

Sexual Violence and Abuse

A follow-up review of inspection recommendations

October 2013

Criminal Justice Inspection
Northern Ireland
a better justice system for all





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List of abbreviations

CJI	Criminal Justice Inspection Northern Ireland
DHSSPS	Department of Health, Social Services and Public Safety
PPS	Public Prosecution Service for Northern Ireland
PSNI	Police Service of Northern Ireland
TI(s)	Trainee Investigator(s)



Chief Inspector's Foreword

Three years on from our original inspection, this short follow-up review in the main assesses the progress made by the Police Service of Northern Ireland (PSNI) and the Public Prosecution Service for Northern Ireland (PPS) in their response to our recommendations.

Tackling the significant under-reporting of sexual abuse and violence cases so that more incidents can be successfully investigated and prosecuted should be a priority for the criminal justice system and wider Government. Dealing effectively and appropriately with offenders and supporting victims through their trauma should be both a legal and moral priority for the whole of society.

The importance of the issue is now recognised in the Programme for Government 2011-15 and the opening of The Rowan is a significant achievement providing Northern Ireland with its own Sexual Abuse Referral Centre. Victim and Witness Care Units are being established across Northern Ireland and their full potential is also being developed.

This report found that significant progress has been made by the PSNI and the PPS, not only in terms of their partnership approach to investigations, but in the critical area of the care and treatment of victims and witnesses. However, we acknowledge that it will take time for the overall situation to improve, and it is only when you hear from victims and examine case files that you can accurately assess whether an improvement in outcomes has been achieved. To that end I intend to conduct a full thematic inspection of this issue in 2015.

This review was conducted by Rachel Lindsay, my sincere thanks to all who participated.



Brendan McGuigan
Chief Inspector of Criminal Justice in Northern Ireland
October 2013



Section



Follow-up review



CHAPTER 1:

Introduction



Background to the follow-up review

Criminal Justice Inspection Northern Ireland's (CJI's) full report 'Sexual Violence and Abuse' was published in July 2010. The inspection was conducted with the assistance of Her Majesty's Inspectorate of Constabulary and Her Majesty's Crown Prosecution Service Inspectorate who completed a file review of 100 rape cases. The report made 12 recommendations for improvement. The intention of this piece of work was to follow-up on progress against the recommendations with the PSNI and the PPS. The fieldwork for this inspection was conducted in tandem with a forthcoming follow-up review on 'Domestic Violence and Abuse'.

Changes since the 2010 inspection

Since the original inspection there have been a number of changes within the justice system and wider Government which impact on this area. In 2012 the first 'Tackling Domestic and Sexual Violence and Abuse' Joint Action Plan¹ was published to deliver on the objectives of the 'Tackling Violence at Home Strategy' (published October 2005) and the 'Tackling Sexual Violence and Abuse Strategy' (published June 2008). This therefore aligned actions to address both domestic violence and abuse, and sexual violence and abuse, and recognised the close links between these two types of crime. The Joint Action Plan fed into the 2011-15 Programme for Government² in relation to a key commitment to 'introduce a package of measures aimed at improving safeguarding outcomes for children and vulnerable adults' (Department of Health, Social Services and Public Safety (DHSSPS)). Priority Four

('Building a strong and shared community') of the Programme for Government also:

'...focuses on building relationships between communities, encouraging active citizenship, reducing the incidences, and impacts, of domestic and sexual violence and abuse, elder abuse and harm directed to other vulnerable groups, wherever it occurs and whoever is responsible...'

On 31 May 2012 the First Minister and Deputy First Minister announced an inquiry into historical institutional abuse in Northern Ireland. The terms of reference published for the inquiry stated its intention to examine if there were systemic failings by institutions or the State in their duties towards those children in their care, in Northern Ireland, between the years of 1922-1995. The inquiry is due to report by 18 January 2016 and, at the time of this follow-up review, had commenced its work. The inquiry has the potential to result in increased numbers of victims of abuse being reported to the PSNI (either by self-referral or by the inquiry itself) with subsequent investigation and potential prosecution.

