



WITHOUT WITNESS: A THEMATIC INSPECTION OF THE HANDLING OF SEXUAL VIOLENCE AND ABUSE CASES BY THE CRIMINAL JUSTICE SYSTEM IN NORTHERN IRELAND

A FOLLOW-UP REVIEW OF THE
INSPECTION RECOMMENDATIONS

MARCH 2021

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RECOMMENDATIONS

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LIST OF ABBREVIATIONS

| | |
|--------------|---|
| CJI | Criminal Justice Inspection Northern Ireland |
| CPS | Crown Prosecution Service (in England and Wales) |
| DoH | Department of Health |
| DoJ | Department of Justice |
| NICTS | Northern Ireland Courts and Tribunals Service |
| PPS | Public Prosecution Service for Northern Ireland |
| PSNI | Police Service of Northern Ireland |
| RASSO | Rape and Serious Sexual Offences (term used by the CPS) |

CHIEF INSPECTOR'S FOREWORD

Sexual violence and abuse crimes are some of the most traumatic and life changing in our criminal justice system. Accepted recommendations need sustained momentum and commitment to implement them and deliver better services and outcomes for every adult and child affected.

This Follow-up Review looked at how the Police Service of Northern Ireland, the Public Prosecution Service for Northern Ireland and the Department of Justice implemented the recommendations in the 2018 report *Without Witness: A thematic inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland*.

The *Gillen Review* in 2019 also made many recommendations that had synergy with and connection to the *Without Witness* recommendations and other recent CJJ reports and there are opportunities to focus resources and energy on actions that will show cohesive progress against report recommendations. However, there are actions needed to more clearly address the specific issues identified in the *Without Witness* inspection and explicitly demonstrate the implementation of accepted recommendations.

This Follow-up Review shows that welcome progress has been made by the Police Service of Northern Ireland and the Public Prosecution Service for Northern Ireland, but there is more to be done. Two recommendations are assessed as achieved, four as partially achieved and three as not achieved.

Better partnerships are in place and improvements made to file content and quality standards. Electronic evidence sharing has been established that can be built on and extended to Court and defence representatives as intended. Both organisations have made structural changes and reorganised Investigator and Prosecutor resources to enhance their focus on sex offence cases.

The Public Prosecution Service for Northern Ireland has reviewed Prosecutor compliance with recording their rationale in considering the test for prosecution and have made improvements. However, extending effective practice in this area to offences prosecuted in the Magistrates' Courts would provide information on what evidence a Prosecutor considered when deciding if to prosecute and on what charges. This could help deliver the benefits intended including being able to provide better information to victims.

The strategic recommendation to include an action in the Department of Justice *Stopping Domestic and Sexual Violence Strategy* on legislative change to enable jury directions in sex offence cases has not progressed because of competing priorities.

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An early opportunity should be identified in the next legislative programme to progress this. The introduction of draft legislation to reform committal proceedings is welcome, however, extending offences to include cases that can be heard in either the Crown Court or Magistrates' Court would bring more victims within the scope of the intended benefits of this reform.

The COVID-19 pandemic has stalled or delayed action on some recommendations. Restarting and regaining ground lost has

to be part of each organisation's recovery plans to ensure vulnerable victims and witnesses also impacted by lockdown, including those who have not yet reported crimes against them, benefit from service improvements through the implementation of all recommendations as soon as possible.

I am grateful to Rachel Lindsay who led this Follow-up Review and those in the inspected organisations who provided information and support.



Jacqui Durkin

Chief Inspector of Criminal Justice
in Northern Ireland

March 2021

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Northern Ireland
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CHAPTER 1: INTRODUCTION

BACKGROUND TO THE FOLLOW-UP REVIEW

In November 2018 Criminal Justice Inspection Northern Ireland (CJI) published *Without Witness: A thematic inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland*¹. This was the second time CJI had inspected the area of sexual violence and abuse, the first report being published in July 2010². The *Without Witness* report was the first in a series of three public protection inspections published by CJI consecutively in 2018 and 2019. The fieldwork for the second report, *No Excuse: An inspection of the handling of domestic violence and abuse cases by the criminal justice system in Northern Ireland*³, was conducted in tandem with this inspection and the report was published in June 2019.

The *Without Witness* inspection report on sexual violence and abuse made three strategic and six operational recommendations. The recommendations were addressed to the Department of Justice (DoJ), the Police Service of Northern Ireland (PSNI) and the Public Prosecution Service for Northern Ireland (PPS). A specific action plan to address the recommendations was co-ordinated by the DoJ, which included updates from the PSNI, the PPS and various Directorate teams in the Department of Justice (DoJ).

CHANGES SINCE THE 2018 INSPECTION REPORT

Stopping Domestic and Sexual Abuse Strategy

The Department of Health (DoH) and the DoJ *Stopping Domestic and Sexual Violence and Abuse Strategy draft Year 4 Action Plan*⁴ was published in April 2019. This, in common with the previous Action Plans, included a range of actions for Government Departments and agencies across the strand areas of: driving change through co-operation and leadership; prevention and early intervention; delivering change through responsive services; support; and protection and justice.

- 1 CJI, *Without Witness: Public Protection I: A thematic inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland*, November 2018, available at <http://www.cjini.org/TheInspections/Inspection-Reports/2018/October-December/Sexual-Violence>
- 2 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 at <http://www.cjini.org/getattachment/0ad6b7e4-0810-4151-8bb0-e28789591efc/Sexual-Violence-and-Abuse.aspx>
- 3 CJI, *No Excuse: Public Protection II: A thematic inspection of the handling of domestic violence and abuse cases by the criminal justice system in Northern Ireland*, June 2019, available at <http://www.cjini.org/TheInspections/Inspection-Reports/2019/April-June/Domestic-Violence>
- 4 DoH and DoJ, *Stopping Domestic and Sexual Violence and Abuse Strategy: Draft Year 4 Action Plan*, April 2019, available at <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/Year%204%20draft%20Action%20Plan%20Stopping%20Domestic%20and%20Dexual%20Violence%20and%20Abuse%20Strategy.pdf>

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Some of the recommendations from both the domestic and sexual violence reports were included in this Action Plan (for example, in relation to advocacy services, training for prosecutors and actions to improve the prosecution process, domestic abuse court, and training for police first responders) although only one specifically referenced the CJI reports.

A mid-term review of the domestic and sexual violence strategy undertaken by the Strategic Investment Board⁵ highlighted that (among other findings):

- reported domestic and sexual violence and abuse continued to increase in Northern Ireland, with the lifelong impact on victims representing a high cost to Northern Ireland society (estimated £1 billion per annum);
- domestic and sexual violence and abuse are cross cutting issues, affecting all Departments, but current leadership for the strategy was heavily reliant on the DoJ and the DoH, despite major resources allocated by the Department for Communities, and the prevention lead being the Department of Education;
- a considerable amount of work had taken place during the first four years of the strategy, however, there was concern the pace of change has been slow, and there was a lack of clarity as to the impact of individual actions;
- to date, there had been a focus on actions relating to protection, services and justice rather than prevention;
- the evaluation framework was lacking, although there was a widespread recognition of the need to move to an Outcome Based Accountability framework; and
- despite work to date, high level metrics that can be monitored showed a continuing rise in incidents and crimes and poor outcomes/long case processing times.

In common with the reports on domestic⁶ and sexual⁷ violence and abuse published by CJI, the review recommendations included:

- a continued need for a Northern Ireland Executive ('the Executive') strategy to address domestic and sexual violence and abuse in Northern Ireland, which should be cross Departmental and funded appropriately;
- continued leadership and co-operation at the highest level of Government, and effective mechanisms to demonstrate clear commitment by the Northern Ireland Executive to address domestic violence and sexual violence are required;
- a commitment from Ministers relating to all strands of the strategy is required including education to address prevention/early intervention; and
- ways in which progress in delivery can be accelerated should be explored, for example avoid repeating pilots and re-piloting what is already known to work elsewhere.

5 Strategic Investment Board, *Mid-term review of the stopping domestic and sexual violence strategy*, October 2020, available at <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/mid-term-review-dsva-strategy.PDF>

6 CJI, *No Excuse: Public Protection II: A thematic inspection of the handling of domestic violence and abuse cases by the criminal justice system in Northern Ireland*, June 2019, available at <http://www.cjini.org/TheInspections/Inspection-Reports/2019/April-June/Domestic-Violence>

7 CJI, *Without Witness: Public Protection I: A thematic inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland*, November 2018, available at <http://www.cjini.org/TheInspections/Inspection-Reports/2018/October-December/Sexual-Violence>

Gillen Review

In May 2019 the *Gillen Review* report into the law and procedures in serious sexual offences in Northern Ireland was published.⁸ The Criminal Justice Board had commissioned a review of the law and procedure in prosecutions of serious sexual offences, led by a former Lord Justice of Appeal, the Right Honourable Sir John Gillen. The report made 253 recommendations⁹ across five areas and 16 key recommendations. Many of these recommendations were similar to those published in reports by CJI on sexual violence and abuse, victims and witnesses and delay.

Sir John Gillen presented at a Victim Support Northern Ireland conference entitled 'Gillen: Where are we now?' in February 2020 alongside representatives from the PSNI, the PPS and the DoJ. It was clear that the organisations were committed to work in partnership to address the recommendations arising from the *Gillen Review*.

The DoJ published an implementation plan to address the recommendations in July 2020 which was developed with key partners, including the PSNI, the PPS, the Office of the Lord Chief Justice, Victim Support Northern Ireland, the Probation Board for Northern Ireland and the Northern Ireland Courts and Tribunals Service.¹⁰ The implementation plan noted that the DoJ had '*established the multi-agency Strategic Justice Group on Sexual Harm, to oversee work in this area and ensure it is conducted in a coherent and co-ordinated way, and to promote connectivity on the issue of sexual harm across the Justice System, both where it relates to the Gillen recommendations and more generally. The Strategic Justice Group on Sexual Harm reports to the Criminal Justice Board... This is a high level version of more detailed programme management plans owned by the DoJ's Gillen Review Implementation Team.... We will review this high level plan annually and provide regular thematic updates to the Justice Committee and the Criminal Justice Board.*'¹¹

The implementation plan also noted progress made, prior to its publication, with 11% of the 253 recommendations fully implemented, all of which would improve the complainants' experiences and/or the way these cases are progressed. These included:

- a voluntary protocol led by Her Honour Judge Smyth in Belfast to expedite sexual offences cases involving children under 13 commenced in September 2019;
- the PSNI's operational re-structure to have two separate teams dedicated to cases involving children - one for current cases and one for historic cases to allow more focus on current, acute cases involving children, ensuring they are dealt with sensitively and speedily (see Operational Recommendation 1);

8 *Gillen Review, Report into the law and procedures in serious sexual offences in Northern Ireland* available at <https://www.justice-ni.gov.uk/publications/gillen-review-report-law-and-procedures-serious-sexual-offences-ni>

9 *Gillen Review, Report into the law and procedures in serious sexual offences in Northern Ireland (recommendations)* available at <https://www.justice-ni.gov.uk/publications/gillen-review-recommendations>

10 DoJ, *The Gillen review implementation plan, July 2020*, available at <https://www.justice-ni.gov.uk/publications/gillen-review-implementation-plan>

11 As above, page 3.

- the Crown Court Liaison Committee issued a Practice Direction and Protocols in November 2019 for Vulnerable Witnesses in the Crown Court reinforcing best practice in case management in trials involving vulnerable witnesses in serious sexual offence cases, such as directing that Case Management and Review Hearings are held to ensure all issues are expedited, and delay in securing trial hearings is minimised;
- the PPS and the PSNI working jointly to improve the disclosure process;
- the appointment of Case Progression Officers in the NICTS and the PPS to manage cases and reduce delay in Laganside, Newry and Craigavon Courts¹²; and
- work on raising education and awareness in relation to consent, including an advertising campaign funded by the DoJ in March 2020 in relation to ‘consent’, focussing on the key message “without consent it is sexual crime”.

