

**An inspection of the handling of
sexual offence cases by the justice
system in Northern Ireland:
Donagh sexual abuse cases inspection**

November 2010





**An inspection of the handling of
sexual offence cases by the justice
system in Northern Ireland:
Donagh sexual abuse cases
inspection**

November 2010





Contents

List of abbreviations	iv
Chief Inspector's Foreword	v
Section 1: Inspection Report	
Introduction	3
Chapter 1: Case management up to the point of disposal	5
Chapter 2: Northern Ireland Courts and Tribunals Service administrative errors	13
Chapter 3: Conclusions	17
Section 2: Appendices	
Appendix 1: Inspection Terms of Reference	22



List of abbreviations

CJI	Criminal Justice Inspection Northern Ireland
CPO	Custody Probation Order
DHSSPS	Department of Health, Social Services and Public Safety
DoJ	Department of Justice
GAA	Gaelic Athletic Association
NI	Northern Ireland
NICTS	Northern Ireland Courts and Tribunals Service
PBNI	Probation Board for Northern Ireland
PDP	Potentially Dangerous Person
PSNI	Police Service of Northern Ireland
PPANI	Public Protection Arrangements Northern Ireland
PPU	Public Protection Units (in police)
PPS	Public Prosecution Service for Northern Ireland
RQIA	Regulation and Quality Improvement Authority
SOPO	Sexual Offences Prevention Order
STO	Supervision and Treatment Order



Chief Inspector's Foreword

This report presents the findings of an inspection of the handling of sexual abuse cases by criminal justice agencies, with particular reference to the circumstances surrounding the investigation, prosecution, management and disposal of the cases against the McDermott brothers from Donagh in County Fermanagh. The inspection was requested by the Minister of Justice to see how the agencies fulfilled their responsibilities in relation to these cases.

The Terms of Reference of the inspection were to consider the quality of administrative practices in relevant justice agencies, the quality of inter-agency communication and collaborative working and the nature of the communication arrangements with victims at each stage of the process up to, and including disposal.

A critical dimension of our work has been in understanding the views of survivors and the wider community in Donagh on their experience of the justice system and the handling of the cases. I would like to express my sincere thanks to all those who co-operated with the inspection, particularly the survivors and those Donagh community representatives who gave freely of their time to discuss these difficult issues.

The key messages emerging from the report in relation to the justice agencies are as follows:

- the Police Service of Northern Ireland (PSNI) investigation of the cases was thorough and the role of the Investigating Officer was perceived by survivors to be professional and sensitive to their needs;
- the prosecution resulted in one conviction and a 'finding of fact' against two other brothers who were deemed unfit to plead. Our review of the Public Prosecution Service for Northern Ireland (PPS) case files showed the decision making and handling of the case was sound, in what was a complex case for many reasons;
- there were errors in the administrative arrangements undertaken by the Northern Ireland Courts and Tribunal Service (NICTS) but this did not have any material effect on the outcome of the disposal. Subsequent to these errors being identified, the NICTS undertook an extensive review of the factors leading up to the errors, and implemented extensive arrangements for them not to happen again. We are satisfied that the work undertaken by the NICTS was extensive and comprehensive;
- the risks posed by the McDermott brothers were assessed within the framework provided by the Public Protection Arrangements Northern Ireland (PPANI). This was an inter-agency assessment comprising the police, probation and social services. Our review of the Local Area Public Protection Panel papers and interviews with key agencies revealed to us that the arrangements worked as anticipated and there was good inter-agency co-operation; and



- the on-going communication between survivors and the individual justice agencies (particularly the PSNI and the PPS) was good in the circumstances of the cases. It is important to recognise that the needs of survivors extend far beyond communication issues. Meeting the full range of victims needs will always be a challenge but the system should strive to do more. We will be returning to this issue in our inspection of the treatment of victims and witnesses.

Donagh is a hamlet where the McDermott brothers' home dominates the nursery school, play park and main thoroughfare to the extent that the brothers presence loomed heavily over the community throughout their time prior to the disposal of the cases by the Court. There was no structured and formal opportunity for the survivors or community to explain the impact of having the brothers continuing to live locally after years of sustained abuse. Ultimately there was a clear mismatch between the official view that the McDermott brothers were best located in Donagh and the survivors/community's firm expectation that the brothers would be removed from the area after the disposal of the cases by the Court. The result of these cases reinforces the need for the voice of the survivors and in these particular circumstances, the community, to be heard and understood.