In April 2013 CJI Inspectors visited the new Sexual Assault Referral Centre, The Rowan, located at Antrim Area Hospital. The development of the Centre was a key action of the Joint Action Plan. The project was a joint initiative between the PSNI and the DHSSPS providing 24-hour care and support, 365 days a year to victims/survivors and their families, where applicable, in the aftermath of a sexual assault. The Rowan was due to open and become formally operational in September 2013 although, at the time of this follow-up review, it had begun receiving all

1 See <http://www.dhsspsni.gov.uk/dom-vio-plan.pdf>.

2 See <http://www.northernireland.gov.uk/pfg-2011-2015-final-report.pdf>.



police referrals, where a forensic medical examination was required. Come September victims would be able to access the service directly or via a third party. The Rowan was an impressive facility and Inspectors hope that this will provide a more sensitive and holistic approach to victims as well as increasing the numbers of victims who are willing to report their experience to statutory agencies and reduce attrition rates.

In May 2012 the Minister of Justice announced that a pilot of a Victim and Witness Care Unit would commence in Autumn 2012. The pilot commenced in November 2012, was situated in the PPS's Belfast chambers and was a joint initiative between the PPS and the PSNI. The project was developed as a result of a number of factors, including a recommendation in CJI's 2011 report on 'The care and treatment of victims and witnesses in the criminal justice system in Northern Ireland.'³ A subsequent report on 'special measures'⁴ also made recommendations relating to the need for improvements in the treatment of vulnerable and intimidated witnesses. The Victim and Witness Care Unit project will inevitably impact on victims and witnesses of sexual offences and therefore Inspectors would hope that it will result in an improved service, reduce avoidable delay and subsequently help to lessen attrition rates.

The follow-up review

The purpose of this review was to assess the extent to which the PSNI and the PPS had implemented the recommendations made in the original 2010 report. As part of the review fieldwork CJI conducted an examination of relevant documentation, then undertook a series of follow-up interviews and focus groups with relevant individuals.

The following chapter looks at each of the 2010 recommendations, the PSNI and the PPS responses, as well as providing the Inspectors' independent assessment of progress. The final chapter draws conclusions about the progress to date, acknowledges the work that has taken place, and emphasises the need for work to continue in this area to address the issues raised in the original inspection report.

3 Available at <http://www.cjini.org/CJINI/files/c3/c3a0fb11-e230-4d73-97e9-002c200e277a.pdf>.

4 'The use of special measures in the criminal justice system in Northern Ireland', CJI, April 2012.

CHAPTER 2:

Progress against recommendations



Recommendation 1

The Northern Ireland Policing Board take cognisance of child protection issues during the planning process for the next Policing Plan in order to reflect the critical importance of this area of work.

Status: Achieved

Agency response

This recommendation has been brought to the attention of the Policing Board.

The Board has noted that not every priority can make it into the Plan itself but that other areas of police activity, especially those concerned with protective services, are being properly resourced and tackled. The 2010-13 Policing Plan does include reference to increasing the detection rate for the most serious sexual crime and this includes crimes involving children.

Recommendation assessed as completed and therefore no further action required.

Inspectors' assessment

The Northern Ireland Policing Board and PSNI Policing Plan 2012-15 included the following two priority initiatives which are relevant to this area:

'We will:

- *put into practice recommendations contained in the Policing Board's Human Rights Thematic Review for Children and Young People (and other reviews concerning vulnerable groups); and*
- *improve the service we provide to victims of domestic abuse, serious sexual crime and hate crime.'*

Subsequently the latest version of the Northern Ireland Policing Board and PSNI Policing Plan 2013-16 was published on the 28 March 2013. This included relevant outcome measures under the heading of 'Protective Policing' as follows:

Outcome	Indicator(s)	Measure
Improved service to vulnerable groups.	Service provided to vulnerable groups.	To improve the quality of engagement with, and service provided to, the following groups: <ul style="list-style-type: none"> • children and young people, in particular males aged 16-24 and children in care; • older people; • victims of domestic abuse; • victims of hate crime; and • victims of serious sexual abuse.
Enhanced confidence and reassurance to the public through our response to risk and harm.	<ul style="list-style-type: none"> • Serious crime; • critical incidents; • civil contingencies; • public order; and • Public Protection Arrangements for Northern Ireland. 	Provide an annual report and assessment of threat to the Policing Board.