CJI report on the care and treatment of victims and witnesses

In July 2020 CJI published its third report on the care and treatment of victims and witnesses by the criminal justice system in Northern Ireland¹³. The Chief Inspector’s Foreword noted: *‘This report makes a number of strategic recommendations to ensure victim and witness needs are paid better attention by senior leaders who, in their organisations and across the criminal justice system, influence the culture and behaviours, commit resources and make decisions about priorities and services they want their officers, prosecutors, officials and staff to deliver. It also makes a number of operational recommendations to improve training, practice and better partnership working with Victim Support Northern Ireland and the National Society for the Prevention of Cruelty to Children that makes best use of their expertise.’*

The report made four strategic and 12 operational recommendations to deliver improvements for victims and witnesses across the criminal justice system. A number of the recommendations included improvements to the provision of communications to victims and witnesses and the manner in which the needs of victims and witnesses were assessed and met. The recommendations were therefore complementary to those included in CJI’s *Without Witness* and *No Excuse*¹⁴ inspection reports.

COVID-19 pandemic

The COVID-19 pandemic and public health restrictions and regulations continued to have, at the time of the fieldwork for this Follow-up Review, a significant impact on victims of crime and the response of the criminal justice system. In terms of sexual offences this manifested itself mainly by way of reduced numbers of reported crimes to police, delays in prosecution decision making and delays in cases being dealt with at court.

12 The pilot project to appoint Case Progression Officers had concluded at the time of writing and, while the Officers remained in place within the NICTS the equivalent PPS posts had been withdrawn. This decision may be revisited by the PPS in light of other emerging requirements, in particular the likely impact of Committal Reform in 2022.

13 *CJI, Victims and Witnesses: The care and treatment of victims and witnesses by the criminal justice system in Northern Ireland, July 2020*, available at:

<http://www.cjini.org/getattachment/5193b4b4-6351-4987-bdfb-03bace145c7e/report.aspx>

14 *CJI, No Excuse: Public Protection II: A thematic inspection of the handling of domestic violence and abuse cases by the criminal justice system in Northern Ireland, June 2019*, available at

<http://www.cjini.org/TheInspections/Inspection-Reports/2019/April-June/Domestic-Violence>

Figures published prior to the pandemic showed that sexual offences recorded by the police continued to rise. The PSNI's latest report on Trends in Police Recorded Crime in Northern Ireland, published in November 2020¹⁵ showed that 3,558 sexual offences were recorded by the police in 2019-20, a slight increase of 22 offences on 2018-19. It reported that in 2019-20 the level of sexual offences was the highest recorded since 1998-99, three times higher than the lowest level recorded in 2000-01. Between 1998-99 and 2013-14 sexual offences represented between 1 and 2% of victim-based crimes. This proportion reached 4% in 2016-17 and had remained at this level ever since.

After the onset of the pandemic the PSNI produced a series of exceptional statistical releases on crimes recorded by the police from when lockdown measures were introduced on 23 March 2020 up until the end of June 2020. The June 2020 publication¹⁶ reported that in the 11 weeks from 23 March 2020 to 7 June 2020, compared with the same time period in 2019:

- overall police recorded crime fell by 23% and crime fell across each of the main crime types, with the exception of possession of weapons offences;
- overall sexual offences fell by just over one third (33.9%); and
- rape specifically fell by 39% and other sexual offences fell by 31.7%.

A later statistical release published in December 2020¹⁷ reported that overall crime levels fell by 23% between the week beginning Monday 16 March and the following week when lockdown measures were introduced. The lowest level of overall crime was recorded during the first week of lockdown. In the 37 weeks from 23 March 2020 to 6 December 2020, compared with the same time period in 2019, overall police recorded crime had fallen by 13.5% and levels had fallen across each of the main crime types. In the 12 months from 1 December 2019 to 30 November 2020 sexual offences decreased by 6.6% (229 offences). Within this classification rape offences decreased by 2.3% (23 offences) and other sexual offences decreased by 8.4% (206 offences). It is worth noting however that these figures relate to crimes recorded by the police and that, although there is normally considered to be a certain level of under-reporting of sexual offences it is highly likely that this was exacerbated by the conditions of lockdown, particularly for those who have been assaulted in their homes and for child victims.¹⁸

15 PSNI, *Trends in Police Recorded Crime in Northern Ireland 1998-99 to 2019-20 Annual Bulletin*, November 2020, available 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-2019-20.pdf>

16 PSNI, *Police Recorded Crime in Northern Ireland Levels recorded since lockdown measures were introduced: 23rd March to 7th June 2020*, June 2020 available at <https://www.psnipolice.uk/globalassets/inside-the-psni/our-statistics/police-recorded-crime-statistics/2020/crime-bulletin-23.03-to-07.06.pdf>

17 PSNI, *Police Recorded Crime in Northern Ireland Update to 30th November 2020*, December 2020. available at https://www.psnipolice.uk/globalassets/inside-the-psni/our-statistics/police-recorded-crime-statistics/2020/november/crime-bulletin_nov-20.pdf

18 See for example *Belfast Live*, *NSPCC say number of child sex abuse victims has soared by 37% in five years*, 10 August 2020, available at: <https://www.belfastlive.co.uk/news/belfast-news/nsppc-say-number-child-sex-18741002>

The PSNI advised that the significant reduction of referrals during the lockdown period had assisted officers to reduce the backlog of cases awaiting investigation. There had been challenges about the ability to complete Achieving Best Evidence interviews¹⁹, which was a more significant issue for sexual offences than other types of crime. A difficulty in arranging solicitors to attend with a client for a voluntary interview (usually in relation to historical offences) was also reported by police. The PSNI reported that rape outcome rates remained the same despite the pandemic.

The PPS were already taking action to address a backlog of cases when the lockdown and public health restrictions due to COVID-19 began (see Strategic Recommendation 1). Management reports provided to CJI²⁰ highlighted the impact of the lockdown restrictions on the Serious Crime Unit in April 2020 indicating that almost all Serious Crime Unit Prosecutors were working from home with some having only limited access to the case management system either remotely or in the office. It also noted that, although there had been some reductions in file numbers received from the police, this had been modest given that Police Officers working on sexual offences cases, were still working. Police Officers had therefore been able to continue to progress file submissions and respond to requests for further information from Prosecutors.

By September 2020 the PPS management report noted that all Serious Crime Unit Prosecutors were working from home with remote access to the case management system as well as having an option to work in the office two days a week. The Administration Team was also able to attend the office on a rotational basis to ensure administrative tasks remained up to date. The PPS Assistant Director for the Serious Crime Unit noted to Inspectors his concerns for the wellbeing of staff who were dealing with sensitive and often distressing work at home, without the normal supports from colleagues and managers that were available in an office environment. The PPS had been developing ways of supporting their staff further by facilitating their attendance in the office when the Assistant Director was present, scoping out training on trauma when working at home and monitoring staff wellbeing.

The closure of courts during the first lockdown created further delays in a criminal justice system where victims of sexual offences could often wait two or three years for a trial to commence. During the pandemic court venues were reduced and these were only used to hear urgent matters in the Youth and Magistrates' Courts, for example first remands, custody remands, bail applications and compassionate temporary release applications, although the majority of this work was done remotely. On 19 August 2020 the Minister of Justice announced that the first jury trial had got underway in Laganside

19 Achieving Best Evidence interviews are visually recorded interviews with vulnerable and intimidated witnesses (for example child witnesses or adult victims of sexual crimes) which are undertaken by specially trained Police Officers and social workers (in cases involving children or vulnerable adults). These are part of the package of special measures provided for in The Criminal Evidence (Northern Ireland) Order 1999, see [https://www.legislation.gov.uk/nisi/1999/2789/part/II/crossheading/special-measures#:~:text=%E2%80%94\(1\)%20A%20special%20measures,arrangement%20from%20seeing%20the%20accused](https://www.legislation.gov.uk/nisi/1999/2789/part/II/crossheading/special-measures#:~:text=%E2%80%94(1)%20A%20special%20measures,arrangement%20from%20seeing%20the%20accused).

20 PPS, Serious crime unit: Monthly caseload reports, April - September 2020. Internal documents.

Court.²¹ By September 2020, 16 NICTS venues had reopened, with jury trials resuming in six courthouses (Laganside, Craigavon, Newry, Dungannon, Coleraine and Antrim Courts) after significant adaptations were made to courtrooms to provide protection for all court users from COVID-19 in line with public health guidelines and regulations.

The latest Crown Court Bulletin, published in February 2021, reported an average time from committal to hearing for October to December 2020 of 163 days, compared with 124 days for the same period in 2019. The average time from conviction to disposal was 64 days, compared with 49 days for the equivalent period in 2019²². Similarly in the Magistrates' Courts the average waiting time in the adult criminal court from first hearing to disposal increased to 16 weeks from an average time of seven weeks for the corresponding period last year²³. In addition there was a decrease of 25% in adult defendants received (8,112 down from 10,758) and an increase of 4% in adult defendants disposed of (10,616 up from 10,225) respectively, compared to the same period the previous year. This is the lowest number of adult defendants received during the October to December quarter since recording began. Inevitably, given the ongoing restrictions as a result of the COVID-19 pandemic and the continued limited opening of courthouses, this issue will not be resolved quickly with the reduced capacity of courts to hear trials and dispose of cases.

Management data provided by the NICTS suggested that, in mid-March 2021, there were around 271 Crown Court cases involving 275 defendants charged with a sexual offence who were awaiting a trial date. Over 95 of these cases were committed to the Crown Court before the first lockdown in response to the COVID-19 pandemic on 23 March 2020.

In an inspection report of the Crown Prosecution Service of England and Wales (the CPS) response to the COVID-19 pandemic the Chief Inspector stated: *'Court sittings and courtroom capacity with social distancing requirements will not allow for reduction of the existing backlog. Some estimates show that the current scale of increase in the backlog would take 10 years to clear at pre-pandemic rates. Any major increase in the time taken to hear cases is likely to be highly detrimental to justice.'* Given the ongoing issues with avoidable delays in the criminal justice system in Northern Ireland prior to the pandemic, it is highly likely that the backlog of cases could take even longer to clear in this jurisdiction unless an effective recovery plan is agreed and implemented.

Victim Support Northern Ireland research

Following the publication of the CJI *Without Witness* report Victim Support Northern Ireland produced a report of an evaluation of the role of the Independent Sexual Violence Advisors²⁴, which were introduced in April 2016.

