The impact of the different fee arrangements is exacerbated by the significantly greater availability of two Counsel for the conduct of defence cases compared to the prosecution. Work had been undertaken since this report to address the costs of legal aid, but there were still issues apparent in this inspection as evidenced.
- 5.12 This inspection did not attempt to replicate the methodology of the previous work but considered the role of Counsel as evidenced in the prosecution case files. The review found that in some cases the PPS sought advice from Senior Counsel, where prosecutors and the Assistant Director should have had confidence in their own decision making. The use of the Case Management Panels, as part of the Case Management Procedures, also offered an alternative approach to dealing with complex cases which would assist in developing skills within the PPS. In addition there were some cases where Senior Counsel was instructed but the case could have been dealt with by a competent and experienced Junior Counsel, with or without a PPS Higher Court Advocate, as it was not complex.
- 5.13 This was, in some respects understandable in the context of a note circulated across PPS Management in 2012 regarding briefing of Counsel, which stated *'The briefing of Senior Counsel requires the written consent of the Regional Prosecutor/Assistant Director except in relation to the following cases: (1) Homicide/Attempted Murder, (2) Rape/Attempted Rape, (3) Fatal Road Traffic Accidents.'* This therefore suggests the prosecutor is able to make use of Senior Counsel based on the offence rather than the features of the case which makes it more complex and worthy of using Senior Counsel (for example, complex child sexual abuse offences). The note then went on to state: *'The following factors may be taken into account in deciding whether it is necessary to brief Senior Counsel:- (1) complex or novel legal issues are likely to arise which are of significant public interest; (2) Factually complex, serious, sensitive or significant public interest issues are likely to arise.'*
- 5.14 In sexual offences cases it is likely that these 'following factors' will be more important to consider when deciding on the level of Counsel required than purely focusing on the charged offence(s). Most of the cases reviewed by Inspectors were straight forward without novel or particularly complex legal issues. The more significant issues arose in respect of dealing with victims and their evidence, which Counsel at both levels and PPS Higher Court Advocates should be capable of addressing appropriately.

99 CJI, *Use of legal services by the criminal justice system*, June 2011. Available online at: <http://www.cjini.org/getattachment/503670ba-f0a8-4fc8-9842-725c09c0100e/Use-of-Legal-Services-by-the-Criminal-Justice-Syst.aspx>

- 5.15 During the fieldwork CJI spoke to a range of interviewees about the quality and skills of Counsel used by the PPS. The general view was that Counsel had improved in recent years in terms of their adherence to the instructions received from the PPS with regard to checking with the directing prosecutor before making decisions about the case (for example, amending charges, accepting a plea to a lesser offence etc.). There was also some anecdotal evidence that Counsel were more likely to consult with the victim in the case prior to making a decision or proposing a course of action.
- 5.16 The case file review however found that there was evidence that the victim was consulted prior to a change of charge or acceptance of plea in 40% of cases (four of 10). There were only five cases where a plea to a different charge or a basis of plea was accepted; in two it was not appropriate to accept the plea and in none of the five was there an adequate record which was signed by the parties. This anomaly between what Inspectors were advised by PPS staff and Counsel and the findings of the review may of course be down to a lack of recording of decisions, as noted previously, but again this emphasises the need for all those involved with the case to keep appropriate notes. Without adequate note-keeping and rationale for decisions, victims, witnesses and the wider public cannot be sufficiently re-assured that obligations are being fulfilled on both sides. Some issues were also raised with regard to the preparedness of Counsel for trial, including requests for last minute amendments to court documents or requests for further information.
- 5.17 In 2017 the PPS had provided mandatory training for Counsel who wished to work on sexual offences cases and this had been facilitated by both PPS staff and by a leading Judge and QC from England. It was acknowledged however that some Counsel had more appropriate skills than others for this type of work, particularly in dealing with victims. The system for selecting Counsel to be used for each case however did not always facilitate selection of those most appropriate for the type of case. There had not been as much use of the PPS Higher Court Advocates in these types of cases as had been hoped when the Serious Crime Unit was established. CJI would support measures by the PPS to make use of Counsel who are considered to have the most appropriate experience and skills for handling the complex and sensitive nature of sexual offences cases, particularly in dealing with victims who may have significant vulnerabilities or children or young people, rather than basing selection decisions on seniority.
- 5.18 In addition the case file review indicated that the PPS needed to take a more proactive approach to setting out the essential instructions in the briefing to Counsel. This was included in only three of the 16 relevant cases (18.8%) but was not included in nine of the cases (56.3%). PPS practice was for the advocate to meet with the victim for a consultation prior to their attendance at Court for the trial and a note to be taken of that meeting. In the file review there was evidence of a consultation with the advocate in five of the 15 relevant cases (33.3%) but it was not known from the file whether there had been any consultation in two-thirds of cases (10; 66.7%). These figures also reflect the lack of records kept on the file. Whilst the quality assurance process for Counsel envisaged by the PPS had not come to fruition, Inspectors were told of at least one case where the Assistant Director was investigating a complaint of poor performance by Counsel appointed to a sexual offences case.

- 5.19 Inspectors found there was a will within the PPS to better manage the use of Counsel, by using those who were believed to be the most suitable for the sensitive nature of these types of cases and who would carry out the expectations of the PPS to best effect. Whilst acknowledging that the PPS did not have sufficient resource at the time of the inspection to implement robust quality assurance processes for Counsel, Inspectors believe that there are steps that could be taken to develop a more highly skilled and confident prosecution team with specific skills in sexual offences.

Operational recommendation 6

Inspectors therefore **recommend that the PPS should, within three months of this report, develop an action plan to further improve how Counsel is utilised in cases involving sexual offences.**

- 5.20 Inspectors would suggest that the following could feature in the action plan:

- develop methods to improve the approach to second opinions on decisions made within the Serious Crime Unit (for example, by the use of peer review, quality assurance procedures and Case Management Panels);
- establish a specialist sexual offences prosecution Counsel panel using criteria to select those with the most appropriate skills and experience for these types of cases;
- ensure all Counsel on the sexual offences panel are trained to a high standard on dealing with cases of sexual offences, particularly regarding the PPS Rape Policy and victims and witnesses issues;
- ensure the selection of Counsel is based on those most appropriate for the specific nature of the case rather than purely on case type or seniority; and
- ensure Counsel are more fully briefed by prosecutors about the case strategy through a comprehensive review note (see recommendation at paragraph 4.26) and the instructions to Counsel.

Performance improvement and lessons learned

- 5.21 In common with findings highlighted earlier in this report the case file review also highlighted issues with recording and note-taking of court proceedings by Counsel in order to help inform future practice. The PPS Staff Instruction 07/2014 'Maintenance of Case Files' set out the requirements for recording of court hearings which included any actions to be carried out post-hearing and any adverse or positive comments made by the Judge. In cases where the PPS offered no evidence at Court or there was a Judge Directed Acquittal, there was a report whereby lessons could be learned in only 26.7% of cases (four of 15). The advocate provided a report on recording of court hearings in only 23.3% of cases (10 of 43). A court report, proportionate to the level and difficulty of the case, is important for the directing prosecutors (who may not be at Court) and the PPS as a whole to be clear about what happened during the trial and the outcomes of the case as well as identifying any outstanding issues or lessons for the future.

- 5.22 The PPS Business Plan 2017-18 indicated an intention to conduct a review of any cases where there had been a 'No Bill' or Acquittal by Direction¹⁰⁰ in the Crown Court. The PPS advised that in the past year there had not been any No Bills for sexual offences or offences with a domestic motivation and only four cases which were Not Guilty by Direction. The PPS confirmed that when a No Bill or Not Guilty by Direction verdict was recorded, Counsel was required to complete a Prosecutor Report form and/or a written report. As part of this process, the prosecutor may be informed of the outcome either by Counsel directly or by forwarding of the form or report.
- 5.23 The PPS advised that as part of this process, 'No Bill' and Not Guilty by Direction forms/reports were to be forwarded to the Serious Crime Unit Assistant Director on a monthly basis for review. The review of such cases had also been included in the Performance and Accountability Meetings template. A review of the Staff Instruction had commenced and updated instructions were due to be issued in due course. Inspectors were shown reports/forms on four cases which were concluded as Not Guilty by Direction and one in which the Judge had directed that the case be stayed by an Abuse of Process. These reports highlighted issues raised early about the need for a robust case strategy at the outset of complex cases, which should anticipate difficulties with the evidence available. It was not clear what overall learning across the Serious Crime Unit there had been from these cases.
- 5.24 Consideration had also been given to establishing scrutiny panels, working in partnership with victim organisations, to review their cases. Area scrutiny panels were established in CPS Areas in England and Wales to scrutinise cases involving allegations of rape and serious sexual offences¹⁰¹. The local panels allow members of the local community to examine the details of anonymised cases, an opportunity to provide their perspective on the way cases are prosecuted and provide feedback about the way people and communities perceive CPS decision making and the way it handles cases locally. They provide for a further assurance of casework and an opportunity to be informed by the third sector. Whilst Inspectors welcome the considerations by the PPS of the scrutiny panel process this is likely to be a longer term ambition, once further work is undertaken to address some of the issues raised in this inspection report.

