

An Inspection of the Public Prosecution Service for Northern Ireland

Conducted by Her Majesty's Inspectorate of the
Crown Prosecution Service under the delegated
statutory authority of the Chief Inspector of
Criminal Justice in Northern Ireland

July 2007





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Presented to the Houses of Parliament by the Secretary
of State for Northern Ireland under Section 49(2) of the
Justice (Northern Ireland) Act 2002.

**Criminal Justice Inspection
Northern Ireland**

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List of abbreviations

AD	Assistant Director
ADF	Assistant Directors Forum
AG	Attorney General
BMF	Business Managers Forum (within the PPS)
CJB	Criminal Justice Board
CJI	Criminal Justice Inspection Northern Ireland
CJR	Criminal Justice Review
CLT	Community Liaison Team (within the PPS)
CPS	Crown Prosecution Service
DCU	District Command Unit (in the PSNI)
DFP	Department of Finance and Personnel
DPP	The Director of Public Prosecution
DSM1	Data Sharing Mechanism 1
HET	Historical Enquiries Team
HMCPSI	Her Majesty's Crown Prosecution Service Inspectorate
HMRC	Her Majesty's Revenue and Customs
JOC	Justice Oversight Commissioner
ODPP	Office of the Director of Public Prosecution
MB	Management Board (within the PPS)
NIO	Northern Ireland Office
PPS	Public Prosecution Service
PP	Public Prosecutor
RFI	Request for Further Information
SAD	Senior Assistant Director (within the PPS)
SCF	Staff Communications Forum
SMG	Senior Management Group
SPP	Senior Public Prosecutor
SSA	Social Security Agency
The Act	The Justice (Northern Ireland) Act 2002
The Code	The Public Prosecution Service Code for Public Prosecutors



Chief Inspectors' Foreword

This report sets out the findings from the first inspection of the Public Prosecution Service (PPS) for Northern Ireland.

It was undertaken by the Chief Inspector of Her Majesty's Crown Prosecution Service (HMCPSI), under powers delegated by the Chief Inspector of Criminal Justice in Northern Ireland (CJI) contained within the Justice (Northern Ireland) Act 2002 (the Act). Her Majesty's Crown Prosecution Service Inspectorate is an independent statutory body in England and Wales. The Chief Inspector reports to the Attorney General on the performance of the Crown Prosecution Service (CPS) and certain other prosecuting authorities.

This report is presented to the Houses of Parliament by the Secretary of State for Northern Ireland under Section 49 (2) of the Justice (Northern Ireland) Act 2002.

It is difficult to overstate the importance of the role of the prosecuting authority in any democratic society. The power to prosecute is possibly the most important and also the most intrusive of all the powers vested in the state. Exercised firmly but fairly and with impartiality, it underpins the safety and liberties of all citizens. Conversely, its abuse would not only lead to injustice but also compromise one of the foundations of society – the rule of law. Society therefore requires a highly professional service combining competence with integrity and dedication. It must also be responsive to changes in the social environment.

For several decades there was considerable disquiet about the perceived partiality of some aspects of policing and prosecution policy and practice in Northern Ireland. Following the 1969 report of the Advisory Committee on Police in Northern Ireland, the Office of the Director of Public Prosecutions (ODPP) was established. It assumed responsibility for the more serious and difficult casework, including that which was connected directly with the conflict. However, routine cases continued to be prosecuted by the police.

The creation of an independent prosecuting authority responsible for handling all criminal cases in Northern Ireland was therefore a historic step. The PPS was established formally on the 13 June 2005 although work had been underway since 2002 when the Act ratified the recommendations of the Criminal Justice Review.

At the time of our inspection the Service had been in existence as a statutory body for less than two years and had yet to be fully rolled out across Northern Ireland, although the Belfast Region pilot commenced in December 2003, and the Western and Southern Region pilot in April 2004. As an organisation it is still developing and managers are having to



extend their range of responsibilities and skills within rapidly changing criminal justice and social environments. Whilst the organisation is built in part on the existing structures of the then ODPP, much of what has been achieved or still needs to be delivered will, of necessity, be radically different from that of the past.

Even though its development is not yet complete, the importance attaching to the work of the new organisation made it appropriate in our view that there should be a review of the Service to take stock and assess its progress against the vision and objectives of the Criminal Justice Review and the PPS service delivery model.

This report reflects those achievements and recognises that this is an inspection of an organisation which is still very much in its infancy, but we also set out clearly where we believe more progress can be made in achieving the publicly stated aim of the Service, which is:-

“To provide the people of Northern Ireland with an independent, fair and effective prosecution service.”

The progress made in the implementation of the Service prior to this inspection has been publicly scrutinised by the Justice Oversight Commissioner in his six reports. This inspection has, however, had the benefit of resources not available to the Commissioner which has allowed us to consider in depth how the PPS is operating, together with the quality of service it delivers for all those who come into contact with the criminal justice system, and the wider communities, in Northern Ireland.

Our focus has been on the practical application of the provisions of the Act and the Review on which it was based. This has led us to recommend, where appropriate, that there is a need for a revision of some of the key aspects of the current approach of the PPS.

We recognise that some of the recommendations in this report are challenging as they will require a significant cultural change, not least those which relate to the giving of reasons for decisions and the Service’s working relationship with the Police Service for Northern Ireland. However, they reflect the fact that the circumstances in which the PPS operates are substantially different from those which the staff of the ODPP had to contend with. The Service now has an opportunity to assume a central role in the criminal justice system, and establish itself as an influential force in ensuring that it matches the progress of Northern Ireland as a whole.

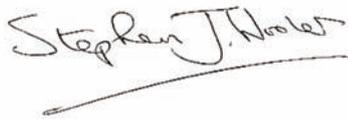
If implemented we believe these recommendations will contribute substantially to the PPS being seen as an open and transparent organisation in which all the people of Northern Ireland can have confidence.



None of our findings should, however, detract from recognising that the DPP and his then staff, like so many others in Northern Ireland, faced serious and difficult challenges during the course of the conflict in Northern Ireland.

Throughout this inspection we received co-operation from the DPP and his staff, who dealt with our many requests for information and also gave freely of their time during our visits to the regional offices.

We thank everyone we saw during this inspection, or who provided us with information, for their participation and co-operation.



Stephen Wooler CB
Chief Inspector
Her Majesty's Crown Prosecution
Service Inspectorate



Kit Chivers
Chief Inspector of Criminal Justice
in Northern Ireland



HM CPSi
HM Crown Prosecution Service Inspectorate



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Section



Inspection Report



Introduction and Overview

The transition to the Public Prosecution Service for Northern Ireland

- 1.1 The Office of the Director of Public Prosecutions (DPP) for Northern Ireland, the forerunner of the Public Prosecution Service (PPS), was established in 1972 (shortly after the introduction of Direct Rule by the United Kingdom Government) at a time when there was considerable unease about aspects of the handling of prosecutions which was then a police responsibility. The DPP's office was modelled on that of its counterpart in England and Wales, although its case mix was different because of the significant proportion of its work which related to the conflict in Northern Ireland. That which may be described as "routine" crime continued to be prosecuted by the police.
- 1.2 The environment in which the ODPP had to undertake its work was therefore a very challenging one, encompassing a number of tensions. This included the creation of what became known as "Diplock" courts, which were implemented following the Report of the Commission to Consider Legal Procedures to deal with Terrorist Activities in Northern Ireland (1972) chaired by Lord

Diplock. In these courts, defendants were tried by a judge alone.

Following the passing of the Justice and Security (Northern Ireland) Act 2007, Diplock courts are scheduled to be abolished on 31st July 2007¹.

The context within which the ODPP operated was therefore significantly different to that of its counterparts in England and Wales, or indeed in the Republic of Ireland.

- 1.3 The change from the ODPP to the Public Prosecution Service (PPS) for Northern Ireland has its origins in the Belfast Agreement signed on 10 April 1998 by the United Kingdom and Irish Governments. One of the provisions of the Agreement was the setting up of a Criminal Justice Review, part of whose terms of reference were to address "the arrangements for the organisation and supervision of the prosecution process, and for safeguarding its independence".
- 1.4 The report of the Review of the Criminal Justice System in Northern Ireland was published in March 2000. It made many recommendations, including the creation of a Public Prosecution Service for Northern

¹ The legislation continues to provide for non-jury trials in certain circumstances that do not pertain elsewhere in the United Kingdom.



Ireland. The bulk of the recommendations relating to the creation of an independent prosecution service were accepted by the Government and the Justice (Northern Ireland) Act 2002 (the Act) provided the necessary statutory framework for the establishment of the new office.

- 1.5 The central recommendation of the Criminal Justice Review was that the new service would assume responsibility for all prosecutions for alleged criminal offences (excluding some of a regulatory nature, for example those relating to the breach of the provisions appertaining to television and vehicle excise licences). Responsibility for the transition from the Office of the DPP to the PPS lay largely with the DPP and his staff. The initial aim was to roll out the Service fully by the end of 2006.
- 1.6 Progress on the implementation of the recommendations within the review, including those which relate directly to the PPS, has until recently been monitored by the Justice Oversight Commissioner in his six published reports.

The status of the PPS

- 1.7 The Act provides that the PPS is to consist of the Director of Public Prosecutions, the Deputy Director and members of staff. However, we found there was a lack of clarity about the exact legal status of the PPS. The DPP and Deputy Director are statutory appointments, whereas the staff of the PPS are civil servants. They are recruited by the Department of Finance and Personnel

(DFP) and are attached to the Northern Ireland Office (NIO). They are then assigned to the PPS. The Service is funded by the Secretary of State, through the NIO, and the staffing levels are subject to his approval. However, the Act also makes clear that the DPP is subject to the superintendence and direction of the Attorney General (AG).

- 1.8 There is therefore a disjunction whereby one government department, (the NIO), is responsible for funding the PPS whilst not being able to engage in the normal dialogue about performance which would routinely take place between a funding department and a publicly funded body.
- 1.9 At the present time therefore the PPS has limited control over recruitment processes and policies, being governed by its relationship with the NIO, the DFP and the Civil Service. The PPS would benefit from having greater control over both these aspects of management.
- 1.10 This lack of clarity about the status of the PPS does not assist senior management in the PPS effectively to discharge their functions. The placing of the PPS on a sound footing as a stand-alone public body would assist in resolving a number of current problems the PPS is facing, in terms of staff turnover, recruitment, and also ensure it is held accountable for its expenditure and achieving value for money, particularly important in the area of the use of counsel, and the management of counsel fees, an aspect that needs particular attention. It would also give structural



expression to the independence of the PPS, insulate them further from any undue influence and clarify its obligations as an employer, for example in the context of Northern Ireland's equality legislation.

1.11 The current plans for the PPS under devolution envisage that it would be a non-Ministerial Department funded from the Northern Ireland block grant. The new Attorney General for Northern Ireland would have a consultative relationship to it: but he or she would not provide a line of accountability. This would perpetuate and might accentuate the disadvantages of the present arrangements. The importance of the PPS does require that it be accountable through its funding body for the delivery of a high quality service. It is beyond the scope of this inspection to recommend a specific structure. However, we are confident that arrangements are possible which would provide the necessary accountability whilst preserving the all-important independence of prosecution decision-making.

1.12 A number of reasons, including the need to recruit and train staff and obtain suitable office premises outside of Belfast, made it desirable to stage the implementation. This was clearly the correct decision. As part of the phased approach, pilot offices were set up in Belfast (December 2003) and Omagh (April 2004). These were subject to a detailed evaluation by the PPS (Inspectors from HMCPSI provided an external element to the evaluations) which identified lessons

to be learned for the further roll out of the Service.

1.13 The difficulties the PPS has subsequently experienced in finding suitable accommodation have impacted on the timeliness of the full implementation of the Service and affected the operational effectiveness of some of its processes in the Western and Southern region.

The structures for casework delivery

1.14 The transition from the ODPP to the PPS necessitated huge changes to the existing organisation and large-scale recruitment. It is to the credit of the PPS that the fundamental structures have been established across most of Northern Ireland and a large scale recruitment exercise undertaken successfully. Unlike the Crown Prosecution Service (CPS) for England and Wales, the Service did not have a pre-existing pool of experienced prosecutors on whom it could draw to staff the new Service. The PPS therefore had to recruit many new and relatively inexperienced lawyers.

1.15 However, the core operational structures have remained relatively unchanged from those of the ODPP and need to be reviewed to reflect the changes in caseload and case type. At the moment they are overly compartmentalised, for example most prosecutors are split between casework decision-making and court teams. This is leading to a duplication of effort, a lack of case ownership and convoluted workflows.



The wider criminal justice environment

- 1.16 The findings in this Report must be seen in the wider context of the operation of the Northern Ireland criminal justice system. There is currently a lack of a joined up approach across the system although some joint targets are being developed. There is much emphasis on the independence of the different agencies and insufficient recognition of interdependence. The absence of a joined up approach means that the actions of individual agencies can impact adversely on the performance of others. For the PPS to work effectively, it is imperative that it develops constructive working arrangements with other agencies, and that it understands the effort that achieving this will take.
- 1.17 Additionally, during the course of the inspection, a number of procedures relating to the operation of the criminal justice system were identified which impacted on the effectiveness of both the PPS and the system overall, for example the procedure of “connecting” the defendant to the charge. We consider that a revision of these procedures, set out in Appendix 9 would improve the system and contribute to overall efficiency savings.
- 1.18 The criminal justice environment can be challenging for the Service, not least the large number of cases listed for hearing in the magistrates’ courts. However, improvements in the timeliness of PPS decision-making and some key processes would assist in reducing this burden. It was also apparent that there was a “not guilty”

culture amongst defendants, requiring cases to be prepared for trial which resulted ultimately in a guilty plea.

The quality of casework decision-making

- 1.19 The overall quality of casework decision-making is good, but could be improved in respect of cases where the decision is to withdraw the proceedings. A number of other aspects of casework handling were less assured, and we discuss these in the report. In all the cases examined we were satisfied that decisions were fair and not unduly influenced by other agencies.
- 1.20 Like its prosecutorial counterparts in the UK and the Republic of Ireland, throughout its existence the ODPP staunchly asserted its independence from the other criminal justice agencies and in particular from being seen to compromise that independence by having too close a working relationship with the police. Despite this some aspects of policy, such as that relating to the giving of reasons for decisions caused considerable tensions with some sections of the community. This was particularly so in the context of cases involving deaths caused by agents of the State.
- 1.21 Whilst there may have been good reason in the past to keep to a minimum the explanation of decisions, the PPS now works in a different environment where openness and transparency can only assist in building public confidence in the decision-making process. This is reflected in our recommendations to



improve the explanation of decisions to victims.

- 1.22 We also found that there was a need to work more closely with the investigative agencies in the early stages of cases, to ensure that the necessary evidence was obtained and to identify where efficiencies could be made in case preparation by the police, for example reducing the necessity to assemble in a “court-ready” manner all the evidence when it was apparent that the defendant would plead guilty. The development of a properly supervised working relationship the investigative agencies will not compromise the independence of decision-making, which the PPS rightly holds as sacrosanct.

The case mix

- 1.23 In addition to the structural changes there has been a radical change in the case mix dealt with by the PPS compared to the ODPP. There is relatively little work connected to the Troubles although there continues to be some sectarian crime; but there remain some very high profile legacy cases and the possibility that further cases of a similar nature, investigated by the police Historical Enquiries Team (HET) may have to be considered. We draw together the issues around the HET in the chapter on the quality and timeliness of casework delivery. However the Service now has to deal additionally with other types of serious and sensitive casework, including an increasing number of racially and homophobically motivated offences.

The biggest change, however, is the requirement to deal with the high volume of “routine” crime.

- 1.24 Unlike their counterparts in England and Wales, PPS prosecutors consider whether there should be a prosecution in every case where there is an identifiable potential defendant. The police have no discretion as to which cases they refer to the Service. This ensures that every citizen suspected of an offence, whatever its gravity, can be assured that it is considered fairly and impartially by a prosecutor independent from the other organs of the state.
- 1.25 This change in case mix, together with the changing nature of the criminal justice, the wider political developments and the shifting demography in Northern Ireland, makes a different culture and approach on the part of the PPS inevitable. The environment which underpinned the practices of the ODPP either no longer exists or is viewed differently by the communities of Northern Ireland. We believe there is some way to go before this need for change is recognised throughout the PPS, and this is reflected in some of our key recommendations.

The supporting processes

- 1.26 It is to the credit of the Service that it has, in conjunction with the police, implemented a computerised case management system, incorporating electronic file submission by the PSNI.



1.27 As with the operational structure there is, however, a need to review the current processes to ensure that they are appropriate for both the change in case mix and caseload. Some of the processes used in the ODPP have been overlaid onto the new Service and are unnecessarily cumbersome for directing on low level, high volume crime. Initiatives to fast-track some types of decision are being piloted.

1.28 The Service has also taken on a number of new processes which, prior to its creation, were the responsibility of the police. These include warning witnesses to attend to give evidence in the magistrates' courts and the issuing of summonses in those cases where the defendant is reported for possible prosecution as opposed to being charged by the police. For different reasons both are having a significant impact on the effectiveness of the Service in its early stages of development. Additionally, the organisation has had to develop and embrace new technology, including the introduction of a computerised case management system and the Causeway project which will link electronically all the criminal justice agencies and should improve significantly the flow of information.

1.29 It is therefore important to acknowledge that the establishment of the PPS is still "work in progress", and it has yet to be rolled out fully across Northern Ireland.

The challenge for the future

1.30 This report is reflective of an organisation that is in an early stage of development and which has had to make significant and wide-ranging structural changes. The PPS is still developing, as is the society in which it is operating, and until rolled out fully cannot be seen as a steady state organisation. There is however a need to accelerate the transition from implementation to efficient service delivery, including the development of systems to assure managers that the quality of casework decision-making is maintained at its current overall good level.

1.31 The Service now has an opportunity to assume a central role in the criminal justice system and establish itself as an influential force in ensuring that it matches the progress of Northern Ireland as a whole.

Methodology

- 2.1 The PPS was inspected against an agreed inspection framework, which was developed from an Issues Analysis meeting held between HMCP/PSI/CJI and the senior management team of the PPS. This meeting adopted the Issues Analysis Dinner Party Approach™ developed by the National Audit Office.
- 2.2 In accordance with the framework the inspection considered whether the service being delivered by the PPS met its publicly stated aim of being fair, independent and effective. The inspection framework sets out in detail the defining elements of this aim. The detailed framework is at Appendix 1.
- 2.3 The evidence on which the findings in this report are based is drawn from a number of sources, including an examination of PPS files, management and performance information and data, observations at court, the views of stakeholders and interviews with PPS staff across the grades.

File examination

- 2.4 Inspectors examined 305 PPS files finalised in the three months to November 2006. The files were selected by Inspectors from lists drawn from the PPS case

management system (CMS), and reflected as far as possible the proportion of the PPS caseload dealt with by each region (including those dealt with centrally). The sample comprised a mix of cases and outcomes including those where the PPS directed no prosecution, and cases concluded in the magistrates' courts and Crown Court. The sample also included a range of sensitive cases, for example where the offences were motivated by race or sectarianism, domestic violence and child abuse. A breakdown of the file sample is at Appendix 3 and the key findings from the file examination are set out at Appendix 4.

Audit of counsel fees

- 2.5 As part of the inspection, case auditors undertook an audit of fees paid to counsel, selecting 42 cases at random from the inspection file sample and examining costs charged against work done, and systems of control.

Management and performance information and data

- 2.6 A wide range of information and data was considered which was provided either by the PPS or other agencies. Some was publicly available on the PPS website.



Fieldwork

- 2.7 The fieldwork was conducted between 26 February and 16 March 2007. Each operational PPS region was visited (Belfast, Eastern, Northern and Western and Southern). During these visits a wide range of consultees were seen, including the local representatives of the PSNI, other investigative agencies, Northern Ireland Court Service staff, members of the judiciary, defence representatives and local interest groups. A full list of external consultees is at Appendix 8.
- 2.8 Additionally the views of PPS staff at all levels in each region were taken, as well as those of senior managers. Observations of the effectiveness of court presentation by PPS prosecutors and counsel were carried out at a number of magistrates' courts and the Crown Court.

Recommendations, issues to address, strengths and good practice

We make recommendations about the steps necessary to address significant issues relevant to important aspects of performance, which we consider to merit the highest priority. We also identify issues which the PPS should address to improve further its performance. To assist the Service we have indicated whether these issues have a high or medium priority.

The report also identifies strengths and a good practice. A strength is

consistently good work undertaken properly to appropriate professional standards. Good practice is a favourable aspect of performance, which reflects a manner of handling which might be adopted across the Service.

The inspection team

- 2.9 The inspection was led by Jonathan Carver, HM Inspector HMCPSI and comprised Diane Hurlley and Derek Gibbs (HM Inspectors, HMCPSI), Paul Mageean and James Corrigan (Inspectors, CJI). In view of the importance of the inspection, the Chief Inspectors of both HMCPSI and CJI together with the Deputy Chief Inspector of HMCPSI also participated in some of the fieldwork. Administrative support to the team was provided by Amanda Hannan, CJI. The inspection was quality assured by Sally Hobbs, HM Deputy Chief Inspector (Northern & Wales Group) HMCPSI.
- 2.10 The inspection team is grateful to Sarah McIlwain and Michael Hoare, case auditors from the Crown Prosecution Service Business Delivery Unit who undertook an audit of fees paid to counsel. We are also grateful to Phil Airey of the National Audit Office who facilitated meetings between HMCPSI, CJI and PPS senior managers at which the inspection framework was designed and emerging findings discussed.

The PPS: Structure and Key Facts

3.1 In this chapter we set out the key functions of the PPS, its geographical and organisational structure, and some of the Service's key performance data, including caseload, case decisions and staff numbers.

What the PPS does

- 3.2 The central recommendation of the Criminal Justice Review was that the new prosecution service would assume responsibility for all prosecutions for alleged criminal offences (excluding some of a regulatory nature, for example those relating to the breach of the provisions appertaining to television and vehicle excise licences).
- 3.3 Therefore the PPS directs on every case where there is a known suspect. The directing lawyer may decide that:
- the suspect should be prosecuted;
 - that there should be no prosecution; or
 - that a disposal other than a prosecution is appropriate, for example a caution.
- 3.4 The PPS receives cases from a number of investigating agencies including the PSNI, the Social Security Agency (SSA) and HM Revenue and Customs (HMRC).

3.5 In the majority of cases the investigating agency will report the suspect for consideration of whether he or she should be prosecuted. If the PPS direct a prosecution, a summons will be issued against the suspect.

3.6 In some cases the PSNI will charge the defendant before the PPS makes a direction. This will be in the most serious cases where the police seek to have the defendant remanded in custody or be subject to conditions on their bail, or the more minor allegations which can be dealt with quickly. Even where the case commences by way of charge, the PPS must still direct whether there should be a prosecution. The proceedings must be withdrawn if the PPS lawyer disagrees with the decision to charge the defendant.

3.7 If the direction is that the suspect should be prosecuted, it is the responsibility of the PPS to conduct the proceedings against the defendant, including if necessary to prepare the case for trial. At court the PPS will be represented by an in-house prosecutor or counsel. Almost all hearings in the Crown Court are conducted by counsel under instruction from the PPS.



The structure of the PPS

3.8 The PPS is headed by the DPP supported at the senior level by the Deputy Director of Public Prosecution (DDPP), and two Senior Assistant Directors (SADs), although the Service had three SADs at the time of our inspection.

3.9 The PPS is structured on a regional basis, with some specialist casework, policy matters and corporate functions dealt with from the Service's headquarters in Belfast.

3.10 At the time of our inspection some regions were fully operational, in others the PPS had yet to assume responsibility for all prosecutions and suitable premises had yet to be identified, as follows:

Region	Operational Office	Office awaited	Courts covered	
			Crown Court centres	Magistrates' courts districts
Belfast	Belfast (including HQ) – fully operational	–	Belfast	Belfast and Newtownabbey
Northern	Ballymena – fully operational	Derry/Londonderry – Some adult cases still prosecuted by the police	Derry/ Londonderry Antrim	Derry/ Londonderry Magherafelt Limavady Antrim Ballymena Larne North Antrim
Western and Southern	Omagh - some casework still dealt with from Belfast pending completion of Omagh office	Omagh – awaiting completion Newry – some adult cases still prosecuted by the police	Armagh and South Down Fermanagh and Tyrone	Armagh Banbridge Newry and Mourne East Tyrone Fermanagh Omagh Strabane
Eastern	Lisburn – fully operational	-	Ards Craigavon	Ards North Down Castlereagh Down Craigavon Lisburn



3.11 Each region is headed by an Assistant Director (AD), who has overall responsibility for prosecution decisions and for the conduct of all prosecutions in their region (except for cases which fall to be dealt with by headquarters). The AD is supported by senior public prosecutors (SPPs) and public prosecutors (PPs), and administrative staff. Within each region there is also a Community Liaison Team (CLT) which has responsibility for a number of aspects of the Service's business, including dealing with victim and witness issues.

3.12 ADs report to a Senior Assistant Director (SAD). A chart showing the management structure is at Appendix 2.

Staffing

3.13 At the time of the inspection, the PPS had a total of almost 550 staff against a final target of 609. Numbers of prosecutors have increased from approximately 40 (at the time of the ODPP) to almost the full anticipated complement of 162.

The operational structure

3.14 At regional level, PPS officers are in the main divided on functional lines; prosecutors work in decision-making or court teams; administrators in casework preparation, casework support and court support teams. We comment in Chapter 15 on the effects of the organisational structure on working practices.

3.15 We refer to the impact of this compartmentalisation on the effectiveness of the Service at the relevant parts of the report.

Governance arrangements

3.16 The DPP chairs the PPS Management Board comprising the Deputy DPP, the two SADs and two non-executive members. The Board meets regularly and focuses on strategic issues. It is supported by a Senior Management Group and an ADs Forum whose roles are to translate strategy into operational delivery. Management is also supported by the Business Managers Forum, whose role is to manage processes and ensure consistency and the Staff Communications Forum. These groups operate with terms of reference and key objectives. Governance arrangements are discussed further at Chapter 4.

Caseload and Prosecutions

3.17 In 2006-07 the PPS received a total 38,091 files from investigating agencies. This represented a 65% increase on the caseload in the previous year, reflecting the fact that a number of regions went live during this period.

Cases dealt with in 2006-07 that the PPS directed	
No prosecution decision	25.4% ²
Diversionsary option (caution, informed warning or youth conference)	15.9%
Summary prosecution	55.0%
Indictable Crown Court prosecution	3.8%

² The no prosecution figures include those cases started by way of police charge, but in which the directing lawyer decided that either the Code for Public Prosecutors (the Code) evidential or public interest test was not met.