21 DoJ, Minister welcomes resumption of jury trials, 19 August 2020, available at:

<https://www.justice-ni.gov.uk/news/minister-welcomes-resumption-jury-trials>

22 Analytical Services Group, *Crown Court Bulletin October to December 2020: Research and Statistical Bulletin Provisional Figures*, February 2021, available at <http://drupdocs.intranet.nigov.net/DoJDocs/a2j-directorate/nicts/crown-court-bulletin-october-to-december-2020.pdf>

23 Analytical Services Group, *Magistrates' Court Bulletin October to December 2020: Research and Statistical Bulletin Provisional Figures*, February 2021, available at <http://drupdocs.intranet.nigov.net/DoJDocs/a2j-directorate/nicts/magistrates-court-bulletin-october-to-december-2020.pdf>

24 *Victim Support Northern Ireland, Evaluation Independent Sexual Violence Advisor pilot, August 2019. Unpublished report.*

This found evidence of positive achievement against the agreed client outcomes namely:

- increased engagement of victims of sexual violence with the criminal justice system;
- victims of sexual violence are better able to cope after crime; and
- clients, whether going through the criminal justice system or not, will be enabled to feel and be safe, following their trauma.

The report also noted that '*Additional and unintended outcomes such as improved health and wellbeing, increased independence resilience, feeling more empowered and the positive impact on friends and family were evidenced also*'.

The Independent Sexual Violence Advocate scheme ('the Scheme') was originally funded by Comic Relief with a contribution from the DoJ when it was introduced April 2016. When the Comic Relief funding ended the DoJ took over the full funding in 2018-19. Originally the funding was to provide 30 hours of advocacy work plus a management charge. In 2019-20 this was increased to 35 hours. The role of the Scheme was intended to be subsumed into the DoJ and PSNI funded advocacy service, which was tendered for in December 2020. This advocacy service will be covered in more detail in the Follow-up Review of CJI's *No Excuse* inspection report²⁵.

In February 2021 Victim Support Northern Ireland published *Bearing Witness*, a report on research undertaken into jury trials.²⁶ This research was based on a similar model to work undertaken in Northumbria by the then Police and Crime Commissioner Dame Vera Baird QC, the report of which was published in February 2017.²⁷ The Victim Support Northern Ireland research involved training volunteers as court observers who then attended rape trials and recorded their observations of the trial process across a range of areas. These included the methods used by the prosecution and defence counsel in dealing with the case, the approach to victims, witnesses and defendants, the behaviour of juries, the use of technology and the court facilities. This work was supported by a reference group made up of representatives of the criminal justice organisations and included CJI. The PPS provided training to the court observers on the legal and administrative processes that occurred during a trial.

After a year of observing 27 sexual violence trials²⁸, observers found;

- rape myths were widely used during trial, especially during the defence's cross-examination of complainants, and these myths were rarely challenged effectively;
- the treatment of complainants during trial was falling short of the dignity and respect they are entitled to. This was particularly the case regarding their treatment during cross-examination by the defence;

25 CJI, *Follow-up Review of No Excuse: A thematic inspection of the handling of domestic violence and abuse cases by the criminal justice system in Northern Ireland*, forthcoming publication.

26 Victim Support Northern Ireland, *Bearing Witness: Report of the Northern Ireland Court Observer Panel 2018-2019, February 2021*, available at https://www.victimsupportni.com/site/wp-content/uploads/2021/02/VSNi-Report-BearingWitness_Final.pdf

27 Northumbria PCC, *Seeing is Believing: Dame Vera Baird QC launches a new report on Northumbria's unique Court Observers scheme*, available at: <http://www.northumbria-pcc.gov.uk/seeing-is-believing-dame-vera-baird-qc-launches-a-new-report-on-northumbrias-unique-court-observers-scheme/>

28 Inevitably, not all these cases will have resulted in a full trial being concluded and therefore the findings do not all relate to the views of observers in all 27 cases.

- failings in technology, such as badly-recorded ABE [Achieving Best Evidence] interviews and incompatible technology between police stations and courthouses, were doing a disservice to complainants' evidence in sexual offences trials;
- significant delays and adjournments continue to hamper sexual offences trials;
- there was some evidence of previous sexual history and compensation being raised by defence during cross-examination;
- questions were raised by observers about the suitability of juries to decide on sexual offences trials in their current form; and
- there were some positives. The majority of positive comments concerned the even-handed handling of cases by Judges.

In addition observers made wide-ranging suggestions as to how trials involving allegations of sexual violence could be improved. These included providing legal representation for complainants in court, overhauling how juries are provided with information and evidence, and changing court culture about how rape myths are handled and challenged as evidence.

THE FOLLOW-UP REVIEW

In common with the inspection reports, the fieldwork for this Follow-up Review was undertaken jointly with the fieldwork for the Follow-up Review of CJI's inspection of the handling of domestic violence and abuse cases by the criminal justice system in Northern Ireland²⁹. A progress update against the recommendations was provided by the DoJ, the PSNI and the PPS, co-ordinated by the DoJ Violence Against the Person Branch, using information collated for the report action plan. This outlined the work undertaken to date and in support of this, organisations provided a range of documents to evidence the activity described. Desktop research was also undertaken to identify information available in the public domain which would be of assistance to this review.

CJI met with key stakeholders (Women's Aid, Nexus, Men's Advisory Project and Victim Support Northern Ireland) as well representatives from the DoJ, the PSNI and the PPS to discuss each of the recommendations and progress against them. The information provided in these meetings as well as the documentation available was assessed and judgments were made as to progress against each of the recommendations.

29 CJI, *No Excuse: Public Protection II: A thematic inspection of the handling of domestic violence and abuse cases by the criminal justice system in Northern Ireland, June 2019*, available at <http://www.cjini.org/TheInspections/Inspection-Reports/2019/April-June/Domestic-Violence>

CHAPTER 2: PROGRESS AGAINST RECOMMENDATIONS

STRATEGIC RECOMMENDATION 1

The Public Prosecution Service for Northern Ireland 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*).

Status: Partially achieved.

ORGANISATIONAL RESPONSE

PPS update - October 2020

- Senior management continue to receive regular updates regarding the performance of the Serious Crime Unit and the new operational model.
- Key performance measures are published internally on a quarterly basis, including prosecution and conviction rates in respect of sexual offences.
- A detailed Official Statistics Sexual Offences Bulletin for 2019-20 will be published on 5 November 2020.

Inspectors' assessment

The PPS had not published a business plan on its website since the 2017-18 business plan. The PPS corporate scorecard for 2020-21 and key performance indicators were provided to CJI for the purposes of this Follow-up Review. The corporate scorecard included activities relating to domestic abuse and sexual offences although these were spread across various priority areas of the scorecard as follows:

Table 1: PPS 2020-21 corporate scorecard references to domestic abuse and sexual offences

| |
|--|
| PRIORITY 1: |
| Supporting a safer community by providing an effective and high quality prosecution service. |
| OUTCOME: |
| PPS delivers an effective and high quality prosecution service. |
| MILESTONES: |
| 1a: Criminal Justice Inspection NI |
| <ul style="list-style-type: none">• Develop appropriate responses to CJI recommendations. |
| 1b: Gillen Review |
| <ul style="list-style-type: none">• Implement accepted recommendations. |
| 1e: Development of Legal Policy and Guidance |
| <ul style="list-style-type: none">• Set out the standards and levels of service in respect of:<ul style="list-style-type: none">- Guidelines for Domestic Violence and Abuse. |
| 1g: Reviews of Business Areas |
| <ul style="list-style-type: none">• Post-project evaluation of the implementation of the revised Serious Crime Unit model. |
| 1j: Advocacy Strategy |
| <ul style="list-style-type: none">• Establish a rape sub-panel among junior counsel.• Liaise with the Bar Library in their planning for accreditation for members in sexual offence prosecution.• Provide ongoing training to the rape panel and all senior counsel involved in this work. |
| 1k: Service Level Agreements |
| <ul style="list-style-type: none">• Identify and agree relevant documents with key partners, including PSNI (Domestic Violence and Abuse)... |
| 1s: Workforce Planning |
| <ul style="list-style-type: none">• Implement 2020-21 Resource Plans.• Monitor capacity model in light of reviews of core departmental functions and implementation of new initiatives, Gillen Review and Committal Reform. |

PRIORITY 2

Building confidence in the independence, fairness and effectiveness of the Service.

OUTCOME:

There is an increasing level of public confidence and trust in the independence, fairness and effectiveness of the PPS.

2b: Official Statistics

- Publish Bulletin on Sexual Offences.

PRIORITY 3

Meeting the needs of victims and witnesses.

OUTCOME:

N/a

MILESTONES:

3b: Use of Pre-Recorded Cross Examinations (Article 16 Hearings)

- Provide ongoing support for pilot (commencement of the Pilot to be confirmed)

PRIORITY 4

Strengthening our capability by continuously improving the way we work.

OUTCOME:

N/a

MILESTONES:

4b: Justice Act 2015

- Meet agreed project objectives for 2019-20 in respect of Direct Committal.

4g: Criminal Justice System Northern Ireland Digital Justice Strategy

- Consider and promote acceleration of appropriate Digital Justice Strategy elements to support business efficiency under restrictive pandemic arrangements.
- Implement agreed Strategy objectives for 2020-21, including Digital Sharing Solution for audio-visual evidence/Digital Disclosure.

In response to Priority 1, Milestone 1b the PPS advised that a temporary Principal Public Prosecutor had been assigned to work both internally and externally to implement the *Gillen Review* Recommendations. A permanent Principal Public Prosecutor Sexual Offences Policy Lead had also been appointed. In response to Priority 3, Milestone 3b the PPS continued to work closely with all relevant stakeholders in the ongoing development of the use of pre-recorded cross-examinations.

The PPS monitored key performance indicators in the areas of both domestic abuse and sexual offences. These were reported against on a quarterly basis for the PPS overall and broken down by the three PPS regions and the Serious Crime Unit. The indicators were as follows:

1.15 Domestic violence

- 1.15a Domestic violence (PSNI domestic violence flag): % of domestic violence cases (number of suspects where there was a decision for prosecution);
- 1.15b Domestic violence (PSNI domestic violence flag): % of domestic violence cases prosecuted (number of defendants) with a conviction (Crown); and
- 1.15c Domestic violence (PSNI domestic violence flag): % of domestic violence cases prosecuted (number of defendants) with a conviction (Magistrates’).

1.16 Sexual Offences/Rape

- 1.16a Sexual offences: % of sexual offences (number of suspects) where there was a decision for prosecution;
- 1.16b Sexual offences: % of sexual offences (number of defendants) with a conviction (Crown);
- 1.16c Sexual offences: % of sexual offences (number of defendants) with a conviction (Magistrates’);
- 1.16d Rape offences: % of rape cases (number of defendants) where there was a decision for prosecution; and
- 1.16e Rape offences: % of rape cases produced (number of defendants) with a conviction (Crown).