Victim care and special measures

- 5.25 The Victim and Witness Care Unit were responsible for undertaking a victim needs assessment, providing updates to victims on the progress of the case and dealing with queries that arose. The role of the Unit will be considered more fully in CJI's forthcoming inspection of the care and treatment of victims and witnesses in the criminal justice system and therefore this inspection did not seek to undertake an in-depth review.

100 'No Bill' is where the prosecution offers no evidence. Acquittal by direction is a direction provided to a jury by a Judge.

101 See HMCPSI report on RASSO Units at https://www.justiceinspectorates.gov.uk/hmcpsi/wp-content/uploads/sites/3/2016/02/RASSO_thm_Feb16_rpt.pdf

- 5.26 The prosecution case file review found that all aspects of The Victim's Charter, The Code for Prosecutors and other policy requirements regarding the treatment of victims and witnesses were complied with in 55.6% of cases (40 of 72 cases) (for example, in relation to correspondence with victims, consultations with victims etc.) with a further case where it was not known. There were records which indicated that there had been appropriate consideration of special measures in 24 of 39 relevant cases (61.5%) and evidence of appropriate use in 11 of the 12 relevant cases (91.7%). The applications appeared to be timely and of good quality in eight of the 12 relevant cases (66.7%).
- 5.27 The special measures legislation¹⁰² and The Victim's Charter¹⁰³ set out that all victims of sexual assaults would be considered 'intimidated witnesses' and therefore eligible for assistance in respect of special measures unless they have informed the Court that they do not wish to avail of them. It is unclear therefore why there continues to be issues in applying for and the use of special measures in sexual offence cases. There were some examples where the prosecution sought medical evidence to show that the victim's mental health would be affected if they were obliged to give evidence in court. It would be more efficient and effective if the legislation and procedure rules were used to support special measures applications and rebut challenges by the defence.
- 5.28 The example below illustrates an issue in one case and demonstrates how issues with the application for special measures can also contribute to delay:

Example 10

A report was made to police in May 2015 from a victim claiming sexual assault. A file was submitted to the PPS in February 2016 and the prosecutor directed prosecution 12 days later. A statement taken from the victim in which she requested special measures, was contained on the file dated in March 2016. In May 2016 a date was fixed for a contest in the Magistrates' Court to commence in July. On the day of the contest special measures had not been applied for and the victim did not feel she could give evidence without them. The PPS then requested an adjournment to August to fix a new date for the contest and apply for special measures. Special measures were contested by the defence but the Judge granted screens to be used at the contest in September 2016. The hearing outcome recorded that the victim was a very poor witness and gave inconsistent evidence. The case was dismissed by the District Judge. A solicitor for the victim contacted the PPS in February 2017 requesting an update; despite the victim being spoken to at Court by the prosecutor to explain the outcome she had not realised, in her anxious state, that the defendant had been acquitted.

102 See the *Criminal Evidence (Northern Ireland) Order 1999, Section 5*. Available online at: <https://www.legislation.gov.uk/nisi/1999/2789/article/5>

103 See paragraph 49 of DoJ, *Victim Charter: A Charter for victims of crime, September 2015*. Available online at <https://www.justice-ni.gov.uk/sites/default/files/publications/doj/victim-charter.pdf>

- 5.29 Pre-recorded cross examination was introduced in England and Wales in early 2017. In early 2017 the Minister of Justice in Northern Ireland also announced plans to pilot pre-recorded cross-examination for 12 months from summer 2017. It was suggested to Inspectors however that the current practices regarding disclosure may make it difficult to roll this out properly. Inspectors would welcome any opportunity to enable victims and witnesses to give their best evidence in accordance with ABE interview guidance but this must be facilitated by proper disclosure of evidence in a timely and appropriate manner.
- 5.30 As the fieldwork for this inspection was concluding Victim Support Northern Ireland advised CJI about research they intended to undertake about rape cases at Court. The research aimed to adopt the approach undertaken by the Office of the Police and Crime Commissioner for Northumbria. The Northumbria Court Observers Panel (a panel of volunteers given training to court observers who had been trained to follow the essentials of the trial process and the specific provisions around rape cases) observed 30 rape trials during 2015-16 and a report of the observations and analysis together with recommendations was produced. Victim Support aimed to undertake a similar piece of research in Northern Ireland during 2018-19 with the agreement of the Judiciary and support from the PPS. CJI welcome this research and look forward to the report of the work, which will be able to look more closely at the Court stage of the justice system than this inspection has been able to. It is to be hoped that the resulting recommendations and feedback are helpful to the organisations of the criminal justice system.
- 5.31 Victims were provided with a court familiarisation visit prior to their attendance in court. For adults this service was provided by Victim Support's Witness Service. For young people there was a greater level of preparation provided by the NSPCC's Young Witness Service. Previous CJI reports¹⁰⁴ have noted positive feedback from victims and witnesses about the services provided by these two organisations. Similar positive feedback was heard from victims and victims groups in this inspection. In addition some victims had specific support from organisations from whom they had previously been receiving services such as Women's Aid and Nexus. Victims were incredibly positive about this support as is discussed in Chapter 6. The positive role of Registered Intermediaries was also noted in assisting some victims to give evidence to the court. These services will be considered further in the forthcoming CJI inspection of victims and witnesses.
- 5.32 In common with previous work Inspectors heard concerns about the layouts of some court buildings where victims and defendants could easily be in close proximity prior to entering court. Such issues can cause additional stress on the day for both the victim and others involved in the case. In some courts, there was greater ability to separate victims and defendants, one notable example being in Derry/Londonderry Court where victims could give evidence remotely from the NSPCC offices and did not have to enter the court building at all. One victim described how concerns about safety could appear small to practitioners yet be huge issues for victims, such as fears that the defendant would discover the door code and gain entry to the witness room to harm her.

104 CJI, *The care and treatment of victims and witnesses in the criminal justice system in Northern Ireland*, December 2011. Available online at: <http://cjini.org/getattachment/c3a0fb11-e230-4d73-97e9-002c200e277a/picture.aspx>

- 5.33 The victim was informed of their entitlement to make a Victim Personal Statement in 23 of 28 relevant cases (82.1%) with a further 12 cases where it was not known due to the absence of any record. This information was invariably provided in a template letter at the outset of the case. The involvement of victims in the case and their care and treatment will be considered in more detail in CJI's forthcoming inspection of victims and witnesses.

Juries and jury directions

- 5.34 CJI's 2010 report on sexual violence and abuse¹⁰⁵ highlighted concerns raised during the inspection about the ability of juries to make accurate judgements about the guilt or otherwise of defendants in sexual offence cases, particularly where there were issues of consent. Myths and stereotypes that exist (as outlined for example in the PPS Policy on Prosecuting Cases of Rape) can therefore affect the decision making of juries.
- 5.35 In England and Wales and in Scotland judicial directions have attempted to address these myths and stereotypes. Part 1 of the Crown Court Compendium in England and Wales provides guidance for Judges on making directions in court proceedings¹⁰⁶. This includes several circumstances relevant to sexual offence cases within 'Chapter 20 Sexual offences' of the Compendium, particularly 20-1 the dangers of assumptions, 20-2 historical allegations, 20-3 grooming of children, 20-4 consent and reasonable belief in consent, 20-5 capacity and voluntary intoxication.
- 5.36 In Scotland, the Abusive Behaviour and Sexual Harm (Scotland) Bill became law in April 2016 and was enacted in April 2017. This sets out the directions that the Judge must give to the jury in sexual offences cases specifically relating to a lack of communication about the offence (delayed reporting) and the absence of physical resistance by the victim or physical force by the perpetrator. On announcing the bill the Scottish Justice Secretary said *"As victims of sexual offences have increasing confidence in reporting to the police this new requirement for judges to direct juries will make a real difference in enabling juries to approach court evidence in an informed way"*¹⁰⁷.
- 5.37 In Northern Ireland there is no such legislative requirement for juries to be directed in relation to assumptions or stereotyping, as is the case in Scotland, nor is there a single document, such as the Crown Court Compendium in England and Wales, which provides guidance on directing the jury for members of the judiciary. The approaches in England and Wales and Scotland aim to provide openness and transparency for the public and users of the criminal justice system, particularly victims and witnesses. This is an area the DoJ would be well placed to address given the focus of the previous Minister.