Whilst these outcomes/measures do not specifically state 'child protection' Inspectors consider that this places an appropriate emphasis on the protection of all victims of sexual violence and abuse, including child victims.



Recommendation 2

Inspectors recommend that:

- in the short-term further action is taken to clarify and provide guidance for staff on the remit and responsibilities of the structures in place within the PSNI for dealing with sexual violence and abuse (Rape Crime Units, Child Abuse Inquiry Units, response officers), including on-call arrangements, in order to provide a better service for victims; and
- (from CJI inspection of Policing with the Community 2009) longer-term as a matter of urgency the PSNI develop and implement a service-wide call management strategy that reflects advances in technology to enable effective call handling in support of the delivery of Policing with the Community.

Status: Achieved

Agency response

A service procedure has been approved and was published on 21 April 2011. This outlines the standard required for police staff and police officers when dealing with a reported sexual crime.

Provision of a corporate Contact Management Solution (Contact Relationship Management) has now been completed. Contact Management is now provided from four centres operating to the same corporate standards, procedure and process. Contact Relationship Management was deployed to all Contact Management Centres throughout September/October 2011 to support identification of Vulnerable/Repeat Callers and those affected by anti-social behaviour. Contact Management Services are now based in four locations throughout the PSNI.

Recommendation assessed as completed and therefore no further action required.

Inspectors' assessment

Officers working in the areas of child abuse and rape crime confirmed that the allocation of calls had improved since the inspection and that there were fewer occasions that calls were forwarded to the wrong team. It was acknowledged by the PSNI that there would always be occasions where there was a lack of clarity as to which team should deal with a

reported incident, but this was reported as being less frequent as structures had been embedded.

The CJI inspection of the PSNI contact management, 'Answering the Call' published in June 2012 reported extensively on the new structures introduced within the PSNI to help them deliver contact management. The inspection found that the PSNI had 'made significant improvements in dealing with the public and its handling of emergency and non-emergency calls, however the Contact Management Strategy of the PSNI must be continuously reviewed to ensure user satisfaction in the long term'. Whilst the PSNI needs to sustain a continuous drive for quality, the delivery of this project addresses the second half of this recommendation.

Recommendation 3

The PPS should investigate the reasons why the majority of rape cases are directed for no prosecution and, if issues are identified, take action to address these, where appropriate in conjunction with the PSNI.

Status: Achieved

Agency response

The PPS has carried out a thematic review of cases submitted with a primary offence of rape where a decision of no prosecution has been taken. The review made recommendations and the following action has been, or will be, taken:

- the PPS continue to input into training for the PSNI as part of the PSNI Rape and Child Abuse Investigator Courses;
- the PPS will continue to review rape cases and abuse cases where a no prosecution decision has been taken. This will be achieved via Dip Sampling Quality Assurance by Regional Prosecutors each month and periodic thematic reviews by the PPS Quality Assurance Team; and
- Sexual Offence Specialist Prosecutors will meet regularly to identify any training needs or areas of good practice and it is intended that Specialist Prosecutors will meet with Rape Crime Unit investigators in their region to discuss issues which may arise.

The PPS and the PSNI have also established a Rape Steering Group which will meet to discuss any issues or training requirements which may be identified.

Inspectors' assessment

Inspectors were provided with evidence and sought the views of staff in the PPS and the PSNI to support the response provided above. A thematic review was conducted by the PPS which was completed in December 2011. The aim was to review files in hard copy and on the PPS case management system in cases where decisions for no prosecution were recorded at first instance during September 2010. The review therefore considered 22 rape cases where a no prosecution decision was taken. In the majority of these cases, a no prosecution decision was reached due to the case not meeting the evidential test for a variety of reasons. The review did not identify that in any of the cases there was an issue where reasonable lines of enquiry were overlooked. However, in order to ensure that this area continued to receive a focus by the PPS, recommendations were made as to ongoing actions as outlined below.