In addition the PPS began publishing an annual statistical bulletin for cases involving sexual offences in April 2018 (this first bulletin being for the year 2016-17³⁰). The bulletin for 2019-20 was published on 5 November 2020.³¹ Key findings for the 2019-20 financial year were as follows:³²

- the PPS received a total of 1,684 files involving a sexual offence. This was an increase of 5.6% on 2018-19 (1,594). There was a rise of 6.9% in the number of files received involving a rape offence, from 610 to 652;
- files received included a total of 1,801 suspects, 706 of whom were charged or reported for rape (an increase of 10.8% on 2018-19) and 1,095 for other sexual offences (an increase of 4.5%);
- 1,755 prosecutorial decisions were issued by the PPS in respect of suspects in cases involving sexual offences. The Test for Prosecution was met in respect of 28.7% of decisions, which included 503 decisions for prosecution or diversion from the courts. At 28.7%, the percentage of decisions meeting the Test represents a small increase on 2018-19 (27.4%);
- of the 1,252 decisions for no prosecution, the vast majority (99.4%) did not pass the evidential test. The remaining 0.6% did not pass the public interest test;

30 PPS publishes new statistical bulletin on sexual offences, 26 April 2018, available at <https://www.ppsni.gov.uk/news-centre/pps-publishes-new-statistical-bulletin-sexual-offences>

31 PPS, Statistical bulletin: Cases involving sexual offences 2019-20, November 2020, available at <https://www.ppsni.gov.uk/publications/statistical-bulletin-cases-involving-sexual-offences-201920>

32 PPS, PPS publishes latest statistical bulletin on cases involving sexual offences, including rape, 5 November 2020 available at <https://www.ppsni.gov.uk/news-centre/pps-publishes-latest-statistical-bulletin-cases-involving-sexual-offences-including-rape>

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- median days for the issue of indictable prosecution decisions (prosecution in the Crown Court) in cases involving sexual offences was 255 calendar days (256 days in 2018-19). Median days for summary prosecution decisions (prosecution in the Magistrates' or Youth Courts) was 20 days (45 in 2018-19);
- a total of 217 defendants were dealt with in the Crown Court in cases involving sexual offences. The overall conviction rate was 69.1% compared with 64.3% in 2018-19;
- a total of 67 defendants were dealt with in the Crown Court for an offence of rape and 36 (53.7%) of these were convicted of at least one offence (that is, any offence). Twenty (29.9%) defendants were convicted of an offence of rape; and
- a total of 153 defendants were dealt with in the Magistrates' and Youth Courts for a sexual offence during 2019-20. The overall conviction rate was 72.5% compared with 71.3% in 2018-19.

This bulletin provides useful information for the public on the PPS's handling of sexual offences. It highlights the continuing upward trend in the numbers of sexual offence cases being sent to the PPS by the police as well as small improvements in the overall prosecution rate for Crown Court cases. The figures in the bulletin also show the ongoing challenge of delay in the system in these types of cases. The key findings report a small improvement in the median days for indictable prosecution decisions. However, the bulletin also reports that, in 2019-20, 80% of indictable decisions in respect of all sexual offences were issued within 666 days compared to 447 days in 2018-19. By comparison in the CPS report in 2018-19³³ the average timeliness of the decision to charge to be 107 days in rape-flagged cases.³⁴

A review of the work of the Serious Crime Unit by the Business Consultancy Services of the Department of Finance was commissioned by the PPS and reported on its findings in January 2019.³⁵ This was a detailed review of the Serious Crime Unit ('the Unit') operating model and made 32 recommendations relating to organisational structures, processes, standards, case preparation, administrative support, non-case work activity, the mission statement of the Unit, comparative models and the future of the Unit. While this review considered the operating model of the Serious Crime Unit in more detail than the CJI report some of the findings echoed those in *Without Witness*. The activity to address these issues was therefore complementary to the work being undertaken by the PSNI and the PPS in respect of Strategic Recommendation 2 of CJI's report.

CJI was also provided with evidence from the PPS on how they addressed a backlog of cases allocated to the Serious Crime Unit in 2020. Monthly caseload reports outlined the number of cases which formed the backlog and then monitored action taken to address this. To address the issue of case delay in the Serious Crime Unit it was agreed in July 2019 that a number of outstanding cases would be allocated to Prosecutors outside the Unit.

33 CPS, *Violence against women and girls annual report, 2018-19, September 2019*, available at <https://www.cps.gov.uk/sites/default/files/documents/publications/cps-vawg-report-2019.pdf>

34 In England and Wales the police have to seek a charging decision from the CPS for rape cases and therefore the time from receipt of the case from the police to the decision to charge is reported on. The CPS flag all cases where the initial charge was rape even if they later reduce the charge to a lesser one to ensure the standards for rape cases continue to be applied.

35 *Business Consultancy Services, Public Prosecution Service - Review of Serious Crime Unit Operating Model 2018-19 Report, January 2018. Internal document.*

The agreement was for 252 cases to be given to Fraud and Departmental Section (Backlog Team 1) and 48 cases to Belfast and Eastern Team (Backlog Team 2). The data indicated that on the 2 September 2019 there were 301 cases in the Serious Crime Unit that required a decision.³⁶

By March 2020 the management report showed there were 75 outstanding cases received before 2 September 2019. The total number of Serious Crime Unit cases that required a decision in March 2020 was 435 (356 core Serious Crime Unit Cases plus 79 backlog cases allocated to other teams between March 2020). There were, at this time, 216 outstanding cases allocated to the Serious Crime Unit Senior Public Prosecutors (equating to an average of 26 cases per Prosecutor) and 101 cases allocated to the Public Prosecutors (equating to an average of 25 cases per Prosecutor).

The September 2020 monthly caseload report³⁷ showed that there were only 15 of these cases outstanding. As a result they had been absorbed within the overall Serious Crime Unit figures and were no longer reported separately.

CJI welcomes the work done by the PPS to make their work in the area of sexual offences more transparent to the public as well as to address the operational issues experienced by the Serious Crime Unit. The key performance indicators, which included specific indicators for sexual offences and offences with a domestic motivation, were similar to those in place during the 2018 inspection report. However these, as well as the PPS corporate scorecard containing recommendations specific to or more generally related to the work in relation to sexual and domestic offences, are both internal documents. The aim of the recommendation was that the PPS should develop more specific measures which focus on the quality of work in relation to sexual and domestic offences. None of the performance indicators, for example in relation to quality, victim satisfaction, or reducing avoidable delay are specific to the work of the PPS on sexual offences or offences in a domestic context.

The CJI *Without Witness* report compared the approach of the PPS in its business planning with that of the CPS in regard to Rape and Serious Sexual Offences (RASSO) cases.³⁸ It stated: '*The CPS 2016-17 Business Plan*³⁹ 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 Plan*⁴⁰ 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' (paragraph 2.18).

36 PPS, *Monthly caseload report, March 2020*. Internal document.

37 PPS, *Monthly caseload report, September 2020*. Internal document.

38 See paragraphs 2.18-2.19 of CJI, *Without Witness: Public Protection I: A thematic inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland, November 2018*, available at <http://www.cjini.org/TheInspections/Inspection-Reports/2018/October-December/Sexual-Violence>

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

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

'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.' (paragraph 2.19).

'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.' (paragraph 2.20).

Some of the activity undertaken in relation to this recommendation has achieved the aim of demonstrating the importance that the PPS places on sexual offences, however, it does not fully address the recommendation as intended. This recommendation can therefore only be assessed as partially achieved.

STRATEGIC RECOMMENDATION 2

The Police Service of Northern Ireland and the Public Prosecution Service for Northern Ireland 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).

Status: Partially achieved.

ORGANISATIONAL RESPONSE

PPS update - October 2020

- The PPS and PSNI have carried out a review of joint working arrangements in cases involving sexual offences. The outputs from this review include the following:
- Agreement of quarterly PPS/PSNI prosecution team meetings.
 - The PSNI/PPS Strategic Quarterly meetings continue to be held every three months with the working group meeting on a regular basis.
 - The agreed PPS/PSNI Local Operating Agreement also mandates a monthly meeting to look at outstanding quality issues and consider potential improvements.
- Development of an agreed 'prosecution clinic' model.
 - The Sexual Assault Advice Clinics are continuing online on a monthly basis.
 - The potential for the extension of the Sexual Assault Advice Clinic is currently being considered by the PPS/PSNI working group but it has proven difficult to identify cases that meet the agreed criteria.

- Streamlining of current disclosure arrangements, with the potential for a PPS Prosecutor to be embedded within PSNI.
 - Although a PPS Prosecutor has not been embedded in the PSNI the duty prosecutor role is still in place and is now supplemented by the availability of the gateway Senior Public Prosecutor and Public Prosecutor to provide advice regarding file build issues.
 - Revised arrangements for the quality assurance of police files, including 'gatekeeper' roles established within both the PPS and the PSNI to manage file quality issues.
 - The PPS have had a Gateway Team in place since September 2019 and quality checks 100% of cases received in the Serious Crime Unit against the agreed file build standards. This is supplemented by two Gatekeepers in the PSNI who provide quality checks prior to submission to the PPS.
- The Service Level Agreement between the Serious Crime Unit and the PSNI will be reviewed to ensure that any revisions to the joint working arrangements and procedures are clear.
 - The Serious Crime Unit/PSNI Service Level Agreement has now been superseded by the PPS/PSNI Local Operating Agreement. This agreement has been signed by the Head of PPS Serious Crime Unit and the Head of PSNI Public Protection Branch. The agreement clearly sets out the file build standards required to allow the PPS to make their decision to prosecute or not. The agreement also stipulates the role of the PPS Gateway Team and a clear escalation path if a case does not meet the standards required.
- Serious Crime Unit prosecutors will also conduct awareness-raising sessions with relevant prosecution team members in support of the revised Service Level Agreement.
 - The PPS/PSNI Local Operating Agreement has been shared with all staff within the Serious Crime Unit and a number of awareness sessions have been completed ensuring all admin and legal staff are aware of their roles within the new Serious Crime Unit operating model.

PSNI update – October 2020

- The PPS Serious Crime Unit and PSNI Public Protection Branch now have a Local Operating Agreement in place. This agreement provides the governance for the prosecution team approach for cases involving sexual crime. It has been signed by the Head of PPS Serious Crime Unit and the Head of PSNI Public Protection Branch.
- The PPS have had a Gateway Team in place since September 2019 and quality checks 100% of cases received in Serious Crime Unit against the agreed file build standards. Imminently, this will be supplemented by two PSNI Detective Inspectors from Public Protection Branch, who will provide quality assurance checks prior to submission of a file to the PPS.
- The Local Operating Agreement mandates for a monthly Gateway meeting, for which a Current Situation Report is produced. The meeting addresses outstanding quality issues, considers potential improvements and deals with operational issues arising. Over the last two months August to September 2020, significant improvements have been made with 70% and 60% of files meeting the standards set in each month respectively.

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- The team are currently working on disclosure arrangements. At present there are three main areas of development:
 1. Disclosure management documents;
 2. Consent forms (third party and digital); and
 3. Disclosure Review Panel.
- The team are in advanced stages of working together to develop these concepts. Once completed, training will be rolled out amongst the teams to operationalise these arrangements and the monthly Gateway meetings will monitor and review improvements. It is anticipated that this will then result in a Memorandum of Understanding being signed between the PPS and PSNI, and inserted into the Local Operating Agreement.
- In the future, the team also plan to look at the expansion of the 'clinic model'. Both organisations have seen the benefit of the clinic model in increasing efficiency and reducing delay without compromising quality. Over 400 cases have now been handled under this process and no significant adverse issues have arisen, so the process has been well tested from both the PSNI and the PPS's perspective. The intention would be to look at how we can expand the clinic criteria beyond those cases where a 'no prosecution' decision is virtually inevitable because the witness has withdrawn their participation in the criminal justice process, to those cases where the witness is engaging but the available evidence is weak and a prosecution is highly unlikely. If such an expansion were to be successful, this would release resource for both organisations to focus on the more complex cases and those most likely to proceed to prosecution.