105 CJI, *Sexual violence and abuse: A thematic inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland, July 2010*. Available online at: <http://www.cjini.org/getattachment/0ad6b7e4-0810-4151-8bb0-e28789591efc/picture.aspx>

106 Judicial College, *The Crown Court Compendium: Part 1: Jury and Trial Management and Summing Up, November 2017*. Available online at: <https://www.judiciary.gov.uk/wp-content/uploads/2016/06/crown-court-compndium-pt1-jury-and-trial-management-and-summing-up-nov2017-v2.pdf>

107 Scottish Government, *Tackling abusive behaviour and sexual harm, April 2017*. Accessed online: <https://news.gov.scot/news/tackling-abusive-behaviour-and-sexual-harm>

- 5.38 Action 6 of the Year One implementation plan for the *Stopping Domestic and Sexual Violence Strategy* was ‘consult on the need for changes in practice and legislative provisions for initiatives, including, a Domestic Violence Disclosure Scheme and a Domestic Abuse Offence and develop proposals for the way forward’.

Strategic recommendation 3

Inspectors therefore recommend that **the DoJ should include, in Action 6 of the Strategy implementation plan, legislation which contains a requirement for jury directions to be given in sexual offence cases to enable them to approach court evidence in a more informed way.**

Anonymity and transparency of proceedings

- 5.39 After the fieldwork for this inspection had concluded there was a significant amount of media and public commentary around a number of issues arising from a high-profile rape trial which concluded in March 2018. The issues raised included the right of the defendant to anonymity particularly in cases of acquittal (and given the right of the victim to anonymity), the role of the press and social media in reporting and commenting on rape trials, the public nature of proceedings in criminal trials and the manner in which complainants are cross-examined during the trial. The specific issues of defendant anonymity and reporting of court proceedings were not raised during the fieldwork for this inspection by stakeholders, including those representing defendants and therefore were not considered at length by Inspectors.
- 5.40 CJI was made aware in April 2018 that Sir John Gillen was to undertake a review of sexual offences cases¹⁰⁸ and would therefore await the conclusion of that review to provide guidance in this area. Inspectors would welcome consideration as to how these types of issues could be addressed as part of this review, particularly through consideration of the reporting restrictions on naming defendants in the Republic of Ireland. CJI would note however that these issues, particularly those of defendant anonymity and the cross-examination of victims, is a feature of most, if not all, rape and serious sexual offence cases. Therefore whilst there was a large amount of public interest during the course of one particular trial due to the high profile nature of the defendants, these issues are not unique to one individual sexual offences case and are a feature of the adversarial system of justice in Northern Ireland as it exists at the current time.

Preparation and options for sentencing

- 5.41 CJI previously reported on the quality of pre-sentence reports (PSRs) delivered by the Probation Board for Northern Ireland (PBNI)¹⁰⁹. The report noted that ‘*the quality of the PSRs produced by the Probation Board were held in high regard by the courts*’. This inspection heard similar compliments from stakeholders and no concerns were raised about any aspects of the PSR process.

108 See <https://www.justice-ni.gov.uk/news/review-arrangements-deliver-justice-serious-sexual-offence-cases-launched>

109 CJI, *Pre-sentence reports, June 2011*. Available online at: <http://www.cjini.org/getattachment/7d0d4159-4e96-4991-968e-0ef24365c699/Pre-Sentence-Reports.aspx>

- 5.42 In addition to the delivery of standard pre-sentence reports for those convicted of less serious offences, individuals who had been convicted of a serious sexual offence were assessed for their eligibility to attend a sex offender programme. Horizon was in use by the PBNi as the revised programme for sex offenders, both those who admit and deny their guilt. An assessment was therefore conducted of the offender's risks and needs in order to recommend the appropriate programme and length of programme. There was however a gap in provision for un-adjudicated perpetrators.¹¹⁰ The need to develop preventative measures to reduce risk to victims had been identified in the *Stopping Sexual and Domestic Violence Strategy* but no specific provision had been developed.
- 5.43 Stakeholders and victims raised concerns about the awareness and understanding of the sentencing process, where it was difficult to access information to assist in understanding sentencing decisions. The recently developed Judiciary NI website contained sentencing guidelines for different types of offences, including the range of sexual offences for the Magistrates' Court¹¹¹. For Crown Court cases, the guidance was in the form of judgments, which recorded the comment of the sentencing judge and references to previous case law¹¹². In England and Wales, Part II of the Crown Court Compendium on Sentencing¹¹³ and the Sentencing Council Sexual Offences Definitive Guideline¹¹⁴ set out the steps to be taken by the Court in determining the appropriate sentence.
- 5.44 It is important that victims understand the factors which have determined the sentence that the defendant has received in order to ensure the justice system is transparent. It is also important that Counsel, prosecutors and defence lawyers also have this understanding in order to advise victims or defendants appropriately and to enable them to make decisions about whether to appeal against sentences.
- 5.45 In June 2016 the then Justice Minister announced a major review of policy issues in relation to sentencing¹¹⁵. The Minister stated that *'The Review will look at the legislative framework for certain categories of crime, the setting of tariffs for murder, the arrangements for unduly lenient sentences and the effectiveness of the current sentencing guidelines mechanism to enhance public confidence, consistency and transparency in sentencing'*. It was noted that *'The Review will consider the extent to which these arrangements meet the objectives of an effective sentencing guidelines mechanism, and consider possible alternative approaches to securing public confidence in sentencing'*. Inspectors look forward to the conclusion and reporting of this review in due course.

110 An un-adjudicated perpetrator is a term used to describe an individual who has not been subject to court proceedings.

111 See <https://www.judiciary-ni.gov.uk/sentencing-guidelines-magistrates-court-sexual-offences-0>

112 See <https://www.judiciary-ni.gov.uk/judiciary-decision-types/sexual-offences>

113 Judicial College, *The Crown Court Compendium: Part II: Sentencing*, November 2017. Available online at: <https://www.judiciary.gov.uk/wp-content/uploads/2016/06/crown-court-compedium-pt2-sentencing-nov2017-v3.pdf>

114 Sentencing Council, *Sexual offence definitive guideline*, December 2017. Available online at: <https://www.sentencingcouncil.org.uk/wp-content/uploads/Sexual-Offences-Definitive-Guideline-web5.pdf>

115 DoJ, *Justice Minister announces sentencing review* (press release), June 2016. Available online at: <https://www.justice-ni.gov.uk/news/justice-minister-announces-sentencing-review>



Victims' issues

Engagement with victims and victim organisations

- 6.1 The PSNI have had a long history of engagement with voluntary and community organisations, particularly where victim's issues were concerned. At the time of the inspection a Detective Superintendent and Detective Inspector from the Rape Crime Unit were members of the Nexus Board. The Detective Inspector had met with the Nexus Client Forum to seek feedback on the performance of police and where improvements could be made. In fact one member of this Forum advised Inspectors that, on the basis of feedback given by her, the investigation into the offences against her was re-opened and significant progress was made. In addition, Nexus were discussing opportunities with the PSNI to assist in providing support for victims at different stages of the early criminal justice journey.
- 6.2 Victim's organisations however raised concerns at the reduction of their input into police training over recent years. Whilst Nexus had an input into Foundation Training in respect of the lesson on sexual offences and Women's Aid had an input into the lesson on domestic offences, Inspectors were advised that the length of these sessions had been reduced due to time constraints in the programme. In addition, there was insufficient time to incorporate specific sessions from other groups such as Men's Advisory Project and The Rainbow Project. Victim support organisations all noted the lack of funding available for organisations to support these training activities but felt that the need to help improve the police response outweighed these concerns.
- 6.3 Victims support organisations reported a greater willingness by the PPS to engage with them since the establishment of the Serious Crime Unit. The Assistant Director of the Serious Crime Unit had also attended the Nexus Client Forum and had sought feedback on a document which had been developed for victims. Nexus also spoke positively about relationships with the Serious Crime Unit at a PPS event on Connecting with the Community in March 2018 and had given the PPS and the PSNI a Nexus NI 'Break the Silence' award in 2016. The establishment of the Serious Crime Unit provides an excellent opportunity for the PPS to develop more effective relationships with victim support organisations and enhance the transparency and understanding of their work.