- 3.18 These figures illustrate the changing nature of the caseload from that previously dealt with by the ODPP, with the majority of cases submitted now being suitable to be dealt with in the magistrates' courts.
- 3.19 Appendix 7 sets out regional key caseload data for 2005-06 and 2006-07. There are marked variations between 2005-06 and 2006-07 as some regional offices only became fully operational and took responsibility for all cases arising in their area during 2006-07. Cases where the police are still deciding on, and conducting the prosecution of adult offenders in the magistrates' courts are not included in regional figures.

Convictions

- 3.20 Conviction rates for 2006-07 stood at 85.6% in the magistrates' courts and 87.2% in the Crown Court.

Budget

- 3.21 For 2005-06 PPS actual spend stood at £25,856,000. For 2006-07 spend stood at £35,560,000. Both figures include capital costs. Figures for 2006-07 include accruals from 2005-06 and the costs of opening two regional offices. Arrangements for financial management are discussed in Chapter 16.

The Status and Standing of the PPS

4.1 In this chapter we consider the current status of the PPS and the impact it has on the operation of the organisation. We also discuss the current standing of the Service within the overall criminal justice system.

Political and financial governance

4.2 The Act provides that the PPS is to consist of the DPP, the Deputy Director and members of staff. The Service is funded by the Secretary of State and the staffing levels are subject to his approval. However, the Act also makes clear that the DPP is subject to the superintendence and direction of the Attorney General. This broadly reflects the situation which existed in relation to the former ODPP in that the funding for the organisation came from the Northern Ireland Office (NIO) but the DPP was accountable to the Attorney General. The superintendence by Law Officers of prosecuting authorities is very different from the conventional Minister/Department relationship concentrating as it does particularly on legal decision-making and the success or otherwise of prosecutions, rather than on more general management arrangements.

4.3 This means that the government department (the NIO) which is

responsible for funding the PPS does not engage in the normal dialogue about performance which would routinely take place between a funding department and a publicly funded body.

4.4 In addition to the rather difficult governance arrangements, the exact legal status of the PPS lacks clarity. The DPP and Deputy Director are statutory appointments, whereas, the staff of the PPS are civil servants. Staff members are recruited by convoluted means through the NI Department of Finance and Personnel, which then attaches them to the NIO who in turn second them to the PPS. Whilst the PPS is a separate organisation for operational purposes, it appears to be part of the NIO for staffing and budget purposes. Inspectors believe that this lack of clarity about the status of the PPS together with the disjunction between funding and accountability, does not assist senior management in the PPS to discharge their functions effectively. The placing of the PPS on a sound footing as an independent department would assist in resolving a number of current problems the PPS is facing, in terms of staff turnover and recruitment. Such a move would also be likely to lead to more robust financial governance of the PPS budget. It would also give



structural expression to the independence of the PPS and insulate it further from any undue influence, and clarify its obligations as an employer, for example, in the context of Northern Ireland's equality legislation. This is discussed further at Chapter 15.

- 4.5 In our view, the current arrangements for governance of the PPS by the two Government departments combined with the unclear status of the organisation, is contributing to the difficulties outlined above. The proposed funding arrangements for the PPS under devolution which we discuss at paragraph 1.11 will go some way to resolving these difficulties. However, there remains the need to determine how the PPS will be accountable for its performance through its funding body.
- 4.6 It is important that this issue be resolved prior to the devolution of justice and policing to the Assembly in Northern Ireland. In the (now likely) context of devolution of justice and policing, the accountability and financial provision for the organisation should be brought together so that the PPS is funded by and held accountable by one department.

We recommend the PPS should become a department in its own right, responsible for its own budget and recruitment.

- 4.7 We recognise the concern of PPS staff that their status as civil servants remains and we see no difficulty in that status being secured. At the

present time, the PPS has limited control over recruitment processes and policies, being governed by its relationship with the NIO, the DFP and the Civil Service. The PPS would benefit from having greater control over these aspects of management, including its current obligation to apply the UK nationality requirement when recruiting lawyers.

The standing of the PPS within the criminal justice system

- 4.8 The developing role of the PPS means it is now a pivotal agency in the criminal justice system. It is evolving from a small team handling a relatively low volume of very serious cases, to an organisation of 600 staff that will shortly handle about 60,000 cases a year. In order to become fully successful, the PPS needs to increase its influence within the criminal justice community in shaping strategy, performance and systems. Although in its early stages, the process has begun, and the momentum needs to be maintained.
- 4.9 The PPS is heavily involved in the development of more integrated IT with other agencies through the Causeway project. Despite some delays significant progress is anticipated later in 2007 and this should deliver some efficiencies. However, this will not resolve many of the considerable inefficiencies that currently exist within criminal justice processes and practices. Whilst there have been some improvements in inter-agency liaison and co-operation, there is still not an integrated approach in identifying and agreeing operational priorities for the criminal



justice system. Business Plans are not routinely shared at the present time although the PPS has provided a copy of its plan to others. There is still a silo approach to some issues with each agency focused only on its own priorities and targets, and in some respects a blame culture exists. The Criminal Justice Board (CJB) clearly has an important role to play in driving a more 'joined-up' approach at strategic level.

- 4.10 There is limited evidence of a joint performance culture at a strategic level between the agencies although individual case failings are discussed, and there have been positive steps in the development of regional joint performance meetings.
- 4.11 This inspection has found numerous examples of opportunities for the PPS to improve its processes and performance if it can secure the cooperation of its criminal justice partners. Overall, Inspectors formed the view that the PPS, as a key and central criminal justice organisation, is not yet as influential as its position merits. To some extent this is understandable at this point in its development, but this should be a key priority, to ensure the PPS attains the full confidence and trust of its partner criminal justice agencies and other stakeholders. The PPS itself will become more efficient if it can engage other agencies more effectively. This will require a more proactive approach, with high quality communication, planning and performance management.

Public confidence in the PPS

- 4.12 One of the PPS corporate objectives is to promote public confidence. Public confidence is measured as part of the Northern Ireland Omnibus survey. A key milestone for the PPS was to achieve 70% public confidence in the provision of a fair and impartial prosecution service by March 2006. The January 2006 survey indicated that 66% of respondents were very or fairly confident in the provision of a fair and impartial prosecution service, compared with 69% in February 2005.
- 4.13 For some sections of the community, confidence in the prosecution service will be key to securing confidence in the criminal justice system as a whole. The opening of regional offices across Northern Ireland is a major development in the process towards establishing public confidence. While offices have to date been opened in Lisburn and Ballymena, it is important that the opening of offices in Derry/ Londonderry, Omagh and Newry is progressed quickly to ensure the development of relationships between the PPS and communities that might, in the past, have been estranged from the criminal justice system. It is important that the local offices provide focal points for proper and genuine engagement between the PPS and the local communities in the areas the offices serve.
- 4.14 To date there has been only limited engagement with the full span of political parties, although there are encouraging developments centred on





the newer regional offices. As with all outreach activity, the PPS needs to engage with all sections of the community in an open and transparent way in order to achieve the aim of, and be viewed as, a fair, independent and effective prosecution service.

- 4.15 Elsewhere in this report we identify measures that the PPS can take to assist in increasing public confidence, including the provision of fuller explanations to victims, a more proactive approach to media engagement, improving timeliness, and the development of its community outreach programme.

CHAPTER 5:

Independence, Openness and Transparency



5.1 In this chapter we consider whether PPS decision-making is independent, transparent and free from undue influence. We also examine those aspects of the organisation, for example leadership and culture, which can be influencing factors.

Independence

5.2 It is of course of vital importance that the PPS is independent both in terms of its relationships with others and also in terms of its decision-making. It is equally important that the public has confidence in the independence of the PPS.

5.3 Inspectors were impressed by the commitment expressed by staff at all levels to asserting their independence and the extent to which they valued the importance of being seen to be independent. It is undoubtedly the case that senior managers within the PPS have been successful in instilling this ideal in the many new recruits.

5.4 While it is critical that the independence of prosecutors is not compromised, it is also important to recognise that an undue pre-occupation with independence can lead to reluctance to engage fully with others, both within and outside the criminal justice system. Many of the issues of concern which were

identified during the course of the inspection, both by Inspectors and those we spoke to, in terms of the relationships between the PPS and other criminal justice agencies, and the wider community in Northern Ireland, were often attributed to an over-emphasis on independence without the measure of collaboration required by the inter-dependencies.

5.5 In particular, we found that the PPS was reluctant to provide pre-charge advice to the police in appropriate cases (although there were some praiseworthy exceptions), which gave rise to a general frustration at all levels of the PSNI. Prosecutors were reluctant to give pre-charge advice as they did not wish to be seen to be directing the investigation for fear of compromising prosecutorial independence, although it was apparent that at a local level in some regions there was a much more relaxed attitude to direct engagement with the police. Where this was occurring relationships were constructive and the PPS was held in good regard by operational officers.

5.6 The PPS has a statutory obligation to pass to the Police Ombudsman any case where it comes across evidence of police wrongdoing. Having regard to this obligation, working in a closer relationship with the police and even



occasionally attending police stations will not weaken the Service's robust independence.

- 5.7 Maintaining a rigid degree of operational distance from other agencies, and particularly the police, is not necessary to maintain community confidence in the PPS. Inspectors, however, came across a wide range of consultees, including community groups, defence lawyers, some political representatives and others, who seriously questioned whether the PPS was in fact sufficiently independent from the police and from other government agencies.
- 5.8 We have considerable sympathy for the PPS in its need to strike a delicate balance. Whilst independence on the part of the PPS is vital, the way that independence manifests itself can result in difficulties in working relationships with criminal justice partners and yet paradoxically does not necessarily result in widespread confidence in its independence across the community.
- 5.9 We examine in detail in Chapters 6-10 the quality of decision-making on the part of the PPS. We found no evidence that decisions were unduly influenced by anyone. A common theme in the evidence from sources that had dealings with the pre-cursor organisation was to doubt whether decision-making by the PPS was genuinely independent. In particular, there was mention of cases involving allegations of unlawful activity by the state or its agents or high profile conflict-related cases. None of these mainly historic cases featured in our

file sample. Our focus was on the current position.

- 5.10 A new policy on the giving of reasons for decisions not to prosecute (discussed at paragraphs 5.15 - 5.28) might well go some way to addressing and avoiding the perpetuation of the fundamental concerns raised above, which are likely to impact on public confidence in the criminal justice system as a whole, and not just in the PPS. The appetite for better explanation of decisions by those outside the criminal justice system is mirrored by those within. Agencies other than PSNI who rely on the PPS to prosecute cases investigated by them spoke of greater confidence engendered by a willingness in recent years to engage in this way. Some went further and said that feedback from prosecutors was valuable in enabling them to improve the quality of investigations.
- 5.11 Such a cultural shift on the part of the PPS would have a number of benefits and impact positively on a number of issues which were raised during the course of the inspection. It would also allow much greater explanation of decisions to victims and others and, in consequence, a more engaged relationship with the media and the wider community.

Transparency

The explanation of decisions to victims and the public

- 5.12 We have already discussed aspects of the relationships between the PPS and other agencies within the



criminal justice system. A willingness to engage is even more essential when the PPS is dealing with those outside the formal criminal justice system. The general policy of the ODPP and the PPS in terms of explaining decisions to victims and the public in general continues to evince the caution which flows from many years of the Troubles when the majority of its casework related directly to divides within the community. That approach led to challenges by way of applications for judicial review (albeit unsuccessful) and academic comment. It is not the purpose of this inspection to evaluate the previous policy of the DPP's office or the challenges made to it, but to consider the effectiveness of the publicly stated policy of the PPS and whether in practice it contributes appropriately to providing a fair, independent and effective service for the people of Northern Ireland.

- 5.13 The context in which the PPS operates is very different from what preceded it, not least in the mix of cases which it now handles. In numerical terms, most of its casework now relates to behaviour which might be called "routine" crime, and whilst any crime is distressing for the victim, the public sensitivities around decision-making are very different.
- 5.14 The PPS policy on the giving of reasons is set out at section 4.12 of the Code for Prosecutors. The Code states that it is the policy of the PPS to give reasons to the victim, albeit in the most general terms. In practice, where the decision is that there is to be no prosecution, this involves

sending a standard form letter to the victim, regardless of their age, learning ability or their first language, setting out in legalistic terminology that either the Code evidential or public interest test has not been met. We noted that in a few cases experienced prosecutors had overridden this process to ensure that a reasoned explanation was given in the first instance.

- 5.15 The initial letter to the victim rarely sets out the reasoning behind the prosecutor's decision, but the Code states clearly that detailed reasons may be given to the victim upon request. We found this discretionary policy was applied inconsistently across the PPS regions, with the result that whether a victim received a more detailed explanation depended in part on which region handled the case. When detailed reasons were given we found that these were generally well written and indicated that all the relevant factors had been considered.
- 5.16 Further, the onus should not be on the victim to seek reasons, and the current policy may discriminate against the less articulate or those who do not have English as a first language. In order to improve public confidence in the fairness of PPS decision-making and to strengthen the openness and transparency of the Service we consider that, save in exceptional circumstances, substantive reasons should be given to the victim. We recognise that this will take more time for prosecutors, but believe that this is an investment that will reap substantial public dividend.



5.17 Substantive reasons should also be given in cases where the proceedings are withdrawn after an initial decision to prosecute. Although some victims are currently informed of the outcome, usually no substantive explanation is given. Our file examination showed that no letter is sent in cases where the victim indicates that they no longer wanted to support a prosecution, the majority of which were allegations of domestic violence. We consider that the policy should be applied in all cases where proceedings are withdrawn, so that the victim understands fully what has happened.

We recommend directing lawyers should, save in exceptional circumstances, set out clearly to the victim or personal representative their reasoning for directing no prosecution or withdrawing proceedings.

5.18 The Code sets out at paragraph 4.12.4 the policy of the PPS where a death is, or may have been, occasioned by the conduct of agents of the State. The policy recognises that in these cases the public interest lies in favour of the provision of a reasonable explanation. While the number of cases which raise concerns of this nature is likely to reduce in the future, the PPS should of course be alert to the possibility of cases arriving from the police Historical Enquiries Team (HET). This is discussed further in Chapter 9.

The review of prosecution decisions

5.19 The process whereby prosecutorial decisions may be formally challenged is set out in the Code and other published PPS material although unlike the complaints process, it is not contained in a separate booklet. This contributes to a lack of awareness among stakeholders of the proper process to be followed.

Issue to address:

Information about the process by which a review of prosecutorial decisions can be initiated should be made widely available to users of the criminal justice system including victims (Priority: medium).

5.20 The police and other investigating agencies were aware fully of the review process although it was rare for it to be formally invoked. Data supplied by the PPS indicates that at the time of our inspection there had only been 45 requests for formal reviews of decisions, of which five have been changed as a result of the review.

5.21 Our findings show that there are, however, significantly higher numbers of informal requests for review. The absence of a detailed explanation to the investigating agency was contributing to the level of requests.

5.22 We noted examples where very good explanations were given, which indicated clearly that the prosecutor had considered all relevant factors before making their decision, but in others the only explanation was that the case did not meet either the

Code evidential or the Code public interest test. We found consistently that the investigating agencies would then contact the directing lawyer informally to request clarification of decisions. Once a more detailed explanation had been given, they understood and agreed with the reasoning in almost all cases, although there was some difference in approach between the PPS regions in the willingness to give a more detailed explanation.

- 5.23 However, this process is time consuming both for the investigating agency and the PPS, with the prosecutor having to retrieve the file and consider the case afresh to provide the more detailed explanation. This could be avoided by the prosecutor giving an adequate explanation at the time they make their decision.
- 5.24 Our file examination showed that the adequacy of the endorsement of the decision on the case management system (CMS) (which reflected the adequacy of the initial explanation to the investigating agency) could be improved. CMS was endorsed adequately in only 76% of cases where no prosecution was directed, 84% of magistrates' court cases and only 63% of Crown Court cases.
- 5.25 It is particularly important that a detailed explanation is given to the investigating agency (including the Office of the Police Ombudsman of Northern Ireland (OPONI)) in cases where no prosecution is directed or the prosecutor's decision differs from the recommended disposal made by the investigator. This will save time in

the long run, and importantly will enable the investigator to identify any learning points which may help to strengthen similar cases in the future. It will also help PPS managers to identify any trends in file quality which may require discussion with managers in the investigating agency.

- 5.26 There is a technical difficulty relating to the length of explanation that can be given in the relevant section of the CMS. This was raised during the evaluation of the Western region pilot, but it has not yet been addressed.

We recommend directing lawyers should explain fully their reasoning to the agency in cases where they direct no prosecution or where their decision is different from that recommended by the investigator.

The explanation of the prosecutorial decision to defendants

- 5.27 In every case the PPS writes to the defendant to inform them of the direction made in the case. This correspondence from the PPS is confusing, particularly where there is more than one alleged offence or incident and there is more than one direction, for example to prosecute one alleged offence but not another. The lack of specific detail in the letters confuses defendants; we observed an occasion in court where the defendant thought wrongly that one set of proceedings had been withdrawn. The format of the letters sent to defendants should be



considered as part of the overall review of standard correspondence which the PPS is undertaking.

The fairness of case outcomes

- 5.28 There are systems in place, although currently undeveloped, which would allow the PPS to analyse case outcomes by age and gender, although this has not yet been undertaken.
- 5.29 However, there are no current systems to analyse case outcomes by ethnicity or community background. The ability to produce this type of case outcome data is not something which can be done by the PPS in isolation from the rest of the criminal justice agencies. For this to happen it would require them to work together.
- 5.30 Although a pilot scheme, operating in a small number of police stations, to identify community background at point of charge or the time the defendant was reported for process by way of summons, was not taken up, the Northern Ireland Criminal Justice Board (CJB) is developing mechanisms which would allow the necessary information to be collected accurately. The PPS should then produce casework outcome data by community background.

Issue to address:

To provide evidence of the fair approach of the PPS, the Management Board should, once the necessary mechanisms are in place, produce casework outcomes for example by community background and ethnicity (Priority: medium).

Relationships with the media

- 5.31 We found there was still a collective cautiousness about developing a relationship with the media. Senior members of the PPS have received training on media handling and this is beginning to be reflected in the organisation's approach to the press, including using the opening of regional offices to publicise its work. This is wholly appropriate. The creation of a public prosecution service which handles all allegations of criminality is something which is both a matter of public interest and of interest to the public.
- 5.32 It is important that the PPS develops a pro-active media approach which will ensure that so far as possible matters are portrayed fairly. This should include ADs developing links with their local media.
- 5.33 During the inspection the PPS received negative press coverage following a decision of the High Court which commented unfavourably on some aspects of PPS performance. This was an example where a proactive PPS could have explained publicly how it had already improved its processes to prevent a reoccurrence of the events which had been criticised.

Issue to address:

To develop the PPS profile and increase public confidence the Management Board and Assistant Directors should become more pro-active in their approach to media engagement (Priority: medium).

The complaints process

- 5.34 There is a formal complaints process (for issues that do not relate to review decisions) which is published on the PPS website and is usefully available in booklet form.
- 5.35 The definition of a complaint is broad and states the public may complain verbally or in writing about almost any aspect of work under the control of the PPS. Complainants are directed initially to the PPS Community Liaison Team (CLT), although at the time of our inspection the only contact details in the complaints booklet or complaints form referred to the Belfast CLT, which added to their workload.
- 5.36 Staff members were unsure about how to deal with telephone complaints, and complainants were being asked to put their complaint into writing. This makes it less likely that some complainants continue with their complaint, particularly if they have learning difficulties or English is not their first language and could result in the level of complaints being understated, and valid complaints not being addressed.
- 5.37 There is provision within the process for complaints to be referred to an Independent Assessor when the complainant is dissatisfied with the PPS response. This provides an important element of independence, which assists in building confidence in the fairness of the process.
- 5.38 In 2005-06 no complaints were formally escalated to the Independent Assessor, although he produced a

report (which is available on the PPS website) on non-escalated complaints that included an assessment of the quality of the PPS complaints handling and some analysis of the types of complaints received. The PPS Annual Report for 2005-06 indicates that for the period July 2005-March 2006, 35 complaints were received of which 11 were upheld or partially upheld.

- 5.39 The Independent Assessor's report identifies two main areas of complaint, namely the timeliness of witness payments and cases not being prosecuted because the statutory time limit had expired. Some work has been undertaken to address these issues; however our file sample indicated that cases were still becoming statute barred before they were considered, although this was not always attributable to PPS processes. This is dealt with more fully at Chapter 6.

Strength

The independent element to the complaints process provided by the Independent Assessor.

- 5.40 The report also contained a number of recommendations designed to improve complaints handling, but it is unclear how these have been taken forward. One matter which needs further consideration is the accessibility of the complaints process. It was not available at other relevant locations, for example court centres and police stations. The complaints form on the PPS website is not in a user friendly format. It is not available in any language other



than English, nor is it available in other formats to assist for example the visually impaired. Translation and the production of other formats can be costly. The PPS should take steps to ascertain whether there might be a case for making it available in some other form having regard to the changing demography of Northern Ireland.

- 5.41 CJI has recently completed a thematic review of complaints handling across the criminal justice system “*The handling of Complaints in the Criminal Justice System: A review of how the main Criminal Justice Organisations deal with Complaints*” which deals with these issues further.

CHAPTER 6:

The Application of the Code for Public Prosecutors



6.1 In this chapter we consider the effectiveness of the implementation of the Code for Public Prosecutors, the correctness, and timeliness, of its application to initial decisions on whether or not to prosecute an alleged offender, together with some ancillary issues. We discuss the handling of cases in the magistrates' courts and the Crown Court in Chapters 7 and 8.

The Code for Public Prosecutors

6.2 The PPS Code for Public Prosecutors (the Code), which also contains the PPS Code of Ethics, is a public document which sets out clearly the evidential and public interest tests that prosecutors must apply in each case. In every case the prosecutor must consider whether the evidence is sufficient to provide a reasonable prospect of conviction (the Code evidential test). If the Code evidential test is met, the prosecutor must then go on to consider whether it is in the public interest to prosecute the offender. In applying the tests the prosecutor must adhere to the obligations set out in the Code of Ethics, which also sets out clearly the expected behaviour of a Public Prosecutor.

6.3 In addition to the Code tests, the document covers related issues such

as the policy on the giving of reasons and the approach to be taken when the prosecutor is asked to review a decision.

6.4 The draft Code was subject to public consultation before it was issued. However we found that not all representatives of other agencies, including the PSNI, and defence practitioners were familiar with its content, and in some instances, were not aware of its existence. To improve awareness of the Code, the PPS should publish it in an abridged form and make copies available at relevant locations, for example police stations and court centres.

6.5 Familiarisation with the provisions of the Code is a core part of the induction training for prosecutors and we found that it had been successfully embedded.

The initial application of the Code tests

6.6 As part of our file examination, we considered whether the Code tests were applied correctly when prosecutors considered whether an alleged offender should be prosecuted. In considering the correctness of the decision Inspectors applied the "reasonable prosecutor test", which is not whether the Inspector agreed with



the decision. Although the vast majority of the decisions were justifiable by reference to the Code we also found that prosecutors adopted a cautious approach in some cases and a different decision (for example a direction to prosecute) could have reasonably been taken.

6.7 The overall quality of decision-making at this stage was good, which is commendable having regard to the relative inexperience of many PPs. The Code evidential test was applied correctly in 69 of the 72 cases (95.8%) where the decision was not to prosecute, and the public interest test was applied correctly in all relevant cases. Where a prosecution was directed, the Code evidential test was applied correctly in 97 of the 98 magistrates' court cases (99%) and the public interest test in 95 of the 96 relevant cases (99%). However, the element of caution was present in all categories. It is also worthy of note that our examination of cases that were withdrawn (discussed in Chapter 7) revealed less positive results.

6.8 There was a similar high level of compliance in respect of Crown Court cases, where both Code tests were applied correctly to all the cases in our file sample. A more detailed breakdown of our findings is at Appendix 4.

6.9 In those cases where the Code tests were not applied appropriately, Inspectors considered whether this indicated any element of unfairness on the part of the prosecutor or undue influence by another agency. It did not. We were satisfied that the

incorrect decisions were made because the prosecutor either misunderstood the law, or failed to assess the evidence properly. Indeed most stakeholders, including those who might be regarded as critical of the PPS and the criminal justice system more generally, accepted that decisions were generally properly taken.

6.10 Even so, we found there were some inconsistencies between prosecutors, particularly about when it was appropriate for a youth to be cautioned in circumstances where they had not admitted the offence. Our file sample included cases where the decision to direct no prosecution on the evidence supplied was correct, but where a request for further information might have led to a different outcome. For example an allegation of assault on police might have been viable if the prosecutor had explored in more depth the reason for the officer's conduct to assist in determining whether she or he was acting in the execution of her or his duty.

6.11 There is a clear referral process, understood by all staff, which ensures that cases are dealt with by prosecutors of sufficient experience.

Strength

The process of referring cases which ensures they are dealt with by a prosecutor of sufficient experience.

The level of charge

6.12 The quality of decision-making when directing the most appropriate

charge(s) was good. The correct charge was directed by the prosecutor in 96 of the 98 magistrates' court cases (98%) and 65 of the 68 Crown Court cases (95.6%).

The timeliness of decision-making at the direction stage

6.13 The reduction of delay in the criminal justice process is a key objective for the PPS in its Annual Report for 2005-06. Targets for 2006-07 mirrored those of the previous year, which were not met.

6.14 The following table sets out the performance of the regions, for the timeliness of the direction on whether an alleged offender should be prosecuted:

and cases commenced by way of police charge. As a consequence some summons cases, which often involve low level, high volume crime, can take longer than they should to process. Many cases exceed the target for a decision to be made, including offences which would be categorised as low level crime and which could therefore be reviewed quickly. Delays in dealing with this type of offence can impact adversely on public confidence in the criminal justice system and on police sanction detection rates. In addition most of the offences are prone to becoming statute barred, which we discuss below. Managers should ensure that high volume crime is progressed within acceptable timescales.

Performance against targets for the issue of decisions 2006-07

Case category	Target % in 25 days	Regional Performance		Target % in 80 days	Regional Performance		Target % in 80 days	Regional Performance	
		Belfast and Western	Northern and Eastern		Belfast and Western	Northern and Eastern		Belfast and Western	Northern and Eastern
Indictable	n/a	n/a	n/a	50%	58%	57.1%	95%	87%	90%
Summary (including diversionary options)	50%	54.7%	n/a	95%	87.5%	n/a	n/a	n/a	n/a

6.15 Although performance represents an improvement on that for 2005-06, performance against timeliness targets has overall been variable and generally needs to be strengthened.