The PPS confirmed that they continued to input into PSNI training for both Rape Crime Units and child abuse investigators, and had good relationships with the PSNI trainers responsible for designing and delivering specialist training. Plans were being developed to provide further training for prosecutors to build on that provided at the time of the introduction of the Sexual Offences (Northern Ireland) Order 2008.

A Departmental Instruction issued by the PPS in 2011 gave directions on the files to be selected by regional prosecutors/assistant directors as part of their monthly quality assurance process. This stipulated that of the minimum 12 files to be dip sampled each month, three should be indictable files 'to include sexual offences, theft/dishonesty; and, if possible, hate crime' and four files should be those in which no prosecution was directed 'to include one file in respect of sexual offences'. This illustrates that the PPS is placing a focus on these types of offences in quality assuring the decision making process of prosecutors.

Police officers working in Rape Crime Units and Child Abuse Investigation Units confirmed, that in general, there was good communication between

themselves and specialist prosecutors working in the area of sexual offences. This enabled consideration about individual cases on an ongoing basis. The superintendent and chief inspector from the Rape Crime Unit were involved in the Steering Group with the PPS, however this had been put on hold temporarily. There were plans to reintroduce this with meetings once or twice a year, or as the need arises.

Recommendation 4

The PSNI and the PPS should develop a protocol for the investigation and prosecution of allegations of rape and serious sexual offences which outlines responsibilities in relation to the updating of victims.

Status: Achieved

Agency response

The PPS/PSNI have finalised a Service Level Agreement for the investigation and prosecution of allegations of rape and serious sexual offences which includes information on communication with victims and witnesses and outlines responsibilities in relation to updating victims. This protocol has been signed off.

Recommendation assessed as completed and therefore no further action required.

Inspectors' assessment

Inspectors were provided with a copy of the Service Level Agreement between the PSNI and PPS for the investigation, prosecution and management of rape and serious sexual assault cases which was signed off by relevant individuals in 2011. This outlined responsibilities of both the PSNI and the PPS including the requirements on both PSNI investigating officers and PPS prosecutors in respect of updating victims. It was generally acknowledged from both the PSNI and the PPS that there had been improvements in working relationships in recent years. Anecdotally, Inspectors were also advised that there appeared to be improved relationships between police and victims.

Since the original inspection was undertaken, CJI recommended the implementation of a Victim and Witness Care Unit in its 2010 inspection of 'The care



and treatment of victims and witnesses'. This is currently being piloted by the PSNI and PPS and should address many of the issues that arose in the initial inspection. The impact of this will be assessed by further CJI work in due course.

Recommendation 5

The PSNI should take steps to improve communication and intelligence sharing between teams within Public Protection Units.

Status: Not achieved

Agency response

A review was undertaken of Public Protection Unit activity which included scrutiny of communication and intelligence sharing. The review identified communication difficulties and a solution is currently being worked upon.

Inspectors' assessment

This issue, and the review that was undertaken of Public Protection Units has been subsumed by a larger review of District Policing (which will include consideration of the role of Public Protection Units as well as Criminal Investigation Departments). This review is due to report later in 2013. Whilst waiting for the outcome of this review the PSNI confirmed that work to address communication difficulties has been put on hold, despite their response as outlined above. Operational officers in Public Protection Units spoken to were not aware of this piece of work.

Recommendation 6

The PSNI should fully adopt the principles and recommended practices of the National Policing Improvement Agency Crime Investigators' Development Programme and appoint appropriately experienced and trained tutor detectives in order to better support and supervise trainee investigators (TIs) appropriately whilst they are undergoing their training.

Status: Not achieved

Agency response

The Professionalising Investigation Programme process for new TIs to become substantive detectives is rigorous and administered by the detective sergeant, detective inspector and detective chief inspector/superintendent in districts/departments. Currently there will be 30 new TIs appointed in the next calendar year. It is not anticipated that this number will increase as workforce modernisation is supplementing TIs and detective constables with assistant investigators. The Professionalising Investigation Programme II portfolio is the check on the work of the TI and the TI must reach the standard if they are to be signed off as substantive detectives. To develop a new training course for detective tutors at detective constable level would not be cost effective given the numbers involved and the time scales which are prohibitive. Also the drive within the organisation is to have the supervisors supervise and the creation of another layer of potential bureaucracy has the potential to blur the lines of responsibility.