Victim experience

First response and investigation

- 6.4 In general most victims spoken to had a positive experience of the police who dealt with their case. Some issues were raised about the need to give a statement to Local Policing Team officers prior to accessing specialist officers from rape crime or child abuse investigators, which has been noted above. Some concerns were also raised by female victims about having to tell their story to a male officer, which made them feel uncomfortable, although they appreciated that officers working in sexual crime could not all be women. In general, when victims described giving statements to, or being interviewed by, specialist officers they were complimentary about the way the investigations were conducted in as sensitive a way as possible, given the circumstances. Victims often sought information, updates and support from the Investigating Officer long into the process, as they saw them as their single point of contact for the duration of the case. One victim whose case had been investigated by an officer from the RCU stated: *'I would have been lost without them...they explained everything right through from the incident to the day of the court.'*
- 6.5 Delay featured a great deal in the discussions about the investigation stage of the process, particularly those who had reported historic abuse. One victim raised concerns about a lack of continuity of the Investigating Officer, which was reflective of the high turnover of officers in Public Protection Branch.

Prosecution decision-making

- 6.6 Victims felt less connected with the directing prosecutor in the PPS. Although letters were sent from the Victim and Witness Care Unit to advise victims that the PPS had received their file and who the directing prosecutor was, victims still often reverted back to the PSNI Investigating Officer for information about the case progression. The delays in the system inevitably compounded this issue.
- 6.7 One of the most significant concerns for victims was the transparency of the decision making by the PPS, particularly cases where the decision was made not to prosecute the case. Some victims did not appear to understand the role of the PPS or felt that a no prosecution decision meant that they were not believed. Some victims felt that it was unfair that the defendant had their own solicitor and barrister working on their behalf, whilst the prosecution service worked on behalf of the public rather than the victim.

Trial and court process

- 6.8 The over-riding desire of victims was to have the opportunity to tell their story in Court, even if the end result was an acquittal. This gave them comfort in the knowledge that they were believed by the criminal justice system, even if the jury couldn't convict the defendant given the need to prove the case beyond all reasonable doubt.

- 6.9 Evidence of this was apparent in the actions of victims in dealing with the criminal justice organisations. Some obtained their own solicitor to act on their behalf in communicating with the PPS and challenging decision-making. One victim described how she applied for a Judicial Review against a decision by the PPS not to prosecute a defendant who she had accused of raping her. Victims also demonstrated significant tenacity in remaining involved in the case. In one example in the case file after a consultation meeting, prosecution Counsel was insistent that medical evidence be obtained to show that the victim's mental health would not be affected if she gave evidence at trial. This was despite her saying she would '*crawl on her hands and knees to give evidence*'. This report has highlighted issues regarding victim communication from the PPS and comments made by victims demonstrate the need for further work in this area.
- 6.10 In terms of the outcome of the case victims also wanted to see justice being done and to seek closure on the trauma they had suffered. Even if the case resulted in a conviction, the victim could feel let down if they did not feel sufficiently or meaningfully consulted on or informed about the process that led to that conviction. One victim described how she still did not understand the sentence that the defendant received or what difference him being on the sex offenders register would make. There appeared to be a focus on achieving a successful 'outcome' in terms of the criminal justice system without sufficient consideration of what a successful outcome is in terms of the victim experience. The example in the box below illustrates what can happen if victims feel the communication they receive is inadequate, even if the defendant is convicted.

Example 11

A victim who had suffered domestic abuse including a sexual offence in the course of a relationship described how the case took a year and a half to get to court. The case proceeded with 13 charges against the defendant. She was due to appear in court on Monday morning and spent all weekend going over her evidence and preparing herself emotionally for the trial. On arrival at court she was advised by the Witness Service that her case wasn't listed for trial but the Investigating Officer did not know why. She was then advised that the previous Friday the defendant had pleaded guilty to all but one of the charges, which was left on the books. She described this final charge as the one offence that would have confirmed to her that he knew what he did was domestic abuse. Nobody had consulted or told the victim about the guilty pleas and she had not been given the opportunity to hear the defendant plead guilty. She said 'hearing him plead guilty was a big part of my healing and they [the PPS] took that away from me.'

Victim advocacy and support

- 6.11 The 2010 CJI report on domestic violence and abuse¹¹⁶ recommended that *'Plans for a properly resourced Independent Domestic Violence Advisor Service to provide advocacy and support for all victims of domestic violence and abuse should be developed by the Department of Justice as a matter of urgency to complement the roll-out of the Multi-Agency Risk Assessment Conference (MARAC) process'*. In the follow-up review to the domestic violence and abuse report in 2013, CJI expressed concerns about the planned implementation of an Independent Domestic Violence Advocate (IDVA) service in Northern Ireland¹¹⁷ in response to the recommendation above.
- 6.12 At the time of this inspection these plans had still not progressed and therefore gaps in services were being filled by organisations such as Victim Support Northern Ireland, Women's Aid, Men's Advisory Project and Nexus. Victims spoke positively about the support received from these organisations and often stated that they couldn't have got through the process if it wasn't for the support received from their support worker.
- 6.13 In the absence of statutory provision of independent advocates for victims of domestic violence and abuse or sexual violence and abuse, Victim Support Northern Ireland had sought funding to appoint two ISVAs in 2017 for a one year pilot¹¹⁸. As part of this inspection CJI met with one of the ISVAs who spoke positively about the engagement with and feedback from victims that had availed of the service. Whilst it was too early to assess the overall effectiveness CJI would support the continuation and mainstreaming of this service. This topic will be returned to in CJI's forthcoming inspection report on domestic violence and abuse.

Attrition and victim withdrawal

- 6.14 As highlighted in the various chapters in this report attrition occurs at every stage of the criminal justice system. There remains a significant number of victims who do not wish to report sexual offences they have suffered to the police and decline to engage in an investigation process even if the offence is disclosed to the police via a third party. There are a range of reasons victims will not wish to engage with the system at all and why some make an initial report but later withdraw their support for the investigation or prosecution. The evidence from this inspection suggests that currently the victim is not viewed as being at the heart of the process. This is, to some extent, a feature of the adversarial system of justice in Northern Ireland but greater efforts could and should be made to engage with victims and enable them to feel part of the process.

116 CJI, *Domestic Violence and Abuse: A thematic inspection of the handling of domestic violence and abuse cases by the criminal justice system in Northern Ireland, December 2010*. Available online at: <http://www.cjini.org/getattachment/1b651b43-657b-471b-b320-101fca7c6930/Domestic-Violence-and-Abuse.aspx>

117 CJI, *Domestic violence and abuse - A follow up review, October 2013*. Available online at: <http://www.cjini.org/getattachment/34118bcc-00c5-4071-bf2f-5397e6b20332/picture.aspx>

118 See <http://www.victimsupportni.com/help-for-victims/sexual-violence/> for further information

Delay

- 6.15 As outlined previously the issue of avoidable delay in the criminal justice system has been a persistent issue which has been the subject of many reports by CJI and others. The issues causing avoidable delay and the difficulties in addressing them are the same in sexual offences cases as in other sorts of criminal cases. In cases of sexual offences however this can be an even more significant impact on the victims, defendants and the wider public due to the nature of the offences.
- 6.16 Victims, who may have waited months, years or decades to report the offences against them to the police, are let down by a system which then takes months or years for an investigation and prosecution to commence and years to have the case resolved in court. During this time victims may experience significant emotional distress both due to the nature of the offences against them and the anxieties caused by the criminal justice process itself. In addition, Inspectors were advised that adjournments at the court stage could be incredibly distressing for victims. This was particularly difficult when a case was put back on the planned date of trial either because of a request for more time or because another trial fixed for that date would run instead, especially where the victim had spent time preparing themselves to give evidence in court.
- 6.17 Victims who were already vulnerable by virtue of their age (young or old), mental health, learning difficulties or physical disabilities can be particularly impacted upon by such delays, in some cases because further passage of time can lead to difficulties in recalling their evidence or further deterioration in their mental or physical health. One such example from the file review is outlined on the next page.