The inspection was carried out by Tom McGonigle and Brendan McGuigan with specialist expert support from Stephen Wooler. My thanks to all those who participated in the inspection process.

Dr Michael Maguire
Chief Inspector of Criminal Justice in Northern Ireland

November 2010



Inspection Report





Introduction

On 20 September 2010 the Minister of Justice requested Criminal Justice Inspection Northern Ireland (CJI) undertake an inspection of how the criminal justice agencies fulfilled their responsibilities in respect of sexual abuse cases involving the McDermott brothers.

The aim of this inspection was to examine the effectiveness of justice agencies in dealing with sexual offence cases up to the point of disposal.

The key objectives were to assess:

1. the quality of administrative practices and processes in relevant justice agencies;
2. the quality of inter-agency communication and collaborative working on case progression and disposal; and
3. how adequate are the communication arrangements with victims at each stage of such cases up to, and including disposal.

For the purposes of this inspection 'the point of disposal' is interpreted as the point up to completion of the administrative processes following sentencing, finding of fact or other disposal.

The Minister of Health, Social Services and Public Safety subsequently ordered a separate review be carried out by the Regulation and Quality Improvement Authority (RQIA) of how these cases were handled by the Western Health and Social Care Trust. That review, undertaken by the RQIA will report independently from CJI.

In undertaking this inspection, CJI has focussed on how the survivors' expectations were managed throughout the relevant period. We are particularly grateful to the Donagh survivors who met with us and outlined their experiences with an admirable degree of dignity. Inspectors also acknowledge the full co-operation received from all the agencies involved.

In order to assess the agencies performance, CJI examined:

- the Police Service of Northern Ireland (PSNI) investigation, risk and case management processes;
- the Public Prosecution Service for Northern Ireland (PPS) file preparation and case progression;
- the Public Protection Arrangements Northern Ireland (PPANI) involvement with the McDermott brothers; and



- the Northern Ireland Courts and Tribunals Service (NICTS) administrative accuracy in relation to Sexual Offences Prevention Orders (SOPOs), Supervision and Treatment Orders (STOs) and the service of documents on offenders.

The body of this report is laid out in three chapters:

Chapter 1:

Case management up to the point of disposal;

Chapter 2:

Northern Ireland Courts and Tribunals Service administrative errors; and

Chapter 3:

Conclusions.

CHAPTER 1:

Case management up to the point of disposal



- 1.1 From the survivors' perspective, this was a painful process for several reasons. Having come forward after years of suffering in silence, the criminal case was complex. It extended over a two-year period and involved some survivors having to give their evidence twice. There were different types of hearing (remand, arraignment, fitness to plead, finding of facts, sentencing) at Magistrates and Crown Courts sitting in three different locations (Enniskillen, Omagh and Dungannon). There were four defendants, two of whom were dealt with under mental health legislation. Survivors also experienced increasing media interest as the case unfolded. The main dates and attendant issues were as follows:
- 1.2 **May 2008** – Police launched an enquiry into complaints against four McDermott brothers in respect of very serious sexual assaults and associated violence, committed against extra-familial male and female children during the period 1967 – 2001 within the Donagh community.
- 1.3 A total of six survivors made formal complaints to police over the next four months. Five additional possible survivors were also identified and approached by police, but chose not to pursue formal complaints.
- 1.4 **30 July 2008** - All four McDermott brothers were arrested and taken to Enniskillen PSNI Station for questioning. James McDermott was deemed unfit for interview and was released to be dealt with by report. The other three brothers were interviewed:
- John McDermott made partial admissions, was charged and bailed to attend court on 20 August 2008; and
 - Owen Roe McDermott was interviewed in the presence of an appropriate adult. He and Peter Paul McDermott denied the charges and were bailed to be re-interviewed at a later stage.
- 1.5 Police never had any authority to dictate the brothers' residence. John McDermott had admitted some offences and was subject to police bail pending his first court appearance. The primary rationale for police bail is to ensure there are no immediate risks to victims or witnesses, and that alleged offenders will turn up in court.
- 1.6 A series of appropriate actions were initiated by the PSNI from the outset of the case.