6.16 The PPS's stated aim is to prioritise decisions in three categories of case: youth cases, offences where defendants are remanded in custody

6.17 The PPS "stop the clock" when they issue a request for further information (RFI) to the police, and do not start it again until they receive a satisfactory response. The data does not, therefore, reflect real time performance. The proposed introduction of overall processing time targets, shared by all the criminal justice agencies should help



to develop a collaborative approach to timeliness as opposed to each agency striving to achieve its own targets, sometimes to the detriment of others and overall case quality.

- 6.18 Whilst overall timeliness is getting better, there is clearly still room for significant improvement. In addition, there are considerable unexplained differences in regional performance which the PPS needs to consider and, where necessary, take appropriate remedial action.

Targets for 2007-08

- 6.19 There are new Ministerial targets for 2007-2008 for the timeliness of processing cases within the criminal justice system, which were set following a review by the Criminal Justice Board Delay Action Team. For the PPS the targets are: indictable decisions (charge cases only) within 116 days; summary decisions (charge cases) for adults within 32 days and for youths within 30 days; summary decisions (summons cases) for adults within 47 days and for youths within 52 days. These targets are now more challenging as they do include time occupied by the police in making further enquiries, which will require the PPS to work with PSNI to manage that aspect of the process actively. However, the target for summons cases for youths is surprising in view of the drive to improve timeliness and expedite youth work.

Monitoring

- 6.20 To assist in monitoring performance a report of cases where a decision is

outstanding at 40 and at 80 days from receipt is produced and monitored by a Senior Assistant Director. The report is used to reinforce individual accountability, with prosecutors required to produce reports on cases on the list which they have been allocated or which they have taken from the unallocated case queue (which tend to be the less serious cases).

- 6.21 To improve throughput, targets for the number of directions made per day have been proposed for prosecutors. We found that across the regions there was a lack of clarity about the numerical target, with some local variations developing and a level of misinterpretation by staff. There was also a recognition by staff that there was a danger that prosecutors would focus on the more straightforward cases from the unallocated case queue to ensure they met the target. The Assistant Directors Forum (ADF) needs to establish clear ground rules and criteria. At the very least, the system requires some element of weighting in respect of the cases allocated to prosecutors.

Reasons for delay

- 6.22 The timeliness of decision-making at the direction stage is often poor and we observed some unacceptable delays. One factor is the requirement that all allegations of criminality relating to an identified suspect must be referred to the PPS. This broad remit includes some where the outcome is clear from the outset. Some attempts have been made to address the problems. Progress has



been made in relation to some types of case, for example the piloting of fast-tracking PPS directions in one police district command unit where an adult caution is recommended.

- 6.23 There can also be a considerable delay from the point of decision to the issue of the necessary documentation, an administrative process. For example, there was an average delay in summary cases in 2006 of 12.8 days from decision to issue of paperwork; this ranged from 17 days in Belfast to less than five days in the Northern and Eastern regions. The delays were attributed to backlogs and untrained or temporary staff. The next release of CMS includes an enhancement that should improve the situation.
- 6.24 We found that alleged offenders were spending a considerable time on remand (either on bail or in custody) on police holding charges, awaiting a prosecution direction and there was no apparent impetus to expedite the review of the case and take a decision. Our court observations confirmed that cases where the police had initially charged the defendant were routinely being adjourned for at least four weeks for the police file and a further four weeks for the file to be allocated to a prosecutor. The problem is particularly evident in Belfast where it seems to be an embedded culture within the system as a whole; in the other regions there is still some delay but headway is being made.
- 6.25 We also noted file endorsements by PPS court staff that the defendant was eager to plead guilty and a

decision as to prosecution and jurisdiction was requested. It is unsatisfactory that these cases cannot be progressed by a decision being made by the prosecutor at court. This is an example of the compartmentalised structure and division of responsibilities working against effective case progression.

- 6.26 In cases where the decision was not to prosecute the alleged offender the timeliness of the police response to RFIs was good. In 14 of the 16 cases (87.5%) where an RFI was sent the response was timely.
- 6.27 However, performance dropped dramatically in cases where the direction was to prosecute. The police response was timely in only five of the 15 magistrates court cases (33.3%) where an RFI was issued and eight of the 36 Crown Court cases (22.2%), and this will have had an adverse impact on overall timeliness.

Statute barred cases

- 6.28 Proceedings for cases which can only be dealt with in the magistrates' courts must, subject to limited exceptions, be commenced within six months of the date of the alleged offence. A failure to do this is a bar to prosecution. This was happening in a significant number of cases and sometimes whilst awaiting a PPS decision. In some instances however, the file was only received after the case had become statute barred. The scale of the problem was unclear, and needs to be resolved jointly with investigating bodies, including the OPONI. It also reinforces the need to develop fast-track processes in appropriate cases.



6.29 A judicial procedure is available to remove the time limitation by obtaining what is called a Form 1, although it is important that this process is not used to mask inefficiencies in the timeliness of decision-making; nor can it be used in cases received by the PPS after the six month period has expired. Staff used CMS reports to try to monitor relevant cases which are flagged on the system; unfortunately they are not assisted by the format of the report and an element of manual checking is required to capture cases which are subject to statutory time limits. Figures provided by the PPS for two of the regions during January and February 2007 showed that 34 cases became statute barred, 27 in Belfast region and seven in Western region. Twenty of the cases were received from the investigating agency after they had become statute barred (11 of which were due to a temporary failure of the electronic transmission system to register the files as having been received from the police) and 14 were due to various administrative oversights, for example the non-administering of a caution or where the summons was not issued in time.

6.30 Prosecutors need to be alert to the wider implications of cases becoming statute barred in demonstrating a fair approach and building confidence in the criminal justice system. We were provided with an example where a minor public order case arising out of a parade could not be prosecuted because the statutory time limit for the commencement of proceedings had passed. It was unclear whether this was an oversight on the part of

the PPS or as a result of electronic failure. Whilst it is important that this is not allowed to happen in any case, it is particularly so when there are sensitivities around the circumstances of the offending.

Case Study

The following examples illustrate the impact of delay at various stages on case handling:

- There were delays in a case involving harassment by telephone messages and texts following the break up of a relationship. The offence occurred in February 2006 when a harassment order was already in force and became statute barred in August (as no Form 1 had been issued). It was not until October 2006 that the defendant was spoken to by the police and he apologised for his behaviour. It was also at this time that the victim withdrew support for the prosecution as the behaviour had not recurred in the previous eight months. The file was received by the PPS in November 2006 when it was too late for any decision to be made other than not to prosecute. This is unsatisfactory handling of a case by the PSNI, involving an allegation of domestic abuse, which prevented the PPS from making an informed decision.
- In a case involving alleged child abuse by a youth on a four-year-old boy where there was clearly insufficient evidence it took three months from the date of the decision to the decision being issued. There was no apparent reason for the delay and it is not in accordance with the prioritisation of youth cases.

We recommend the Management Board should:

- **review the case management processes and administrative support systems to reduce delays, improve efficiency and eliminate duplication (from receipt of the file to allocation, decision-making and issuing decision); and**
- **monitor jointly with investigating agencies the use of the RFI system and collate data to drive up performance in relation to timeliness.**

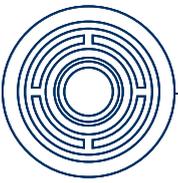
The quality of the investigating agency files

- 6.31 CMS links the PPS with the PSNI, and is part of a much larger overall criminal justice computerisation programme known as Causeway which we discuss in Chapter 17.
- 6.32 Electronic file transmission between the PSNI and the PPS has been developed, and in most cases all statements are in electronic form, and exhibits and other documentation are scanned in by the police. There are PPS criteria for files which should remain electronic within the PPS to reduce unnecessary printing and duplication. This increased use of the electronic file has caused some confusion over cases submitted by other investigative agencies. Their files are not submitted electronically which can cause particular problems if they are transferred from the Departmental section to regional offices.

6.33 The approach to be adopted by the PPS when the police file does not reach the agreed quality standard remains an issue. There has been considerable debate as to whether the PPS should simply reject files with a 'no decision' rating if the file is sub-standard, or continue to work towards file improvement by sending formal RFIs. However, neither in our view is wholly satisfactory. It is not in the public interest for the PPS to 'discipline' PSNI by rejecting files or delaying proceedings where that can be avoided. The most likely loser will be the original victim. But PPS cannot allow prosecution resources to be used unnecessarily on building up sub-standard files. There must be a collaborative approach with both sides jointly managing this important interface.

6.34 To assist in maintaining file quality the PSNI has established police liaison units in each PPS region. This is a relatively new role in some regions and has yet to be formally evaluated, although feedback suggests it is a very useful function which assists in the management of relationships at operational level. The units are responsible for monitoring and reporting on the quality and timeliness of police submissions, and can also query with the prosecutor whether an RFI is necessary. The police liaison function is working well in terms of addressing issues such as RFIs at a local level.

6.35 We were informed that the PSNI are considering moving the police liaison posts from a police headquarters function to the relevant district command units. New competing



priorities at district level may impact on the effectiveness of the liaison officers. The PPS needs to ensure that the proposal and possible impact are discussed fully with senior police managers; it may be prudent to canvass the postponement of any decision pending a formal evaluation of the posts.

- 6.36 We found that despite many staff being aware of the key elements of the PPS/PSNI protocol, and it having been explained during induction training, most did not have access to a copy of it to familiarise themselves with detailed aspects of the protocol relevant to their work.
- 6.37 The formal RFI process (recorded on CMS) is used to request most additional evidence or information. There continues to be some confusion as to when an RFI needs to be used. There is guidance in the protocol so this should not be an issue, but access to the protocol is essential for it to be effective. Feedback suggested that RFIs cause a considerable problem for the police; requests for full transcripts of interview before a decision can be made, or a full file when the defendant is likely to plead guilty, lead to the inefficient use of resources which could be diverted to work on cases which are likely to be contested. Some work in relation to RFIs has been conducted but has not been taken forward. It is now proposed to undertake a thematic review of the RFI process in the coming year. The PPS needs to ensure that any conclusions and recommendations are taken forward in conjunction with the PSNI.

CHAPTER 7:

The Quality of Casework in the Magistrates' Courts



7.1 In this chapter we consider how effectively cases are handled and progressed through the magistrates' courts, including the preparation for summary trial and the quality of advocacy. We also evaluate the quality of decision-making in cases where the proceedings are withdrawn by the PPS.

The application of the Code tests at the summary trial stage

7.2 As part of our file examination we considered whether the Code tests were applied correctly when prosecutors prepared cases for summary trial. Again, the overall quality of decision-making was good. The Code evidential test was applied correctly in each of the 74 cases that were prepared for trial and the public interest test in 73 of the 74.

7.3 The Code tests are not usually applied until receipt of the full police file and the review of the case for summary trial would usually be undertaken at the same time as the initial direction. The exception is police charge cases where there is an initial screening of the evidence when the case first goes to court but nothing further until the full file is received. This can take a considerable time (Chapter 6).

The reduction of charges

7.4 The Code sets out guidance for PPS prosecutors on when it is appropriate to reduce the level of charge. Prosecutors are also instructed to include a note on any file in which a reduction or variation of the charges has taken place, explaining the reasons for the decisions taken. During the file examination it became clear that these endorsements were not always present although the decisions were correct.

7.5 Stakeholders told us, and file examination confirmed, that decisions to reduce the level of charge could often take a considerable amount of time and increase the number of unnecessary adjournments. There were a number of causes for this delay, including in cases that commenced by way of police charge, the necessity for a PPS prosecutor to consider formally and direct the appropriate charges. A more proactive approach by the prosecutor at court could help to improve the timeliness of this aspect of decision-making. The current division of responsibility between casework and court work prosecutors inhibits the taking of decisions at court.

**Issue to address:**

The Management Board should ensure that counsel and PPS prosecutors endorse fully the file with the reasons for the alteration or withdrawal of charges (Priority: medium).

Case outcomes in the magistrates' courts

7.6 Overall there was a successful outcome (namely the defendant either pleaded guilty to one or more charges or was convicted after trial) in 85.6% of cases finalised in the magistrates' courts in 2006-07. We have excluded those cases categorised by the PPS as "other", and where the defendant was bound over or elected for Crown Court trial. This performance is similar to that for successful outcomes in the magistrates' courts in England and Wales (84% for the period March to December 2006), although caution should be exercised in making a direct comparison due to the difference in caseload and the categorisation of some case outcomes. A detailed breakdown of the magistrates' court case outcomes is at Appendix 5.

The withdrawal of proceedings

7.7 The quality of the application of the Code tests in cases which are withdrawn following an earlier direction that the defendant should be prosecuted needs to be improved. The Code evidential test was applied correctly in 41 of the 47 cases (87.3%) where the decision was to withdraw the proceedings, and the public interest test in 39 of the 42 relevant cases (92.6%).

7.8 In some withdrawn cases, although the Code evidential or public interest test was applied correctly at that stage, it was remedying an incorrect application of the Code tests at an earlier stage, as the following case examples illustrate:

Case Study

- The defendant was stopped for failing to wear a seat belt in a taxi, he had been drinking and initially provided false details before providing his correct name and address at the scene. The direction was to prosecute him for obstructing a police officer. The defence canvassed the possibility of a caution in view of his previous good character, which was accepted by the PPS and the proceedings correctly withdrawn. The case was subject to continuing review; however the prosecutor should have considered this disposal at the outset.
- A prosecution was directed against two defendants for criminal damage. There was only evidence against one, who pleaded guilty. The case against the other was withdrawn after a further review (albeit a year after the incident) when the PPS became aware the owner of the damaged property could no longer be found. The proceedings against the second defendant were withdrawn correctly in accordance with the Code, but the initial direction to prosecute was incorrect.
- An elderly defendant with severe mental and physical problems was prosecuted for a minor, although unpleasant, offence. Fourteen months after the incident the proceedings were withdrawn correctly, but applying the Code public interest test they should not have been commenced.



7.9 The PPS has established levels of authority required before a case may be withdrawn, which require certain cases to be referred to a more senior prosecutor. These were complied with. The Code is clear that counsel do not have the authority to withdraw charges without consulting and receiving the authority of the PPS. Counsel were aware fully of this policy. This requirement provides some quality assurance of decision-making and case handling but it is not formally recorded or analysed.

7.10 Consultation with the investigating agency and, in appropriate cases the victim, before the case is withdrawn could be improved. We recognise that the reason why a case must be withdrawn can arise at short notice, for example when a crucial witness fails to attend court, but in other cases the investigating agency may be able to provide further information. Consultation also assists in promoting confidence in the PPS decision-making processes.

7.11 File examination showed that in some cases, where a direction to prosecute had been made but subsequently the case was withdrawn, the outcome was being recorded incorrectly as a no prosecution decision. This will create a misleading picture of the level of cases withdrawn.

The preparation for summary trial

7.12 Overall the mechanics of preparation of cases for summary trial were satisfactory, which reflects the fact that in most cases the full file is received from the investigating agency before the direction is issued. The

following table illustrates our findings:

Summary trial	Number	%
Were the correct witnesses warned	61 of 66 cases	92.4%
Was witness warning timely	59 of 64 cases	92.2%
Was the correct evidence served	52 of 53 cases	96.3%
Was any additional evidence served in a timely manner	12 of 13 cases	92.3%
Was a hearsay application made correctly	3 of 5 cases	60%
Was the application timely	4 of 5 cases	80%

7.13 It was clear, however, that there were significant inefficiencies around some of the underlying processes, for example the obtaining of witness availability, which we discuss later in this chapter. Therefore, whilst the warning of witnesses was timely from the date the trial was fixed, there would often have been a number of previous adjournments before the PPS was able to provide the court with the necessary witness information to enable them to fix the trial date.

7.14 CMS has a task management system that can be used to aid case progression; unfortunately it is used inconsistently and is not particularly popular with staff. The task lists demonstrated significant variance as to how up-to-date regions are with their task management.

The handling of correspondence

7.15 There was a timely PPS response to correspondence in 34 of the 37 relevant cases in our file sample (91.9%), although performance was





not as satisfactory on other files we considered during our fieldwork. The PPS structure for the handling of magistrates' courts work, which splits the casework and courtwork functions, can lead to inefficiencies in the handling of correspondence. Administrative staff attach correspondence to the file, and task the work on CMS. The nature of the correspondence determines which section will deal with it, although this is not always clear as there are considerable overlaps, causing confusion to support staff and delaying case progression. We observed correspondence on files that was several weeks old, which had not been considered or responded to while the case continued to be listed in court and adjourned further. The absence of case ownership by a named lawyer contributes to difficulties in the efficient and effective handling of correspondence.

- 7.16 There was a particular problem with correspondence in the Western region. Due to issues of security all post is sent to Belfast Chambers first before it is forwarded to the relevant Western region office, often via another Western region office currently based in Belfast. There is no accountability at the various stages of handling and the additional post boxes add to the delays, although these issues should be resolved when the PPS opens its regional office in Omagh.
- 7.17 An efficiency review has been conducted on correspondence across the regions, although no remedial action appears to have yet been

taken as a result. Managers need to ensure that the findings and recommendations are progressed to improve correspondence handling across the organisation.

File endorsements

- 7.18 The quality of file endorsements was variable, and in particular the poor recording of case outcomes in magistrates' court cases was leading to incorrect case finalisations on CMS. The case outcome was recorded clearly in only 82 of the 97 magistrates' courts cases (84.5%) and any necessary post-hearing action in 79 of the 91 relevant cases (86.8%).
- 7.19 A full and legible note of the hearing was missing from many files, although prosecutors recognised the importance of this aspect of performance. There were also occasions where the full picture of what had happened at the hearing was unclear, and notes of evidence given by witnesses in magistrates' court cases, which may be relevant to any appeal, were a rarity. We recognise that the ability to record accurately is undoubtedly hindered by the speed at which some hearings are conducted.
- 7.20 Prosecutors who appeared in the same courts with continuity of caseload recognised their accountability if necessary actions were not endorsed or action taken to progress cases. The quality of counsel's endorsements was particularly poor in some magistrates' court cases, although detailed notes were found in those cases where a special fee was requested. This failing



could be readily addressed through a short but thorough induction programme for new counsel and a counsel pack detailing expectations, including the quality of endorsements.

Case progression and effective hearings

7.21 We found that magistrates' court cases were frequently adjourned and it was common for there to be more than 50 adjournments in a court, resulting in the courts listing large numbers of cases, including up to six trials. Prosecutors, therefore, had to prepare a sizeable caseload, although most would be adjourned and then have to be prepared again for the next hearing. This caused unnecessary replication of effort (often many times over) and could result in more than one prosecutor attending court, with additional administrative support, putting a strain on available resources.

7.22 Our file examination indicated that the lack of witness availability was a significant cause of adjournments and we noted files due in court that day which were still in the PPS office at midday in an attempt to obtain witness availability. Often the lack of accurate information from the PSNI about witness details contributed to the delay. Better case progression would be achieved by more effective case preparation which could then result in more cases being effective at the designated hearing.

7.23 Case progression is also hampered when they are moved between courts. The case has to be prepared

again by the new advocate at very short notice and can impact adversely on witness care and any liaison and discussions already undertaken. The practice which is designed to maximise the use of judicial resources, is largely beyond the control of the PPS but the impression given to other interested parties such as victims and witnesses is unfavourable. They are less likely to have confidence in an advocate who clearly has not had an opportunity to prepare.

7.24 Other court users considered that the PPS contribution to case progression at court was mixed and this was supported by our observations at court and of the files. In the Belfast region the lack of experience of some PPS prosecutors and the use of counsel in magistrates' court trials were seen as major contributors to the slow progress on cases because of prosecutors unwillingness to take decisions at court or because, in the case of counsel, they lacked the necessary authority. This may in part be due to prosecutors who are undertaking their induction programme being called on to prosecute at this court centre. We found that this aspect of performance was better in other regions.

7.25 Previous difficulties relating to missing files are being addressed and performance has improved, although it has not yet been resolved completely. Improved performance may be due in part to increasing staff numbers and the consistency of PPS administrative court support who are responsible for preparing the same court each week.



Linked files

- 7.26 Prosecutors can be at a disadvantage if there are related cases for the same defendant in court. CMS has a mechanism to cross-reference new cases, but we found that prosecutors were unaware of this function and it was not used to improve the progressing of cases. We observed this in practice, where an alleged offence was committed on bail or there was an allegation of a breach of bail conditions and further offences, and the existing file was not linked. In the file sample we noted cases where the defendant had not attended and a warrant for their arrest was issued which was not linked up when the defendant was arrested for further offences. This failure resulted in the earlier case being subsequently withdrawn when the warrant had not been executed for some time.
- 7.27 It is hoped that the problem will be resolved at the next implementation stage of Causeway DSM1 which will give all the agencies the capacity to cross-reference cases.
- 7.28 There is a need for the PPS to identify how it could improve the effectiveness of case preparation, although there were some good regional initiatives, for example the use of a “contest action sheet” to help identify whether all necessary tasks prior to trial had been undertaken overall.
- 7.29 At the time of our inspection the Court Service was piloting the use of case progression officers at some court centres, although it was unclear

how they would work jointly with the PPS or other agencies to improve the timeliness of cases and the rate of effective trials.

Effective, ineffective and cracked trials

- 7.30 There is a tendency for defendants to plead not guilty initially but to change their plea to guilty on the day of trial, either to the original or fresh charges. This culture is embedded and may be attributable to the overall delay in bringing cases to trial. Considerable delay can for a variety of reasons, cause the loss of support of witnesses. This fact may of itself be an incentive to the defence to stall in the hope that the prosecution may in due course be unable to proceed. The result is all too often and for whatever reason, the subsequent collapse of cases. In addition, any eventual sentencing hearing becomes distant to the date of offence. This alone can impact on public confidence. The passage of time between offence and sentencing maybe relied on as a mitigating factor to reduce penalty: “My client has had this matter hanging over his/her head for a very long time.” The PPS must confront this culture by taking a robust stance in relation to decision-making and case progression, displaying a willingness to consider pleas at the earliest opportunity and introducing efficient and effective processes which are more conducive to a speedy determination of cases. At present it is often in too weak a position itself to resist adjournments.
- 7.31 Our file examination indicated that there was a high level of ineffective trials, and in a number of cases there



were late applications to vacate trials because of witness difficulties. There was at least one ineffective trial in 21 cases of the 74 (28.4%) listed for contest and overall there were 30 ineffective trials. Of the 30 ineffective trials, 11(36.7%) were due to the prosecution.

7.32 In 13 other cases the trial cracked (this does not include cases which were discontinued on the day of trial). The primary reason for the trial cracking was the defendant pleading guilty to the original charges. There were nine cases where the trial cracked when the defendant pleaded guilty to all the original charges, (it was noted that one of these was on agreed facts). A further four cracked when the defendant pleaded guilty to some of the original charges, although in three of these cases earlier prosecution action could have prevented the trial cracking.

7.33 The Court Service has started to monitor cracked and ineffective trials at some court centres. Data provided from two of the courtrooms at Belfast Magistrates' Court suggests there is a very low level of effective trials. For the period August 2006 to February 2007 the true effective trial rate was 12% in one court and 9.7% in the other. Even if all the cracked trials are included the rate would still be under 50%. The overall ineffective rate for the two courts was 51.6%. Data was also provided from some courts outside Belfast and revealed slightly better performance. This data is not shared with the PPS, who appeared unaware of its existence,

which hinders a joint approach to tackling the issues that are jointly of concern.

Issue to address:

The Management Board should agree with the Court Service to collect and analyse reliable data relating to the proportion of magistrates' courts late vacated, cracked and ineffective trials, and take remedial action where necessary (Priority: medium).

The quality of advocacy in the magistrates' courts

7.34 Advocacy is the shop-window of any prosecuting authority. It is where its performance is most likely to be judged by other users of the criminal justice system, including victims and witnesses. The value of good quality case preparation can be lost if it is poorly presented in court, or the prosecution is seen as not being in control of its business. Cases should be presented fairly but firmly and in accordance with the relevant professional standards.

7.35 The PPS does not have any formal advocacy standards although the Code of ethics provides general guidance. We therefore considered the standard of PPS advocacy against the relevant standards of the CPS (and HMCPSI) National Standards of Advocacy.

7.36 We observed a number of advocates in the magistrates' courts. Our findings are set out in the table on next page:





		PPS advocates in the magistrates' courts and the youth court	Counsel agents in the magistrates' courts
Advocacy standards	Level ³	Number	Number
Above normal standards	1	None	None
	2	None	None
Within normal standards	3+	1	None
	3	8	1
	3-	2	None
Less than competent	4	3	None
	5	None	None

³ Assessment:

- 1 Outstanding;
- 2 Very good, above average in many respects;
- 3+ Above average in some respects;
- 3 Competent in all respects;
- 3- Technically competent, but lacking in presence and lacklustre;
- 4 Less than competent in many respects;
- 5 Very poor indeed, entirely unacceptable.

7.37 The majority of the advocacy observed was competent in all respects, with one in-house prosecutor above average. However, two advocates lacked presence and were lacklustre, and three were less than competent in many respects.

7.38 The size of some of the magistrates' court lists has led to a practice of sending two prosecutors to cover a single court with administrative support, and with counsel instructed to prosecute the trials at the end of the general list. The current practice is not only resource intensive, but has with it the danger of deskilling PPS prosecutors trial advocacy, or preventing them from developing the necessary skills, as they will not be

undertaking the most challenging form of courtwork.

7.39 In the magistrates' courts the work undertaken by the PPS advocates is mostly administrative rather than advocacy proper, because of the large number of cases listed, the bulk of which are invariably adjourned. The quality of the in-house advocates was variable. In part this was down to the manner in which the court business was conducted, with the prosecutor often appearing as an interested bystander. We think that the presentation of cases would be more effective if the defendant were routinely to be in the body of the court and the PPS should make applications where necessary to this effect.

7.40 In other regions continuity is achieved through the same prosecutor covering the same court each week which has been well received. The continuity of prosecutors in the courts was seen as an advantage, which encouraged greater



accountability particularly where they were also the directing lawyer. The quality of case presentation in court is not generally considered a problem, particularly in the Northern region where the courts covered by a prosecutor are taken into account when cases are allocated.

- 7.41 We discuss the effectiveness of the deployment of resources to court more fully in Chapter 15.

Advocacy monitoring in the magistrates' courts

- 7.42 The PPS does not have a formal system for monitoring advocacy standards in the magistrates' courts. This needs addressing in view of the inexperience of the prosecutors in court, the feedback we received and our observations.
- 7.43 In the magistrates' courts there is heavy reliance on feedback from other stakeholders, although some senior prosecutors line managers have conducted supervision of new prosecutors at court, but this practice is exceptional and has not been adopted consistently across the regions.
- 7.44 Outside Belfast, SPP line managers could take responsibility for the monitoring of advocacy at a particular court which would also provide an informal single point of contact for any issues raised. Such a system would need some adaptation for the magistrates' courts in Belfast.