Recommendation assessed as no further action required.

Inspectors' assessment

The role of TIs was still believed to be challenging in terms of availability of training courses and then support whilst putting that training into practice. Some examples were provided where officers had to wait several months for relevant training and therefore were learning 'on the job'. This therefore placed the onus on their colleagues or sergeant to provide them with guidance. Whilst sergeants clearly should have responsibility for supervising officers in their team Inspectors were told, at the time of the original inspection, that the sheer numbers of TIs, and

requirements of supervising them through their traineeship, was creating an excessive workload on top of their other duties.

Inspectors were advised that these issues are still ongoing although it was suggested that stability in the teams had helped address this as the number of TIs had reduced. This will probably become less of an issue in the long-term as the requirement for new detectives to replace those who are retiring is anticipated to reduce resulting in a lower number of TIs. However there does not appear to be a strategy in the short-term for overcoming these issues. Inspectors therefore do not feel that the PSNI has been proactive in addressing the issues raised in the initial inspection.

Recommendation 7

The PSNI should develop a co-ordinated and consistent approach to the provision of welfare services for officers working in the investigation of sexual offences and consider proactive methods for managing the welfare of staff.

Status: Partially achieved

Agency response

An application for research funding into this initiative was made to the RUC George Cross Foundation. Funding, unfortunately, was not forthcoming. However, the PSNI's Occupational Health and Welfare have agreed with Queen's University Belfast for a number of Post-Graduate researchers to work in cooperation on a study of 'The mental health and well being of police officers and police staff working in PSNI's Public Protection Units'. This will take at least two years and will help direct long-term strategies. This research project in partnership with Queen's University Belfast commenced in April 2012 and while it will explore the issues, it will also gather valid evidence of what interventions are needed. In the interim these groups are engaged with the well-being programme tailored to the identified local needs.

In the interim the Criminal Justice Department also organised for 150 officers and staff within Public Protection Units to receive 'Resilience Training'.

Inspectors' assessment

The PSNI were undertaking the research project as outlined above which would develop a further understanding of the specific needs of these officers which aimed to provide a more consistent approach in the future. In addition a business case was being submitted for Child Abuse Investigation Units to receive the same level of welfare provision as those working in the area of internet protection for children who received planned support on a bi-annual basis. These plans were still in progress however and had not yet led to any specific interventions.

However officers in some Child Abuse Investigation Units and Rape Crime Units informed Inspectors that they had spent time away from their workplace at one of the Police Treatment Centres. Officers working in other Units stated that they were due to attend in the coming months. This provided them with respite and interventions to help them cope with the strains of the nature of their work. Each district's Public Protection Unit was expected to develop a business case for this type of support and therefore this was not necessarily consistent across the PSNI. Until such an agreement is reached decisions about welfare provisions are likely to be left to the discretion of district commanders or heads of branch, and therefore this will lead to inconsistency across the PSNI. Inspectors believe that there should be a more consistent approach to welfare support on an ongoing basis, for example through the services of occupational health and welfare.



Recommendation 8

The PSNI should, in conjunction with Social Services Gateway Teams, develop and implement methods to improve the quality and consistency of communications between police officers and social workers working in the area of child abuse.

Status: Achieved

Agency response

The 'Protocol of joint investigation by social workers and police officers of alleged and suspected cases of abuse - Northern Ireland' has been reviewed. The Joint Protocol Working Group met in December 2012 to finalise amendments to a draft document. It is anticipated that Social Services will have the completed draft document ready by February 2013.

Inspectors' assessment

The revised 'Protocol of joint investigation by social workers and police officers of alleged and suspected cases of abuse - Northern Ireland' was still in draft format at the time of this follow-up review. Some officers were aware the revised protocol was due to be published but in the absence of this it was not evidenced to Inspectors that there have been any proactive action to address communication issues. As in the initial inspection there were mixed views about the quality of communications between police and social services, often depending on personal relationships. Whilst the revised Protocol clearly sets out the responsibilities of police and social services it is not intended to address communication between the two sets of professionals.