- 1.7 **July 2008** – They notified the local Gaelic Athletic Association (GAA) club and Fermanagh County Board of the brothers’ arrest because of their involvement with the GAA. They also notified the Western Health and Social Care Trust in order to initiate child protection procedures. The Trust subsequently commenced an assessment of Owen Roe and James McDermott’s mental capacity. That process concluded in July 2009 that their intelligence and social functioning were significantly impaired and both met the criteria for learning disability, thus qualifying as vulnerable adults in their own right.
- 1.8 The survivors’ ongoing care was assumed by the PSNI Investigating Officer. This was a common, but uncodified model of practice, and as such was dependent upon the individual commitment of the Investigating Officer.
- 1.9 Feedback from survivors suggests the Investigating Officer was excellent, balancing professional investigation with a sensitive approach. She was attentive to the survivors’ needs from the outset and spent a lot of time supporting them throughout the court process. CJI Inspectors also saw evidence of considerable endeavour on her part to encourage other alleged victims of the McDermott brothers to come forward. The prosecution also suggested that photographs which she obtained of locations where the abuse was committed assisted the court’s understanding and the recall of some survivors. This was not an easy task in an area where police were generally unwelcome.
- 1.10 Apart from the Investigating Officer, the survivors explained that they had to make their own arrangements for support. Needs differ, but there is clear merit in a formalised system for early signposting, perhaps even at the conclusion of police interviews. The Donagh survivors report that Nexus and Victim Support Northern Ireland were helpful. Additional assistance was initiated by a local community representative and provided by the Oak Healthy Living Centre and the One in Four organisation.
- 1.11 **August/September 2008** – The McDermott brothers made their first court appearances. A variety of factors indicated from the formal criminal justice perspective that bail to the home address was appropriate. These included the historical and extra-familial nature of the offences, which at that stage were mostly denied; the brothers had continuously lived all their lives in Donagh without apparent difficulty; and the six survivors were now adults living outside Donagh. At the court the McDermott brothers were granted personal bail with conditions that prohibited:
- contact with any of the injured parties either directly or indirectly;
 - contact with any child under the age of 16 years; and
 - leaving Northern Ireland.
- 1.12 Donagh is a hamlet and the location of the McDermott brothers’ home dominates its school, play park and main thoroughfare to the extent that



the four brothers' ongoing presence loomed heavily over the community throughout their time on bail. They lived with their two unmarried sisters, fearful of the media attention that the cases had generated. The issue has caused tensions with the wider McDermott family, many of whom live in and around Donagh.

1.13 Also in August 2008, the four McDermott brothers were referred by the PSNI Investigating Officer to the inter-agency Public Protection Arrangements Northern Ireland (PPANI) as Potentially Dangerous Persons (PDPs). The PPANI provide a forum for regular, formal sharing of information between police, probation and Social Services about offenders in order to assess and manage their risks. The McDermott brothers were reviewed on four occasions between November 2008 and July 2009.

1.14 Inspectors reviewed the PPANI case papers and interviewed relevant personnel as part of this inspection. We are satisfied these cases were managed in keeping with prevailing guidance. Each McDermott brother's individual characteristics were considered, as well as common factors such as their domicile. Attention was paid to relevant concerns and at their last review in July 2009 the three brothers – who were still in the community – were reduced to Category 1 risk level on the basis that all child protection assessments had now been completed, and they remained compliant with bail conditions and police visits. Category 1 is defined as:

“Someone whose current alleged offending, current behaviour and current circumstances present little evidence that they will cause serious harm through carrying out a contact sexual or violent offence.”

1.15 The risks presented by those assessed as Category 1 are not subject to multi-agency risk management. Instead the risk management plan is designed and delivered by a single lead agency, which in this case was the PSNI. The option was always open for police to return the cases for inter-agency consideration if things deteriorated, but this was never felt necessary up to the point of disposal. While Inspectors heard of the brothers' presence causing distress to local residents, and some concerns were reported to the police, no formal complaints about breach of bail were ever made. In addition to the Investigating Officer's regular contact with survivors, the PSNI's local Public Protection Unit (PPU) made unannounced home visits to remind the McDermott brothers of their bail conditions. While they remained compliant, there was no apparent need to consider changing their residence.