Inspectors' assessment

The CJI *Without Witness* report suggested that the following elements form part of the implementation plan⁴¹:

- 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 Forensic Science Northern Ireland 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.

CJI was provided with an action plan from the PSNI for the *Without Witness* inspection report which included the actions to be undertaken by the PSNI and the PPS in response to this recommendation. As outlined in the responses from the PSNI and the PPS there had been a significant amount of activity undertaken by the two organisations in response to this recommendation. Additionally the PPS provided a number of documents outlining the transformation plan for the Serious Crime Unit.

⁴¹ See paragraph 4.16 of CJI, *Without Witness: Public Protection I: A thematic inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland, November 2018*, available at <http://www.cjini.org/TheInspections/Inspection-Reports/2018/October-December/Sexual-Violence>

This was co-ordinated by a Programme Board, chaired by the Senior Assistant Director for Corporate Services, which commenced its work in May 2019. This transformation plan arose from the review of the Serious Crime Unit undertaken by the Business Consultancy Service (as outlined in Strategic Recommendation 1) but, as highlighted previously, was complementary to the findings of CJI's inspection, particularly in relation to this recommendation. The work of the Programme Board concluded in July 2020.

It should be noted at this stage that neither the action plan provided by the PSNI nor the transformation plan provided by the PPS highlighted the specific points outlined at paragraph 4.16 of CJI's *Without Witness* report as listed. Instead the PSNI and the PPS joint action plan covered in broader detail the work undertaken to address the recommendation (see organisational response) and the PPS transformation plan responded to the individual recommendations of the Business Consultancy Service review. The recommendations of the Business Consultancy Service provided advice as to how the PPS could address the recommendations of the CJI report, the *Starmer Review*⁴² and the *Gillen Review*⁴³.

The ultimate assessment of improvements in the areas listed however can only be achieved by a review of police investigation files and prosecution files. The assessment of this recommendation in the Follow-up Review is therefore based on whether the PSNI and the PPS have demonstrated that they have developed implementation plans which aim to enhance the prosecution team approach overall and the issues highlighted in the results of the case file review for CJI's inspection.

A Local Operational Agreement between the PSNI Public Protection Branch and PPS Serious Crime Unit was agreed in April 2020 to '*support the production of prosecution case files to the standard required to bring a complaint to decision*'.⁴⁴ This described the required file contents for various file types submitted by the police to the PPS as well as outlining the file quality standard check process (to be performed by the new Serious Crime Unit Gateway team) and the different outcomes arising from these checks. However it did note that '*General requirements for the formatting and presentation of files sent to the Serious Crime Unit by Public Protection Branch have not been agreed but will be included in later versions of the Local Operating Agreement*'. A Gateway Project Team was established between the PPS and the PSNI in August 2019. Minutes provided from recent monthly meetings demonstrated how discussions included general issues in relation to the operating agreement as well as flagging up issues with specific cases which required action. Quarterly strategic meetings were also held between the PSNI and the PPS.

The PPS transformation plan introduced a number of changes to the work of the Serious Crime Unit which can be summarised as follows:

42 *Starmer, K. & O'Byrne, K. Independent review of the prosecution of related sexual abuse and terrorism cases - report, May 2015*, available at <https://www.ppsni.gov.uk/sites/ppsnifiles/publications/StarmerReview.pdf>

43 *Gillen Review, Report into the law and procedures in serious sexual offences in Northern Ireland, May 2019*, available at <https://www.justice-ni.gov.uk/publications/gillen-review-report-law-and-procedures-serious-sexual-offences-ni>

44 PSNI and PPS, *Local operational agreement between Police Service Of Northern Ireland Public Protection Branch and the Public Prosecution Service for Northern Ireland Serious Crime Unit, April 2020*. Internal document.

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- the establishment of a 'Gateway Team' for the Serious Crime Unit comprising a Senior Public Prosecutor, Public Prosecutor, administrative support staff, the PSNI Liaison Officer and a newly appointed Engagement Manager to address case quality and acceptance by assessing all incoming files for completeness, before allocation to prosecutors and referring cases back to the PSNI as appropriate;
- deployment of an Engagement Manager within the Serious Crime Unit to undertake stakeholder engagement and standards management alongside partner organisations;
- engagement with the PSNI to agree operating protocols;
- agreement of quality standards for Achieving Best Evidence interviews with the PSNI;
- reorganisation of the Serious Crime Unit to regionally-based allocation (each team of Senior Public Prosecutors and Public Prosecutors responsible for files from a particular PPS region to enable relationships to be built with the PSNI officers from Public Protection Branch in those areas);
- move to a concept of 'case ownership' in respect of delegation of work activity from Senior Public Prosecutors to Public Prosecutors;
- the establishment of regular liaison meetings with the PSNI's Rape Crime Units and Public Protection Units with a view to improving standards and quality;
- the allocation of administrative support to the Serious Crime Unit with additional support provided for administrative tasks and case preparation;
- process improvements for disclosure and evidence management processes to enhance prosecution processes;
- improvements in information technology and communication links;
- development of an agreed approach within the Serious Crime Unit to the victim/complainant to ensure the best possible approach to victim engagement and standardise the approach to victims/complainants; and
- a review of prosecutor performance measurement with a focus on quality.

In addition to this work the PSNI also appointed two Gateway Inspectors in October 2020, who were focused on file standards and disclosure practices. The PPS reported that the file 'failure' rate (where a police file was sent back to the police rather than allocated to a Prosecutor as one of the documents on the agreed checklist was not available or readable on the file) had reduced from around 70% to 14%. It was confirmed that the PPS and PSNI met every month to review outstanding information. The focus was currently on quantitative information (whether all documents were included and if the Investigating Officer had completed all the actions on the checklist) but it was hoped that eventually there would be more of a focus on the quality of the information provided. Minutes of the PSNI and the PPS working group also noted that sharing of decision information requests in this way had led to reductions in the time information was outstanding on the files. The working group were, at the time of the update provided, working on disclosure arrangements with a view to a Memorandum of Understanding being developed to be inserted into the Local Operating Agreement. The PPS advised that this action would be taken forward by the senior Serious Crime Unit and Public Protection Branch group to be addressed once the PPS Sexual Offences Policy had been revised and the proposal for a five year Sexual Offences Strategy had been fully scoped.

The PSNI was also undertaking a new pilot process in the Southern Health and Social Care Trust area in relation to Achieving Best Evidence interviews, in response to one of the *Gillen Review* recommendations. In this pilot two trained Police Officers were undertaking all Achieving Best Evidence interviews alongside specialist social workers, which CJI were told had led to an increase in quality as well as positive feedback from the officers involved. The PSNI was also undertaking a review of the police estate in relation to the provision of facilities for Achieving Best Evidence interviews and potential options for rationalisation. A remote evidence centre was being piloted and the use of The Rowan Sexual Assault Referral Centre as a venue for interviewing victims was being considered.

The PPS also reported that the work of the transformation plan had given them a better insight into the most appropriate model for the Serious Crime Unit and the resources required, which had been lacking when the Unit was first established. A visit had been undertaken to a CPS RASSO team in August 2019, which had provided some further detail around timeliness for decisions which the PPS said they could aim for in future.

The PPS had also considered in May 2019, the extension of Sexual Assault Advice Clinics to encompass files where the victim was engaged but the state of the evidence is such that the police had recommended no prosecution. A study of these types of files was undertaken. It was concluded that the Sexual Assault Advice Clinic model, as already established, was not the appropriate method to direct cases of this type. It was proposed instead that certain, limited, types of cases where police recommended no prosecution could be submitted in a streamlined way, to an agreed file build.

As is apparent from the update and documentation provided by the PSNI and the PPS to CJI, there has been a significant amount of activity undertaken to improve the working relationships between the two organisations and the quality of files submitted, thereby reducing avoidable delay. A substantial amount of the work undertaken by the PPS arises from the specific recommendations of the Business Consultancy Service review, however, it appears to have supported the principle of this recommendation to further improve the prosecution of cases by the Serious Crime Unit.

As noted previously, CJI highlighted specific areas of practice which needed to be improved, which have not yet featured in the PSNI and the PPS plans. The inspection highlighted areas identified from the case file reviews which required a particular focus by the organisations in order to improve the quality of the case prior to and after the decision to prosecute. To date the action plans developed by the organisations are not sufficiently comprehensive to address these issues in detail. With the current focus being on improving the quality of the investigation file produced by the police and on the disclosure processes, it maybe that these issues need to be addressed in the next phase of the work and included in the subsequent version of the Service Level Agreement.

CJI welcomes the partnership work of the PSNI and the PPS in aiming to improve the areas of working relationships, quality standards, operational processes and disclosure but believes there is still more to be done to enhance the prosecution team approach

further. The ultimate assessment of this work will be in the quality of files and disclosure processes, improvements in timeliness and in the views of victims of sexual offences. CJI is pleased there has been positive action taken by the organisations in striving to meet these aims but Inspectors emphasise the need to address the specific issues raised in the report and implement agreed recommendations, that still need further attention. This recommendation is therefore assessed to be partially achieved.

STRATEGIC RECOMMENDATION 3

The Department of Justice 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*).

Status: Not achieved.

ORGANISATIONAL RESPONSE

DoJ Update - September 2020

- *Work against these recommendations has been paused temporarily (particularly given that there is no opportunity to legislate on this within this mandate) in order to focus resource to take forward urgent work on legislative proposals in relation to the rough sex defence, with a view to inclusion in the Miscellaneous Provisions Bill.*

Inspectors' assessment

The DoJ had commissioned Professor Cheryl Thomas, a Professor of Judicial Studies at University College London Faculty of Laws⁴⁵, to undertake a piece of research in relation to juries. However, as outlined in the DoJ response above, this work has been paused to give way to the 'rough sex' defence and advised there would not be an opportunity to legislate on this issue during this Northern Ireland Assembly mandate. Inspectors therefore consider this recommendation as not achieved at this stage.

OPERATIONAL RECOMMENDATION 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*).

Status: Achieved.