Issue to address:

The Management Board should ensure that:

- *there is regular and effective monitoring of the performance of prosecution advocates in the magistrates' courts; and*
- *prompt feedback is given to the prosecutor and any training needs addressed (Priority: high).*





The Quality of Casework in the Crown Court



8.1 In this chapter we consider the quality of case preparation, progression and presentation in Crown Court cases including the process by which counsel is instructed.

The application of the Code tests at the committal review stage

8.2 As part of our file examination we considered whether the Code tests were applied correctly when prosecutors prepared cases for committal to the Crown Court. The quality of decision-making was very good. The Code evidential and public interest tests were applied correctly in each of 60 relevant cases.

8.3 In addition to the internal targets relating to decision-making there is also a timeliness target for the preparation of committals. From the date of decision, 50% of committal papers should be prepared within 20 days and 95% within 50 days. Belfast and Western regions achieved the 20 day target but not the 50 day, and the other regions missed both 2006-07 targets. Overall performance is declining. The compartmentalised nature of the process for preparing committal papers contributes to delay with up to six staff involved in producing and checking a set of

documents against a detailed hand written instruction from the prosecutor.

The reduction of charges

8.4 In most files considered, where counsel was instructed and charges were reduced, it appeared that prior authority from the PPS had been received. However, it was suggested by some interviewees that there were instances where counsel had reduced charges without prior reference to the PPS, and our file examination indicated that some files were silent as to why charges had been altered. The PPS should ensure that the appropriate authority is obtained in all cases, and the decision recorded on the file.

Case outcomes in the Crown Court

8.5 There were few cases in our file sample where the prosecutor offered no evidence at the Crown Court, which supports our finding that the Code evidential and public interest tests are applied correctly when the evidence is reviewed for the preparation of the committal papers.

8.6 Overall there was a successful outcome (namely the defendant either pleaded guilty or was



convicted after trial) in 87.2% of Crown Court cases (excluding those cases categorised by the PPS as “other”) finalised in 2006-07. This compares with 77.6% in England and Wales, but as with magistrates’ courts cases caution should be exercised in making a direct comparison. A detailed breakdown of the Crown Court case outcomes is at Appendix 5.

- 8.7 There were three Crown Court cases in our file sample where the judge directed an acquittal at the end of the prosecution case, because the evidence was too weak to be considered by the jury. In each of these cases the prosecution could have done more either by trying to strengthen the evidence, or if this was not possible by withdrawing the case before the trial started. Similar action should have been taken in three of the seven cases where the prosecution offered no evidence before the start of the trial.
- 8.8 The following case example illustrates where the prosecution could have done more to avoid the outcome by withdrawing the case at an earlier stage:

Case Study

In a case involving an armed robbery of commercial premises, issues surrounding the quality of the identification evidence should have been addressed at the time of committal review, which would have revealed fatal weaknesses in the case. This was not done until the day of trial.

Learning from experience

- 8.9 There is no formal mechanism in either the magistrates’ courts or the Crown Court by which unsuccessful prosecutions are reported on and considered and analysed, to enable lessons to be learned or trends identified. There was a report in eight of the 13 cases in the file sample where the court directed an acquittal or no evidence was offered at the Crown Court. The reason for the outcome was set out clearly in seven of the eight. In the other cases the file was silent as to the reason why the prosecution offered no evidence, and in one involving the possession of child pornography nothing appeared to have changed from the time of committal. Where a report was present on the file, either submitted by counsel in the Crown Court or prepared by the prosecutor in the magistrates’ court, with a suggested learning point, it was not apparent that any action was taken to disseminate this beyond feedback to the directing lawyer. There were other cases which were withdrawn or resulted in an acquittal where a lesson could have been learned but again there was no mechanism in place to capture this information for others.

Issue to address:

To enable prosecutors to improve the quality of their decision-making the Management Board should ensure:

- *that accurate and full case reports which identify the issues in the case are completed in all appropriate cases;*
- *a cohesive system is in place to enable staff to learn from experience; and*
- *lessons to be learned are shared between the regional offices, and with the police (Priority: high).*

The preparation for Crown Court trial

8.10 Our findings indicate that there is a need to improve the identification of cases where bad character and hearsay applications are appropriate, although other aspects of trial preparation were more satisfactory:

Crown Court trial	Number	%
Were the correct witnesses warned	42 of 42	100%
Was witness warning timely	39 of 40	97.5%
Was the correct evidence served S1	34 of 35	97.1%
Was any additional evidence served in a timely manner	25 of 27	92.6%
Was a bad character application made correctly	6 of 12	50%
Was the application timely	5 of 6	83.3%
Was a hearsay application made correctly	8 of 12	66.7%
Was the application timely	5 of 8	62.5%

8.11 We noted that often the possibility of making either a bad character or hearsay application was raised by counsel as opposed to the directing lawyer. As counsel could be instructed close to the trial date this was leading to late applications. It is important that all relevant aspects of case presentation are considered by the directing lawyer when the committal is being prepared.

The handling of correspondence

8.12 In Crown Court cases there is no consistent system for handling correspondence. In Belfast region it is dealt with by the PPS Crown

Office, in the Eastern and Western regions there are specific lawyers who deal with any post committal correspondence, whereas in the Northern and Southern regions the directing officer retains case ownership and accordingly responds to any correspondence. The differing processes impacted on the ability of prosecutors to meet the time targets for directing on cases. They can also be confusing for practitioners and other agencies who need to know who to deal with.

Issue to address:

The Management Board should review the handling of correspondence to include the implementation of the recommendations of the Efficiency Report (Priority: high).

File endorsements

8.13 The quality of the recording of case outcomes was better in Crown Court cases than in the magistrates' courts, which may in part be attributable to the fact that very few cases are listed for hearing when compared with the magistrates' courts. The case outcome was recorded clearly on the file in 62 of the 67 cases (92.5%) and the necessary post-hearing action in 48 of the 55 cases (87.3%). Our detailed findings can be found at Appendix 4.

8.14 It was particularly apparent in Crown Court cases that the hearings noted on the file and on CMS did not always accord and therefore there was no proper audit trail for case progression or any effective fee payment system.



Case progression in the Crown Court

8.15 Following committal, each case is subject to a procedure known as 'proof and directions' whereby 'standing' counsel prepare the indictment and identify any additional evidence required. This will only ever be a cursory look (the fee paid is in the region of £40) unless it is a High Court case which will remain with 'standing' counsel. Many cases are not looked at again or prepared further until counsel is instructed, often at a late stage, as part of the system of block booking them for court. The necessity and the added value of this procedure is questionable. It is not practical for the three senior prosecutors in the Belfast Crown Office (which handles cases dealt with at Belfast Crown Court) to prepare the proof and directions, due to other demands on their time. If there was greater input by the directing lawyer prior to committal with clear instructions to the law clerks as to work required, and earlier instruction of counsel case preparation would improve further, and provide better value for money.

Case study

In a case involving allegations of historical sexual abuse 30 charges were directed. Following committal when the file was subject to the indictment and proof procedure by standing counsel the order of the counts was amended to make the counts chronological. However, counsel instructed for the trial subsequently amended the indictment to 20 counts which properly reflected the criminality over the period without overloading the indictment.

8.16 In contrast to the late instruction of trial counsel, we observed in the file sample a number of occasions where counsel were instructed at an early stage to advise on an aspect or draft an application. The examples we noted were matters that could have been properly handled by a competent prosecutor. In addition, we noted that counsel were also instructed to conduct consultations with victims, to assess credibility prior to the prosecution decision being made. The PPS needs to ensure prosecutors are not deskilled by instructing counsel to advise on less straight forward legal issues within their competency and experience.

Case studies

- In a case involving an allegation of rape outside the jurisdiction, the prosecutor sought advice from counsel on the issue of jurisdiction. This could have been dealt with by an experienced prosecutor. In this example there was little added value from the prosecutor.
- A defendant was wrongly informed that the proceedings were going to be withdrawn when a police inspector wrongly assumed an old victim withdrawal statement was a new one. This led to an abuse of process argument which was unsuccessful. However, counsel was instructed to draft the skeleton argument in response, something the prosecutor could and should have done.

8.17 There are regional variations in the systems for selecting counsel to be instructed. In the regions outside Belfast there are regular counsel who are instructed to conduct prosecutions in the Crown Court.



This consistency of counsel provides the opportunity to build up trust with other stakeholders and greater accountability, and in general counsel can be instructed at an early stage to ensure proper case preparation. It is, however, important that the PPS guards against complacency.

- 8.18 In Belfast, counsel are block-booked for periods of up to six weeks to ensure court coverage, in the absence of a chambers clerking system. The most serious cases are sent to 'standing' counsel at an earlier stage and can therefore be returned and new counsel instructed, if necessary, in good time. This booking system means that every case in a courtroom will be covered by the same counsel except where trials previously listed remain with counsel from an earlier booking. This system can result in the late instruction of counsel which hampers case preparation and ultimately case progression and presentation. This can also lead to a lack of ownership by counsel at arraignment and the lack of authority to deal with the case even if the defendant indicates a guilty plea. At review hearings, counsel do not, as should be expected, always have a grasp of the issues in the case at an early stage.

- 8.19 PPS law clerks are allocated to courts on a weekly basis which can prevent continuity of support on the longer cases for counsel and witnesses.

Effective, ineffective and cracked trials

- 8.20 In 15 of the 55 Crown Court cases (27.3%) in our file sample which were set down for trial, there were one or

more ineffective trials. Overall there were 27 ineffective trials, although only eight were due to the prosecution.

- 8.21 Half of all cases set down for trial cracked on the day (27 of 54 cases). In a number of cases this was following an indication of sentence by the trial judge. Inspectors found that prosecution action could have avoided the cracked trial in three of the 27 cases (11.1%). There were 10 cases where the trial cracked when the defendant pleaded guilty to all the original charges, 15 cracked when the defendant pleaded guilty to some of the original charges and a further two cases where the defendant pleaded guilty to fresh charges.
- 8.22 The following case illustrates where more could have been done to avoid the cracked trial:

Case Study

A defendant who had been equipped with a knife during an attempted robbery was arrested, although the knife was not used. He was indicted for attempting to cause grievous bodily harm. At arraignment the defence indicated to counsel instructed on behalf of the PPS that the defendant was willing to plead guilty to attempted robbery but not to the charge on the indictment. Following consultation with the PPS, the counsel indicated that nothing could be done. The case was subsequently listed for trial with the witnesses and all parties in attendance. A new charge of common assault was put and the serious charge withdrawn.



Issue to address:

The Management Board should agree with the Court Service to collect and analyse reliable data relating to the proportion of Crown Court late vacated, cracked and ineffective trials, and take remedial action where necessary (Priority: medium).

The quality of advocacy in the Crown Court

8.23 Outcomes of advocacy observation are set out below.

8.24 All the counsel seen were competent, although we considered generally that the performance of some could be better. The need for a higher overall level of advocacy was confirmed by the judiciary and other practitioners. There would be benefit in increasing the pool of counsel available to do prosecution work and we welcome the PPS initiative in this aspect. There also needs to be a more structured assessment of counsel to ensure that those with the necessary level of specialism are instructed in appropriate cases. It was surprising that counsel instructed

		Counsel in the Crown Court
Advocacy standards	Level⁴	Number
Above normal standards	1	None
	2	None
Within normal standards	3+	None
	3	5
	3-	None
Less than competent	4	None
	5	None

⁴Assessment:

- 1 Outstanding;
- 2 Very good, above average in many respects;
- 3+ Above average in some respects;
- 3 Competent in all respects;
- 3- Technically competent, but lacking in presence and lacklustre;
- 4 Less than competent in many respects;
- 5 Very poor indeed, entirely unacceptable.

on behalf of the PPS had not been provided with copies of the Code or relevant PPS policies.

8.25 We noted cases at court and in our file sample where two counsel were instructed to conduct a case which could have been handled effectively by a competent and experienced junior. We recognise that the approach of the Legal Services Commission in granting senior counsel to the defence might

influence the approach of the PPS and increases pressure to ensure equality of arms. Notwithstanding these demands, the PPS needs to ensure that its own use of resources is justified through a consistent policy in relation to the instruction of senior counsel across the regions.

Advocacy monitoring in the Crown Court

- 8.26 As in the magistrates' courts there is no formal monitoring of advocates. Counsel's performance is monitored by informal feedback from law clerks and the judiciary.
- 8.27 A formal system of monitoring would provide a sound structured basis upon which counsel are instructed, enabling fair and open competition, and consistency across the regions. It should feed into any new system proposed for the instruction of counsel.

Issue to address:

The Management Board should ensure that there is a structured system for monitoring the quality of Crown Court advocacy so that the PPS can be satisfied that they are obtaining objective and reliable information about the performance of counsel which is shared across the regional offices (Priority: high).

Instructions to counsel

- 8.28 Instructions to counsel do not include a summary and analysis of the case or the directing prosecutor's view as to the acceptability of pleas. They do, however, include the prosecutor's original directions,

although these were of variable quality. We observed in the file sample that some directing officers included more details in the directions to assist counsel, but there is no expectation that they customise their directions to provide a detailed brief to counsel as to case analysis, choice of charges and acceptability of pleas. The issue of the acceptability of pleas is particularly important as the decision to accept pleas is invariably dealt with not by the directing prosecutor but by either an AD or the Belfast Crown Office, who will not have detailed knowledge of the case.

We recommend the Management Board should take action to improve the quality of instructions to counsel by ensuring prosecutors:

- include an accurate summary of the case;
- identify and address the issues (including outstanding matters);
- where applicable, address the acceptability of pleas; and
- summarise for counsel the steps already taken in relation to disclosure and identify any disclosure issues remaining to be addressed.

- 8.29 Arrangements should also be put in place to ensure counsel receive their instructions in good time, and that all are aware fully of the relevant PPS standards and policies.



CHAPTER 9:

Sensitive, Hate Crime and Specialist Cases



9.1 We discuss in this chapter how the PPS handles those case categories that require particular care and attention, including those involving allegations of domestic violence, sectarianism and racial motivation. We also consider cases submitted by investigative agencies other than the police and the implications for the PPS of any cases submitted by the police HET.

The flagging of sensitive cases

9.2 The PPS and the PSNI have mechanisms for identifying (on CMS) some sensitive case categories. The primary purpose of ensuring cases are identified correctly is to alert prosecutors to the particular care and attention these cases need. It is a clear reminder to the prosecutor and administrative support that in a particular case, where a PPS policy is applicable, for example the domestic violence policy, there needs to be compliance with that policy. In addition, flagging assists in alerting the prosecutor that there may be witnesses who require special care as

they pass through the criminal justice system. It also provides the PPS with the ability to publish specific case outcome data, to reassure the community that these cases, with their particular sensitivities, are being dealt with correctly.

9.3 However, the sensitive status of the case is not flagged or given any physical distinguishing mark on the front of the paper file. This should be done to help prosecutors identify these cases for the reasons we have outlined.

Issue to address:

To assist in alerting prosecutors that a case comes within a sensitive category, the Management Board should ensure that its status is flagged clearly on the paper file (Priority: high).

9.4 We assessed our file sample to determine whether the three sensitive case categories currently flagged by the PPS and the PSNI, were correctly identified on CMS. The correct identification is illustrated by the following table:

Case category	Police identify		PPS identify	
	number	percentage	number	percentage
Domestic violence	*5	*	33 of 47	70.2%
Racist incident	5 of 6	83.3%	6 of 6	100%
Sectarian	19 of 24	79.2%	22 of 24	91.7%

5 * = data not recorded in file examination



9.5 The file sample showed that the PPS is better than the PSNI at identifying sensitive cases. However, some were incorrectly flagged by the PPS as being a domestic incident when the charges did not relate directly to the incident, for example, an assault on a police officer who had attended a domestic incident from which no other charges arose. Other cases involving clear allegations of domestic violence were not flagged, for example, the murder of a spouse. Many of the cases that were not flagged coincided with a failure to apply the PPS domestic violence policy in terms of witness care and assessment of risk, which reinforces the primary reason why these cases should be identified correctly.

Sensitive case outcomes

9.6 The PPS does not currently produce specific sensitive case outcome data, and does not therefore assess the effectiveness of for example its domestic violence policy. In the course of our inspection we requested this data for outcomes in 2006-2007 in certain categories to assess performance. The child abuse cases were selected from a list of offence categories so therefore may not have captured all relevant cases.

9.7 The overall successful outcome rate for sensitive cases, where a prosecution or a diversionary option was directed was 69.9%. Within the specific categories the successful outcome rate ranged from 43% for cases involving allegations of child abuse to 89.4% for sectarian motivated offences. Our detailed findings are at Appendix 6.

9.8 We consider that it would assist in increasing public confidence in the PPS, and reinforce its openness and transparency, if case outcome data was produced and published in respect of those case categories that are, or will be, flagged on CMS.

Issue to address:

The PPS should identify the categories of cases which engender the greatest public concern and put in place structures to publish specific outcome data in respect of those cases (Priority: medium).

The use of specialist prosecutors

9.9 The PPS does not have dedicated specialists to handle sensitive cases and hate crime, although it has appointed youth champions. The PPS may wish to consider nominating specialists as it moves to a full complement of staff and the completion of roll out. The appointment of domestic violence champions or co-ordinators would be the most suitable aspect of casework in which to introduce such an initiative as there is already a published policy on the handling of cases involving allegations of domestic violence. The appointment of other specialists and co-ordinators, with clearly defined roles, could coincide with the launch of any new policies, for example the proposed policy on hate crime.

Domestic violence

9.10 The Code evidential test was applied correctly in 41 of the 46 cases (89%) and the public interest test in 33 of



the 35 cases (94.3%) of domestic violence in the file sample.

- 9.11 The quality of decision-making in cases involving allegations of domestic violence needs to be improved and in particular there needs to be a more consistent application of the PPS policy. The current absence of any quality assurance mechanism prevents the PPS from assessing the level of compliance and the identification of any weaknesses or training needs.
- 9.12 The main area of concern was in respect of withdrawn cases where the decision to withdraw complied with the Code evidential test in only six of 10 cases (60%). The PPS policy on domestic violence was followed in 28 of the 44 cases (63.6%), where there was sufficient information on the file to determine the answer.
- 9.13 Some cases involving an allegation of domestic violence where the victim no longer wished to attend court were handled particularly well, with the prosecutor requesting, receiving and considering all the necessary information to enable an informed decision to be made about whether the case should proceed. The letters sent to police in these cases could form a template for standard requests to the police in similar cases or as a prosecutor checklist. In contrast, there were cases where the policy was not applied, and no evidence that it had been considered.
- 9.14 We also found cases where although the Code tests were applied correctly on the information available on the file, the prosecutor could have

been more proactive in following up certain lines of enquiry which may have helped to strengthen the case, for example seeking to obtain corroborative evidence or considering a bad character application. There was also a tension between complying with time targets and ensuring all aspects of the policy were considered.

- 9.15 There needs to be greater clarity about the circumstances in which a reluctant victim should be witness summonsed, and whether an arrest warrant should be applied for if the witness fails to respond to the summons. There were a number of cases in our file sample where a summons had been granted but the proceedings subsequently withdrawn when the victim failed to respond, even though the summons had been served. This inconsistent approach also diminishes the authority of the court which grants the summons.

We recommend the Management Board should ensure compliance with the PPS policy on domestic violence in all relevant cases.

Racist incident cases

- 9.16 The application of the Code tests was correct in each of the racist incident cases examined, although only one resulted in a conviction. On that file there was evidence that the racist nature of the offence was drawn to the attention of the court.
- 9.17 CJI has recommended that the PPS





develop a policy on the handling of hate crimes (*Hate Crime in Northern Ireland: A thematic inspection of the management of hate crime by the criminal justice system in Northern Ireland – January 2007*). At the moment, PPS prosecutors use the Racist and Religious Crime Policy of the Crown Prosecution Service for general guidance, although there are significant differences between the jurisdictions in the types of offence which may be prosecuted. At the time of our inspection internal PPS guidance on race crimes and a hate crime policy was being developed.

Sectarian motivated cases

9.18 The Code evidential test was applied correctly in 22 of the 23 cases (95.7%) and the public interest test in each relevant case. It was apparent that the PSNI did not always identify files correctly although these were picked up by the PPS. In addition, there appeared to be some confusion over what constitutes sectarian motivation; the handling of such cases would benefit from clarification by managers or a guidance note issued by the Policy division.

Child abuse cases

- 9.19 There is no child abuse or sexual abuse policy although a steering group on sexual violence has been formed and is preparing a strategy.
- 9.20 Allegations of child abuse are not flagged as a case category on CMS. It is, however, possible to identify most of these cases by reference to the offence and age of the victim. These cases require particularly

careful handling and in the absence of any specialists, they should be subject to specific casework quality assurance.

9.21 The Code tests were applied correctly in all of the cases involving an allegation of child abuse. However, in one case where there was an acquittal by direction and another where the prosecution offered no evidence more could have been done to avoid the outcome by trying to strengthen the evidence, or if that was not possible to drop them at an earlier stage.

9.22 Prosecutors tended to rely on transcripts of interviews rather than viewing the video recording of the child's evidence which would be relied on in court; in many cases there was no evidence on the files that the video interview had been viewed and an assessment made of the witness. The importance of viewing video evidence prior to the prosecution decision should be reinforced; it is not acceptable to view the video for the first time just prior to or at trial.

Youth offenders

9.23 Particular efforts are being made to improve the handling of cases involving youth offenders. Youth champions have been appointed in each region; the champions are the contacts for the Court Service and other stakeholders on youth matters. The PPS also intend to convene periodic meetings of youth champions under the chairmanship of the AD of Policy to encourage consistency in decision making and to provide a



forum for the identification of best practice, although no date has been set for the launch of this initiative.

9.24 In the Belfast region there is a dedicated team that takes responsibility for the decision-making in all youth cases, for case progression, and most court coverage. Although there are no dedicated teams in the other regions, there is a consistency of prosecutors for court coverage and for decision-making in youth cases. There is evidence that youth cases are now being progressed more quickly by the PPS and this positive development was acknowledged by many. The efficiency and effectiveness of the handling of youth cases would benefit further from the development of fast track systems with the PSNI.

9.25 The Delay Action Team (DAT) subgroup of the CJB identified a number of actions to improve timeliness in youth cases. As part of this the PPS committed to allocating all youth cases on receipt to a directing lawyer, and only combining youth cases with longer running mixed adult and youth cases in exceptional circumstances. Both these actions were to have been initiated in September 2006. However, the former commitment has since been revised, to reduce the average time to allocate cases from the queue to less than 10 days by December 2007 as the regions move to full complement, with a further commitment to an internal target of less than 10 days. We consider that this target is not sufficiently stretching, as the allocation of most cases will be an administrative task that does not require any

consideration of the nature of the allegation.

9.26 As well as overall processing targets for cases which result in a prosecution the DAT has also developed revised targets for processing youth cautions and informed warnings, to take effect from the beginning of 2007. The target is to complete 90% of cases within the timescales set of 28 days from charge or report to the submission of file, seven days from receipt of the file to the PPS decision, and 28 days from the date of decision to administer the caution or informed warning. As yet no performance data relating to progress is available.

Specialist casework

9.27 Whilst the majority of casework handled by the PPS is submitted by the PSNI, the Service also has to consider cases sent in by other investigative agencies, including the OPONI, the Social Security Agency and HMRC.

9.28 Much of this work is handled by the Fraud and Departmental Section of the PPS, although the larger and more complex cases (including those submitted by OPONI) will be dealt with by the Central Casework section.

9.29 Some of this casework is now being devolved to the regions, although most remains within the headquarters departments. This assists in developing the necessary expertise and consistency in complex types of casework. However, there is a need to ensure that the PPS has the



necessary expertise both in-house and in the counsel it selects to deal with complex HMRC work. Overall the PPS has a good working relationship with other investigating agencies, and the issues which arise are similar to those identified in respect of the PSNI.

- 9.30 The quality of decision-making is generally sound and frequently evidenced by a detailed note of the case analysis and basis for the decision made. These are not always shared with the responsible investigative agency, which may be viewed as a missed opportunity; although as with PSNI cases, if requested, informal feedback is provided. Overall, the timeliness of cases dealt with by the Fraud and Departmental section is improving.

Historical Enquiry Team cases

- 9.31 The PPS should be alert to the possibility of a relatively large number of files arriving from the police HET whose job is to re-examine all deaths attributable to the security situation in Northern Ireland between 1968 and 1998. These cases may well include instances of agents of the State being involved in killings, or cases where collusion is alleged.
- 9.32 In the context of the recent history of Northern Ireland, the import of how the PPS policy on the giving of reasons where a death is, or may have been, occasioned by the conduct of agents of the State is applied to any HET cases cannot be underestimated and will have a significant impact on the confidence of the communities in how the Service applies the rule

of law.

- 9.33 Funding has already been provided to set up a team of prosecutors to handle any HET cases, albeit the resources have been redeployed in the absence of any cases to date.

Ancillary issues

- 9.34 Training has been provided on ancillary orders after conviction, for example anti-social behaviour orders (ASBOs) and on the forthcoming Sexual Offending Prevention Orders. All legal staff have been trained in the money laundering provisions although there is only one operational specialist.
- 9.35 In the file sample there was only one case where an ancillary order was relevant; the application for an ASBO was properly prepared but was withdrawn at the sentencing hearing although the reason for this was unclear.
- 9.36 There were instances in cases involving domestic violence where there was little information or no proper consideration of parallel civil proceedings taken out by the victim to prevent further molestation. There was also no evidence of any consideration of applying for such an order as part of any sentence to reduce risk or increase future protection or to continue pursuing the case so that the court could if it wished make the order upon conviction.

The Disclosure of Unused Material



10.1 As part of our inspection we considered how the PPS complies with its duty to disclose any material which might undermine the prosecution case or assist the defence. As part of this process we also considered the quality of defence statements and how the PPS deals with them. We also looked at the effectiveness of the Service's procedures for dealing with sensitive unused material.

Primary or initial disclosure

10.2 We examined 71 magistrates' courts files and 65 Crown Court files to assess the level of compliance with the duty to make primary or initial disclosure. There were no cases in our file sample where it appeared that the prosecution failed to disclose undermining material. However, the nature of the disclosure arrangements means that such material is retained by the police. Our detailed findings are at Appendix 4.