1.16 The Western Health and Social Care Trust's Learning Disability Directorate remained simultaneously involved in respect of Owen Roe and James McDermott's status as vulnerable adults. As they continued to live at home without fresh allegations of child abuse emerging, statutory court bail conditions and Social Services child protection measures were deemed to be fulfilling their purpose.



1.17 **8 June 2009** – The four McDermott brothers were committed to Crown Court and a new bail condition was added requiring each of them to reside at their home address. This suggests that, in the eyes of the court, rather than the brothers’ residence being a concern, it was actually viewed as a safeguard.

1.18 **1 July 2009** – Arraignment took place at Dungannon Crown Court. John McDermott was remanded into custody after pleading guilty to most offences. The other brothers remained on bail, living at home.

1.19 **6 October 2009** – Owen Roe and James McDermott were found unfit to plead following a hearing before a jury. From the survivors’ perspective this was hard to accept, because they believed they were shrewder and more manipulative individuals than was apparent in court.

1.20 **23 November 2009** – Owen Roe and James McDermott’s trial of facts commenced. This was the first time the survivors came together as a group. Some had known each other from childhood but had not met since, and it was only at this stage that they and the wider community really began to realise the extent of abuse perpetrated by the McDermott brothers. From their position in the public galleries, survivors explained they were often unable to follow some of the important deliberations that took place due to poor courtroom acoustics.

1.21 **26 November 2009** – A jury at Omagh Crown Court found that Owen Roe and James McDermott

had committed all the acts specified in the charges that had been laid against them. They included 20 counts of indecent assault, gross indecency, attempted rape, threat to kill and common assault. As their cases were to be adjourned for reports, the prosecution raised “severe concerns within the village community” and made an application to have both defendants remanded into custody. There was also deliberation as to whether interim Hospital Orders were possible.

1.22 However, the defence objected robustly on the basis that both brothers had been on bail up until that point for the offences which occurred some years ago. They indicated the inhabitants of Donagh were aware that the proceedings were taking place; the brothers had kept indoors since being charged; there had been no breaches of bail; and obtaining reports would be facilitated if they were remanded on continuing bail.

1.23 Prosecution Counsel again tried to have the brothers kept out of Donagh:

“Police believe there are other victims...the reality is they don’t know the full extent...but they do have strong concerns...the offending behaviour was a long time ago but it was persistent over a lengthy period of time when these men were adults. There is nothing to suggest the risk has gone away...”

The court recognised its “overall limited powers under the legislation” and bail was eventually granted to Owen Roe and James McDermott on the same terms as before.

1.24 Nonetheless from the survivors perspective this was also a good day. As the acts were found to have been committed, they thought the way was now clear for the brothers to be removed from their community and they expected the case would be concluded by Christmas 2009. A community garden was developed in Donagh to mark a fresh start for the local population.

1.25 Junior Counsel and the Investigating Officer spent a considerable period of time with the survivors after this hearing explaining the legalities of Owen Roe and James McDermott's position and the possible implications. However, the possibility that they might return to Donagh at the cases' conclusion still seemed unbelievable to the survivors and their families.

1.26 **4 May 2010** – Peter Paul McDermott's separate trial commenced. The trial had been due to commence in January 2010 but was adjourned when he attempted suicide – an event that caused the survivors concern that he might also be deemed unfit to plead.

1.27 **5 May 2010** – Peter Paul McDermott died by suicide.

1.28 **7 May 2010** – John McDermott was granted compassionate bail to attend Peter Paul's funeral. His bail conditions included a requirement to reside at the home address.

1.29 **18 June 2010** – Following further adjournments final disposals were delivered at Omagh Crown Court. A range of psychiatric, social and

psychological opinions – both written and verbal – were available to this and previous courts in relation to Owen Roe and James McDermott. Victim impact statements – taken by the PSNI – were also provided. There is no guidance for the content of victim impact statements, and the future residence of the perpetrators was not a consideration.

1.30 There was no opportunity for providing a wider community perspective to the court. PSNI community impact assessments are generally only conducted in homicide cases with the aim of achieving best evidence; and while the Department of Justice's Community Safety Unit website describes an opportunity for community impact assessments, these only apply in anti-social behaviour cases.