Example 12

In January 2016 Social Services reported a historic rape which occurred in 2011 of a vulnerable adult. The victim who had Down's syndrome with high ability had alleged that she had been sexually assaulted by her brother-in-law who was partly responsible for her care. A joint investigation was agreed at the outset of the case and an investigation strategy was put in place the following morning. An initial joint meeting took place during which the victim disclosed that the suspect had raped her.

The victim attended the Rowan for an ABE interview a week later. Although there were clear communication issues, there could be no doubt on reading the file that the victim stated that the suspect had penetrated her against her wishes on three separate occasions. The victim spoke and answered questions for one hour during which she was consistent in what she had stated. There was also corroborating evidence obtained from witnesses, the suspect's wife and medical evidence. The suspect was interviewed in February 2016 and denied the offences.

In May 2016 a file was sent to the PPS recommending prosecution and highlighting a requirement for special measures. A report was sought from a Registered Intermediary regarding support for the victim to give evidence in court. A Request for Further Information was issued to the Investigating Officer in September 2016 regarding narrowing down the dates of the offences and third party material. This was not completed until November 2016.

On 24 April 2017 the victim died from pneumonia. She was 51 years old. The Down's Syndrome Association report that average life expectancy for a person with Down's syndrome is between 50 and 60 with a small number of people living into their 70s.

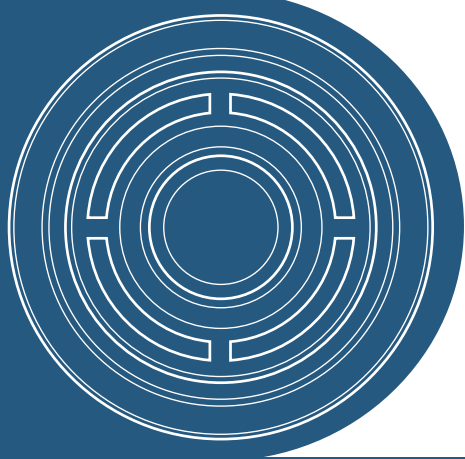
At the time of the file review in October 2017, the PPS had not yet made a decision on the case.

- 6.18 Defendants are also negatively impacted by avoidable delays in the case. Charges of serious sexual offences can often result in long periods in prison on remand whilst cases proceed to Court. There is a significant stigma both in prison and in the community about being accused of a sexual crime and these types of charges can have implications within families, in the workplace and in the community.
- 6.19 Finally there are significant challenges within communities in terms of un-adjudicated perpetrators or those who are subject to ongoing prosecution proceedings being appropriately managed to ensure other potential victims are not placed at risk. The responsibility to manage the risks presented by the defendant falls to the police once they are released on bail and to Social Services, police and other statutory agencies to ensure children or vulnerable adults are protected from future harm.

Particular groups and individual needs

- 6.20 Many of the case examples quoted in this report highlight the particular and individual needs of those who are subject to sexual offences and engage with the criminal justice process. There is a responsibility on criminal justice agencies to tailor their services to the needs of particular victims, including different genders, ages, ethnicities and those with disabilities. Whilst reporting a sexual crime and engaging with the criminal justice system is difficult for all victims, there are greater challenges for individuals to report if there are cognitive or language barriers to overcome, if they are isolated in their community, or if they have a fear of the authorities because of previous experiences.
- 6.21 One feature of these types of cases, as well as those of domestic violence and abuse, was the number of victims who had appointed their own solicitor. Solicitors were sometimes involved in seeking updates for the victim on the progress of their case or communicating with the PPS in regard to decision making. One victim remarked that she didn't have anything explained to her about the justice process. She said: *'I came out [after undertaking an ABE interview] thinking I had to hire a solicitor.'* This issue will be explored further in the forthcoming inspection report on domestic violence and abuse.
- 6.22 Some stakeholders advised Inspectors about the particular needs of victims they worked with and efforts they had made to improve the response of the criminal justice system to these individuals. For example, a charity that worked with older people advised that they had trained peer support workers to work with those who had experience of being victims of domestic or sexual abuse. The peer supporters had then provided training to police officers about statement taking and getting information from elderly victims. Registered intermediaries were also highlighted as an example of how individuals with communication difficulties could be assisted in giving their best evidence. CJI's report on the implementation of Section 75¹¹⁹ further examines the criminal justice systems approach to different equality groups.

119 CJI, An inspection of the implementation of section 75 (1) of the Northern Ireland Act 1998, September 2018
<http://www.cjini.org/TheInspections/Inspection-Reports/2018/July-September/Equality-and-Diversity-within-the-Criminal-Justice>



Appendices



Appendix 1: Data provided by criminal justice organisations

Table A1:1 PSNI Recorded crime in Northern Ireland overall and for sexual and domestic offences

	2014-15	2015-16	2016-17
Overall number of recorded crimes	103,177	105,023	98,076
Number of sexual offences	2,729	3,037	3,158
Proportion of crimes which were sexual offences	2.6%	2.9%	3.2%
Number of domestic offences	13,357	14,073	13,933
Proportion of crimes which were domestic offences	12.9%	13.4%	14.2%
Total number of sexual and/or domestic offences*	15,637	16,582	16,506
Proportion of crimes which were sexual and/or domestic offences	15.2%	15.8%	16.8%

*This figure was calculated by subtracting the number of recorded sexual offences with a domestic motivation from the number of overall crimes with a domestic motivation and adding to the number of overall sexual offence crimes.

Table A1:2 PPS caseload overall and for cases involving a sexual offence and offences involving a domestic motivation

	2014-15	2015-16	2016-17
Overall number of PPS cases for decision	45,383	43,914	43,946
Number of cases received involving sexual offences	1,339	1,245	1,312
Proportion of PPS cases for decision which involved a sexual offence	2.95%	2.84%	2.99%
Number of offences with a domestic motivation	5,117	5,406	5,567
- of which involved a sexual offence	99	96	119
- of which did not involve a sexual offence	5,018	5,310	5,448
Proportion of PPS cases for decision which involved an offence with a domestic motivation	11.28%	12.31%	12.67%
Total number of cases involving a sexual offence and/or offences involving a domestic motivation	6,357	6,555	6,760
Proportion of PPS cases involving a sexual offence and/or involving a domestic motivation	14.01%	14.93%	15.38%

**Table A1:3 Disposals from courts in Northern Ireland overall and for sexual offences**

	2014*	2015*	2016*
Overall disposals from Crown and Magistrates' Courts ¹²⁰	45,922	45,136	42,585
Disposals at Courts for cases where at least one offence was a sexual offence	362	288	317
Proportion of disposals at Court where at least one offence was a sexual offence	0.8%	0.6%	0.7%

* Note that this data is reported by calendar year rather than financial year as data for sexual offences cases was not available in this format.

120 Figures obtained from the NICTS 'Judicial Statistics publications for 2016, 2015 and 2014'. Available online at: <https://www.justice-ni.gov.uk/publications/nicts-judicial-statistics>

Table A1:4 Outcomes that have since been assigned to crimes recorded (sexual offences and total crimes) during 2015-16 and 2016-17 by outcome group and offence group¹²¹

Offence group		Charged/ summoned (%)	Taken into consideration (TICs) (%)	Out-of- court (formal) (%)	Out-of- court (informal) (%)	Prosecution prevented or not in the public interest (%)	Evidential difficulties (suspect identified; victim supports action) (%)	Evidential difficulties (victim does not support action) (%)	Investigation complete - no suspect identified (%)	Action undertaken by another body/ agency (%)	Offences not yet assigned an outcome (%)
2015 - 16	Sexual offences	11.3	0.0	0.6	0.2	4.1	16.7	36.3	14.5	5.0	11.3
	of which: Rape	6.9	0.0	0.0	0.0	4.2	20.8	42.4	6.5	0.3	18.8
	Total recorded crime - all offences (excluding Action Fraud)	20.7	0.0	3.8	4.0	0.9	9.4	18.4	40.0	0.7	2.0
2016 - 17	Sexual offences	7.6	0.0	0.4	0.3	4.2	10.3	30.3	13.3	6.4	27.1
	of which: Rape	5.0	0.0	0.0	0.0	3.0	9.4	32.9	6.0	0.4	43.4
	Total recorded crime - all offences (excluding Action Fraud)	19.3	0.0	3.1	4.1	1.1	8.3	20.0	38.0	0.9	5.3

¹²¹ Data taken from PSNI website and document spreadsheet for *Outcomes of Crimes Recorded by the Police in Northern Ireland 2015-16 and 2016-17*. Available online at: <https://www.psnl.police.uk/globalassets/inside-the-psni/our-statistics/police-recorded-crime-statistics/documents/police-crime-outcomes-in-northern-ireland-2015-16-to-2016-17.ods>

Table A1:5 Estimated overall outcome rates across the the UK for rape and other sexual offences

These figures have been calculated by CJI using available published data to give an indication of the outcomes of sexual crimes across the UK. To provide a statistically complete picture, a longitudinal analysis where the same cases have been followed through from report to disposal would be required.