10.3 Overall primary or initial disclosure was dealt with correctly in 36 of the 71 magistrates' court cases (50.7%) and 44 of the 65 Crown Court cases (67.7%). Timeliness was better, with the schedule being served within the time limits in 65 of the 70 magistrates' court cases

(92.9%) where we could determine when service took place. In the Crown Court service was timely in 63 of the 65 cases (96.9%). We use the term "dealt with correctly" to indicate that the correct processes were followed. Whilst compliance with the established processes and procedures does not guarantee that all disclosable material will be disclosed, it makes it more likely. That is why compliance is so important. However, non-compliance with the processes does not mean that there has been a failure to make disclosable material available. But the risk is increased.

10.4 The non-sensitive schedule lists all material within that definition, not only that which is likely to be unused, but also material which will clearly be evidence in the case against the defendant. The quality of schedules submitted by the investigating agencies was good, with all but one listing the material adequately. However, many schedules were either not endorsed at all by the prosecutor, or endorsed inadequately, making it difficult to determine whether they had considered the material listed, or identified that which was to be evidence or unused. The failure to endorse the schedule or sign it was particularly noticeable in magistrates' courts cases.



Secondary or continuing disclosure

- 10.5 There were no cases in our file sample where the prosecutor failed to disclose assisting material at the secondary stage or as part of continuing disclosure. Overall secondary or continuing disclosure was dealt with correctly in each of the nine magistrates' court cases where a defence statement was served, although it was not timely in two.
- 10.6 In the Crown Court performance was not as good. In 38 cases where a defence statement was received, secondary disclosure was dealt with appropriately or in a timely manner in 28 (78.7%). Issues included the police failing to respond, or not responding in a timely manner to the PPS request to consider the unused material in the light of the defence statement, or the prosecutor failing to inform the defence that there was no assisting material.
- 10.7 The quality of defence statements, which should set out the basis of the defence and those parts of the prosecution case which are in issue, was particularly poor. They tended to assert a simple denial or make human rights assertions and failed to address the issues in the case. In the Crown Court only 21 of the 38 (55.3%) defence statements were adequate. However, it was rare to find an inadequate defence statement being challenged by the prosecution. This happened in only one of the relevant 16 cases (6.3%).

- 10.8 Following receipt of a defence statement, some non-undermining or non-assisting material would be routinely disclosed by the prosecutor, usually this would be items such as the command and control log or police note books. We found that prosecutors were not making blanket disclosure of all unused material although in some cases would make further disclosure as a result of a court direction.
- 10.9 None of the regions use a disclosure record sheet to provide an audit trail of actions; this was raised at a management meeting and endorsed as a useful proposal although it does not appear to have been pursued. Schedules, correspondence and documents are not kept together in a separate disclosure folder within the file, which makes it difficult to determine when and on what basis disclosure decisions are made.

Sensitive material

- 10.10 Sensitive material schedules are not endorsed with the prosecutor's view on the material so it was hard to be confident that they had been considered properly. We were informed that managers expect to see a green form on the file if an issue has arisen relating to sensitive material. This approach does not provide satisfactory assurance. The procedure for handling of third party material was good although there were some delays in obtaining material, particularly medical records.



10.11 During the course of the inspection a number of interviewees across the spectrum of those consulted raised issues which they considered significant, relating to the handling of the disclosure of sensitive material in a small number of high profile cases. We were also aware of a recent judgment which commented critically on the failure of the PSNI to disclose information to the PPS. This inspection has concentrated on reviewing the introduction of the new prosecution service across Northern Ireland. A separate review of disclosure will be undertaken during 2008.

Compliance and training

10.12 A corporate objective was set for 2006-2007 to comply fully with the duties of disclosure. A revised disclosure manual was planned. It was proposed that this would be evaluated in March 2007, but at that date the manual was in draft form and still required approval. It was anticipated that line management and the quality assurance team would be used to improve the assurance of the handling of unused material, but currently there is no formal mechanism for line management assurance. It was surprising to see that the corporate scorecard, as at December 2006, displayed this objective as green in the absence of any effective action and performance data. It is therefore a concern that disclosure does not feature in next year's scorecard.

10.13 There has only been limited disclosure training to date. Training was originally intended to form part of the induction programme for new lawyers but this was withdrawn pending the design of a corporate training course for all lawyers. At the time of our inspection, discussions were ongoing in relation to how the training should be provided but no date had been set for its inception. It is important that the manual is approved and training started at the earliest opportunity. The large influx of inexperienced lawyers whose only training extends to guidance provided from tutors during induction, with no guarantee of consistency of approach, highlights the priority that needs to be attached.

We recommend the Management Board should ensure that all prosecutors;

- **are trained appropriately in the disclosure provisions;**
- **endorse fully and sign all schedules to indicate they have reviewed all sensitive and non-sensitive unused material;**
- **maintain a comprehensive record of disclosure decisions on the file;**
- **keep separately on the file all disclosure material; and**
- **challenge inadequate defence statements.**



The Service to Victims and Witnesses

11.1 In this chapter we draw together the various issues relating to the service provided by the PPS to victims and witnesses.

The PPS commitment

11.2 The PPS has assumed a range of responsibilities to victims and witnesses which previously rested with the police or other investigating agencies.

11.3 The PPS Annual Report for 2005-06 states that it will provide an enhanced service to victims and witnesses. This was underpinned by a commitment to publish a policy on the service to victims and witnesses, which was formally launched in March 2007. The policy incorporates commitments in relation to the relevant recommendations from the CJI report on *Improving the Provision of Care for Victims and Witnesses within the Criminal Justice System in Northern Ireland (July 2005)*. A senior lawyer within the Policy department has responsibility for victim and witness issues and has developed a good working relationship with Victim Support and the Witness Service.

11.4 We welcome this public commitment and accountability to provide an enhanced service although at the time of our inspection we found that the PPS had some way to go before it reached the levels of service to which it aspires. These included ensuring that witnesses were kept fully informed of the progress of the case and being in a position to refer witnesses to other agencies if they were in need of more specialist support. Some staff were also unaware of the content of the policy and how it impacted on their roles and responsibilities. The PPS will also wish to ensure that counsel are aware fully of the policy.

11.5 In 2006 the PPS took the positive step of conducting a victim and witness survey in the pilot areas to assess the quality of the service being delivered. Although the response rate was lower than desired, respondents identified some aspects of concern, namely the adequacy of facilities at court, not being kept up to date and not having access to their statements. The adequacy of court facilities needs to be addressed jointly with the Court Service, but the PPS has taken some remedial action in respect of the other aspects.



Informing the victim of the prosecutor's decision

- 11.6 We have discussed in Chapter 5 the important general principles that we consider should be applied to the level of explanation of the prosecutor's decision given to the victim. In short we recommend that the PPS should, save in exceptional circumstances, set out clearly to the victim (or personal representative) the reason for directing no prosecution or withdrawing the proceedings. We have also proposed steps which would make the availability of the PPS review process more widely known to stakeholders including victims.
- 11.7 In this section we consider how effectively the current system works. The current letter to the victim informing them of the prosecutor's decision, is particularly unclear when there is more than one offence alleged or more than one offender. The process is also confusing when a no prosecution decision is made in cases that start by way of police charge as opposed to summons. In these cases the victim will get two letters, one informing them of the outcome of the case, namely that the charge has been withdrawn and the other saying there will be no prosecution because one of the Code tests is not met.
- 11.8 At the time of our inspection the PPS was looking at how to rationalise these standard form letters and make them more easily understood. The issues we have identified should be considered as part of that process.
- 11.9 The current practice is to send a letter in each case where there is an identified victim, a term which is widely drawn and includes for example store detectives who detain persons suspected of shoplifting. As part of its current review the PPS should consider whether there are certain categories of "victim" in respect of which the sending of a letter is unnecessary in terms of increasing public confidence in the fairness of the Service. This does not however, mean that retailers affected by theft should not receive any feedback, but it could be actioned more appropriately. There also need to be robust safeguards to ensure that CMS can be overridden to prevent victim letters being sent out inappropriately, for example a letter in our file sample was sent to the mother of the victim to explain the decision not to prosecute. The victim was 17 but living away from home and the allegation arose out of a domestic incident with her partner.
- Formal "consultation" with the victim*
- 11.10 The prosecutor may meet formally with the victim at any stage before the start of the trial to assist in clarifying or determining the strength of their evidence. The process is generally referred to as "consultation" but that word does not accurately describe the nature of what occurs.
- 11.11 We saw a number of examples in our file sample where meetings took place, often before the issuing of the prosecution decision. In most cases the exercise was undertaken by

counsel and, contrary to what is stated in the Victims and Witness policy, there was no evidence that a public prosecutor was present.

11.12 All such instances seen in our file sample involved an allegation of sexual assault, although more informal contact in respect of other types of offence takes place at court. This provision can add value to the decision-making process as it enables the prosecutor to assess the accuracy of the victim's recollection of events and also help to determine whether they would benefit from the assistance of special measures to reduce the trauma of giving evidence.

11.13 We found that prosecutors were unclear on the circumstances when it would be appropriate to meet the victim formally, and would benefit from the issuing of specific guidance to ensure consistency.

Issue to address:

Guidance should be issued to prosecutors on when pre-direction consultation with the victim should be considered (Priority: medium).

The effectiveness of the Community Liaison Teams

11.14 The Belfast Pilot Project Evaluation Report: Summary of Key Findings and Recommendations (June 2005) commented favourably on the pilot's provision of service to victims and witnesses, although noted some issues of concern over the mechanisms for obtaining some information from the police and the

unexpectedly high number of calls to the CLT from defendants. In contrast the Fermanagh and Tyrone Pilot Project Evaluation Report (May 2006) expressed significant concerns about the level of service provided to victims and witnesses by the Western region office.

11.15 During this inspection we found that whilst there had been an improvement in performance in the Western region office, where CLT resources have increased, there had been a marked deterioration in Belfast. It is significant that since the Belfast evaluation the work of that region has expanded to cover all of Belfast, whereas the pilot only dealt with youth cases and alleged offences committed within one police District Command Unit.

11.16 There is a need to review the overall effectiveness of the CLTs to ensure that they are able to deliver the enhanced level of service to which the PPS aspires. Staff within the units need to be clear on their roles and responsibilities and trained appropriately, including how to assist vulnerable and intimidated witnesses. There is a need for training in relation to some of the softer skills required, for example dealing with individuals who are shocked and upset, and possibly displaying aggression.

11.17 An assessment also needs to be made as to whether the units are properly resourced. It was clear for example, that there were still a high number of queries from defendants, which was impacting on the ability of the units to carry out other tasks.



11.18 The effectiveness of the CLTs was also being affected by the poor quality of witness information on some police files. This has resulted in staff spending an unnecessary amount of time trying to contact witnesses to find out when they would be available to attend court. The process of obtaining witness availability needs urgent attention as it is impacting adversely on the performance of the CLT and in case progression generally. In addition to improving its own processes, the PPS needs to work more closely with the PSNI to ensure that the right contact information is provided at the outset.

11.19 We are aware that senior managers share our concerns about these issues and had already instigated a review of the CLTs, although this has been subject to some delay. Despite our concerns over the current effectiveness of the CLTs, we were impressed with the level of commitment of the staff who were acutely conscious that the service was falling below the standards they wish to provide.

We recommend the Management Board should ensure that the effectiveness of CLTs is improved, in particular that:

- **the roles and responsibilities of the CLTs are clarified, including their role in the handling of general telephone calls;**
- **CLT processes are set out clearly;**
- **all CLT staff are trained in all aspects of their role;**

- **standard form letters should be amended to ensure defendant queries are dealt with by the relevant casework team; and**
- **the provision of poor quality police witness information should be addressed through CJU liaison meetings.**

Case study

The allegation was that the defendant knowingly allowed himself to be carried in a vehicle taken without the consent of the owner. The case involved professional witnesses (police officers and a civilian fingerprint officer) and the owner of the car. No evidence was offered, and the case dismissed, at the second trial listing when only the fingerprint officer attended. On the first trial date no witnesses attended. It later transpired none had been warned for a variety of reasons. There was no evidence of action to ensure all witnesses were properly warned on the second occasion (indicating a lack of pro-activity), resulting in the prosecution offering no evidence and a complaint from the fingerprint officer about the handling of the case.

Invitations to attend

11.20 Witnesses are sent an 'invitation to attend' court by the PPS. This can give the impression that it is optional and therefore makes it more difficult to act upon and seek a witness summons if a witness fails to attend. The PPS should consider a change of terminology for this process, for example 'witness warning' or 'requirement to attend

as witness' to reinforce the fact that it is a public duty with consequences for non-attendance.

The provision of Interpreters

11.21 The procedures for the provision of interpreters needed clarifying at the time of our inspection. Staff members were unclear how to arrange and book interpreters and whether it was the responsibility of the prosecution or the Court Service. There was also a related issue over which criminal justice agency had responsibility for payment of their fees. A sub-group of the CJB was considering these and other issues which should be resolved as soon as possible, as they contribute to unnecessary adjournments. We understand that since our inspection the issues have been resolved.

Special measures for vulnerable and intimidated witnesses

11.22 At a strategic level, issues relating to vulnerable or intimidated victims and witnesses are considered by a sub-group of the CJB, on which the PPS is represented. At a regional level, ADs are starting to attend inter-agency groups where issues relating to vulnerable and intimidated witnesses are discussed, for example the Foyle inter-agency partnership on domestic violence. These local developments are encouraging and should increase as the regions develop their standing in their communities.

11.23 The Criminal Evidence (Northern Ireland) Order 1999 sets out the

grounds on which the prosecutor can apply to the court for special measures for witnesses. These special measures are designed to reduce the trauma of giving evidence and include provisions for the witness's evidence to be given by a live link as opposed to in the courtroom itself. The type of special measure and the process by which they can be obtained vary depending on the age of the victim or witness and the type of offence alleged.

11.24 If the application relates to a **child witness** the primary rule is that the court must, subject to a very limited discretion, grant certain special measures. We found that where the primary rule applied, prosecutors were making the appropriate application in a timely manner, although the position was less satisfactory in cases where the primary rule did not apply. Overall, we found that special measures were applied for correctly in four of the five relevant magistrates' court cases (80%), all of which were timely. In Crown Court cases, special measures were applied for correctly in 16 of the 21 relevant cases (76.2%), and 15 of the 16 applications were timely.

11.25 In cases involving **adult witnesses** there was a lack of early provision of relevant information by the police to the prosecutor, and there was a need for the protocol between the PPS and PSNI to state clearly the prosecutor's expectations and to caution the police against giving the victim an expectation that special measures would be granted. The



issue was compounded by the prosecutor not requesting the relevant information at the directing stage. Often it was not until a member of the CLT spoke with the witness to obtain their availability that the issue of whether special measures should be applied for arose.

11.26 More consideration needs to be given to the type of special measure requested. Understandably, and rightly, prosecutors want to ensure that the environment is conducive to the witness being able to do justice to her or himself. The quality of evidence will be enhanced if victim or witness trauma in giving evidence is reduced as far as possible. Distancing them from the process, through applying for live links is often perceived as the best way of achieving this aim, but care needs to be taken to ensure that the views of the victims and witnesses are sought in reaching a decision as to the most appropriate special measures application. Prosecutors need to make timely and informed decisions about whether in some cases the remoteness of the victim, whilst reducing the trauma, is appropriate and consider whether other measures, for example the use of screens may achieve the necessary level of protection and allow for a better presentation of the evidence. However, the overall objective is to achieve justice for the victim by the proper conviction of the guilty, whilst ensuring the victim's views are taken into account as to what measures will help them most.

11.27 If special measures are granted by the court there is at present no formal process whereby the CLT and consequently the victim or witness is informed of the court's decision. We consider that this should be undertaken and the victim or witness notified in advance as part of the responsibilities of the PPS to keep them fully informed.

Issue to address:

The PPS should implement processes whereby the CLT and the victim and witnesses are informed of the grant of special measures by the court, together with the type of measure (Priority: high).

Good practice

In special measures cases dealt with by the Western region office a member of the CLT attends Omagh court (where there is no Witness Service representation) to meet the victim or witness to help to reassure them about the court process. We commend this as good practice and an example of an enhanced service, which should be adopted in the other regions.

Referral to Victim Support or the NSPCC

11.28 Victim Support is only able to provide support once a referral is made; unfortunately the absence of the victim's formal consent has resulted in Victim Support not receiving referrals from the PPS in all appropriate cases. This is currently being addressed through joint work to amend the statement forms to include permission for



referral once a decision is made to prosecute. The CLTs should provide information to victims and witnesses and the appropriate agencies in relation to prosecutions in the magistrates' courts.

Child witnesses

11.29 The care and treatment of child witnesses is improving. We have mentioned above the availability of special measures. A joint protocol with the NSPCC is also currently being developed to ensure young witnesses in criminal trials receive the support needed and the court is informed of witness needs. There is also mutual training and consultation on policy. However, the PPS needs to ensure that young witness referrals are sent to the NSPCC in a timely manner and that prosecutors are more pro-active in court to challenge poor questioning and treatment of young witnesses.

The care and treatment of victims and witnesses at court

11.30 The quality of the care and treatment of victims and witnesses at court is mixed. The Witness Service (part of Victim Support) is being rolled out and will become available at all courts. This will provide considerable support to witnesses attending court to give evidence. The PPS also needs to ensure that prosecutors in the magistrates' courts, and counsel and law clerks in the Crown Court discharge their responsibilities diligently. We observed during the inspection that there was a reluctance to take responsibility for

witness care at court, which was not solely due to time constraints. This can lead to unreasonable burdens on the Witness Service volunteers. The PPS need to ensure advocates improve liaison with the Witness Service at courts, where there is representation, to provide a more effective service.

11.31 In the magistrates' courts the practice of the multiple listing of trials in general court lists, to improve the effectiveness of court sitting time, can adversely impact on witness care. It inhibits proper preparation by advocates, hinders proper consultation with witnesses at court and can result in unnecessary attendance at court for trials which are then adjourned due to lack of time. Whilst the practice of instructing counsel in contested cases assists in overcoming these issues, we found that their level of witness care was variable.

11.32 Due to the large number of adjournments, witnesses and victims were becoming disenchanted with the criminal justice system and CLTs considered that eventually they would cease to attend court voluntarily. The policy of requesting witnesses to attend court at the start of business leads to unnecessary waiting at court, with infrequent updating from the prosecutor, and matters cannot be resolved at an early stage because the defence are not in attendance until later in the day. The Court Service was addressing this issue by listing trials later in the day.



CHAPTER 12:

The Relationships with other Criminal Justice Agencies



12.1 This chapter looks at how the PPS is developing its operational relationship with its key criminal justice partners.

The PSNI

12.2 The PSNI and the PPS jointly drew up and implemented a comprehensive protocol in August 2006 covering relevant aspects of the relationships between the two agencies. The document was due for review in February 2007, but at the time of our inspection this had not yet been started. Whilst it is long (118 pages) there is a generally high level of awareness of the key elements of the document amongst both police officers and relevant PPS staff, although few had ready access to it and were therefore not familiar with the detail. There are some disagreements between the PSNI and the PPS regarding aspects of the protocol, particularly in relation to the issue of the police charging the defendant as opposed to reporting them for prosecution. There is also a danger that both organisations could sometimes manipulate the protocol to get better target compliance. Senior staff in both organisations felt, and our findings confirmed, that the protocol is adhered to in most cases. In

addition, experience in some PPS regions suggests that outstanding issues can be resolved by regular interaction between the two agencies.

12.3 The ADs all met regularly with senior police officers in their region, although the level of representation of other PPS managers at these meetings varied. These meetings are viewed positively by the police, particularly in Western and Northern regions, where issues raised during the meetings were readily and quickly resolved to the satisfaction of both parties. Whilst the picture was more varied in the other regions it was recognised that the regular meetings were an advance on what had happened previously.

12.4 Concerns were however expressed that in the Belfast region in particular, issues raised by the PSNI on a number of occasions were not resolved and had to be continually raised at subsequent meetings. This was commented on by police officers in a number of the District Command Units in Belfast and was leading to considerable frustration amongst police officers who were regularly engaging with the PPS.



- 12.5 The introduction of the police liaison role has brought some benefits, particularly on individual cases. As with other groups there is scope to improve the identification of trends and the causes of under-performance.

The Court Service

- 12.6 There was some tension between the PPS and the Court Service particularly over listing issues, and there was a need for agreement on some contentious issues, for example whether overall court sittings had increased. This was one of a number of examples which suggested that relationships between the PPS and Court Service could and should be improved. The Court Service is a key player in the criminal justice system and critical partner of the PPS in ensuring successful delivery of its targets. Its working practices have a very substantial impact on the efficiency and effectiveness of the PPS. Discussions between the staff of the two organisations do of course take place on a regular basis but consideration should perhaps be given to whether a formal protocol between the two would help to resolve some of the issues raised with Inspectors.
- 12.7 The PPS are engaging with other partners and users of the criminal justice system by regularly attending court user groups and having regular meetings with the judiciary and magistracy at various levels. However, we consider that court user groups are not the best forum for delivering operational change

given the range of attendees and therefore the relatively broad range of issues that tend to be addressed. A number of those who attend such meetings spoke of the rather superficial nature of the discussion and also of reluctance on the part of the agencies to share relevant performance information in meetings attended by defence solicitors and those outside the criminal justice agencies.

Forensic Science Northern Ireland

- 12.8 There is a need to clarify some case handling issues between the PPS and Forensic Science Northern Ireland (FSNI). In particular defence access to material held by the FSNI which was causing significant delay in some Crown Court cases. Whilst there is a written agreement governing this matter, agreed by the PPS, FSNI and the PSNI, the operation of the protocol needs to be clarified to ensure this aspect of the prosecution process is open and transparent. The effectiveness of the current arrangements need to be reviewed in light of the concerns expressed to us and there would be benefit in defence representatives and the judiciary being involved in those discussions. The culmination of the review should be a protocol which would cover access to such material.

Other agencies

- 12.9 The PPS has also drawn up protocols with the Police Ombudsman and has been engaged with the Youth Justice Agency in trying to develop a protocol for



some time. There is little doubt that the development of these protocols is assisting in strengthening the relationships between the PPS and other relevant agencies. The relationship with the Social Security Agency is good.

12.10 Regular liaison is beginning with HM Revenue and Customs, and the relationship is improving.



Community Outreach

Community outreach

- 13.1 There is a clear commitment to community outreach activity on the part of the PPS. An Outreach Strategy has been developed and is available to the public via a variety of sources including the website. The stated aim of the policy is to increase public confidence in the independence, fairness and effectiveness of the PPS and to increase the understanding of its role in the criminal justice system. At this stage in the development of the organisation the emphasis is on the provision of information rather than outreach that would lead to an improvement in service delivery which can be developed in the future.
- 13.2 The strategy emphasises the importance of local liaison activity with specific targeting of educational establishments, voluntary organisations and community groups. A Community Outreach working party has been established to drive forward activity. The work in relation to stakeholders conducted as part of a strategic project should also assist. Consideration is currently being given to working in conjunction with the Public Information Working Group as a means of tapping into existing activity of other organisations. This would enable the PPS to take full advantage of the steps taken by other agencies who are further ahead in relation to certain types of outreach.
- 13.3 A community outreach action plan is being developed to assist future activity. The latest draft is divided into: information events; meeting the community (minimum of three meetings per region); inter-agency work; diversionary schemes; school visits with other criminal justice agencies (minimum of three per region); volunteerism; and the media – to engage proactively on overarching concerns and respond to specific case issues. Each task within the plan has been allocated a responsible lead. It could be improved further by the inclusion of timescales and the stated aim of the engagement with the specific groups named.
- 13.4 Outreach activity is conducted centrally or locally depending on the community group involved. In the regions the ADs are usually responsible for managing outreach activity whereas central activity is



generally undertaken by the AD for Policy and the SAD for the regions. There has been discussion at the Assistant Directors Forum about the appointment of a Communications Manager whose role would be to oversee activity, but as yet this has not come to fruition.

- 13.5 The Western and Northern regions are relatively well advanced in their outreach activity, but there has been less progress in the Belfast and Eastern regions. The Management Board has acknowledged that the approach to outreach activity could be more adventurous. Examination of the outreach logs indicated that there is a tendency to focus on other criminal justice agencies rather than more meaningful community outreach activity.
- 13.6 It is positive to note that the PPS engaged the Northern Ireland Council for Ethnic Minorities to conduct equality and diversity training and have held a formal meeting on anti-racism. The PPS should build on this promising start and would benefit from more engagement with communities which traditionally have criticised, and had a difficult relationship with, the criminal justice system. Specific efforts should also be made to increase engagement with black and minority ethnic groups. It is also encouraging to note that there have been a number of initiatives to improve the handling of cases of domestic violence.
- 13.7 The PPS is placing some reliance on the feedback from the current Northern Ireland Omnibus survey

to give an insight as to the effectiveness of activity. Although the survey contains some questions on the community outreach programme, the phrasing of the questions is such that any responses would not provide any real insight. Similarly, it is proposed to use the ongoing victim and witness survey to gauge success. Whilst at the interim stage the response rate is low it has provided useful information. The Service needs, however, to develop ways of fully evaluating its outreach activity.

Community consultation

- 13.8 Consultation has been conducted on a variety of policies and initiatives. However, there is no clear and consistent approach to consultation, which may be due to the limited resources available in the policy team. For example, consultation on the Code was undertaken with a wide group of stakeholders and there was also extensive consultation in relation to the domestic violence policy. In contrast the recently published victim and witness policy, which was not intended to be subject to wide consultation, was to be circulated to relevant stakeholders for factual accuracy. However, the policy appeared on the website three weeks prior to its launch without the limited circulation anticipated.
- 13.9 The proposed Equality Scheme has been subject to extensive preliminary consultation with the Equality Commission and has still to be sent out for full consultation, which will also give the Equality



Commission further opportunity to comment. In this instance the preliminary consultation may have been a little too extensive in light of the available resources and may have been at the expense of other initiatives such as the victim and witness policy.

- 13.10 Consultation should be followed up to ensure those who engaged in the process are informed of the outcome, to prevent the undermining of future consultations and the relationship the PPS is trying to build with individual stakeholders. Equally damaging to relationships is the failure to consult with stakeholders where it is reasonable to expect the PPS to do so.
- 13.11 A number of inter-agency groups have been set up to take forward the relevant recommendations of the Criminal Justice Review, for example various victim and witness groups which are attended by the PPS policy lead. The groups provide an opportunity to engage with key stakeholders on issues of policy and to take forward joint work. The PPS needs to ensure their representatives have sufficient authority to take forward appropriate matters and that participation in these groups is not at the expense of consulting more widely with smaller voluntary and community groups.

The community's access to information

- 13.12 The PPS web site (www.ppsni.gov.uk) contains a

number of documents relating to the operation of the Service, including the Annual Report, Business Plans, Implementation Update reports, Code and policy documents. Overall, a satisfactory level of general information is available, but the Service needs to ensure it is kept up to date.