1.31 John McDermott received a Custody Probation Order (CPO) of nine years imprisonment and three years probation, a Disqualification Order, and a lifetime Sexual Offences Prevention Order (SOPO). He was also required to notify as a sex offender for the rest of his life. The court anticipated his probable residence after release from prison would be in Donagh. However, a residence requirement was attached to the CPO which will enable the Probation Board for Northern Ireland (PBNI) to approve his accommodation during the three years under their supervision.

1.32 Whereas John McDermott was sentenced as a criminal, Owen Roe and James McDermott were deemed to have "*committed the criminal act*



as opposed to with a criminal mind” because of their unfitness to plead. Of the four options available under the Mental Health (Northern Ireland) Order 1986, discharge could not be considered because their acts were so serious. The court was told they did not satisfy the criteria for Hospital or Guardianship Orders, and there were doubts about the durability of these orders if made. Thus the only remaining option was a Supervision and Treatment Order (STO). These limited options were thoroughly outlined in open court.

- 1.33 The court took evidence specifically on the point that the brothers would reside in Donagh. CJI Inspectors examined the transcripts and medical reports that were available to the court. None of the expert opinions provided envisaged any alternative residence to the family home. Placing them in another residence or another location was not considered an appropriate way to deal with the case as they were deemed unable to live independently without the help of their sisters.
- 1.34 Consequently, they each received two year STOs, lifetime SOPOs and were required to notify as sex offenders. A specific requirement of the STO was that they should reside at an address approved by their supervising officer, a Western Health and Social Care Trust social worker. The terms of their SOPOs included a map which prohibited them from child-centred locations in Donagh.
- 1.35 The extent of shock to the survivors and their families cannot be underestimated. Having heard

discussion about the possibility of interim Hospital Orders and remands in custody at courts since November 2009, and having seen John McDermott sent to prison, they anticipated the brothers would be compulsorily removed from Donagh, most probably to Carstairs Hospital in Scotland. From their point of view the destination was irrelevant, as long as Owen Roe and James McDermott did not return to the area.

- 1.36 18 June 2010 was the critical juncture in this case. Up to that point the criminal justice system had performed exactly as it normally would in historical sexual abuse cases. Bail terms were set commensurate with known risks, child protection referrals were made to Social Services and the relevant agencies liaised effectively to bring a complicated case to its conclusion. The survivors were well-supported by an attentive PSNI Investigating Officer and were provided with the opportunity to make victim impact statements. Prosecution Counsel also spent time explaining developments to the survivors. In essence, the criminal justice agencies performed their roles appropriately throughout the cases, from reporting of offences to successfully securing outcomes.
- 1.37 By the time they reached Omagh Crown Court on 18 June 2010, the McDermott brothers domicile was confirmed in the official psyche as a protective factor. They had lived there on bail for two years without apparent transgression, and it was felt by the court the community would be better able to protect its children



since the perpetrators were well-known locally.

- 1.38 However parallel realities had developed between the official view and the expectations of the survivors and their community. From the survivors' perspective, they had demonstrated considerable patience to arrive at a conclusion which they were convinced would ensure the brothers' removal from Donagh. They had remained tolerant throughout the brothers' two years on bail because they firmly expected them to be removed; and also through sensitivity towards the extended McDermott family who still lived locally. Although they had been informed about the courts' options at sentencing, they had not contemplated that anyone in authority could seriously consider allowing the brothers' return to Donagh.
- 1.39 The survivors had been focussed on coping with the past and with their ongoing court experiences, which were uncomfortable and at times traumatic. It was difficult giving evidence in court where they saw the McDermott brothers. They were fearful for their confidentiality as media interest grew in the case. The ultimate conclusion left them feeling that, although they had been treated with respect, they were ancillary to the justice process and their voice had not really been heeded.
- 1.40 The survivors understood the courts options under the Mental Health Order were limited. It was however, too much for them to accept the

brothers had sufficiently diminished mental capacity that they were unfit to plead, yet adequate mental capacity to ensure they were not eligible for Hospital Orders – which would have achieved the critical outcome of removing them from Donagh. This indicated from the survivors perspective that the law considered Owen Roe and James McDermott's welfare was of greater importance than their pain and suffering. They felt this was unfair and expressed strong dissatisfaction that in their view, mental health legislation had trumped criminal justice legislation.