Northern Ireland ^{122 & 123}	2016-17	2015-16
Crimes of rape recorded by the police	823	780
Defendants convicted in Crown Court of rape	15	9
Overall proportion of cases of rape resulting in a conviction	1.8%	1.2%
Crimes of other sexual offences recorded by the police	2,335	2,257
Defendants convicted of other sexual offences	228	144
Overall proportion of cases of other sexual offences resulting in a conviction	9.8%	6.4%

England and Wales ^{124 & 125}	2016-17	2015-16
Crimes of rape recorded by the police	41,186	35,704
Defendants convicted in Crown Court of rape*	1,352	1,297
Overall proportion of cases of rape resulting in a conviction	3.30%	3.60%
Crimes of other sexual offences recorded by the police	80,001	70,407
Defendants convicted of other sexual offences*	10,721	9,351
Overall proportion of cases of other sexual offences resulting in a conviction	13.40%	13.30%

* The conviction figures shown are Ministry of Justice figures for the calendar year 2016 and 2015 as per published data.

Scotland** ^{126 & 127}	2016-17	2015-16
Crimes of rape/attempted rape recorded by the police	1,878	1,809
Defendants convicted in Higher Court of rape/attempted rape	98	105
Overall proportion of cases of rape resulting in a conviction	5.2%	5.8%
Crimes of other sexual offences recorded by the police	8,944	8,464
Defendants convicted of other sexual offences	939	1,058
Overall proportion of cases of other sexual offences resulting in a conviction	10.5%	12.5%

** Published data available for Scotland relates to rape and attempted rape. Figures for rape as a stand alone offence/conviction are not published.

- 122 PSNI, *Latest financial year update, period ending 31 March 2017, providing final figures for 2016-17, May 2017*. Available online at: <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/police-recorded-crime-statistics/2017/march/monthly-crime-summary-tables-period-ending-mar-17.xls>
- 123 PPSNI, *Statistical bulletin: Cases involving sexual offences 2016-17, April 2018*. Available online at: https://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Stats%20and%20Research/Sexual%20Offences/Statistical%20Bulletin_Cases%20Involving%20Sexual%20Offences%2016-17.pdf
- 124 Office for National Statistics, *Sexual offences in England and Wales: year ending March 2017, February 2018*. Available online at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesinenglandandwales/yearendingmarch2017>
- 125 CPS, *Violence against Women and Girls Report: 10th edition 2016-17, October 2017*. Available online at: https://www.cps.gov.uk/sites/default/files/documents/publications/cps-vawg-report-2017_0.pdf
- 126 Scottish Government, *Recorded crime in Scotland, 2016-17*, Available online at: <http://www.gov.scot/Resource/0052/00525055.pdf>
- 127 Scottish Government, *Criminal Proceedings in Scotland 2016-17, January 2018*. Available online at: <https://beta.gov.scot/publications/criminal-proceedings-scotland-2016-17/documents/00532010.pdf?inline=true>

Appendix 2: Methodology

Desktop research and development of inspection Terms of Reference and question areas

Research literature and guidance documentation was reviewed in relation to sexual violence and abuse. Other relevant documents included Department of Health/Department of Justice Stopping Sexual and Domestic Violence and Abuse in Northern Ireland Strategy and Action Plans, Northern Ireland research reports, crime statistic reports and reports from other jurisdictions.

Document review

A review was undertaken of the documentation collated to cross-reference information against the topic areas and later obtained during the fieldwork. This was used also to inform interview questions during the fieldwork phase.

Fieldwork

This inspection was conducted in tandem with the inspection of the criminal justice system's approach to dealing with domestic violence and abuse. Unless in a specific role related to either domestic abuse or sexual abuse interviewees therefore were usually asked about both issues. The full list of fieldwork interviews is outlined below, but some interviewees will have focused more of solely on one topic.

One-to-one and focus groups interviews were conducted with a range of personnel within the relevant agencies. Interviews were also conducted with stakeholders from across the business community. Representatives from the following areas were interviewed during the fieldwork:

Department of Justice:

- Community Safety Division; and
- Criminal Policy Branch.

Forensic Science Northern Ireland:

- Lead Scientist and Reporting Officer, Biology.

Northern Ireland Court Service:

- Operational Policy Branch.

Probation Board for Northern Ireland:

- Assistant Director, Head of Interventions.

Public Prosecution Service for Northern Ireland:

- Assistant Director, Belfast and Eastern Region;
- Assistant Director, Southern and Western Region;
- Assistant Director, Serious Crime Unit;
- PSNI Liaison Officer;
- Public Prosecutors, Youth Specialists, Belfast and Eastern Region;
- Senior Public Prosecutors, Serious Crime Unit;



- Senior Public Prosecutors, Belfast and Eastern Region;
- Senior Public Prosecutors, Southern and Western Region;
- Junior Counsel instructed by PPS in sexual cases x2;
- Senior Counsel instructed by PPS in sexual cases x2; and
- Victim and Witness Care Unit staff (Belfast and Foyle Chambers).

Police Service of Northern Ireland:

- ACC Crime;
- ACC District Policing Command;
- Detective Chief Superintendent, Public Protection Branch;
- Detective Superintendent, Child Abuse and Rape Crime Lead, Public Protection Branch;
- Detective Superintendent, Domestic Abuse and Vulnerable Adult Lead, Public Protection Branch;
- Detective Chief Inspector, Child Abuse and CSE lead, Public Protection Branch;
- Detective Chief Inspector, Domestic Abuse and Vulnerable Adult Lead, Public Protection Branch;
- Detective Chief Inspector, Rape Crime, Public Protection Branch;
- District Commander in three police districts (Belfast, Fermanagh and Omagh, Foyle);
- District Inspector Lead for domestic abuse in three police districts (Belfast, Fermanagh and Omagh, Foyle);
- Detective Inspectors (Urban and Rural), Rape Crime Unit;
- Detective Inspectors focus group, Child Abuse Inquiry Unit;
- Detective Inspector, Domestic Abuse and Vulnerable Adult Policy lead;
- Detective Inspector, Child Abuse Inquiry Unit policy lead;
- Detective Constables, Domestic Abuse and Vulnerable Adults focus group;
- Detective Constables, Child Abuse Inquiry Unit focus group;
- Detective Constables and Sergeants, Rape Crime Unit focus group;
- Detective Sergeants, Domestic Abuse and Vulnerable Adults focus group;
- Detective Sergeants, Child Abuse Inquiry Unit focus group;
- Central Referral Unit focus group;
- Local Policing Team Constables and Sergeants in three police districts (Belfast, Fermanagh and Omagh, Foyle);
- Foundation Trainers, domestic abuse and sexual offence training, Police College;
- Crime Trainers, sexual offences and Joint Protocol training, Police College;
- Call handler focus group (Urban and Rural Contact Management Centres); and
- Dispatcher focus group (Urban and Rural Contact Management Centres).

Youth Justice Agency:

- Assistant Director, Northern Area; and
- Assistant Director, Western Area.