A positive development has been the attachment of a senior social work practitioner from each of the five Health and Social Care Trusts with district Public Protection Units. Due to the different boundaries between Trusts and police districts (five Trusts versus eight police districts) some of the Public Protection Units were required to 'share' a social worker between them. This arrangement has been in place since 2010. It was disappointing that police officers working in Public Protection Units did not mention this development when asked about progress towards this recommendation. However the co-location of police and social workers together should serve to improve communication and working relationships.

Recommendation 9

The PSNI should urgently seek to address the issue of files not being submitted expediently from NiCHE to the PPS case management system via the Causeway hub.

Status: Achieved

Agency response

Following the 'Go Live' of Causeway Data Sharing Mechanism 1 in November 2009 a number of transitional issues were experienced which included difficulties in the PSNI's Hub (the mechanism through which case files are progressed through Causeway to the PPS). These issues impacted on the throughput performance of all file shares from the PSNI.

As a result of this, the PSNI initiated a significant and extensive enhancement programme which identified and addressed any technical issues including those impeding the throughput of case files. The Hub was subsequently rebuilt and its capacity increased.

The PSNI's case file transmission to the PPS is now working well with no delays arising from Hub issues. Monthly monitoring is in place to ensure that this continues and that where a problem arises it can be addressed quickly.

A proactive case handling system has also been established. It flags to management case files approaching the deadline for submission to the PPS to ensure that they are followed up and submitted on time.

Recommendation assessed as completed and therefore no further action required.

Inspectors' assessment

Feedback from officers and prosecutors suggested that this issue had been resolved by the roll-out and embedding of Causeway Data Sharing Mechanism I. No further problems of the type raised at the time of the original inspection were highlighted.

Recommendation 10

The PPS should ensure that viewing of victim video interviews and consultations with victims are endorsed on the case files by prosecutors and that video-taped interviews are used as the primary tool by which to make an assessment of the victim's evidence.

Status: Partially achieved

Agency response

A staff instruction was issued by the PPS to all prosecutors to ensure that the recommendation is implemented.

Recommendation assessed as completed and therefore no further action required.

Inspectors' assessment

A Staff Instruction was circulated on 2 May 2013 to address this recommendation. This states that:

'In every case in which a victim has provided video recorded evidence, the prosecutor must view the recording prior to taking a decision as to prosecution. A file record must then be made confirming that:

- 1. the video has been viewed, the date of viewing and any issues arising, such as problems with the audiovisual quality;*
- 2. the prosecutor's assessment of the victim's evidence;*
- 3. the reasons for relying on any video recorded evidence rather than seeking a witness statement, if relevant.'*

Prosecutors confirmed that there was a greater awareness of the need to record that videos had been viewed in the case file. This cannot be fully assessed by CJI without a full case file review, which did not form part of this follow-up. The PPS advised Inspectors that in these types of cases all victims will have a consultation at some stage prior to the contest and therefore Inspectors believe it is important that relevant information arising is reflected in the case file. The recording of this type of information also arose as an issue in the CJI inspection of special measures.⁵ As the Staff Instruction was only circulated towards the end of the inspection fieldwork it is too early to say whether this will have yet been fully implemented by prosecutors across the PPS. This is likely however to be assessed in a future inspection.

Recommendation 11

In every rape or serious sexual offences case where counsel has been instructed, a conference should always be held between the prosecutor, counsel and the police officer in the case to analyse the evidence and to explore ways of overcoming any difficulties.

Status: Partially achieved

Agency response

The PPS issued a Staff Instruction clarifying that, in rape or serious sexual offences cases, where there are evidential difficulties, which may be capable of being overcome, and where counsel has been instructed, prosecutors should analyse the evidence and explore ways of overcoming any identified difficulties.

Recommendation assessed as completed and therefore no further action required.