- 1.41 The survivors were equally clear that they did not blame any of the criminal justice agencies or their collective efforts. Indeed they were appreciative of the work of the PSNI Investigating Officer. However even the best support was diminished by the final outcome.
- 1.42 The shock of the court outcome on 18 June 2010 was quickly exacerbated by an unfolding scenario of mistakes and confused communication that was played out in public, especially around whether anyone had authority to dictate Owen Roe and James McDermott's future domicile. It was at this stage that the wider Donagh community became actively engaged with the cases. Community representatives expressed their appreciation of the six victims who had come forward as this will help protect children in the future.
- 1.43 While the community have in the past encouraged other alleged victims of the McDermott brothers to come



forward, they no longer feel able to do so with real conviction given the way the case has turned out for them. The outcome of this case has severely shaken the survivors and community's confidence in the criminal justice system, a system with which they were only starting to engage after years of alienation during the Troubles. With hindsight the community suggests it would have been better to have registered a vociferous reaction against the McDermott brothers at an earlier stage. Yet they remain measured and are keen to point out that the community still works hard to normalise life for its children, including child relatives of the McDermott brothers. They are now focussed on two main aims: ensuring that the McDermott brothers will never return to Donagh; and in the longer term, on seeing that relevant mental health legislation is amended.

CHAPTER 2:

Northern Ireland Courts and Tribunals Service administrative errors



2.1 The Northern Ireland Courts and Tribunals Service (NICTS) has acknowledged the following administrative errors in the McDermott brothers cases:

- The Bill of Indictment before the court was not accurately reflected in the electronic case records;
- the Supervision and Treatment Orders (STOs) did not include the residence requirement, and when re-issued on 20 August 2010 did not fully reflect the charges before the court;
- the duration of the Sexual Offences Prevention Orders (SOPOs) in respect of two of the brothers was incorrectly stated as five years;
- the SOPOs also incorrectly stated that they followed a conviction whereas they followed a finding of fact; and
- notification documentation was not issued to the three brothers on 18 June 2010.

2.2 Although it was pointed out by the Minister of Justice that: “...none of these errors had any material effect on

*either the outcome of the case or the disposal imposed by the court,”*¹ the matter received widespread attention in the Northern Ireland Assembly and in local media, and confidence in the courts’ administrative processes was undermined.

2.3 These errors took place in a context of 57,675 adult and youth defendants disposed of in Northern Ireland’s criminal courts, resulting in 162,066 orders during 2009. Nonetheless, the NICTS had presumed that 100% accuracy was achieved in recording sentences, court results and orders, and senior personnel have been very disappointed by the errors that emerged in this case.

2.4 With the benefit of hindsight it has been relatively simple to identify the reasons for each of these errors. They arose from:

- court personnel failing to maintain a timely and accurate case record at each stage;
- IT inadequacy: it was not easy to enter free text – outlining conditions of residence – in computer order frames for STOs;

¹ Minister of Justice to the Chair of the Committee for Justice, 20 September 2010.



- human error in transcribing, which was compounded by managerial monitoring based on written records. In other words, managers were merely checking against original court records that were inaccurate in the first place;
- an error of a technical nature; and
- the NICTS are not statutorily required to issue Notification Orders to defendants. Rather, they introduced this as good practice several years ago and it has now become established custom and practice. However, they identify their failure to issue the documentation as an error.

2.5 The NICTS undertook an audit of 372 court orders made from May 2004 – September 2010. They used the best available evidence including the judges own notes, any pre-sentence reports and contemporaneous notes made by the Court Clerks and digital audio recording plus judges sentencing remarks for Crown Court reviews. Quality assurance for this audit was done by the NICTS Head of Internal Audit. A significant amount of extra staff time was invested in undertaking this remedial work.

2.6. CJI observed the audit in process and undertook checks of specimen SOPOs. We can confirm the NICTS approach was very thorough and the methodology appeared sound.