- 13.13 We have, however, referred above for the need to improve accessibility to key information, so that it is readily available in an easily understood format for all the communities of Northern Ireland. This is needed not only to increase public confidence in general, but also to improve the service to victims and witnesses. It should include website access arrangements for review of prosecutorial decisions and the making of complaints. During the course of our inspection we were provided with examples where CLT staff knew they were dealing with Polish and Lithuanian victims but were only able to send them information in English.
- 13.14 The PPS draft Equality Scheme recognises the need to provide information in different forms and media, for example making hearing loops available. It is important that this work is taken forward quickly.

Issue to address:

All key PPS documents should be available in other languages/formats and other documentation on request (Priority: high).



Strategic Direction and Planning

14.1 In this chapter we examine the arrangements that are in place that enable the PPS to meet its objectives.

Planning

14.2 The PPS has four strategic priorities which are the focus of its delivery programme for 2004-08:

- to improve service delivery;
- to enhance value for money through modernisation and better use of resources;
- to value, empower, develop and recognise its staff; and
- to develop and maintain an independent, fair and effective prosecution service.

14.3 The priorities are comprehensive and capture what the new Service should be seeking to achieve and give a clear insight into vision, direction and priorities.

14.4 The PPS has made some progress towards achieving its strategic priorities. Although not yet fully operational this inspection has shown that the Service promotes its independence, has sought to make good use of technology, and has developed its staff to deliver a service which is fair in its decision making. But the rate of progress on all priorities has been variable and

progress in achieving value for money, aspects of service delivery, and effectiveness needs to be accelerated.

14.5 It will be important, therefore, that in addressing what remains to be done, much of which is identified in this report, the Service has the right arrangements in place to identify, plan and drive the next steps.

14.6 The basis for future planning is sound. For each priority area, strategic objectives have been developed, against which milestones and key delivery targets have been set. Strategic objectives are captured in the Service's annual Business Plan, balanced performance score cards and risk registers.

14.7 Some objectives and milestones are clearly defined with target delivery dates, but others are more vague and not qualitative. In some instances, achievement of the stated milestones is unlikely to have a significant impact on the achievement of the overall objective. For example, measures for the inclusion of Crown Court 'no bills' (already a rare occurrence) and the timeliness of the handling of Freedom of Information Act requests are unlikely to have a significant impact on overall service delivery.



Focusing on effective trials and hearings, together with more meaningful measures of witness care are of greater importance.

14.8 Overall, current planning documents do not detail adequately the actions necessary to ensure operational delivery of strategic aims. More precision is needed, detailing actions, time-frames, and responsibilities, and relevant performance measures need to be in place, for example for increased court coverage by prosecutors, or improved outcomes in certain types of case. Precision is particularly important in times of significant change. High quality plans that can be reviewed and updated at regular intervals can be powerful tools in keeping the organisation on track. The balanced scorecard and risk registers provide a framework for future activity on some issues but are not sufficiently robust to bring about the required level of improvement. Planning needs to be strengthened, although there is a solid foundation on which to build.

14.9 Some strategic priorities are being addressed through the three corporate project groups focusing on improving the quality and output of casework; promoting strategic clarity (including community outreach); and organisational development. These were all at varying stages of development at the time of the inspection, and had not yet reached a conclusion. The Service hopes they will bring some benefits in 2007-08. The way in which recommended change is to be brought about will need to be

properly captured, both in relevant plans, and through ensuring clear responsibility for delivery at the right level.

14.10 Despite clarity at the high level and among senior staff about the Service's objectives, there is a lack of understanding among the majority of staff about how the strategic aims and objectives will be achieved. Staff were also not aware of the progress of the project groups.

14.11 The PPS reports progress against the achievement of objectives and milestones in its Annual Report, a positive step towards building accountability and public confidence. The current Annual Report format provides a good foundation on which to build. Future editions should now focus more on service delivery and key achievements.

Issue to address:

Business planning needs to be strengthened so that management and staff at all levels have a clear understanding of:

- the regional and national priorities;
- what needs to be done;
- who is responsible for delivery;
- the timescales involved; and
- the measures of success (Priority high).

Risk management

14.12 Good risk management is important in enabling organisations to develop effectively. Good progress has been made in some respects. The



formation of the Audit and Risk Committee under the leadership of a non-executive director is a positive step in strengthening the management of the organisation. At senior level, risk is taken seriously and is a standing item at Board meetings.

14.13 Regional and departmental risk registers are also in place, but risks are currently not interpreted in the same way at regional and corporate level. For example, a risk relating to staffing levels is interpreted by regional managers as having the right person with the right skills available to deliver the service, whereas at corporate level the focus is on the number of staff recruited. Outstanding risks are therefore seen and recorded differently in different parts of the Service. In general, however, managers do not find risk registers particularly helpful and therefore do not yet pay much attention to completing and reviewing them regularly or thoroughly. The registers need to become more firmly embedded.

14.14 Work is underway to develop a business continuity plan with the help of a consultant. Responsibility for the ongoing management of business continuity needs to transfer to the PPS as the project develops.

Management structure

14.15 In order to ensure the delivery of an effective service, not only must the priorities and objectives be the right ones but the right

management structures need to be in place to enable objectives to be delivered.

14.16 Following a review of governance arrangements in 2005, the management structure of the PPS and management groups that superintend the business were changed. A new Management Board was formed and two non-executive directors were appointed, with the intention of bringing more general expertise and experience to the senior management team. The change has been beneficial.

14.17 The Management Board (MB) is chaired by the DPP and comprises the Deputy DPP, the two SADs and two non-executive members. The Board meets regularly and focuses on strategic issues. It is supported by:

- a Senior Management Group (SMG), chaired by the Deputy DPP, and consisting of the SADs. The SMG meets monthly. Its role is to report and take forward decisions from the MB; monitor and assess operational performance; identify and evaluate risk; co-ordinate deployment of organisational resources; and communicate vision values and objectives at an operational level;
- an Assistant Directors Forum (ADF), chaired by a SAD and consisting of the other SAD and all ADs. The ADF meets monthly. Its role is to act as a change control board for proposed amendments to operational practices, policies, organisational structures, and ensure their proper development; provide an





- effective forum for communications and team briefings at regional level, and advise on the management information needs of the Service.
- 14.18 Groups have terms of reference and key objectives.
- 14.19 There is some overlap between the work of the Board, the SMG and the ADF, and some managers attend all three meetings. Managers consider that these arrangements work and assist in running the organisation. Inspectors were satisfied that this was so at the strategic level but less convinced that the groups were effective in translating strategy into delivery at the operational level. Whilst Inspectors recognise the significant efforts of the management groups, progress and delivery has yet to reach the required level. Translating discussions and ideas into effective, timely improvements has yet to be achieved with any consistency. A more dynamic approach to some issues is needed in particular the treatment of victims and witnesses and structural and staff deployment issues.
- 14.20 A Business Managers Forum (BMF) consisting of most, but not all, regional office business managers, and a Staff Communications Forum (SCF) consisting of a cross section of staff from the regions, support the management arrangements
- 14.21 Whilst the BMF and SCF both meet regularly, they are not as yet effective groups tackling the right issues. One of the key aims of the BMF was to manage processes to ensure consistency and sharing of good practice, although there was little evidence of this taking place and processes need to be better managed and improved. Some issues discussed do not match the remit of the group and some important issues have drifted over multiple meetings.
- 14.22 The majority of Senior Assistant and Assistant Directors have a legal background (mainly in the PPS and its forerunner) and therefore have limited previous experience of setting up and managing a large organisation. They would benefit from greater support in this area so that the PPS can accelerate the transition from implementation to focusing on consistent high quality service delivery. Such a change is unlikely to occur unless actively managed by those with appropriate skills.
- 14.23 The PPS should consider whether it needs to appoint senior staff with specific responsibilities for overseeing non-legal aspects of work, some of which has been undertaken by corporate services in the past. Consideration has been given to a Chief Executive role, and whilst it was thought inappropriate at the time, the PPS may wish to reconsider whether such a post, or a similar one, would be helpful in driving forward change.
- 14.24 Equally managers need to be equipped to deal with the broader management responsibilities they now have. At regional level there is a need to develop a better support



structure for ADs. Whilst they receive assistance with the line management of some staff, they tend to carry the burden of almost all other management issues. It is unlikely that one person can fulfil all these responsibilities effectively by themselves. Whilst it may have been envisaged that some administrative managers would assist in managing the business, most were very heavily focused on day-to-day operational matters, and therefore had limited time to focus on management issues.

14.25 Responsibility for managing finance, processes, relationships with other agencies, risk, performance and planning at regional level needs to be reviewed, and a regional management structure that supports such a framework established. This may involve delegation of responsibility and/or the creation of revised or new management roles. Currently a limited number of senior prosecutors have any management responsibility. This position needs to be reviewed to ensure they are able both to support the AD and contribute effectively to the management of the region.

We recommend the Management Board should review management structures to ensure that:

- **there is an appropriate balance of legal and business management skills among senior managers;**
- **support is made available to ADs to assist with management of people, processes, performance, finance and planning; and**
- **the work of the BMF is reviewed to ensure that it becomes an effective group, focusing on the right issues.**



Human Resources



15.1 In this chapter we examine arrangements for the recruitment, management and deployment of staff, and equality in the workplace.

Recruitment

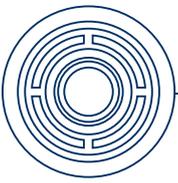
15.2 Considerable progress has been made in recruiting the additional prosecutors needed to fulfil the wider remit of the PPS. Numbers have increased from approximately 40 in the ODPP to almost the full anticipated complement of 162, a significant achievement when considering the starting point and pool of skilled resource available.

15.3 The PPS will wish to ensure it is able to retain prosecutors as their skills develop. Issues have arisen over terms and conditions of employment, arrangements for pay progression and career development which need to be addressed quickly. However, we recognise this is difficult under the current employment arrangements whereby staff are seconded from the NIO with the result that such matters are outside the control of the PPS. There is some risk that prosecutors will leave the PPS as they view their prospects as limited. A grading review for prosecutors is underway which may provide some

assistance. Additionally, the PPS needs to ensure that information concerning pay and conditions held on websites and sent to prospective employees is correct.

15.4 Recruitment of administrative staff has been steady, but is not without difficulty. Recruitment is governed by the need to take account of the central pool of available staff at the relevant grade within the NI Civil Service. This has some disadvantages for the PPS. On occasion these arrangements require the PPS to take staff with limited or no relevant experience for a particular post, when they have suitable internal staff who could fulfil the role more effectively. It can be particularly challenging when newly recruited managers have significantly less relevant knowledge than their staff. However, being part of the Civil Service has benefits for PPS staff because of the opportunities it offers, particularly for promotion.

15.5 Despite its success in recruiting, staff turnover has been high, particularly amongst administrative grades. In the period October to December 2006 the PPS gained 26 new staff, but lost 20 over the same period.



- 15.6 Flexible working arrangements are available to staff but there is a need to formalise the systems for, and guidance on, temporary promotion. The work underway to develop a policy on temporary promotion of legal grades should be broadened to include administrative staff.
- 15.7 Uncertainty over premises in Newry and Derry/Londonderry is likely to affect recruitment further. It is probable that the PPS will take the casework from these areas in 2007-08 irrespective of whether premises are available. This is likely to lead to temporary working arrangements; it may be difficult to find administrative staff who will be willing to work in alternative locations until such times as the remainder of the proposed regional offices are open.

Induction and training

- 15.8 The PPS has invested a significant amount of time and effort in training and preparing its new prosecutors. The induction and training programme lasts around five months, is thorough, and new staff were, on the whole, very satisfied with it.

Strength

The commitment to, and delivery of, prosecutor training.

- 15.9 Training and induction of administrative staff is less systematically organised than that for new prosecutors, and tends to vary depending on when new staff arrived and where they were based.

The turnover and relative inexperience of the administrative workforce brings challenges in terms of training, and the use of temporary administrative staff on fixed contracts compounds the issues. The PPS needs to review the arrangements for the training and induction of administrative staff, and consider how it can address the high turnover levels.

Issue to address:

The development of more systematic training for administrative staff (Priority: high).

Staff numbers

- 15.10 At the time of the inspection the PPS had almost 550 staff in post against a final expected number of 609.
- 15.11 The PPS uses a capacity model to calculate staffing levels. The model has been reviewed on a number of occasions to take account of changing circumstances, and adjustments have been made as a result. Most managers are reasonably satisfied that, following negotiations, they have, or will have, sufficient staff although some units, until recently, operated with a considerable shortfall in expected numbers. The capacity model makes some key assumptions about caseload which will need to be reviewed regularly to ensure they remain valid.
- 15.12 Staffing levels, including the number of senior civil servants, are generally high for the size of the



organisation and the current and expected volume of cases. However, arrangements surrounding the rollout of a new service, some inefficiencies in new procedures and many new and comparatively inexperienced staff mean that some staff at all levels are currently carrying a high workload. The organisation also has a high number of SPPs. Paragraph 15.23 indicates how they might be better used and contribute to the management of the organisation.

- 15.13 The Service has made a concerted effort to manage attendance, and reduce the sickness absence levels, and there is now more systematic completion of the appropriate paperwork and return to work interviews. This has contributed to a reduction in absence rates (down from 5.6% in 2005-06 to 4.7% in the year to January 2007). This is better than both the NIO and Northern Ireland Civil Service rates.

Strength

The management of sickness absence.

Organisational structure

- 15.14 Structurally, the PPS is compartmentalised into small teams, with precise responsibilities.
- 15.15 In all but one region, most prosecutors, are divided into separate casework and court teams, and undertake initial decision-making and the presentation of cases at court respectively. Whilst this may be attractive to some staff

that have a preference for a particular type of work, it diminishes the opportunity for case ownership, and can cause duplication of work. It can also adversely affect case progression at court as decisions usually have to be referred back to casework lawyers. The job description for prosecutors includes responsibilities and competencies for both skills but there is no policy on rotation and limited evidence of movement between the disciplines; arrangements may also hinder the development of the necessary skills among prosecutors. The Northern region has adopted a different approach and prosecutors are expected to undertake both functions. Managers should formally evaluate these arrangements to identify any strengths or weaknesses of the approach.

- 15.16 In Belfast there is a sharp divide between staff handling cases pre and post committal, resulting in an absence of case ownership and duplication of effort. Administrators throughout the PPS are also divided into casework support, court work support and case preparation teams; one office has a separate printing team.
- 15.17 Organisational structures in turn have driven processes, which has led to convoluted work flows. This has been exacerbated in some regions by the layout of the offices, with each team operating in its own room, often behind closed doors. This does not assist teamwork in its broader sense and in some cases





units have become insular. There was limited evidence of cross team support.

- 15.18 Overall, structures are overly compartmentalised. Whilst there is clearly scope for some specialisation, in general terms a more flexible, multi-skilled work force would deliver greater benefit and efficiency. One of the bi-products of the small teams is the creation of a very high number of management positions at administrative level as each team has a manager or supervisor.

We recommend the PPS should review its regional operational structures to deliver:

- a greater sense of case ownership;
- more efficient processing of cases with a reduction in duplication of work;
- a more flexible, multi-skilled work force in a less compartmentalised environment;
- an evaluation of the number and responsibilities of administrative managers to assure their deployment is optimised; and
- improved communication channels.

Staff deployment

- 15.19 Paragraph 15.15 indicates that the organisational structure of the PPS, with the division of functions within both prosecutor and administrative teams means that the fully efficient

deployment of staff is hindered. The deployment of staff at court also needs reviewing to ensure it is efficient and provides value for money.

The deployment of staff in the magistrates' courts

- 15.20 There is an expectation that in-house prosecutors will at some stage handle the vast majority of cases in the magistrates' courts. However the level of in-house coverage is still variable with counsel engaged to undertake a number of sessions or trials.
- 15.21 A number of factors have affected the low level of prosecutor deployment in court. These include the organisational structure of the PPS under which teams are split into those who make decisions on cases and those who attend court; the policy of not deploying senior prosecutors at court; the lack of available resources in some regions in the past; and the perceived requirement to deploy two prosecutors to some of the busier courts.
- 15.22 As yet there is no policy on the proportion of the time PPS prosecutors should spend in court. Prosecutors designated to attend court generally do so on only one or two days a week. This level of coverage should be increased and formally monitored. At the time of the inspection there was little management information available on the number of court sessions undertaken, the level of in-house individual or team coverage or the



cost of using counsel in the magistrates' courts instead. Proactive management is required to drive up coverage and ensure value for money.

15.23 In most regions, SPPs and senior managers rarely, if ever, prosecute cases or attend court. More experienced lawyers could be tactically deployed to: assist courts to progress cases; build public confidence through accomplished performance; assist less experienced prosecutors by providing support and teaching by example; and to ensure that managers are aware of the issues being faced by prosecutors on a day-to-day basis. Current practice, which means that these opportunities are missed, should be reconsidered.

15.24 In some courts the volume of cases is extremely high and as a result the PPS will often send two prosecutors to court. Administrative staff are also sent to court to support prosecutors. It is difficult for a prosecutor to keep complete and accurate records given the number of cases and the pace with which they are dealt (at one court 40 cases were heard in an hour). However, a number of inefficiencies (referred to in Chapters 7 and 17) contribute to the volume of cases in each court, and most cases are subject to multiple hearings. Improvements in the efficiency of processes for case handling and case preparation across the criminal justice system would help the more efficient deployment of prosecutors and other staff.

15.25 Whilst a significant proportion of prosecutors are relatively new and inexperienced, more could and should have been done to increase their deployment, and reduce reliance on counsel in the magistrates' courts. The timetable for increasing in-house coverage, currently 'within a few years', is too relaxed and firm plans need to be put in place.

We recommend the Management Board should:

- take urgent steps to increase the use of PPS prosecutors in the magistrates' courts, and reduce reliance on counsel; and
- keep the policy of deploying administrative staff to court under ongoing review.

The deployment of staff in the Crown Court

15.26 Counsel are instructed to conduct almost all Crown Court cases on behalf of the PPS, although a few experienced prosecutors undertake some Crown Court advocacy, with one doing the full range of work. Over time the PPS should keep this policy under review with a view to deploying in-house prosecutors in appropriate circumstances. This would aid staff development and career opportunities, assist in maximising value for money, and help build public confidence as the court is the 'show piece' of the prosecution service.

15.27 In the Western region, prosecutors are working well with other agencies to improve the progression





of Crown Court cases through the system, contributing to improved efficiency and reduced costs.

Equality

- 15.28 All public sector organisations in Northern Ireland are obliged to collect data on the background of their staff in terms of gender, race, community background and a number of other categories. This information is shared with the Equality Commission whose function is to promote equality of opportunity in Northern Ireland and also to enforce equality legislation. Most criminal justice agencies including the PSNI, Probation and the Prison Service, collate this information on their staff and return it to the Equality Commission which publishes the data. It is through this mechanism that the public becomes aware of the extent to which the staff of the criminal justice agencies reflect the community that they serve.
- 15.29 Because of the status of the PPS, information on the background of PPS staff is collected but is then included in the returns of the NIO to the Equality Commission and is not disaggregated. Senior managers in the PPS therefore, including those with responsibility for recruitment and retention, are not aware of the composition of their staff⁶. This needs to be addressed. However, a break down of staff by community background has been produced in response to a request by the inspection team:

Community background			
Background	Number	Percentage of all staff	Percentage [exclusive of staff where background is not determined]
Perceived Protestant	260	48.1%	49.1%
Perceived Roman Catholic	270	50%	50.9%
Not determined	10	1.9%	-
Total	540	100%	-

- 15.30 Senior managers need to ensure they have access to such information regularly so that they can assure themselves that the PPS is compliant with legislation, promotes equality of opportunity and is reflective of the community.
- 15.31 With the increase in staff numbers, the composition of the workforce has changed considerably from its composition at the time of the ODPP. In total, 62.2% (336) of all PPS staff are female. Some managers have found the feminisation of the workplace, a common feature of a modern working environment, difficult. There remains more work to be done to ensure that all staff feel equally valued and, in particular, those taking maternity leave do not feel potentially disadvantaged. Senior managers should ensure that the principles of equality, respect and dignity at work are reinforced and maintained throughout the organisation.

⁶ Figures relating to the composition of staff within the PPS have also been published on two previous occasions, in the Criminal Justice Review report (relating to the office of the DPP) and also by the Justice Oversight Commissioner, Lord Clyde.



We recommend the Management Board should ensure that:

- they regularly receive details of staff breakdown by community background, gender and other relevant equality categories; and
- all managers lead by example and take steps to reinforce the principles of equality throughout the organisation.

Cultural neutrality

15.32 The PPS offices visited by Inspectors were culturally neutral. The PPS position statement makes clear that the wearing of flags or emblems and sports clothing signifying support for teams identified with one or other community is not permitted. Whilst rare, in a very small number of instances clothing was not consistent with this policy. It is important that the policy is rigorously enforced.

15.33 The PPS has properly invested much time and effort into the training of new legal recruits on equality and diversity matters which was well received. This did not involve specific anti-sectarian training. This omission does detract from an otherwise good programme, and should be remedied in future induction programmes. It would reinforce the clear message delivered by the Director or Deputy Director to all new staff that the ethos of the PPS requiring that they “leave any baggage at the door” and are required to deal analytically with

the evidence and issues according to law, applying the PPS policies and practices to that end.

Communication

15.34 Many staff felt that they did not see enough of senior managers, and the lack of opportunity for face-to-face discussion contributed to perceptions that managers were not alive to the issues being faced by operational staff. There is some evidence to support this, for example the differing views of managers and staff over the quality of processes. We have mentioned elsewhere the potential benefits of more senior staff attending court on occasion. The perception may be further fuelled by the lack of planning documents that could give staff a reference point to understand what needs to be done.

15.35 It is important that senior managers find the time to meet and communicate effectively with staff, not only when there are significant issues that need resolving. An open and transparent management style is more likely to encourage staff ‘buy-in’ to what needs to be done to deliver desired outcomes. Staff welcomed and appreciated the senior manager “road shows” which kept them informed about the progress of the roll-out, but contrasted this with communication on more general day-to-day issues and important topics such as projects to improve the service. A high proportion of staff did not feel that they are kept appropriately informed, or that they had a voice in influencing the development of the regions or the organisation.



15.36 Staff access to important documents needs to be improved, to counter perceptions of a lack of transparency, for example to the capacity model and Quarterly Key Statistics report that details regional and PPS performance against key indicators, which very few staff below AD level were aware. The PPS intranet has improved and carries helpful information for staff (although staff were not always aware of where to find specific information). The Service's website also contains a lot of useful information, particularly for the public. These are both positive developments, The PPS needs to ensure it takes full advantage of electronic communication.

15.37 The dissemination of information through the SCF could be more effective. The compartmentalised organisational structure of the PPS can hinder effective communication in some instances, as can the lay out of the offices, and team meetings are not held consistently even within regions. Notes or minutes of key actions need to be recorded and actioned where appropriate. Criminal justice partners also expressed concerns that messages from joint agency meetings did not always appear to be disseminated to staff. The latter is particularly important as it impacts on the confidence other agencies have in the PPS.

15.38 There was a growing recognition, however, that communication across teams and grades is important and cross-grade regional management

meetings were increasing, but did not yet take place in all regions. There is scope to improve the communication between the policy department and the regional network on legal issues.

15.39 A detailed staff survey is planned for 2007-08. This is an important and positive step and should mean that managers are better informed on the views of staff. To gain maximum benefit it will be crucial that there is an effective and constructive response mechanism to the findings.

15.40 Communication is always likely to be a challenge in multi-site, team based organisations. Inspectors sensed that, at regional level, good intentions on communication were being undermined to some extent by other factors. Training and communication are often the first casualties when staff are under pressure and struggling to cope with workloads. Some good work has been undertaken, but clearly more needs to be done.

Issue to address:

Managers should take steps to improve the effectiveness of internal communication by:

- *reviewing the role and effectiveness of team briefing and the Staff Communication Forum;*
- *delivering an effective response to staff survey findings when completed; and*
- *cascading information more consistently and effectively (Priority: medium).*

Financial Resources

- 16.1 In this chapter we examine the arrangements for financial management and counsel fees.

Financial management

- 16.2 Because of its developmental status, the PPS is allocated an annual budget that is subject to review and adjustment throughout the year. In 2006-07, an adjustment in August increased the budget by £2.2 million; a further adjustment in November reduced it by £640,000. This resulted in a year end budget for 2006-07 of £35.56m, an increase of almost £10m over the previous year's spend. Much of the additional spend related to expenditure anticipated in the previous year's budget, which did not occur due to delays in the opening of two new regional offices.
- 16.3 At the present time, the budget is controlled centrally by the corporate services team. At senior levels, involvement in and understanding of, key budget issues was limited, and regional offices had virtually no involvement in the financial management of the service. Current arrangements contribute to a general lack of

awareness and ownership of, and accountability for, the financial position of the Service and to a generally relaxed approach to financial management. The PPS has recognised that this needs to change and has a stated intention to transfer ownership of some aspects of budget control to the ADs in the 2008-09 financial year. This is a welcome move, but is only likely to be successful if managers are provided with proper training, guidance and objectives.

- 16.4 The IT finance systems are owned and operated by the NIO who provide budgetary information to the PPS. The PPS carries out some reconciliation of figures, but heavy reliance is placed on the information provided by the NIO. Reports are issued on a monthly basis comparing actual spend to budget, but little information on predicted spend is circulated. At the time of the inspection financial controls within the PPS were not all as robust as would be expected, particularly with regard to the management of counsel fees (see paragraphs 16.7 – 16.16). The PPS has, however, operated consistently within their overall allocated budget.



16.5 In the existing operating environment, with very flexible funding, the fact that controls are not comprehensive has not had a significant impact on the management of general running costs. However improved controls, reconciliation and reporting are likely to be necessary in the future, particularly if there are constraints on spending and greater accountability for value for money is expected.

16.6 Chapter 4 sets out how the current governance arrangements of the PPS impact on its financial accountability. In 2006-07 an increase in funding of £1.65 million was granted to cover the cost of counsel fees, without any requirement to justify in detail the uplift. Additional funding was also granted in 2006-07 for five additional prosecutors and two support staff, to handle additional cases arising from the work of the HET. At the time of the inspection, no cases had been forthcoming and the staff have been redeployed to other duties. For the future, accountability should be reinforced through the submission of business cases and where appropriate, ring-fencing of funding.

16.7 One of the key performance indicators for the PPS has been the requirement to achieve a 2.5% efficiency saving per year. For 2005-06 the PPS claimed savings of £514,000, based solely on economies achieved by the introduction of electronic interchange of data with the police. Whilst savings may have been

generated, the supporting information was too basic and did not take account of all relevant issues, and better evidence could have been presented.