Inspectors' assessment

This requirement was included in the Service Level Agreement developed between the PSNI and the PPS. This has also been addressed by the Staff Instruction circulated on 2 May 2013. This states that:

'In cases of rape and other serious sexual offence(s), a consultation should take place with the prosecutor or with counsel, where counsel is instructed, either prior to a decision being taken (where this is required) or at some stage prior to trial. Whilst it would be preferable for such consultation to take place at an early stage prior to trial, it is recognised that there may be cases where this is not required until close to the date of trial or the trial date itself.

Where evidential difficulties arise, these must be carefully considered with counsel, if instructed, and the officer in charge to determine whether these might be overcome.

The file must be endorsed with a file note setting out the date and time of consultation, a record of the discussion, details of any evidential difficulties and a record of how these may be addressed.

Should any duty of disclosure arise in relation to anything said by the victim or any witness during consultation, this

⁵ See page 38 of the report available at <http://www.cjini.org/TheInspections/Inspection-Reports/Latest-Publications.aspx?did=2328>.



should be noted in the record of consultation and disclosed to the defence.’

PSNI officers confirmed that meetings were usually held with the prosecutor and counsel prior to the date of contest. The difficulties in this process were highlighted to relate to the availability of counsel (for example where a busy barrister would be in court most days) but police said that they were proactive in attempting to seek such a meeting. In addition this could be challenging when evidential changes in circumstances became apparent which could occur at any stage.

Whilst this recommendation cannot fully be assessed without a case file review, Inspectors are satisfied that actions have been put in place to address the issues raised in the original report. The full extent of the resulting changes in practice will not become apparent until the Staff Instruction has been fully implemented. This again is likely however to be assessed in a future inspection.

Recommendation 12

The PPS should take further steps to ensure greater consistency in its approach to communications which address the perceptions of victims and their representatives regarding the perceived practice of plea bargaining.

Status: Achieved

Agency response

The PPS is reviewing its communications with victims and have used a number of opportunities to re-iterate that plea-bargaining has no place within the practices and procedures of the PPS.

Published PPS policies including the PPS policy on prosecuting cases of rape also explain the circumstances of accepting pleas to alternative or lesser offences to clarify that plea bargaining has no place within the practices and procedures of the PPS and to improve the public understanding of the criminal justice system and test for prosecution.

The PPS will continue to keep this issue under review.

Inspectors’ assessment

The PSNI and PPS Service Level Agreement set out the fact that:

‘While the prosecutor is under a duty to consider a formal offer from the defence to plead guilty to an alternative and possibly lesser offence, plea bargaining has no place in the practice or procedures of the PPS. The acceptance by the prosecutor of such a formal offer from the defence must be consistent with the evidence and information available at the time and must meet the requirements of justice. Should a decision be taken not to proceed with the prosecution or to accept a plea to a lesser offence the PPS will, whenever possible and where the victim wishes, explain to the victim why this is being considered and where appropriate take account of the victim’s views. A consultation will usually be offered particularly if the decision is made post arraignment.’

The PPS Rape Policy, which is available to the public on the PPS website, also provides detail around this issue stating:

‘The PPS recognise that there is considerable public misunderstanding with regard to the circumstances in which the prosecution consider an offer by the defence to plead guilty to a different or lesser offence. In this context it should be understood that plea bargaining has no place in the practices or procedures of the PPS.’

It then goes on to outline the responsibilities of the prosecutor in cases where the defendant pleads guilty to only some of the charges that they are facing or to a lesser charge. This includes:

‘When considering whether to accept a plea of guilty to a different, and possibly less serious charge, the PPS will make every effort to make enquiries of victims so that the position can be explained and their views and interests taken into account.’

The Code for Prosecutors (2008) which is also on the PPS website states:

‘While the prosecutor is under a duty to consider any such formal offer from the defence, plea bargaining has no place in the practice or procedures of the Prosecution Service. The term is frequently, and indeed generally, liable to be understood as implying the seeking of some improper or at least questionable arrangement between



the prosecution and the defence. Both the term and what it implies are therefore objectionable. There must be no such improper or questionable arrangement and no practice is permissible which reasonably suggests that there may be'.

It also states that *'the proper interests of victims and witnesses'* may be a relevant factor to consider in the acceptance by the Prosecution Service of such an offer from the defence.