2.7 The audit established that 350 orders (94%) accurately reflected the judge's decision and gave effect to the orders

made by the court. A total of 22 orders (6%) had issues. They were as follows:

- one incorrect expiry date;
- eight SOPOs recorded the duration as longer than specified by the judge;
- eight conditions prepared by the court office did not fully reflect those specified by the judge. The audit suggests there has been no apparent harm as a result of the errors; and
- five disqualifications from working with children were incorporated in SOPO conditions rather than given effect under the Protection of Children and Vulnerable Adults (NI) Order 2003.

As a priority remedial step, the NICTS has referred all 22 cases for judicial direction. Amended orders will be served on relevant parties, if directed.

2.8 In addition to the SOPO and STO deficiencies the NICTS has initiated further steps to strengthen procedures for preparing, checking and issuing court orders. They include the following:

- regular audits of court orders will be undertaken by a team of experienced operational and audit NICTS officials;
- it has been agreed that trial judges will verify court orders in all novel or complex cases;



- instructions on court resulting and order production have been re-issued and revised guidance is to be implemented;
- supervisory checks henceforth will be undertaken against digital audio records where available (in the Crown Courts), rather than solely against manual or IT records;
- a Court Clerk training programme is to be delivered; and
- computer templates have been amended, along with an instruction that concerns about IT functionality must be queried with line management rather than accepted without question.

those concerned necessarily having a full understanding of the legal basis on which they were done or the consequences. As such there is a need for the PPS and the NICTS administrative staff to have a clearer understanding of the legal basis on which indictments are preferred, amended and severed. A protocol is being agreed between the PPS and the NICTS in relation to how Bills of Indictment are lodged and amended; and any amendments to Bills of Indictment are now subject to managerial check.

2.9 The NICTS have worked with the PPS to ensure that complex Bills of Indictment are properly authorised and entered on court records. They are also checking with other jurisdictions (England and Wales, Republic of Ireland and Scotland) to learn from best practice for accurate transcribing of judges' sentences and orders.

2.10 In relation to preferment of the indictment our conclusion is that the amendments that were made did not appear to have any adverse impact on the proceedings themselves. However, what stood out was the looseness of some of the terminology involved and how readily documents were created and introduced into the proceedings without any real thought or clarity as to their legal status. In other words, certain things were done as a matter of routine without



CHAPTER 3:

Conclusions



CJI's conclusions in respect of our Terms of Reference are:

The quality of administrative practices and processes in relevant justice agencies

3.1 There were administrative failings on the part of the NICTS. These did not cause immediate material impact, but there has been reputational damage, and there may have been longer term practical implications if the administrative errors were not recognised. The NICTS is currently working hard to remedy these deficiencies.

The quality of inter-agency communication and collaborative working on case progression and disposal

3.2 Our conclusion is that these cases were well managed by the criminal justice agencies throughout. It followed the normal model of practice for inter-agency communication and collaborative working. The PSNI's Investigating Officer made appropriate referrals for child protection and also took the lead in relation to care of the survivors. She was pro-active in encouraging other potential victims to come forward. Bail conditions commensurate with the assessed

levels of risk were granted and supervised without any significant transgressions. There was effective liaison throughout the case between the Investigating Officer and prosecutors.

3.3 The inter-agency public protection process oversaw the cases appropriately for eight months, but in reality did not have a significant additional role because statutory measures – bail and child protection – were operating effectively.

How adequate are the communication arrangements with victims at each stage of such cases up to and including disposal

3.4 The Donagh cases were conducted within a complex set of circumstances. There were six survivors and four perpetrators who came from the same hamlet. The added elements of mental health proceedings, different types of hearing, three court locations and death by suicide of a perpetrator over the two-year duration of the cases added to their complexity.

3.5 While there are no codified arrangements within the Northern Ireland criminal justice system for communication with survivors, a code of practice for victims and witnesses is



out for consultation. The need for a more coherent response to victims and witnesses has emerged from other aspects of CJI's work and still requires remedy. In these cases, both the Investigating Officer from the PSNI and Prosecution Counsel invested considerable effort to explain developments to the survivors, and the court thoroughly outlined its limited options. Communication however remained an issue as survivors progressed through the justice agencies. If the cases could have had a different outcome, then the system's efforts may have been deemed successful by everyone involved. Unfortunately, there was a mismatch between the official view (which strengthened as time progressed without any significant transgressions by the brothers) that the McDermott brothers were best located in Donagh, and the survivors/community expectation that the brothers would be removed from the area. CJI's previous work on the *Treatment of Victims and Witnesses² by the criminal justice system* shows that despite laudable intent and strategies, the system has struggled to address the wide range of issues victims can present with. The Donagh survivors experience is unfortunately not unique and early indications from our current thematic inspection of this subject once more suggest that improvements are required in the way the system engages with victims. We will deal with this issue more fully in that report.