45 See <https://www.ucl.ac.uk/laws/people/prof-cheryl-thomas>

ORGANISATIONAL RESPONSE

PSNI update – October 2020

- *In respect of child abuse, the Public Protection Branch has adjusted the service delivery model with the creation of a Historical Child Abuse Team. This has resulted in a dedicated team to progress investigations where the victim reports as an adult. Previously, these investigations remained with the child abuse investigation units creating significant demand. Since the formation of this team workloads have reduced within the child abuse units by 44% on the same period last year, and there has been a reduction in investigation times for historical investigations by 32%.*
- *There is a new bespoke process for recruitment of child abuse trainee detectives which has resulted in significant numbers of applicants from across the Police Service. This process has seen an increase in the success rate of officers passing the National Investigator Exam which has risen from approximately 20% to 80%.*
- *Public Protection Branch has a dedicated human resources lead at Detective Superintendent rank and a monthly human resources forum is chaired by the Head of Public Protection. Resourcing across teams is under regular review in conjunction with a dedicated human resources partner allocated to Public Protection Branch.*
- *The roles of Domestic Abuse and Adult Safeguarding were also carried out by dedicated Domestic Abuse and Adult Safeguarding Officers prior to this report. By the end of 2020 these roles will be split, with dedicated officers for Domestic Abuse, and separate teams for Adult Safeguarding, ensuring more dedicated expertise is in place in dealing with these important areas of business.*

Inspectors' assessment

Since CJI's *Without Witness* inspection the Public Protection Branch had moved from within the PSNI's Crime Department to a newly established Community Safety Department. The Head of Public Protection Branch described this as a positive development which had assisted in developing links with support hubs.⁴⁶

The PSNI described how, since CJI's inspection, they had undertaken a more proactive and demand led approach to the management of resource within the Public Protection Branch ('the Branch'). At the end of 2019 a human resources forum had been established to meet every month to consider demand and operational readiness. This had given Senior Management of the Branch an improved focus on the resources available and enabled refinements to be made across all areas of public protection work. At the time of this Follow-up Review there were 350 staff in the Branch with only 10 vacancies. Retention, which had consistently been an issue in public protection work, was reported to be improving.

The PSNI paper entitled *Investigative and Resource Distribution Plan for Child Abuse, Public Protection Branch, C7* included a number of options to address the management of demand and caseload within child abuse units across the Public Protection Branch.

⁴⁶ Support hubs are a multi-agency initiative designed to help vulnerable people get access to the right support, at the right time, from the right organisation in their local area. See <https://www.nidirect.gov.uk/articles/support-hubs>

A working group was established in August 2019 to take forward one of these options to establish a historical child abuse team. In September 2019, the PSNI developed a specific proposal paper to outline the rationale for this team and how it could be established.⁴⁷ This paper, provided to CJI, outlined the existing resource, caseloads, findings from dip sampling of cases (considering timescales, outcomes etcetera) and contrasted the investigative methods for current and historic cases. Officers reported a different victimology for those who experience historical abuse, for example, they were more likely to suffer from anxiety and need mental health support. A potential new model was outlined with associated resources, caseloads and locations of the team which it was proposed to be implemented by 1 December 2019 and evaluated after a year.

The PSNI advised that, since the formation of specific historical child abuse investigation units, the workloads had reduced within the child abuse investigation units by 44% on the same period last year (Police Officers were generally responsible for around 15 cases rather than 30 as at the time of CJI's inspection), there had been a reduction in investigation times for historical cases by 32% and Police Officers reported feeling healthier. Specific training had been provided for historical abuse Investigation Officers. Stakeholders were positive about the concept of splitting the two teams, as they recognised that victims of historical abuse were often suffering the greatest delays in having their case investigated, but they had not yet seen the benefits of this approach in the feedback received from victims.

Senior Management of Public Protection Branch had given further consideration to the recruitment and retention of Police Officers into the Branch. Previously Officers had been placed into public protection roles as Trainee Investigators who wished to be an Investigator but did not necessarily have an interest in child abuse or rape crime investigations. This had led to high levels of turnover with Officers leaving once they had completed their training. Recruitment into the Branch had, since April 2020, been on the basis of officers expressing an interest in working in these types of roles rather than via a general selection process for those wishing to become a Detective. In addition, a new bespoke process for the recruitment of child abuse Trainee Investigators had been developed which had attracted significant numbers of applicants from across the PSNI. This process enabled Police Officers to work in child abuse units as a Trainee Investigator, assisted by a peer mentor, as well as receiving study time prior to undertaking their National Investigator Exam (rather than requiring trainees to pass the exam before being placed in the role). This had led to an increase in the success rate of officers passing the National Investigator Exam from approximately 20% to 80%.

In January 2020 an options paper had also been developed for the Domestic Abuse and Adult Safeguarding teams. This included four possible options relating to the adult safeguarding investigative discipline within the Public Protection Branch. The paper reported that adult safeguarding work accounted for about 20% of overall demand from the Domestic Abuse and Adult Safeguarding teams.

⁴⁷ PSNI, *Proposal to create historical child abuse team - C7 Public Protection Branch, September 2019. Internal document.*

The paper considered current and future demands, the operational context (including existing staffing), evidence from previous inspections and strategic drivers for change. It outlined four options for the operational model and concluded that the most appropriate option was to internally restructure the existing teams and return to separate roles for domestic abuse and adult safeguarding. This proposal was implemented in December 2020. To support the adult safeguarding roles a monthly report was produced on victim and Police Officer locations. This would enable patterns and trends to be identified in respect of adult safeguarding reports, so that proactive action could be taken if there was an increasing number of calls at facilities where individuals requiring adult safeguarding resided.

Senior Management of the Public Protection Branch advised that they intended to bid for additional resources for the Branch early in 2021 but that the work completed to date would ensure that this was a much more informed process using management data available on existing resources and current and predicted demand.

CJI welcomes the focus that the PSNI Public Protection Branch has placed on managing the resources available across the various disciplines of public protection work. The documentation provided to Inspectors demonstrates the focus on using quantitative and qualitative management information to ensure the resource distribution is proportionate and sufficient to address demand. The structural changes to the teams investigating current and historical child abuse and domestic abuse and adult safeguarding is reflective of the use of this demand and resource information. It also considers the differing needs of victims of each type of offence and how they can best be supported by skilled Police Officers focused on this type of work. In addition, the PSNI has considered the stressful and challenging nature of much of the public protection work and how it can better support Police Officer wellbeing. The resourcing of the Branch will require ongoing oversight and focus, however, Inspectors assess this recommendation to be achieved.

OPERATIONAL RECOMMENDATION 2

The Police Service of Northern Ireland and the Public Prosecution Service for Northern Ireland should fully engage in the Northern Ireland Courts and Tribunals Service 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*).

Status: Achieved.

ORGANISATIONAL RESPONSE

PPS update - October 2020

- *The DoJ Digital Strategy has been approved. The project to share information digitally was approved as part of this strategy and the project was split into three phases. Phase 1 (PSNI to PPS Sharing) is now live as of 6 June [2020] and a joint Service Level Agreement has been signed off at senior level.*
- *Work on Phase 2 (PPS display at court) is ongoing. The NICTS have paused their in-court technology project due to the COVID-19 outbreak and therefore the 'go live' date for Phase 2 is likely to be pushed back to early 2021. In the interim, the PPS and the PSNI are quality assuring Phase 1 processes/compliance against the agreed Service Level Agreement.*

PSNI update – October 2020

- *The Police Service is working in collaboration with partners across the criminal justice system including the PPS and the NICTS to ensure that the required technologies work effectively with each other.*
- *In June 2020 the PSNI and the PPS commenced Phase 1 of the Digital Evidence Management System, overseen by the DoJ, which is aimed at making the sharing of digital evidence more effective and efficient throughout the criminal justice system. The PSNI now share Body-Worn Video, CCTV, photographs and 999/101 calls digitally through a cloud-based system, enabling this information to be provided more quickly. This assists with timely prosecutorial decisions to be made by the PPS and speeds up justice for victims of crime. This is particularly relevant in cases involving domestic abuse where such evidence is particularly powerful in conveying the aftermath and raw emotion of such incidents. The next phase of this project will see the shared digital evidence being streamed from PPS Prosecutors in courts.*

Inspectors' assessment

The DoJ *Digital Justice Strategy for 2020-25* ('the Strategy') was published in July 2020, following approval from the Criminal Justice Board.⁴⁸ The Strategy covered the work of the police, prosecution and courts and stated that it was not intended to replace the digital strategies of the individual organisations but to build on them and optimise collective efforts. The Strategy identified priorities aimed to improve the experience of people in contact with the justice system under three themes of digital communication and skills; a more effective justice system; and innovation. For the first year of the Strategy, it was intended that justice organisations would focus on delivering collaborative projects to improve the effectiveness and efficiency of the justice system.

Under theme two ('a more effective justice system') one of the two priorities was in relation to digital evidence sharing. The strategy indicated that by March 2022 it was intended that the Criminal Justice Board would:

⁴⁸ DoJ, *Digital justice strategy 2020-25, July 2020*, available at <https://www.justice-ni.gov.uk/publications/digital-justice-strategy-2020>

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- deliver an electronic solution for the sharing of digital evidence between the PSNI and the PPS;
- have the facility to display this evidence in courts; and
- have rolled out this facility to the legal profession and defendants.

As noted in the organisational responses Phase 1, the delivery of an electronic solution for the sharing of digital evidence between the PSNI and the PPS, commenced in June 2020. CJI were provided with project management documentation which evidenced how the project had been scoped, developed and delivered as well as the business case used for the procurement of the 'Box' system for external file sharing. This system enabled the PSNI to transfer digital evidence, collected by Police Officers in support of a case file, to the PPS. A Service Level Agreement was signed in June 2020 between the PSNI and the PPS for the sharing of digital evidence which included details of the arrangements for the sharing, use and retention of multi-media evidence. These related to specific pieces of evidence such as body-worn video, closed circuit television footage, recordings of calls to the police via the '999' and '101' systems and photographs. It did not however include video footage from Achieving Best Evidence interviews at the time of its commencement.

Despite some initial difficulties reported in the first month the feedback from both the PSNI and the PPS about the introduction of Phase 1 was positive. In CJI's *No Excuse* report⁴⁹ the production of body-worn video footage delivered on discs by Police Officers to the PPS was highlighted as a particular issue and the digital transfer of such evidence will clearly lead to a reduction in resource requirements for the police.

Phase 2, the facility to display this evidence in courts, was well progressed at the time of this Follow-up Review. In this phase it was intended that prosecutors would be able to play multi-media evidence in court via their electronic case file (on a tablet). This would link with new updated court technology. Similarly to Phase 1 CJI were provided with project management documentation and minutes of meetings from the PPS, demonstrating how the work had progressed. It was intended that the 'go live' date for this phase would be October 2020 but this had been affected by the impact of the COVID-19 pandemic on the NICTS, with a pausing of their work to implement the necessary technology into courts.⁵⁰ Inspectors were advised that the introduction of Phase 2 was likely to occur early in 2021, with the PPS ready for its commencement.

The final stage of the project, Phase 3, would be the facility to share digital evidence with the community of defence solicitors and counsel as well as defendants. Inspectors were advised that this would require a difficult and time-consuming process of registering solicitors' firms, individual solicitors and barristers. As noted in the DoJ Digital Justice Strategy it was intended that this phase was to be completed by March 2022.

49 CJI, *No Excuse: Public Protection II: A thematic inspection of the handling of domestic violence and abuse cases by the criminal justice system in Northern Ireland, June 2019*, available at <http://www.cjini.org/TheInspections/Inspection-Reports/2019/April-June/Domestic-Violence>

50 An update by the Head of Information Services Division on the DoJ intranet site at the end of January 2021 confirmed that, at that time, technology had been upgraded in around 30 courtrooms, approximately a third of the courts estate. DoJ, *Modernising DoJ, 28 January 2021*. Internal intranet article <http://nics.intranet.nigov.net/justice/news/modernising-doj>

The substantial work that had gone into both Phases 1 and 2 of the digital evidence sharing project demonstrates what can be achieved when organisations collaborate towards a common goal. It is envisaged that there will be significant benefits arising from this work, including a reduction in avoidable delays, improved quality of evidence and resource savings in the reduced need for operational staff to undertake the preparation, delivery and scanning of paper-based evidence for case files.