The PPS had also previously issued a Departmental Instruction which advises that all changes to decisions have to be marked on a sheet at court explaining the reasons for the change.

In December 2012 an email was issued from regional prosecutors to staff regarding the introduction of a case variation form. The purpose of this form was to record either where there was a variation of charges at court (i.e. because of withdrawal of charges, no evidence offered or a plea accepted to a lesser offence). This was required to be completed and, where variations occurred, a copy sent to the prosecutor's line manager.

The PPS policies and guidance for staff therefore clearly addresses the PPS stance on the issue of plea bargaining and these documents are publicly available. However it is unlikely that most members of the public will read these documents therefore their implementation needs to be through a proactive approach in providing explanations to victims and witnesses. Whilst the documents above suggest that prosecutors are encouraged to consult with victims and witnesses, there is still flexibility in the wording that is used such as *'whenever possible'*. Whilst Inspectors appreciate that it will not be possible in every single case to contact the victim (for example if they are deceased or out of the country), we would wish to see a more definite statement in these policies, for example that *prosecutors 'must, except in exceptional circumstances, which should be fully recorded, make enquiries of victims so that the position can be explained and their views and interests taken into account'*. This would then ensure that there is an opportunity to explain the proper decision making process behind accepting a guilty plea to a different or lesser offence and reinforce that the PPS does not engage in plea bargaining to every victim. This will

then ensure that the messages are reinforced over the longer-term. We would therefore encourage the PPS to continue to work towards this recommendation in the longer-term.



CHAPTER 3:

Conclusion



The PPS and the PSNI have continued to work together in developing the quality of investigations into sexual offences and the skills of staff working in this area, for example in delivering joint training and quality assurance processes. Inspectors were again impressed by the commitment of the staff working in this area.

Since the original inspection there have been a number of documents produced or updated which reinforce roles and responsibilities of each agency, and these should continue to be embedded into working practices. Of the 12 original recommendations, Inspectors have assessed that seven have been achieved, three partially achieved and two not achieved. In relation to most recommendations, Inspectors have agreed with the assessment of the agencies in their analysis of progress, but in some cases Inspectors do not feel sufficient evidence has been provided at this time to assess the recommendations as fully achieved.

Some of the issues raised in the original report have been addressed through the work of other projects, due to CJI's growing body of evidence, rather than directly the recommendations of this particular report. One notable example is the PSNI's new contact management process which has been subject to a separate inspection. Similarly the pilot of the Victim and Witness Case Unit is the result of a number of CJI reports in this area (for example this report, 'Domestic violence and abuse', 'The care and treatment of victims and witnesses', 'The use of special measures'). It is anticipated that these projects will bring greater improvements to the victims of sexual violence and abuse in the longer-term.

Some of the out-workings of actions taken to address the recommendations (such as instructions to staff or

joint protocols) will take longer to be embedded than the fieldwork for this follow-up allows.

There is also still a need to address ongoing issues of communication across Public Protection Units and support for TIs which have not yet been attended to sufficiently. In undertaking this review however, Inspectors got a sense that the organisations have, in the main, prioritised this area of work and that the PSNI and the PPS are working more effectively in partnership on these types of cases.

Ultimately however many of the issues arising in the investigation and prosecution of sexual violence and abuse will need to continue to be a priority for the criminal justice agencies, and in particular the PSNI and PPS. There is a need to continue to focus on the reasons why cases drop out of the criminal justice process at all stages in order to increase the number of cases which ultimately result in a conviction in court, and to ensure that vulnerable victims are neither re-victimised nor inappropriately dissuaded from giving evidence. This will also ensure public protection can be enhanced and opportunities are not missed. In addition there will always be a need to pay particular attention to the victims of these types of crimes which can be particularly damaging and difficult to recover from.

The impact of the work undertaken to date in respect of these two aspects can really only be fully assessed through a further full inspection. This piece of work would need to include a case file review and a thorough consultation with victims and victim organisations in order to consider outcomes sufficiently. The topic of sexual violence and abuse is therefore a priority for CJI, as it is for the criminal justice system, and will be returned to at a future point in time.



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