- 3.6 In the final analysis, it was simply too much for the survivors to accept the McDermott brothers had such diminished mental capacity that they were unfit to plead, yet adequate mental capacity to ensure they were not eligible to be removed from Donagh. The survivors viewed this as an indication that the law considered Owen Roe and James McDermott's welfare was of greater importance than their suffering and recovery, something that no amount of communication was ultimately able to resolve.
- 3.7 Nor was there an opportunity for the community to explain the impact of having the McDermott brothers continuing to live in their midst. The unique issues surrounding the Donagh cases, particularly the impact of the brothers' permission to remain in the local community could have been given greater attention. The development of a community impact statement might have helped in this regard. Ultimately, the delivery of justice cannot be divorced from the impact that it has on people and communities. Consideration should be given to what this means in order to inform, support and engage with those who have suffered through no fault of their own.

2 Improving the Provision of Care for Victims and Witnesses within the Criminal Justice System in Northern Ireland, CJI, July 2005 <http://www.cjini.org/CJNI/files/ce/ceda45b5-8b15-4f7b-a2a4-9dfe1902eca4.pdf> and Improving the Provision of Care for Victims and Witnesses within the Criminal Justice System in Northern Ireland - A follow-up review of the July 2005 inspection recommendations, CJI, March 2008 <http://www.cjini.org/CJNI/files/b9/b91c68e8-fb98-4e7d-aaab-3d0745ed5735.pdf>



3.8 CJI's current thematic inspection of the *Treatment of Victims and Witnesses* will address a broad spectrum of relevant issues. However, the absence of an opportunity for community impact assessments is a key deficiency arising from the Donagh cases that we believe requires attention. The United Kingdom Government's Green Paper *Engaging Communities in Criminal Justice*³, created the opportunity for Community Impact Assessments to be introduced into the criminal justice process, giving local people the opportunity to voice their concerns to criminal justice services and the courts in particular. CJI recommends that the Department of Justice (DoJ) should conduct a feasibility study to determine the applicability of the introduction of Community Impact Assessments taking account of best practice in other jurisdictions and report on such by June 2011.

³ Engaging Communities in Criminal Justice Summary, Office of Criminal Justice Reform, April 2009, http://www.cjsonline.gov.uk/current_consultations/downloads/Engaging_Communities_in_Criminal_Justice_Summary.pdf



Section



Appendices



Appendix 1 Inspection Terms of Reference

Inspection of the handling of sexual offence cases by the justice system in Northern Ireland 2010

Terms of Reference

Background

On 20 September 2010 the Minister of Justice, David Ford MLA, invited the Chief Inspector of Criminal Justice for Northern Ireland, Dr. Michael Maguire, to examine how cases involving sexual offences are dealt with by the justice system in Northern Ireland.

Aim and Objectives

The aim of this inspection is to examine the effectiveness of justice agencies in dealing with sexual offence cases up to the point of disposal.*

The key objectives are to assess:

1. The quality of administrative practices and processes in relevant justice agencies.
2. The quality of inter-agency communication and collaborative working on case progression and disposal.
3. How adequate are the communication arrangements with victims at each stage of such cases up to and including disposal.

The inspection report will make recommendations to improve the handling of sexual offence cases by the justice system and its partner organisations.

Timetable

4 October 2010: agree Terms of Reference

During October: undertake fieldwork

By end October: provide interim findings

The final report will be published.

* For the purpose of the review, 'the point of disposal' is interpreted as the point up to completion of the administrative process following sentencing, finding of fact or other disposal. Post-sentencing arrangements are currently being considered separately by CJI as part of their 2010-11 programme of planned inspections.







CRIMINAL JUSTICE INSPECTION NORTHERN IRELAND
14 Great Victoria Street
Belfast BT2 7BA
www.cjini.org

Typeset in Gill Sans
Designed by Page Setup