Stakeholders:

- Action on Elder Abuse;
- Age NI;
- Ballymena Inter-Ethnic Forum;
- Belfast Solicitor's Association;
- Chairs of the Domestic and Sexual Violence Partnerships, Health and Social Care Trusts;
- Childline;
- Children in Northern Ireland;
- Cithrâh Foundation;
- Crown Court Judges x2;
- Disability Action;
- District Judge x1;
- Independent Sexual Violence Advocate (Victim Support Northern Ireland);
- Law Society for Northern Ireland;
- Men's Aid;
- Men's Action Network;
- Men's Advisory Project;
- Nexus;
- Northern Ireland Policing Board;
- Northern Ireland Rural Women's Network;
- NSPCC;
- Rainbow Project;
- Stalking NI;
- The Rowan Sexual Assault Referral Centre;
- Victim Support Northern Ireland; and
- Women's Aid Federation and representatives from local groups.

In addition CJI Inspectors held focus groups and one-on-one interviews with victims of domestic and sexual violence and abuse who had engaged with the criminal justice system arranged via victim support organisations at the following locations;

- Antrim, Ballymena, Carrickfergus and Newtownabbey Women's Aid (Antrim);
- Belfast and Lisburn Women's Aid (Belfast);
- Cithrâh Foundation (Carrickfergus);
- Fermanagh and Omagh Women's Aid (Enniskillen); and
- Nexus Client Forum (Belfast).



Case file reviews

PSNI

A review was conducted of PSNI investigation files with support from HMICFRS. A question set was developed based on that used by HMICFRS for their PEEL effectiveness (vulnerability) inspection. This was used to review 52 investigation files encompassing sexual offences against both adults and children. The files related to reports to police received between 1 January 2016 and September 2017. A random sample was chosen from a full list of reports to police provided by the PSNI. Further details can be found in Appendix 3.

PPS

A review was conducted of prosecution files with support from HMCPSI. A question set was developed based on that used by HMCPSI for their inspections of CPS RASSO Units. This was used to review 77 prosecution files encompassing sexual offences against both adults and children. The cases related to files received from the PSNI between 1 January 2016 and May 2017. Further details can be found in Appendix 3.

Appendix 3: Case file review details

PSNI case files

Case type

Child abuse (sexual offences against a child)	54%	28
Other sexual assault of an adult	2%	1
Rape (including attempts) of an adult	42%	22
Other	2%	1
Total	100%	52

The 'other' case referred to inappropriate sexual behaviour between young children that was assessed to be dealt with more appropriately by Social Services.

Victim-suspect relationship

Current partners (Female-Male)	5.8%	3
Ex partners (Female-Male)	21.2%	11
Mother-Son	1.9%	1
Father-Son	1.9%	1
Father-Daughter	5.8%	3
Siblings	5.8%	3
Other	57.7%	30
Total	100%	52

Victim gender

Male	23.1%	12
Female	76.9%	40
Total	100%	52



Victim age

	Age at time of offence		Age at time of report to police	
0-17	53.8%	28	21.2%	11
18-25	15.4%	8	23.1%	12
26-29	5.8%	3	9.6%	5
30-39	11.5%	6	13.5%	7
40-49	7.7%	4	13.5%	7
50-59	1.9%	1	11.5%	6
60-69	0.0%	0	5.8%	3
70+	0.0%	0	1.9%	1
Not known	3.8%	2	0.0%	0
Total	100%	52	100%	52

Victim ethnicity

White	84.6%	44
Chinese	0.0%	0
Irish Traveller	1.9%	1
Indian	0.0%	0
Pakistani	0.0%	0
Bangladeshi	0.0%	0
Black African	0.0%	0
Black Caribbean	0.0%	0
Black other	0.0%	0
Mixed ethnicity	0.0%	0
Other ethnicity	11.5%	6
Not known	1.9%	1
Total	100%	52

Suspect gender

Male	88.5%	46
Female	11.5%	6
Total	100%	52

Suspect age

	Age at time of offence		Age at time of report to police	
0-17	7.7%	4	5.8%	3
18-25	25.0%	13	23.1%	12
26-29	3.8%	2	3.8%	2
30-39	26.9%	14	13.5%	7
40-49	13.5%	7	15.4%	8
50-59	5.8%	3	11.5%	6
60-69	0.0%	0	11.5%	6
70+	1.9%	1	0.0%	0
Not known	15.4%	8	9.6%	5
Deceased	0%	0	5.8%	3
Total	100%	52	100%	52

Suspect ethnicity

White	82.7%	43
Chinese	0.0%	0
Irish Traveller	1.9%	1
Indian	0.0%	0
Pakistani	0.0%	0
Bangladeshi	0.0%	0
Black African	0.0%	0
Black Caribbean	0.0%	0
Black other	0.0%	0
Mixed ethnicity	0.0%	0
Other ethnicity	7.7%	4
Not known	7.7%	4
Total	100%	52

**Case outcome**

Not yet resolved	37.3%	19
Offender Died	3.9%	2
Evidential difficulties prevent further action; victim supports police action	7.8%	4
Evidential difficulties prevent further action; victim does not support police action	27.5%	14
Evidential difficulties victim based – suspect not identified	2.0%	1
Investigation complete - no suspect identified	7.8%	4
Other	13.7%	7
Not known	-	1
Total	100%	52

Of the other cases disclosure made about historical abuse where referral made by social services but victim did not wish to engage with police (x1); referral made by social services under Joint Protocol about inappropriate sexual behaviour between children but after assessment case agreement made that social services would take forward (x1); referral made by the Historical Institutional Abuse Inquiry where the victim did not want to engage in a police investigation (x1); referral made by a psychologist/psychiatrist where the victim did not want to engage in a police investigation (x3); referral made by social services where an investigation was carried out under Joint Protocol and a decision was made to discontinue due to the learning difficulties of the suspect (x1).

PPS case files**Case type**

Child abuse	6.5%	5
Other sexual offences	61.0%	47
Rape	32.5%	25
Other	0.0%	0
Total	100%	77

Victim age

0-18	21.1%	16
19-25	25.0%	19
26-29	13.2%	10
30-39	19.7%	15
40-49	14.5%	11
50-59	5.3%	4
60-69	1.3%	1
70+	0.0%	0
Total	100%	76

Victim gender

Male	6.5%	5
Female	93.5%	72
Total	100%	77

Defendant age

0-18	10.4%	8
19-25	15.6%	12
26-29	9.1%	7
30-39	29.9%	23
40-49	10.4%	8
50-59	14.3%	11
60-69	5.2%	4
70+	5.2%	4
Total	100%	77

Defendant gender

Male	94.8%	73
Female	5.2%	4
Total	100%	77

**Case outcome**

Timely guilty plea	5.2%	4
Late guilty plea	20.8%	16
Conviction after trial	9.1%	7
Acquittal after trial	9.1%	7
Discontinuance	11.7%	9
No prosecution	40.3%	31
Not finalised	3.9%	3
Total	100%	77

Appendix 4: Terms of reference

Criminal Justice Inspection Northern Ireland Public Protection inspections 2017:

- (1) **Domestic Violence and Abuse: An Inspection of how the Criminal Justice System deals with domestic violence and abuse in Northern Ireland**
- (2) **Sexual Violence and Abuse: An Inspection of how the Criminal Justice System deals with sexual violence and abuse in Northern Ireland**

Terms of Reference

Introduction

Criminal Justice Inspection (CJI) proposes to undertake two inspections of how the criminal justice system addresses public protection, specifically in relation to (1) domestic violence and abuse and (2) sexual violence and abuse.

There are significant overlaps across the areas of domestic and sexual violence and abuse and Inspectors will take a combined approach for preliminary work, stakeholder consultation and criminal justice agency fieldwork as appropriate.

The inspection will focus on the three main elements of the CJI inspection framework as they apply to domestic and sexual violence and abuse: these are strategy and governance, delivery and outcomes.

The main organisations to be inspected will be the Police Service of Northern Ireland (PSNI), the Public Prosecution Service (PPS), the Northern Ireland Courts and Tribunals Service (NICTS). The inspection will also consider the work of the Probation Board for Northern Ireland (PBNI) which occurs pre-sentencing, for example in relation to Pre-Sentence Reports and the programmes offered at sentencing stage. The inspection will review overall CJS response to domestic and sexual violence and abuse including co-operation and partnership working.