CJI considers, based on the readiness of the PPS to implement Phase 2 once the court estate can facilitate roll out, this recommendation to be achieved. Inspectors would encourage the PSNI and the PPS to continue to strive for solutions which enable the sharing of digital footage from Achieving Best Evidence interviews, as well as to support the DoJ and the NICTS in the delivery of the remainder of the Strategy, particularly sharing digital evidence with the legal profession and defendants.

OPERATIONAL RECOMMENDATION 3

The Public Prosecution Service for Northern Ireland 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 Public Prosecution Service should develop a quality assurance process to assess compliance with this guidance (paragraph 4.26).

Status: Partially achieved.

ORGANISATIONAL RESPONSE

PPS update - October 2020

- As outlined above, Staff Instruction No. 6 of 2019 set out detailed procedures for the recording of the prosecutor's rationale where a decision is taken to prosecute on indictment. A Quality Assurance exercise has now been completed by the PPS Policy and Information Unit and is awaiting review by the Service's Policy and Quality Committee later this month. The work of the Committee has been interrupted due to the pandemic.

Inspectors' assessment

Staff Instruction No. 6 of 2019 'Recording of Reasons for Indictable Decisions' was issued by the PPS Policy and Information Unit in March 2019. This noted the background to the Service Instruction being the Starmer Review⁵¹ as well as CJI's follow-up of that review⁵² and CJI's *Without Witness* report.⁵³ The rationale for the introduction of the recording of reasons came from reviews relating to sexual offences, however, the Staff Instruction applied to all types of cases. The guidance noted a number of clear advantages in recording the reasons for a decision to prosecute but also noted that *'it is recognised that the benefits of this approach must be balanced against the potential impact on finite prosecutor resources.'*⁵⁴ It had therefore been decided by the PPS that the formal requirement to record reasons for a decision to prosecute should be limited to indictable decisions only; applying to all indictable decisions taken from 1 April 2019.

The Staff Instruction then outlined the types of issues which should be recorded by the prosecutor, such as the reason why it was believed there would be a reasonable prospect of conviction, the selection of offences and charges, defendants, legal issues and applications, victims, public interest issues and ancillary orders. There was also confirmation of where the note should be recorded on the PPS case management system. It was noted that a quality assurance exercise would be conducted in late 2019 or early 2020 to ensure compliance.

A quality assurance exercise was carried out by the PPS Policy and Information Unit early in 2020, with a report drafted in March 2020. The quality assurance exercise considered all cases between 1 April 2019 (when the Staff Instruction became effective) and 8 January 2020 to assess the levels of recording the rationale for the decision. It was found that rationale for the decision was recorded in just under two-thirds of cases (63.4% overall), although this was recorded correctly in the location specified in the Staff Instruction (as a 'Note to Counsel') in only 27% of cases. Further examination of a sample of files where there was no specific 'Note to Counsel' identified the rationale for the decision was contained in a range of differently described file notes; 42 in total. It was also noted that the detail recorded on the files varied significantly. Where there was a rationale recorded, this ranged from a few lines to much fuller reports, although in most cases this made reference to the evidence supporting the charge or why the case was being dealt with on indictment.

As a result of this quality assurance exercise it was recommended that the recorded reasons for the decision or 'Note to Counsel' was given a dedicated tab on the PPS case management system with completion made mandatory in all indictable decisions.

51 Starmer, K. & O'Byrne, K. *Independent review of the prosecution of related sexual abuse and terrorism cases - report*, May 2015, available at <https://www.ppsni.gov.uk/sites/ppsni/files/publications/StarmerReview.pdf>

52 CJI, *Review of PPS response to the review of related sexual abuse and terrorism cases*, October 2017, available at <http://www.cjini.org/TheInspections/Inspection-Reports/2017/October-December/The-Starmer-Review>

53 *Without Witness: Public Protection I: A thematic inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland*, November 2018, available at <http://www.cjini.org/TheInspections/Inspection-Reports/2018/October-December/Sexual-Violence>

54 PPS, *Staff instruction No. 06 of 19*, March 2020. *Internal document*.

This recommendation was accepted by the Policy and Quality Committee in December 2020 who directed that work begin to implement this change.

CJI's recommendation included that the review note should be '*proportionate to the complexity of the facts, issues and risks in the case*'. It was therefore anticipated that on this basis a review note would be implemented for all types of case. Inspectors were of the view that even summary cases destined for the Magistrates' Court required an appropriate level of rationale as to the decision recorded, providing information for the Prosecutor at court, the police and communication with victims.

This recommendation arose from issues identified in the file reviews conducted by CJI and colleagues from Her Majesty's Crown Prosecution Service Inspectorate of both sexual offences and offences with a domestic motivation. Domestic related offences are mainly heard in the Magistrates' Court, yet the decision whether or not to prosecute can be a difficult one. In these cases the Prosecutor, when applying the Test for Prosecution, is required to consider the evidence available, the risks and potential for harm to the victim and, in many cases, the wishes of the victim when they have withdrawn their support for the case.

In CJI's *No Excuse* report, an example was provided of a case heard in the Magistrates' Court where the Court Prosecutor (who was not the Directing Officer) was advised by a Senior Prosecutor to offer no evidence when the victim did not attend court, despite a note on the file clearly showing that the case was to proceed on the admissions of the defendant alone. The report noted: '*It must be assumed therefore that they did not expect to find a review note on the file, endorsing the decision to continue even in the absence of the victim's evidence, so did not think to check for one. This case clearly illustrates the implications of a widespread lack of record keeping.*'⁵⁵

Inspectors welcome the issuing of this Staff Instruction within the timeframe outlined in the *Without Witness* report recommendation as well as the quality assurance exercise to assess compliance. Inspectors remain optimistic that the identified process improvements will assist in enhancing compliance further. However it is disappointing that a decision has been taken to limit the scope of the Staff Instruction only to indictable cases, given that this is an issue CJI has raised in previous inspections of the PPS across many types of case. It is hoped therefore that, once there is greater compliance with the Staff Instruction, the scope of the Staff Instruction will be widened further to encompass summary cases, not least those of a potentially complex nature such as domestic offences. This recommendation is therefore considered to be partially achieved at this time.

55 See case example 7, page 78 in CJI, *No Excuse: Public Protection II: A thematic inspection of the handling of domestic violence and abuse cases by the criminal justice system in Northern Ireland, June 2019*, available at <http://www.cjini.org/TheInspections/Inspection-Reports/2019/April-June/Domestic-Violence>

OPERATIONAL RECOMMENDATION 4

The Public Prosecution Service for Northern Ireland should undertake further work within six months of this report to fully deliver the standards contained in the Victim Charter and in the Public Prosecution Service 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).

Status: Not achieved.

ORGANISATIONAL RESPONSE

PPS update - October 2020

- *The first meeting of the PPS Stakeholder Engagement Forum, chaired by the PPS's Senior Assistant Director for Regional Prosecutions, took place on 29 January 2020. It was attended by a number of representatives from key organisations and stakeholders, including the Commissioner for Victims and Survivors and the Chief Executive of Victim Support Northern Ireland.*
- *Details of the Terms of Reference were shared and discussed. The next meeting was due to take place in April but this was suspended as a direct result of the COVID-19 pandemic.*
- *A further meeting of the Stakeholder Engagement Forum is scheduled over the coming weeks.*
- *There is ongoing work with Victim Support Northern Ireland to ensure the quality and consistency of letters sent to all victims and witnesses.*
- *It should also be noted that the Victim and Witness Care Unit partners have committed to the establishment of a joint working group to examine future Victim and Witness Care Unit modelling, with a focus on enhanced provision of care to victims and witnesses. This follows on from a recommendation by CJI in their recent report *The Care and Treatment of Victims and Witnesses by the Criminal Justice System in Northern Ireland*. Work in this area has however been delayed due to the pandemic.*

Inspectors' assessment

Inspectors were provided with a copy of the Terms of Reference for the Stakeholder Engagement Forum which was established in December 2019. The first aim of the Forum was noted as being to '*articulate the views and experiences of stakeholders in respect of the delivery of PPS services*'.⁵⁶ The Terms of Reference indicated that a range of organisations across the broad spectrum of stakeholders were represented, including those working with victims and survivors of sexual and domestic violence and abuse such as Nexus, Women's Aid, Victim Support Northern Ireland and The Rainbow Project. The Terms of Reference also indicated that three meetings would be held per year.

⁵⁶ PPS, PPS Stakeholder Engagement Forum - Terms of Reference, December 2019. Internal document.

Minutes of the first meeting held in January 2020, provided to CJJ, outlined that this meeting focused on the PPS website and its accessibility for victims and the public. As noted in the organisational response, the meeting due to be held in April 2020 was suspended due to the COVID-19 pandemic. Inspectors were advised on conclusion of the fieldwork for this Follow-up Review that a meeting was to be held on 4 February 2021. While the PPS note the commitment of partners to support them in their work in response to the CJJ report on the care and treatment of victims and witnesses,⁵⁷ this work has also been impacted by the pandemic. This recommendation can therefore only be assessed as not achieved.

OPERATIONAL RECOMMENDATION 5

Once direct transfer to the Crown Court is established for murder and manslaughter cases, the Department of Justice 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).

Status: Partially achieved.

ORGANISATIONAL RESPONSE

DoJ update - October 2020

- Plans to introduce the draft Committal Reform Bill have been delayed due to coronavirus. However, the Criminal Justice (Committal Reform) Bill is now with the Minister, awaiting approval from the Northern Ireland Executive to introduce it to the Assembly. Amongst other provisions, the Bill seeks to remove oral evidence pre-trial and broaden the list of offences to be included in the first phase roll out of direct committal to all offences that are triable only on indictment. This provision is relevant to adults and youths and includes a number of serious sexual offences.

Inspectors' assessment

The Criminal Justice (Committal Reform) Bill ('the Bill') was introduced into the Assembly on 3 November 2020. The Bill passed Second Stage on 16 November 2020 and the Committee Stage commenced on 17 November 2020. The Committee for Justice requested views and comments from stakeholders between November 2020 and January 2021.

⁵⁷ CJJ, *The care and treatment of victims and witnesses by the Criminal Justice System in Northern Ireland, July 2020*, available at <http://www.cjini.org/TheInspections/Inspection-Reports/2020/July-September/Victims-Witness>

The draft Bill aimed to meet the DoJ commitments made in various reports such as CJI's *Without Witness* report, *Fresh Start*⁵⁸, the *Gillen Review*⁵⁹ and *New Decade, New Approach*⁶⁰ and therefore had two main aims. Firstly it planned to remove the need for oral evidence pre-trial (given by the victim or witness at the committal hearing in the Magistrates' Court) and secondly, to introduce more fundamental reforms to the committal process by amending the Justice Act (Northern Ireland) 2015. This included the expansion of offences to be included in the first phase of the direct committal roll out process from murder and manslaughter (the offences which were specified in the 2015 Act) to all offences which are triable only on indictment. This included, amongst other offences, rape and other serious sexual offences.