Issue to address:

The Management Board needs to ensure that:

- *projected budgets take full account of all committed expenditure;*
- *systems are sufficiently robust to enable the PPS to give independent assurance that the budget position is accurate;*
- *budgets are devolved to regions following appropriate training where required; and*
- *business cases for additional expenditure are more thoroughly explained (Priority: medium).*

Counsel fees

16.8 Counsel fees are paid by the PPS to independent counsel to prosecute cases in the magistrates' courts and Crown Court. In 2005-06 the total expenditure on counsel fees, together with witness costs and other related expenses amounted to £7.46 million; for 2006-07 expenditure amounted to £10.8 million. In August 2006 the PPS sought and was granted an uplift of £1.65 million to cover the expected increase in counsel fee costs.

16.9 There are two types of fees:

- **scale fees**, which provide fixed rates of remuneration depending on the hearing type and court venue; most work undertaken in the magistrates' courts is



- remunerated by way of scale fees; and
- **special fees**, which are non-scale fees which may be claimed for main hearings for which counsel considers the scale fee provides inadequate remuneration. Other than cases in which a QC is instructed, there are no criteria for determining whether a case falls to be remunerated by a special fee.
- 16.10 The absence of criteria meant that in practice special fees were claimed and allowed almost as a matter of routine in contested cases. This suggested a substantial disparity in the fees paid for contested work in the Crown Court compared with elsewhere in the UK. However, the weaknesses in the systems for the managing of fees described below mean that at present there is no way of confirming or refuting the apparent disparity. Inspectors found that total expenditure on counsel fees in 2006-07 was approximately 470% higher than would be spent in England and Wales in an area with a similar sized caseload⁷.
- 16.11 As part of the inspection, an audit was conducted of a random sample of 42 magistrates' court and Crown Court cases in which counsel had been instructed.
- 16.12 The audit found that overall, simple scale fees for specific hearing types
- such as mentions and arraignments were approximately 50% lower than those for similar services in England and Wales. However, for hearings or cases attracting special or non scale fees the costs were on average around two and a half times higher.⁸
- 16.13 The main driver for the level of prosecution fees in Northern Ireland appears to be the remuneration paid to defence advocates – which is also mainly out of public funds. We recognise the need for parity within Northern Ireland but nonetheless remain concerned that the rates paid in respect to publicly funded criminal work may differ so significantly to other parts of the United Kingdom without there being a sound basis for the distinction.
- 16.14 While there are some historical reasons for the differences in levels⁹ Inspectors found that there are significant shortcomings in arrangements for the payment, management, and control of fees that prevent the PPS from making any real assessment of whether the use of counsel in certain cases, and the levels of payment, represent value for money, both in themselves and in comparison with use of its own prosecutors:
- Counsel in the magistrates' court are remunerated against the scale fees for each case listed (rather

7 In 2006-07 in England and Wales, CPS Areas with a Crown Court caseload similar in size to that of the PPS each spent approximately £2.3million on counsel/agents fees in the magistrates' courts and Crown Court

8 Caveats to these findings include the fact the legal processes in England and Wales are different, the absence of full work records on some files, and the relatively small sample of cases.

9 The environment in which counsel operated meant that premiums on fees became established.





than per court session as in England and Wales). The volume of cases in the magistrates' courts lists mean the amount paid by the PPS to counsel can be extremely high. In one case, the PPS paid counsel £1,700 for a day's work in the magistrates' courts that amounted largely to administration.

- In the Crown Court the majority of fees in contested cases are not paid against a set scale, and are therefore subject to negotiation. Fees are not agreed in advance in the majority of cases, and negotiation occurs after the case has concluded. As a result, counsel perceive that the fees they request are usually adjusted downwards, and they may therefore set their fees at a higher level at the outset, in the knowledge that they may be reduced. Such arrangements make effective control of the budget difficult; likely expenditure cannot be predicted with any acceptable degree of accuracy.
- Despite writing to the Bar as long ago as 2002 to request that all claims for non-scale fees were accompanied by a copy of a specific form recording work that had been carried out, counsel routinely do not provide such forms when requesting payment of fees. Fee requests, made in a variety of formats, containing different amounts of detail and of varying quality have been accepted by the PPS. Having examined a sample of cases, Inspectors concluded that

in order to assess fully the fees claimed in special fee cases it was necessary to have sight of the advocate's work record.

- There can be delays by counsel in submitting requests for payment and delays by the PPS in making payments. Most offices had backlogs of overdue payments, although the extent varied by region. In the Eastern region, Crown Court fees were approximately three months behind schedule; examples were seen in Belfast region of unpaid scale magistrates' courts fees that were six months old.
- Payments for scale fee appearances are recorded in respect of each counsel, rather than in respect of each case. Payments are made to counsel as a case progresses through the court system and at no stage do individual payments appear to be reconciled to the case. There is, therefore, no record kept of the cumulative costs of counsels' fees in each case. The PPS therefore has no clear understanding of the cost of using counsel on a case by case basis. Counsel fees paid in respect of magistrates' courts and Crown Court cases cannot be differentiated.
- There is an inconsistent approach to circumstances in which both senior and junior counsel are instructed rather than junior counsel alone. The instruction of senior counsel will have a significant impact on the overall fees paid in a case, and they should only be appointed in



appropriate cases. In six cases featuring leading and junior counsel, Inspectors considered that it was likely that only one counsel was needed.

16.15 Some systems to control and manage counsel fee expenditure are in place. All non scale fee requests are initially reviewed by ADs, and a former member of staff has been retained on a consultancy basis to assist with the management and control of counsel fees. This allows the PPS to make some estimates of the likely level of future expenditure. Although the consultant will see most of the Crown Court cases, he does not see them all, and delayed submissions and scale fees will also have a significant impact on final budget projections. There was a recognition within the PPS that control of counsel fees needed to be improved, and a pilot recently undertaken in the Northern region to improve the monitoring of Crown Court fees was intended to be rolled out across the PPS.

16.16 Overall, current arrangements mean that the PPS is not able to understand and control committed and current, or predict future, expenditure on counsel fees, and therefore is not able to manage its prosecution costs budget to ensure that it represents value for money. Nor is it able to make value for money comparisons with deployment of its own staff.

We recommend the Management Board should ensure that;

- **there is a significant improvement in the understanding of outstanding fees;**
- **a much higher proportion of fees are negotiated in advance of hearing/trials;**
- **establish criteria for cases which should be remunerated as a special fee case;**
- **the costs attached to specific cases can be easily identified;**
- **senior counsel are only instructed where appropriate; and**
- **payment of fees is timely.**

We also recommend the Management Board should initiate a fundamental review of the manner in which fees are calculated and paid for sessional work in the magistrates' courts.

16.17 A proposal is underway to revise the payment structure of prosecuting counsel's fees, following changes to the legal aid scheme and the payment of the defence. The scheme aims to promote fees being agreed in advance against a standard scale of costs, with a consequent saving in management time and costs in administering the scheme. It is envisaged that the proposal will lead to increased fees for lower level work but a reduction in costs





for more complex casework. There is a consensus that proposals will mean an overall increase in the total amount paid in counsel fees by the PPS. Expectations about the precise level of increase varied, but the likelihood is that increased costs will be substantial, if use of counsel continues at its current level. The costs of any change have not been formally analysed. This presents a serious risk for the PPS, particularly as arrangements for its funding are likely to come under review with the devolution of justice and policing to the Northern Ireland Assembly.

- 16.18 The PPS needs to move quickly to ensure expenditure is properly managed and controlled and to ensure use of its own prosecutors in court is maximised. Chapter 8 gives specific examples of work which should have been undertaken by prosecutors, but was passed to counsel.

Procurement

- 16.19 In January 2007 CJI published a detailed report on '*Improving Procurement within the Criminal Justice System*' and therefore purchasing was only examined with a light touch during this inspection. The systems are generally satisfactory, using NIO practices and policies for the most part. An audit of PPS purchasing undertaken recently identified some opportunities for improvement, and these are being addressed by the PPS. Expenditure on consultants' fees would benefit from more

formal evaluation in order to ensure value for money is obtained. Over time the PPS should strive to manage in-house most work that is currently outsourced to consultants.

CHAPTER 17:

The Efficiency of Systems and Processes



- 17.1 In this chapter we examine the extent to which systems, both automated and manual, operating within the PPS offices, help the effectiveness of the organisation.

Automated processes

- 17.2 The PPS has made significant progress in developing CMS to record and help manage cases. Considerable effort is being spent on forging further electronic links with other key criminal justice agencies that should deliver efficiencies and improvements in quality. The PPS has nominated a policy lead to take the work forward with a small team, to examine current processes and design new ones in readiness for going live. Whilst there have been some delays in the projected timescales, it is still the intention to implement a Causeway enabled CMS system (DSM1) in 2007-08. This will deliver interfaces with the courts and prison service and improved functionality in areas such as requests for information, summonses and court results, in addition to the existing process of electronic file, statement and exhibit interfaces with the police.

Strength

The progress towards an integrated electronic interchange of data.

- 17.3 The CMS system is accepted as a core part of all roles within the PPS, albeit it is used more widely by administrative staff. Progress made so far is commendable and improvements have been implemented on a regular basis, although there is still scope for further improvement to the speed and user-friendliness of the system.
- 17.4 As with all new systems there is a need to constantly review the functionality to ensure that it is fit for purpose. When CMS was first introduced, users were encouraged to make suggestions for improvement. Over time their enthusiasm for this process has diminished, prompted partly by perceptions of a lack of response from those responsible for evaluation of ideas. This is an opportunity missed as for the most part users are best placed to identify where systems (electronic or manual) need improving. Staff have found 'uncontrolled' local solutions to long standing problems. A more controlled



process is likely to minimise risks and deliver benefits throughout the organisation. In recognition of this, a formal change management process has been developed, and there is some evidence that it is beginning to be used effectively.

Issue to address:

The CMS change management process needs to be reinforced to harness the knowledge of users in identifying issues that need addressing (Priority: high).

been underway since spring 2006 but has not resulted in any firm proposals. This is worthy of further consideration, particularly in light of the relative inexperience of many staff and the high turnover at administrative level.

Issue to address:

Delivery of training on CMS needs to be improved. Consideration should be given to reinvigoration of IT super-user concept to deliver local support to users (Priority high).

CMS training

- 17.5 The majority of administrative staff consider that the quality of training on CMS needs to be improved along with the timeliness of delivery. There are currently two dedicated technical CMS training officers, one of whom is an experienced operational user. Whilst they can provide assistance, it is not to the level and extent expected or required by the regions. It has been common for staff with comparatively little experience themselves to be expected to train others, with the result that some bad practices proliferate. The PPS intends to improve CMS training in 2007-08, which will be particularly important if they are to take full advantage of the potential benefits of DSM1.
- 17.6 The support provided by the helpdesk is considered to be good, but this tends to be on technical issues as opposed to assistance with process. Discussions on the value of more local expert IT support has

Manual processes

- 17.7 The PPS has faced a significant challenge in developing new processes that need to take account of a number of key factors including: the changing type and volume of cases handled; the introduction of CMS; experience levels of the workforce; and, taking on board new responsibilities such as issuing summonses and witness invitations. A consultant was appointed to lead this important strand of work.
- 17.8 Whilst considerable effort has been expended on the task and some progress made, some aspects of manual processes remain problematic. Responsibility for ongoing management of processes was documented as a key objective for one of three key strategic projects teams and for the Assistant Directors' and Business Managers' Forums. Whilst the groups have undertaken some work in 2006-07, none had delivered a significant improvement in processes at the



time of the inspection. Work by the project team on documenting procedures was close to completion and should help in achieving higher levels of consistency. Care needs to be taken to ensure that work is not just focused on 'doing the thing right', but rather looks at making sure staff are 'doing the right thing'. There is little point in having a documented procedure if the process itself is fundamentally inefficient.

17.9 Despite the efforts made so far, administrative processes need to be made significantly more efficient across the PPS, particularly those relating to case progression. In some instances the co-operation of other agencies is needed to bring about improvement whereas others are within the control of the PPS. The compartmentalised structure of the PPS affects some of the processes, and contributes to a production line approach where a transaction moves to various individuals or teams to undertake their part of the overall process. Whilst this is appropriate in some cases, in many instances it leads to duplication and delay.

17.10 Indicators that processes can be improved include: the incidence of backlogs, which whilst variable across the regions, affects all sites in some aspects of work; the significant increase in workload for some staff where caseload has not changed proportionately; and the increase in outstanding items in CMS task lists.

17.11 In carrying this work forward the PPS needs to ensure that it engages more with the users of the process. Inspectors encountered a higher degree of understanding of the current inefficiencies among junior administrative staff and prosecutors than managers. Staff who operate processes frequently, are most likely to be able to identify weaknesses. Newer staff, who have no historical perspective are also likely to be focused on what works or does not work now.

We recommend the Management Board should conduct a fundamental review of its processes to ensure that:

- wherever practical there is consistency across the regions;
- there is an effective means of identifying and implementing good practice;
- staff are properly trained in agreed processes;
- duplication and rework is minimised; and
- backlogs are cleared as a matter of urgency and that appropriate systems are in place to prevent recurrence.

17.12 Any reviews of processes and structures will require the staffing capacity model to be revisited, as some of the current underlying assumptions would no longer be applicable.





The Management of Performance



18.1 This chapter examines the performance management regime both internal to the PPS and with CJS partners, and the reliability of data.

The performance management regime

18.2 The performance management regime is developing gradually. To some degree this is to be expected as the PPS comes to terms with its new role and responsibilities within the criminal justice system. There will have been less need for performance management techniques in the past and managers now need to learn new skills.

18.3 The PPS has invested in technology to facilitate the collection of performance information. Reports and data can be extracted from the core CMS system, but it is the associated Business Objects management information system that offers the real benefits. Usage of management reports has improved but not to its full potential. Some of the reports would benefit from a review to ensure they capture what is needed. At present, access to and expertise in the use of Business Objects rests with a small group of staff and the PPS intends to change

the licensing arrangements to enable wider access to the system. Whilst the standard corporate reports are helpful it is likely that best use of performance data will only be achieved when staff are confident in designing their own ad hoc reports.

18.4 The integrity of performance data is variable and managers do not fully trust some of that which is produced, but overall, accuracy was improving. In order to help drive further improvements, each region has recently appointed a data integrity champion. The findings from our file examination support the need for this higher level of scrutiny. For example, the entry on the file did not always accord with the entry on CMS and there were several instances where two different outcomes were recorded. For example, a case that was proved in the absence of the defendant was recorded as a guilty plea and the error was reinforced in the victim notification letter. In another, where the defendant pleaded guilty on the day of trial, on the basis of agreed facts, it was recorded as a not guilty verdict. A particular problem relating to the recording of cases that have been withdrawn is referred to in Chapter 7.



- 18.5 The current performance management system is built around standard corporate reports; the Key Quarterly Statistics review; key performance indicators in the business plan; the balanced scorecard and the risk registers. On the surface this looks to be a comprehensive approach. There is a reasonably strong capability to manage performance, but systems are not utilised as effectively or consistently as they should be. Although some of the milestones and objectives in the Business Plan are not particularly strong or stretching, it is good that the PPS monitors and reports on progress. The PPS includes some aspects of performance in its annual report and has issued a separate performance report in the past which contributes to public accountability.
- 18.6 The ADs are expected to report to the senior management group on a quarterly basis about the performance in their region or department. It is difficult to judge the effectiveness of this process due to an absence of records, but the quality of the updates on some scorecards suggests that the process is not yet fully embedded.
- 18.7 In terms of outcomes, most of the milestones within the Business Plan have been achieved or progressed and improvement has been made in the timeliness of some decision-making, particularly for summary cases.

Performance measures

- 18.8 As the priorities of the PPS and the criminal justice system are subject to considerable change there is a need to review regularly the performance data that is collected to ensure that it is still relevant and fit for purpose. Data is an important tool in driving change and improvement and therefore the PPS needs to ensure that it can provide the right information – particularly important in dealing with criminal justice partners. This report contains examples where the introduction of measures would be beneficial.
- 18.9 Some measures have been introduced as indicators of efficiency and this is to be welcomed. There has been a small amount of thematic work on the efficiency of some processes, for example, handling correspondence. As resources allow, more work of this nature would be of benefit particularly in respect of case preparation and progression processes.
- 18.10 One of the key performance indicators is the quality of casework. The PPS had intended to resource a central Quality Assurance (QA) team to manage this process. This has not become fully operational as it was decided to redeploy the lead prosecutor to the DAT. Whilst we would not criticise the PPS for re-evaluating its priorities, no effective alternative arrangements to assure the quality of casework were made.



18.11 Some case monitoring has been introduced by the ADs and SPPs but records have not been kept of the volume, type or outcome of cases examined. There is no evidence that checks are consistent and thorough, and the provision of feedback has been variable.

We recommend the Management Board develops a comprehensive quality assurance programme that defines clearly the roles of Regional Assistant Directors, Senior Public Prosecutors, and the Quality Assurance section of Policy Branch, to assure itself about the quality of work that is being undertaken and enable staff to learn from experience.

Analysis and dissemination of performance information

18.12 Performance information that is available would benefit from better analysis, in particular, the identification of trends in performance; the causes of particular levels of performance, and importantly, remedial actions necessary to deliver any necessary improvements. Whilst this happens sometimes, there was limited evidence of effective analysis of data translating into improved performance. This may in part be impacted by the lack of record keeping, but for the most part there is a need to develop the analytical skills of managers.

18.13 The PPS produces a significant amount of data at regional level. Although this creates the opportunity for internal comparison and benchmarking, there is very little evidence of such activity. Indeed, even at AD level, awareness of the varying levels of performance was not high. A greater understanding of the reasons for local variations is likely to identify some good practice and encourage staff and managers to share ideas that would lead to overall improvements.

18.14 Similarly there is scope to improve learning from experience. Benchmarking of data, understanding the different processes employed, analysis of adverse case outcomes and monitoring of decision-making are examples offering opportunities for learning.

18.15 In some instances there is strong alignment between high level objectives and those set at individual level, for example timeliness of decision-making. Overall objective setting can be tightened, as many administrative staff were unclear as to whether they had any measurable objectives, and if so, how they related to the overall performance of their team or region. Revised procedures and job descriptions issued recently will assist with this.

18.16 There is a significant weakness in the dissemination of performance information. At the time of the CJI report on *Target Setting and*





Performance Management in the Criminal Justice System in Northern Ireland (January 2006), it was suggested that for the most part data was only available at senior civil servant level. This is generally still the case, although some middle managers now see some data. Performance is sometimes discussed at team meetings but usually in an ad hoc manner. For example, most staff had never seen a copy of the Key Quarterly Statistics report. This needs to be remedied, not least because the operational staff are most likely to have an insight as to the reasons for performance (good or bad). It is also more likely that they will take ownership for improving performance if they are involved in the process.

Joint performance management

18.17 Joint performance management with other agencies needs to be improved. Whilst it will take some time to develop a comprehensive and integrated inter-agency approach there are some quick wins. The easiest of these is to implement a system for the exchange of information that already exists. We saw information within the PPS, Court Service and the police that would be useful to other agencies and yet was not shared. Extracts from the Key Quarterly Statistics report, analysis of requests for information and data on cracked and ineffective trials are examples.

18.18 There are individual meetings with both the Court Service and the police at which performance may be discussed. Consideration should be given to scheduled tri-lateral meetings to discuss performance formally in agreed priority aspects of work. We encountered some concerns that such joint working might impact on the independence of agencies. There is no reason why joint working should compromise this.

We recommend the Management Board should strengthen arrangements for performance management by:

- **identifying the most appropriate measures to assess the performance of the PPS;**
- **analysing and evaluating data to determine performance levels and any aspects requiring remedial action; and**
- **ensuring performance information is disseminated widely to staff and other relevant criminal justice agencies.**

CHAPTER 19:

Conclusions, Recommendations and Issues to address

Conclusions

- 19.1 Senior managers and staff have worked hard to develop the Public Prosecution Service of Northern Ireland. The last three years have seen a remarkable increase in staff numbers and the Service, with its staged rollout, has been in a period of almost constant change, with all the stresses and strains that brings. Nevertheless we found a committed staff who wanted to see the Service improve and be fully operational.
- 19.2 In the course of this inspection we have considered whether the PPS meets its stated aim of being a fair independent and effective prosecution service.
- 19.3 The evidence indicates that the PPS takes independent casework decisions, free from undue influence, which overall are of good quality. This needs to be complemented by recognition on the part of the PPS that an acceptance of the inter-dependencies between the Service and the other criminal justice agencies does not compromise that independence. Overall there was a need to develop a better working relationship with its criminal justice partners.
- 19.4 Similarly, our assessment is that the PPS is a fair organisation, but it could do more publicly to reassure the community of this. We have suggested actions that should be taken, for example the publishing of case outcomes and giving better explanations to victims and criminal justice partners, of the reasons why decisions are taken not to prosecute or withdraw cases, which should improve the transparency of the Service and increase public confidence.
- 19.5 The Service has some way to go before it is fully effective. Cases take too long to progress through the PPS system, which is compounded further by unnecessary adjournments of court hearings, leading to undue delay in the fixing of trials. The processes which underpin the decision-making are cumbersome and overly compartmentalised. This restricts the flexibility of managers to move resources to ensure backlogs are cleared and work processes efficiently.
- 19.6 Aspects of financial management, recruitment and retention could all be more effective. In part the position is affected by the current status of the PPS. It is important that the status of the organisation is



clarified, and we have recommended that it become a fully independent department. This would assist in alleviating some of the issues we have identified and increase its standing within the criminal justice system.

- 19.7 The difficulties the PPS has experienced in finding suitable accommodation has impacted on the timeliness of the full implementation of the Service and affected the operational effectiveness of some of its processes, and we recognise the problems this has presented for the conclusion of the roll-out. However, it is also important to note that the Criminal Justice Review was published more than seven years ago and the pilot PPS projects began more than three years ago. Inspectors are strongly of the view that the process of roll-out should be concluded as soon as possible. The opening of offices in Derry/Londonderry and Newry will be an important step in the development of relationships between the PPS and communities that might in the past have been estranged from the criminal justice system, and should serve as a focus for genuine engagement.

- 19.8 This inspection has shown that, despite how much has been achieved, there remains considerably more to be done. Clear direction will be needed and senior management will need to be well supported, by those with expertise in business and change management, to enable all issues to be addressed.

Recommendations

The PPS should become a department in its own right, responsible for its own budget and recruitment.

Directing lawyers should, save in exceptional circumstances set out clearly to the victim or personal representative their reasoning for directing no prosecution or withdrawing proceedings.

Directing lawyers should explain fully their reasoning to the agency in cases where they direct no prosecution or where their decision is different from that recommended by the investigator.

The Management Board should:

- **review the case management processes and administrative support systems to reduce delays, improve efficiency and eliminate duplication (from receipt of the file to allocation, decision-making and issuing of the decision); and**
- **monitor jointly with investigating agencies the use of the RFI system and collate data to drive up performance in relation to timeliness.**

The Management Board should take action to improve the quality of instructions to counsel by ensuring prosecutors:

- **include an accurate summary of the case;**
- **identify and address the issues (including outstanding matters);**
- **where applicable, address the acceptability of pleas; and**
- **summarise for counsel the steps**



already taken in relation to disclosure and identify any disclosure issues remaining to be addressed.

The Management Board should ensure compliance with the PPS policy on domestic violence in all relevant cases.

The Management Board should ensure that all prosecutors;

- are trained appropriately in the disclosure provisions;
- endorse fully and sign all schedules to indicate they have reviewed all sensitive and non-sensitive unused material;
- maintain a comprehensive record of disclosure decisions on the file;
- keep separately on the file all disclosure material; and
- challenge inadequate defence statements.

The Management Board should ensure that the effectiveness of CLTs is improved, in particular that:

- the roles and responsibilities of the CLTs are clarified, including their role in the handling of general telephone calls;
- CLT processes are set out clearly;
- all CLT staff are trained in all aspects of their role;
- standard form letters should be amended to ensure defendant queries are dealt with by the relevant casework team; and
- the provision of poor quality police witness information should be addressed through CJU liaison meetings.

The Management Board should review management structures to

ensure that:

- there is an appropriate balance of legal and business management skills among senior managers;
- support is made available to ADs to assist with management of people, processes, performance, finance and planning; and
- the work of the BMF is reviewed to ensure that it becomes an effective group, focusing on the right issues.

The PPS should review its regional operational structures to deliver:

- a greater sense of case ownership;
- more efficient processing of cases with a reduction in duplication of work;
- a more flexible, multi-skilled work force in a less compartmentalised environment;
- an evaluation of the number and responsibilities of administrative managers to assure their deployment is optimised; and
- improved communication channels.

The Management Board should:

- take urgent steps to increase the use of PPS prosecutors in the magistrates' courts, and reduce reliance on counsel; and
- keep the policy of deploying administrative staff to court under ongoing review.

The Management Board should ensure that:

- they regularly receive details of staff breakdown by community background, gender and other relevant equality categories; and
- all managers lead by example and take steps to reinforce the principles of equality throughout the organisation.



The Management Board should ensure that:

- there is a significant improvement in the understanding of outstanding fees;
- a much higher proportion of fees are negotiated in advance of hearing/trials;
- establish criteria for cases which should be remunerated as a special fee case;
- the costs attached to specific cases can be easily identified;
- senior counsel are only instructed where appropriate; and
- payment of fees is timely.

The Management Board should initiate a fundamental review of the manner in which fees are calculated and paid for sessional work in the magistrates' courts.

The Management Board should conduct a fundamental review of its processes to ensure that:

- wherever practical there is consistency across the regions;
- there is an effective means of identifying and implementing good practice;
- staff are properly trained in agreed processes;
- duplication and rework is minimised; and
- backlogs are cleared as a matter of urgency and that appropriate systems are in place to prevent recurrence.

The Management Board develops a comprehensive quality assurance programme that defines clearly the roles of Regional Assistant Directors, Senior Public Prosecutors, and the Quality Assurance section of Policy

Branch, to assure itself about the quality of work that is being undertaken and enable staff to learn from experience.

The Management Board should strengthen arrangements for performance management by:

- identifying the most appropriate measures to assess the performance of the PPS;
- analysing and evaluating data to determine performance levels and any aspects requiring remedial action; and
- ensuring performance information is disseminated widely to staff and other relevant criminal justice agencies.

Issues to address

Information about the process by which a review of prosecutorial decisions can be initiated should be made widely available to users of the criminal justice system including victims (Priority: medium).

To provide evidence of the fair approach of the PPS, the Management Board should, once the necessary mechanisms are in place, produce casework outcomes for example by community background and ethnicity (Priority: medium).