These inspections will be the latest in a series of work that CJI has conducted in the area of public protection. In 2010 CJI published its first two inspections of domestic violence and abuse and sexual violence and abuse with follow-up reviews published in 2013. There is also overlap with other inspection reports¹²⁸ in the areas of Adult Safeguarding (published 2015), Child Sexual Exploitation (published in 2014), the use of Special Measures in the criminal justice system (published 2012), Telling Them Why - an inspection of the Public Prosecution Service for Northern Ireland giving of reasons for its decisions (published 2012) and the Treatment of Victims and Witnesses (published in 2011). Where possible these inspections will avoid duplicating previous work.

128 All available on CJI's website www.cjini.org



Context

In March 2016 the Department of Health, Social Services and Public Safety (now the Department of Health) and Department of Justice published 'Stopping Domestic and Sexual Violence and Abuse in Northern Ireland A Seven Year Strategy' with the Year One implementation plan published in May 2016.

The Strategy outlines the two definitions as follows:

Domestic Violence and Abuse:

'threatening, controlling, coercive behaviour, violence or abuse (psychological, virtual, physical, verbal, sexual, financial or emotional) inflicted on anyone (irrespective of age, ethnicity, religion, gender, gender identity, sexual orientation or any form of disability) by a current or former intimate partner or family member.'

Sexual Violence and Abuse

'any behaviour (physical, psychological, verbal, virtual/online) perceived to be of a sexual nature which is controlling, coercive, exploitative, harmful, or unwanted that is inflicted on anyone (irrespective of age, ethnicity, religion, gender, gender identity, sexual orientation or any form of disability).'

It notes that coercive, exploitative and harmful behaviour includes taking advantage of an individual's incapacity to give informed consent.

Both types of crime continue to be a persistent problem in Northern Ireland. PSNI domestic abuse statistics report that there were 28,392 domestic abuse incidents recorded in 2015-16, the highest level recorded since the data series began in 2004-05 (the 2015-16 figure is 35.5 per cent higher than the level of 20,959 recorded in 2004-05). The level of 14,073 domestic abuse crimes recorded in 2015-16 is also the highest level recorded since 2004-05 (the 2015-16 figure is 45.9 per cent higher than 2004-05)¹²⁹. There was one murder with a domestic abuse motivation recorded in 2015-16, accounting for 4.8 per cent of all murders recorded by the police (there were 21 murders recorded in total).

PSNI recorded crime statistics¹³⁰ also report that sexual offences have shown a general upward trend from a low of 1,167 recorded in 2000-01 to a high of 3,037 recorded in 2015-16; levels have increased year on year since 2011-12. The number of sexual offences recorded in 2015-16 shows an increase of 11.3 per cent when compared with 2014-15 and is more than twice the level recorded in 2000-01.

Aims of the Inspection

This inspection aims to examine the approach of the criminal justice system to preventing, responding to, investigating and prosecuting domestic and sexual violence and abuse. It will therefore follow the timeline of the 'victim journey' through the criminal justice system from the reporting of a potential crime to the conclusion of court proceedings. The inspection will not seek to examine the manner in which the criminal justice system deals with offenders in prison or upon release into the community.

129 PSNI, *Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland 2004-05 to 2015-16: Annual Bulletin* published 14 October 2016.

130 PSNI, *Trends in Police Recorded Crime in Northern Ireland 1998-99 to 2015-16: Annual Bulletin* published 01 December 2016.

The latter of these will be examined separately in an inspection of the Public Protection Arrangements for Northern Ireland.

The broad aims of the inspection are to:

- Examine the effectiveness of organisational strategies with regard to domestic and sexual violence and abuse, including the approach to prevention and enforcement.
- Examine the response to domestic and sexual violence and abuse - how operational delivery is structured to meet the needs and expectations of stakeholders and victims. To determine effectiveness and potential areas for improvement.
- Examine and assess the outcomes of strategies and delivery mechanisms for domestic and sexual violence and abuse against targets and expectations.
- Examine management information and the performance of the justice agencies in addressing domestic and sexual violence and abuse.
- Examine how the above aspects of the approach to domestic and sexual violence and abuse are benchmarked against good practice.

Methodology

The inspection will be based on the CJI Inspection Framework for each inspection that it conducts. The three main elements of the inspection framework are:

- Strategy and governance;
- Delivery; and
- Outcomes.

Constants in each of the three framework elements and throughout each inspection are equality and fairness, together with standards and best practice. CJI inspection methodology can be found at www.cjini.org

Design and Planning

Collection of benchmarking information and data by review of inspection and research reports and visits to other jurisdictions to examine good practice.

Collection and review of relevant documentation available in Northern Ireland such as previous inspection and other reports, the PSNI, PPS, NICTS, PBNI and other CJA policies and procedures, management information, minutes of meetings and related documentation.



Delivery

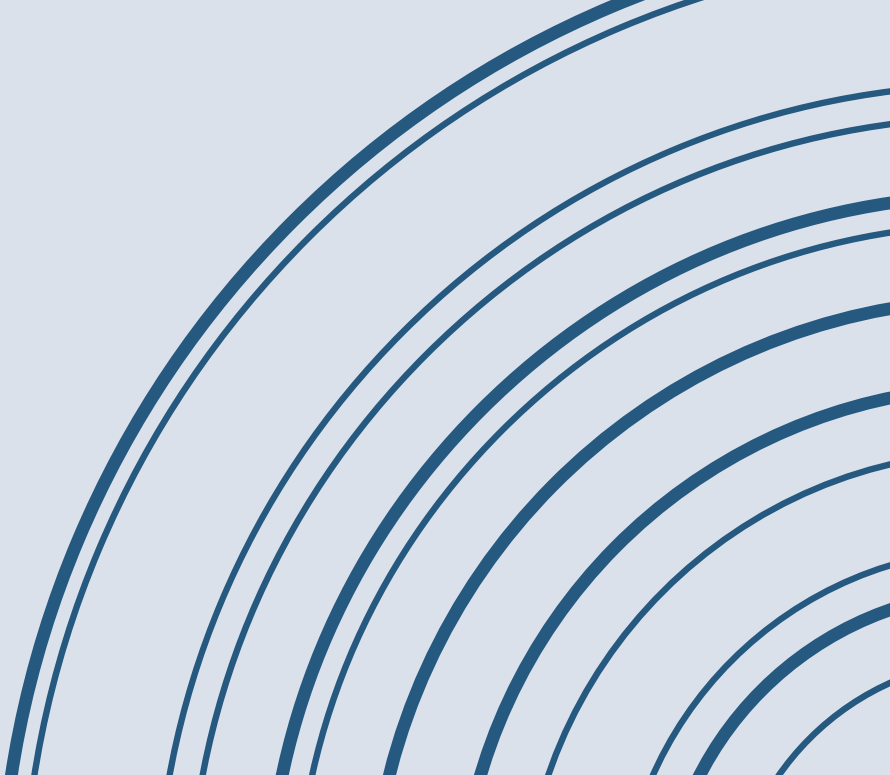
- Terms of reference will be prepared and shared with the DOJ, PSNI, PPS, NICTS and PBNI prior to the initiation of the inspection. Liaison officers from the CJAs should be nominated for the purposes of this inspection.
- Relevant documentation and management information deemed relevant will be requested and reviewed.
- Interviews and focus groups will be conducted with relevant stakeholders (for example, victims organisations, advocacy services, NGOs etc.) to give an insight into the issues affecting domestic and sexual violence and abuse. Where possible, the views of victims will also be sought directly.
- Case file reviews of PSNI and PPS domestic abuse and rape files will be conducted by Her Majesty's Inspectorates of Constabulary (HMIC) and Her Majesty's Crown Prosecution Inspectorate (HMCPSI) files respectively. HMIC will also undertake a review of calls for service and crime recording of reported rapes by the PSNI.
- Interviews and focus groups will be conducted with the PSNI, PPS, NICTS and PBNI staff and representatives of other criminal justice organisations (for example DoJ, the Judiciary etc.) to obtain evidence of the approach to domestic and sexual violence and abuse.
- Where appropriate benchmarking and identification of best practice and alternative approaches to traditional criminal justice processes within and outside Northern Ireland.

Publication and Closure

Following completion of the fieldwork and analysis of data a draft report will be shared with inspected organisations for factual accuracy check. The Chief Inspector will invite the relevant CJAs to complete an action plan within six weeks to address any recommendations. If the plan has been agreed and is available it will be published as part of the final inspection report.

Permission to publish the report will be sought from the Minister of Justice. Once this is received the inspection report will be shared, under embargo, in advance of the publication date with the DoJ and relevant CJAs along with a press release.





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