The list of offences would therefore encompass some offences, which would be classed as child abuse offences, that were triable only on indictment. However, it would not cover the range of offences that were triable either way, such as offences against either adults or children (such as sexual or indecent assault) or those specific to children (such as causing or inciting a child to engage in sexual activity or gross indecency with or towards a child).

Despite this Inspectors believe that the removal of the need for oral evidence pre-trial will address the spirit of this recommendation by ensuring that child victims (or those who suffered abuse as a child but are reporting as an adult some years later) will not be required to provide their evidence in court twice, thus potentially re-victimising them further.

Inspectors welcome the work on this recommendation and, given the remaining work to be done to ensure its passage through the Northern Ireland Assembly, assess it to be partially achieved. The DoJ advised that a number of operational projects need to be undertaken across the criminal justice agencies in relation to information technology, legal aid and business change prior to implementation. Inspectors would hope that the Bill will progress in accordance with the DoJ's proposed target for Act implementation in 2022.

OPERATIONAL RECOMMENDATION 6

The Public Prosecution Service 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).

Status: Not achieved.

58 *The Executive Office, A fresh start: The Stormont agreement and implementation plan, November 2015*, available at <https://www.northernireland.gov.uk/publications/fresh-start-stormont-agreement-and-implementation-plan>

59 *Gillen Review, Report into the law and procedures in serious sexual offences in Northern Ireland, May 2019*, available at <https://www.justice-ni.gov.uk/publications/gillen-review-report-law-and-procedures-serious-sexual-offences-ni>

60 *Northern Ireland Office, New decade, new approach, January 2020*, available at [2020-01-08_a_new_decade_a_new_approach.pdf \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/431112/2020-01-08_a_new_decade_a_new_approach.pdf)

ORGANISATIONAL RESPONSE

PPS update - October 2020

- Counsel are required to undertake mandatory training in key areas, including in the support of vulnerable witnesses.
- Key Recommendation 13 of the Gillen Review, multi-agency training, is currently being developed. The Gillen Strategic Training Group has met to develop a training strategy/plan to support increased awareness, sensitivity and handling of serious sexual offences cases.
- The PPS are the training lead with regard to several areas including previous sexual history and the law in relation to same. Training is also being developed with regard to challenging myths and stereotypes. When this training is ready it will be made available to all relevant groups, including outside counsel.

This work is ongoing.

Inspectors' assessment

This recommendation centred on the need to take steps to develop a more highly skilled and confident prosecution team with specific skills in sexual offences. The *Without Witness* report suggested that the following issues could feature in the action plan⁶¹:

- 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 and the instructions to Counsel.

The PPS Corporate Scorecard 2020-21⁶² included specific milestones in relation to an advocacy strategy under the area of operational delivery; Priority One '*supporting a safer community by providing an effective and high quality prosecution service*'.

The milestones to be achieved by the end of March 2021 were to:

- establish a rape sub-panel among junior Counsel;
- liaise with the Bar Library in their planning for accreditation for members in sexual offence prosecution; and
- provide ongoing training to the rape panel, and all senior Counsel involved in this work.

61 See paragraph 5.20 in *CJI, Without Witness: Public Protection I: A thematic inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland, November 2018*, available at <http://www.cjini.org/TheInspections/Inspection-Reports/2018/October-December/Sexual-Violence>

62 PPS, Corporate scorecard 2020-21, draft 4.0, June 2020. Internal document.

As part of the response to the *Gillen Review*⁶³ a 'Gillen Training Group' had been established. In addition Gillen Training Theme Working Groups were established in September 2020 to implement detailed recommendations arising from the multi-agency training needs analysis reports.⁶⁴ The groups were to be led by a representative organisation from the Gillen Training Group and would report back to this group. The working groups covered a total of 17 themes across a range of areas such as rape myths (led by the PSNI); previous sexual history (led by the PPS); disclosure management (jointly led by the PSNI and the PPS); understanding of issues affecting marginalised groups (led by Victim Support Northern Ireland); and children's rights/child protection (jointly led by the Bar and Law Society). This work would inform the considerations by the Gillen Training Group who would then seek sign off on final proposed learning frameworks from the Strategic Justice Group on Sexual Harm by March 2021.

Project management documentation from August 2020 provided to CJI indicated that a project map of the existing learning across the agencies was completed by May 2020 and a training needs analysis was completed for the 17 identified learning themes by August 2020. The PPS programme manager for this work confirmed that the proposed training would be available to all counsel but that at that stage a decision had not been taken as to whether or not the training would be mandatory for Counsel on the PPS panel⁶⁵.

From a victims' perspective one stakeholder noted that there had been vast improvements in the willingness of Counsel to meet victims prior to the trial in sexual offence cases. It was acknowledged that there was a desire to improve the approach to the use of Counsel but felt that this was not progressing quickly enough to meet the needs of victims.

The broader recommendations arising from the *Gillen Review* regarding training across the criminal justice system in relation to sexual offences will ultimately cover some of the training needs for Counsel raised by CJI in the *Without Witness* report. CJI acknowledges the need to avoid duplication of effort and the benefits of a multi-agency approach to training. It would have been hoped that the structures and actions developed in response to the *Gillen Review* could have explicitly demonstrated and transparently communicated how they aimed to address both the *Gillen Review* and CJI's inspection report recommendations in tandem. While the PPS Corporate Scorecard outlines specific work to be undertaken in relation to an advocacy strategy for prosecution Counsel involved in sexual offences cases, CJI was not provided with evidence as to how these milestones were specifically being taken forward, other than the information relating to the *Gillen Review*. This recommendation therefore cannot be considered to be achieved at this time as the key issues highlighted in the *Without Witness* report do not appear to have been addressed or included in plans developed in response to the *Gillen Review*.

63 *Gillen Review, Report into the law and procedures in serious sexual offences in Northern Ireland*, available at <https://www.justice-ni.gov.uk/publications/gillen-review-report-law-and-procedures-serious-sexual-offences-ni>

64 PPS, *Gillen Training Theme Working Groups: Terms of Reference, September 2020*. Internal document.

65 After the conclusion of the fieldwork the PPS advised a decision had since been made that it will be a prerequisite for panel Counsel to have completed particular training prior to accepting briefs in serious sexual offences cases.

CHAPTER 3: **CONCLUSION**

The period since the conclusion of the fieldwork of CJI's *Without Witness* report has been one of focus for the public, victim support organisations and the criminal justice system on sexual offences and the treatment of those involved in these types of cases.

High profile sexual offences cases, social media campaigns such as #IBelieveHer and #MeToo and the increased willingness of public figures across the world to speak out about sexual harassment and assault they had suffered sparked huge media coverage and public debate in Northern Ireland and beyond about consensual relationships and beliefs about sexual offences.

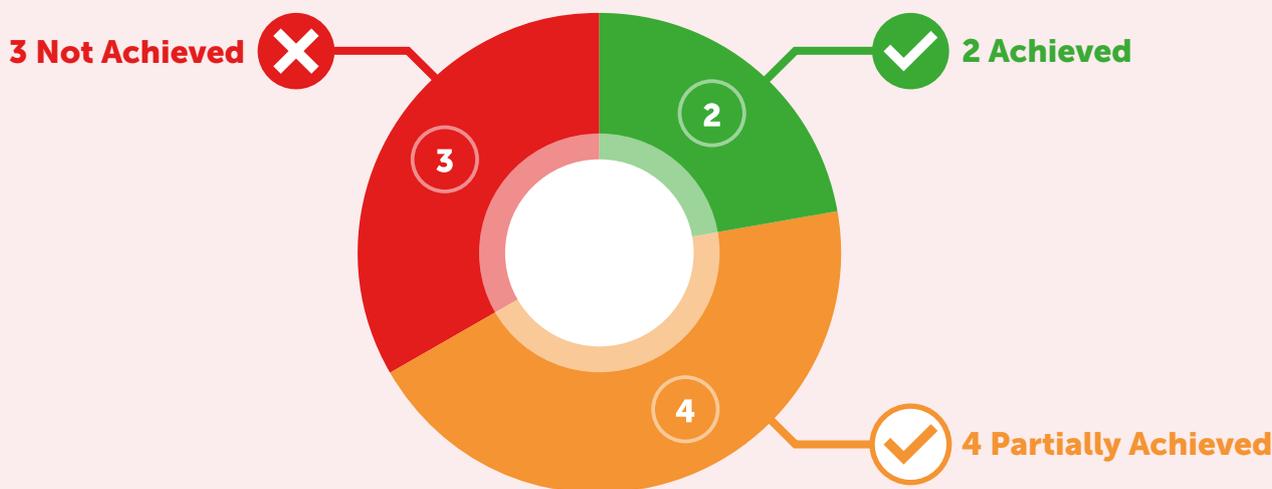
The *Gillen Review*⁶⁶ commissioned after a high profile case in Northern Ireland, was a response to concerns raised about how fit for purpose the criminal justice system was and how victims, witnesses and defendants were treated by those working in the system, the media and wider society. The substantial number of recommendations arising from the Gillen Review has resulted in a significant amount of work for the DoJ and criminal justice system organisations to implement the improvements required.

In addition, the *COVID-19* pandemic and the ongoing restrictions arising from it, while reducing the number of crimes reported to the police, have led to a backlog of sexual offences cases not progressing through the courts and reaching an outcome. This will be a continuing issue during 2021 and beyond and undoubtedly will cause further uncertainty, hurt and suffering for the victims in those cases.

The findings of this Follow-up Review to *Without Witness* shows a significant amount of activity by the organisations involved on some of the key recommendations made. Overall Inspectors have found that two recommendations have been achieved, four partially achieved and three not achieved.

66 Gillen Review, *Report into the law and procedures in serious sexual offences in Northern Ireland*, available at <https://www.justice-ni.gov.uk/publications/gillen-review-report-law-and-procedures-serious-sexual-offences-ni>

Graphic 1 CJI assessment showing progress against inspection recommendations



Changes have been made within the organisational structures of both the PSNI and the PPS for handling cases of sexual offences and there has been a significant amount of work done together to implement quality standards for the investigation and prosecution of offences and utilise technology that enables quicker and more efficient sharing of digital evidence.

Long awaited legislation to reform the committal process has been introduced to the Northern Ireland Assembly and it is hoped that the proposed changes will reduce the suffering experienced by victims and witnesses without affecting the right to a fair trial for defendants. The PPS has gone some way to evidencing an enhanced focus on sexual offence cases and in improving the record keeping on case files of the rationale behind the decision to prosecute.

Work by the DoJ to introduce legislation to provide for jury directions has not progressed as quickly due to a focus on other areas of legislative reform. Similarly improvements in the communication with victims of sexual offences and in the utilisation of counsel by the PPS have also not been achieved due to the impact of the COVID-19 pandemic and a focus on the recommendations of the *Gillen Review*.

As noted earlier in this report, the ultimate assessment of the success of the work undertaken to date will only be possible through a future inspection when cases involving sexual offences are reviewed and the views of victims about their experience of the criminal justice system are sought directly.

CJI hopes that the work that has been described in this Follow-up Review results in positive outcomes for the treatment of victims in these types of cases.

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