To develop the PPS profile and increase public confidence the Management Board and Assistant Directors should become more proactive in their approach to media engagement (Priority: medium).

The Management Board should ensure that counsel and PPS prosecutors endorse fully the file with the reasons for the alteration or withdrawal of charges (Priority: medium).

The Management Board should agree with the



Court Service to collect and analyse reliable data relating to the proportion of magistrates' courts late vacated, cracked and ineffective trials, and take remedial action where necessary (Priority: medium).

The Management Board should ensure that:

- there is regular and effective monitoring of the performance of prosecution advocates in the magistrates' courts; and*
- prompt feedback is given to the prosecutor and any training needs addressed (Priority: high).*

To enable prosecutors to improve the quality of their decision-making the Management Board should ensure:

- that accurate and full case reports which identify the issues in the case are completed in all appropriate cases;*
- a cohesive system is in place to enable staff to learn from experience; and*
- lessons to be learned are shared between the regional offices, and with the police (Priority: high).*

The Management Board should review the handling of correspondence to include the implementation of the recommendations of the Efficiency Report (Priority: high).

The Management Board should agree with the Court Service to collect and analyse reliable data relating to the proportion of Crown Court late vacated, cracked and ineffective trials, and take remedial action where necessary (Priority: medium).

The Management Board should ensure that there is a structured system for monitoring the quality of Crown Court advocacy so that the PPS can be satisfied that they are obtaining objective and reliable information about the performance of counsel which is shared across the regional offices (Priority: high).

To assist in alerting prosecutors that a case comes within a sensitive category, the Management Board should ensure that its status is flagged on the paper file (Priority: high).

The PPS should identify the categories of cases which engender the greatest public concern and put in place structures to publish specific outcome data in respect of those cases (Priority: medium).

Guidance should be issued to prosecutors on when pre-direction consultation with the victim should be considered (Priority: medium).

The PPS should implement processes whereby the CLT and the victim and witnesses are informed of the grant of special measures by the court, together with the type of measure (Priority: high).

All key PPS documents should be available in other languages/formats and other documentation on request (Priority: high).

Business planning needs to be strengthened so that management and staff at all levels have a clear understanding of:

- the regional and national priorities;*
- what needs to be done;*
- who is responsible for delivery;*
- the timescales involved; and*
- the measures of success (Priority: high).*

The development of more systematic training for administrative staff (Priority: high).

Managers should take steps to improve the effectiveness of internal communication by:

- reviewing the role and effectiveness of team briefing and the Staff Communication Forum;*
- delivering an effective response to staff survey findings when completed; and*
- cascading information more consistently and effectively (Priority: medium).*



The Management Board needs to ensure that: projected budgets take full account of all committed expenditure;

- *systems are sufficiently robust to enable the PPS to give independent assurance that the budget position is accurate;*
- *budgets are devolved to regions following appropriate training where required; and*
- *business cases for additional expenditure are more thoroughly explained (Priority: medium).*

The CMS change management process needs to be reinforced to harness the knowledge of users in identifying issues that need addressing (Priority: high).

Delivery of training on CMS needs to be improved. Consideration should be given to reinvigoration of IT super-user concept to deliver local support to users (Priority: high).

Good practice

In special measures cases dealt with by the Western region office a member of the CLT attends Omagh court (where there is no Witness Service representation) to meet the victim or witness to help to reassure them about the court process. We commend this as good practice and an example of an enhanced service, which should be adopted in the other regions.

Strengths

The independent element to the complaints process provided by the Independent Assessor.

The process of referring cases which ensures they are dealt with by a prosecutor of sufficient experience.

The commitment to, and delivery of, prosecutor training.

The management of sickness absence.

The progress towards an integrated electronic interchange of data.

Section



Appendices



Appendix 1

Inspection of the Public Prosecution Service for Northern Ireland: Inspection Framework

*IS THE SERVICE BEING DELIVERED BY THE PPS FAIR, INDEPENDENT AND EFFECTIVE?
leading to*

1.1 IS THE SERVICE FAIR?

1.1.1 Are there effective ethical and professional standards in place for the PPS?

- Does the Code for Prosecutors and Code of Ethics provide an adequate standards framework to casework decision-making?
- Are ethical standards of personal behaviour appropriately set out?
- Do the standards address all relevant issues, e.g. race and community background?
- Are the standards subject to external consultation?
- Are staff aware of, and properly trained in, the relevant standards?
- Are the standards fit for purpose?
- Is compliance with standards monitored?
- Do managers address non-compliance effectively?

1.1.2 Do case outcomes demonstrate a fair approach to all members of the communities of Northern Ireland?

- Are there systems in place which would allow the analysis of suspect and victim case outcomes by way of ethnicity, community background, gender or age?
- Is there a clearly defined effective quality assurance system?
- Do the results of case outcomes and the file examination indicate that casework decision-making is free from bias and discrimination?
- Is appropriate action taken to deal with any disparity?
- Are difficult decisions subject to a referral process?
- If no formal monitoring takes place can the PPS be reassured that its decision making processes are fair and not having an adverse impact?



1.1.3 Is there an appropriate grievance process?

- Does the grievance process in terms of prosecutorial decisions work?
- Do the police and PPS have an effective challenge mechanism?
- Are complaints from the public handled well?
- Is there any independent element to the complaints system?
- Are issues and trends identified from complaints?

1.1.4 Does the PPS provide adequate information that makes it accountable for its decisions?

- Are casework outcomes shared with the public?
- Is information available in multiple languages?
- Is information made available in an accessible form to assist those with a disability?
- Are decisions explained adequately where appropriate?
- Do the PPS deal appropriately with the media?

1.1.5 Are all victims and witnesses treated with respect and sensitivity?

- Is there an effective policy in place regarding the treatment of victims and witnesses?
- Is victim/witness satisfaction measured appropriately?
- Does the PPS provide appropriate assistance to victims/witnesses who are not comfortable using English?
- Is there effective liaison with Victim Support/Witness Service to assure the service to victims and witnesses?
- Are vulnerable witnesses treated well?
- Does the PPS address adequately the special needs of victims and witnesses?
- Does the file examination and observations of the quality of service delivery at court indicate that the above are being met?

1.1.6 Is the public confident that the PPS is fair?

- Is public confidence measured? Have any local surveys been undertaken which distinguish between confidence in PPS and DPP areas?
- Does the PPS receive training/input from community groups on public interest issues?
- Are any other mechanisms used to determine public confidence?
- Are the results of public surveys analysed and used to inform future strategy?
- Are there initiatives to increase public confidence in all communities?
- Is the PPS sufficiently distinguished in the survey questionnaires from the rest of the criminal justice system?
- Is media coverage of the PPS fair?





IS THE SERVICE BEING DELIVERED BY THE PPS FAIR, INDEPENDENT AND EFFECTIVE?

leading to...

1.2 DOES THE SERVICE HAVE THE NECESSARY INDEPENDENCE TO ENSURE THAT DECISIONS ARE TAKEN FREE FROM INAPPROPRIATE EXTERNAL INFLUENCE?

1.2.1 Are relationships with the police, judiciary other agencies and Government managed to ensure decision-making is free from improper influence?

- Are responsibilities between the PPS and other agencies¹⁰ clearly defined and supported by effective service level agreements or protocols?
- Are there regular effective performance meetings between the PPS and the agencies?
- Does the PPS respond to policy consultations by other agencies?
- Are there examples of prosecutions which have been adversely affected by the reluctance of official agencies to provide information to the PPS?
- Are there regular effective meetings between the PPS and the Court Service?
- Are there regular effective meetings between the PPS and the police?
- Does the PPS work effectively with the Police Ombudsman?
- Is non compliance by any agency subject to appropriate remedial action?

1.2.2 Does the culture of the organisation support impartial decision-making?

- Are PPS offices culturally neutral?
- Is there effective training (including induction) to deal with issues such as diversity and anti-sectarianism?
- Is there accurate data on the breakdown of staff in general and at particular levels, in terms of gender/ community background/race/disability?
- Is there a policy on the display/wearing of symbols?
- Is staff mix data used to ensure compliance with NI equality legislation

1.2.3 Is the PPS decision-making free from undue influence by investigating or other agencies?

- Are Code evidential decisions free from undue influence?
- Does the file examination indicate that casework decision-making is free from undue influence in the application of the Code tests?
- Are Code public interest decisions free from undue influence?
- Are the roles and responsibilities of the Attorney General and DPP clearly and properly defined and applied?

¹⁰ Agencies include the PSNI and other investigative agencies, the Security Services, HM Court Service, the Probation Service and Youth Justice Agency, Social Security, the Police Ombudsman and the NIO.

- Are the correct PPS levels of authority adhered to in respect of the reduction/withdrawal of charges at Magistrates Court/Crown Court?
- What policies/guidance exist to assist staff in considering whether to reduce/withdraw charges?
- Does the relationship work appropriately in cases where the Government has an interest?
- Is there effective resolution of conflicts of interest?

1.2.4 Is the relationship between counsel and the PPS compatible with the status of the PPS?

- What happens when there is a difference of opinion between counsel and the PPS?
- How does counsel react in the face of judicial challenge?
- What level of discretion is afforded to independent counsel instructed by the PPS in terms of reduction/removal of charges?
- Does the file examination indicate that Crown Court casework decisions are endorsed appropriately on the file and that there is an appropriate relationship with counsel?

*IS THE SERVICE BEING DELIVERED BY THE PPS FAIR, INDEPENDENT AND EFFECTIVE?
leading to...*

1.3 DOES THE PPS DELIVER A TIMELY AND QUALITY SERVICE?

1.3.1 Are prosecutorial decisions properly made?

- Are prosecutorial directions of a high quality?
- Does initial review in police charge cases comply with the Code?
- Does further review comply with the Code?
- Do withdrawal decisions comply with Code?
- Are all decisions made in a timely manner?
- Is CMS used appropriately to record casework decisions?
- Do lawyers consider all appropriate ancillary issues at the prosecutorial decision stages?
- Does the PPS ensure that all prosecutorial decisions are properly recorded and accurately counted?
- Do casework outcomes comply with PPS/CJS targets?
- Do cases comply with timeliness targets?



1.3.2 Are cases prepared effectively?

- Do cases progress at first hearing?
- Are prosecutors complying with the provisions of the CPIA 1996 (as amended by the CJA 2003) and the Attorney General's Guidelines on disclosure?
- Is there effective case progression?
- Is there effective liaison with the police to build cases?
- Is the ineffective hearing rate at an acceptable level?
- Are the needs of victims and witnesses identified on case papers?
- Is counsel properly instructed on the issues in the case?
- Are all youth cases dealt with expeditiously, and is timeliness improving?
- Is correspondence handled efficiently?
- Are reviews, hearing outcomes, witness details, charges, indictments and finalisation recorded on CMS at the appropriate time and are they correct?

1.3.3 Are cases presented effectively?

- Is there a high level of victim and witness care at court?
- Do prosecutors at court liaise effectively with other court users and witnesses?
- Is there effective liaison with the NSPCC in child witness cases?
- Are prosecution advocates fully prepared and able to advise the court on sentencing issues including ancillary orders?
- Are advocates of sufficient expertise and of the right calibre, in particular for sensitive/specialist cases?
- Do prosecution advocates display a full working knowledge of the file?
- Are prosecutors proactive in contributing to case progression at the first and any interim hearings?
- Are court endorsements clear and do they provide a detailed accurate record of the hearing?
- Do court observations indicate that prosecutors meet the required standards?
- Is advocacy performance at court monitored?

1.3.4 Does the service measure its levels of performance and take action to improve?

- Is the right performance data collected?
- Is performance data accurate?
- Is data analysed thoroughly?
- Is performance management information shared with staff?
- Is performance management information used to improve performance?
- Does performance reach agreed standards?
- Does performance management information feed into staff assessments?

1.3.5 Is the community outreach programme effective?

- Does the PPS consult with the public in relation to proposed policy changes?
- If such consultation does take place, what is the level of response?
- Does community outreach take place at a local level between regional prosecutors and local communities on issues of local concern?
- Do regional prosecutors engage with their local community?
- Is PPS community outreach activity targeted effectively?
- Does evaluation of community outreach activity lead to improvements?
- Are there examples of such consultation available? To what extent did the response actually impact upon the proposed policy/document?
- Does the PPS consult specific interest groups/specific issue groups in relation to particular issues – for instance domestic violence?
- Are there regular meetings between the PPS and political parties?
- Does community outreach add value to the PPS core business?

*IS THE SERVICE BEING DELIVERED BY THE PPS FAIR, INDEPENDENT AND EFFECTIVE?
leading to...*

1.4 DOES THE PPS DELIVER VALUE FOR MONEY?

1.4.1 Is the budget managed well?

- Does the PPS operate within its agreed budget?
- Are managers accountable for their own budget?
- Does the PPS use an appropriate system to forecast expenditure?
- Have there been any costs/financial penalties awarded against the PPS?
- Is there an appropriate system of delegated financial authority?
- Does the PPS have an accurate appreciation of spend against its budget position at all times?
- Are prosecution costs managed appropriately?
- Are rationales behind changes to budget provision clearly understood?

1.4.2 Do services contracted in/out represent good value for money?

- Do purchasing policies support VFM?
- Is there an effective framework of counsel fees?
- Do fees for professional/expert witnesses represent value for money?
- Does the PPS use an effective preferred supplier programme?
- Do negotiated counsel's fees give good value for money?
- Is spending on non-salary related costs (i.e. procurement costs) monitored in terms of Section 75 of the NI Act?



1.4.3 Are staff deployed effectively?

- Is lawyer deployment in the magistrates' courts effective?
- Are administrative staff used effectively?
- Is recruitment activity successfully filling available posts?
- Does Crown Court Law Clerk coverage represent value for money?
- Does the PPS use a clearly defined staffing strategy to maximise performance?
- Is the PPS structure fit for purpose in terms of VFM?

1.4.4 Are the PPS business practices efficient?

- Is there any duplication in processes?
- Is IT used effectively?
- Is CMS used appropriately to record casework decisions?
- Are appropriate efficiency measures used to inform decision-making?
- Has any additional funding resulted in improved performance?
- Are there any significant backlogs?
- Is the level of ineffective hearings acceptable?
- Are there relevant VFM objectives in Business Plans?

*IS THE SERVICE BEING DELIVERED BY THE PPS FAIR, INDEPENDENT AND EFFECTIVE?
leading to...*

1.5 ARE SOUND GOVERNANCE ARRANGEMENTS IN PLACE THAT WILL ENSURE THE DELIVERY OF AN EFFECTIVE SERVICE?

1.5.1 Is there a clearly defined strategy for the PPS?

- Have clear vision and values for the organisation been established?
- Have key priorities for the service been identified?
- Is the management structure appropriate to deliver the strategy?
- Is strategy informed by effective consultation with local communities?
- Have lessons learned been used to inform future activity?
- Are managers empowered to deliver against objectives?
- Is the PPS strategy aligned to the aims of the criminal justice system?
- Has the planning for the roll out been satisfactory?
- Is the roll out of PPS sites progressing to schedule?
- Does the PPS plan effectively?
- Are key milestones being achieved?
- Is risk managed appropriately?
- Have appropriate performance targets been set?



1.5.2 Do managers display strong leadership skills?

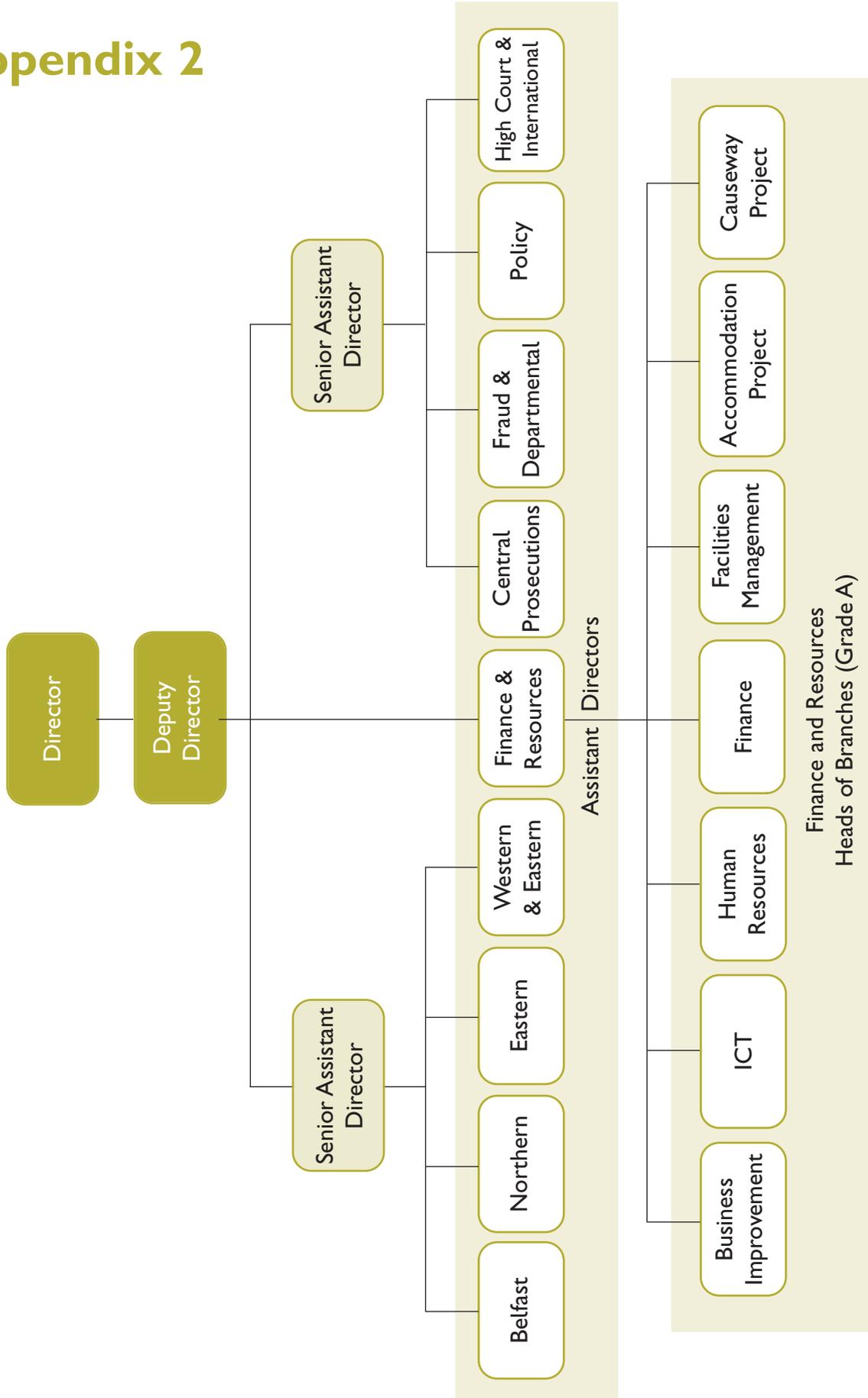
- Do managers lead by example?
- Do managers demonstrate a corporate approach?
- Do managers communicate effectively with staff?
- Are PPS managers influential within the criminal justice system?





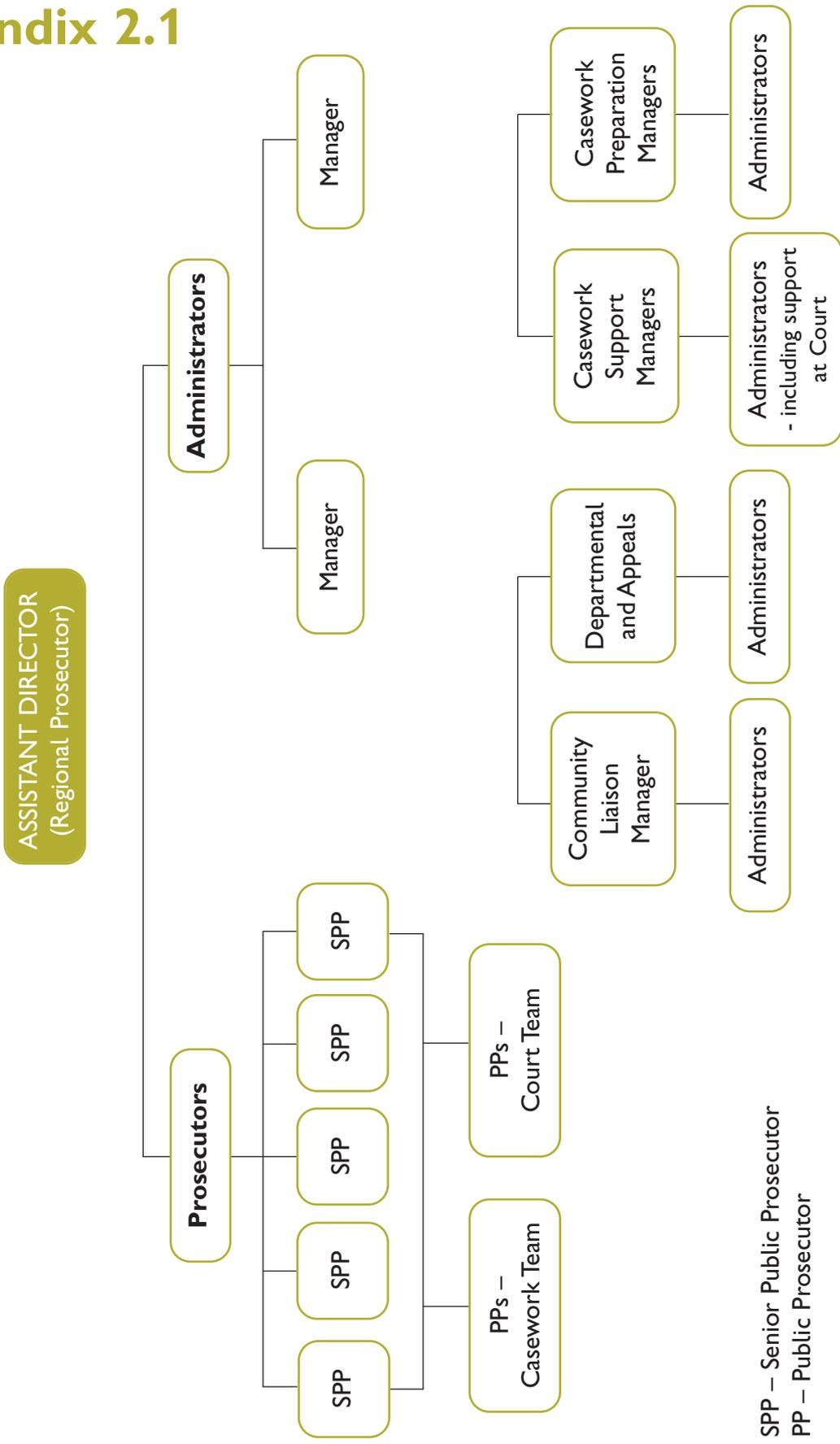
PPS ORGANISATIONAL CHART

Appendix 2



INDICATIVE REGIONAL STRUCTURE

Appendix 2.1



SPP – Senior Public Prosecutor
PP – Public Prosecutor



Appendix 3

Inspection of the Public Prosecution Service for Northern Ireland: Breakdown of file sample

The following table shows the breakdown of the file sample by case category*:

Case category	File numbers	% of sample
No prosecution decision	72	23.6%
Magistrates' Court trial or guilty plea	98	32.1%
Crown Court trial or guilty plea	68	22.3%
Magistrates' Court withdrawn	54	17.7%
Magistrates' Court acquitted by direction	3	1.0%
Crown Court acquitted by direction	3	1.0%
Crown Court withdrawn	7	2.3%
Total	305	100%

* Based on the Inspector's assessment of the outcome, not that recorded on the PPS Case Management System

The number of cases which fell into a designated special category* are shown in the following table:

Special category	File numbers	% of sample
Domestic violence	47	15.4%
Sectarian	24	7.9%
Child abuse**	23	7.5%
Racist	6	2.0%
Not special category	205	67.2%
Total	305	100%

* Based on the Inspector's assessment of the category, not that recorded on the PPS Case Management System

** Not recorded on the PPS case management system as a special category

Appendix 4

Inspection of the Public Prosecution Service for Northern Ireland: Key Performance Data

Findings from the examination of the file sample

In a few cases there was insufficient information on the file to enable Inspectors to answer the appropriate question. Where the answer was not known, the case has been excluded from the relevant table.

Application of the Code for Public Prosecutors

The number of cases in which the Code evidential and public interest tests were applied correctly is illustrated in the following table:

Case category	Number	% of case category
<i>No prosecution decision</i>		
Code evidential test applied correctly	69 of 72	95.8%
Code public interest test applied correctly	34 of 34	100%
<i>Trial or Guilty plea: Magistrates' Courts</i>		
Code evidential test applied correctly at direction stage (no police holding charge)	77 of 78	98.7%
Code public interest test applied correctly at direction stage (no police holding charge)	75 of 76	98.7%
Code evidential test applied correctly at direction stage (police holding charge)	20 of 20	100%
Code public interest test applied correctly at direction stage (police holding charge)	20 of 20	100%
Code evidential test applied correctly at summary trial review stage	74 of 74	100%
Code public interest test applied correctly at summary trial review stage	73 of 74	98.6%
<i>Trial or Guilty Plea: Crown Court</i>		
Code evidential test applied correctly at direction stage (no police holding charge)	46 of 46	100%
Code public interest test applied correctly at direction stage (no police holding charge)	46 of 46	100%
Code evidential test applied correctly at direction stage (police holding charge)	22 of 22	100%
Code public interest test applied correctly at direction stage (police holding charge)	22 of 22	100%
Code evidential test applied correctly at committal review stage	60 of 60	100%
Code public interest test applied correctly at committal review stage	60 of 60	100%



Case category	Number	% of case category
<i>MC discontinued</i>		
Decision to discontinue in accordance with Code evidential test	41 of 47	87.3%
Decision to discontinue in accordance with Code public interest test	39 of 42	92.6%

Magistrates' courts trial preparation

Magistrates' courts trial	Number	%
Were the correct witnesses warned	61 of 66 cases	92.4%
Was witness warning timely	59 of 64 cases	92.2%
Was the correct evidence served S1	52 of 53 cases	96.3%
Was any additional evidence served in a timely manner	12 of 13 cases	92.3%
Were special measures applied for correctly	4 of 5 cases	80%
Was the application timely	4 of 4 cases	100%
Was a hearsay application made correctly	3 of 5 cases	60%
Was the application timely	4 of 5 cases	80%

Crown Court trial preparation

Crown Court trial	Number	%
Were the correct witnesses warned	42 of 42	100%
Was witness warning timely	39 of 40	97.5%
Was the correct evidence served S1	34 of 35	97.1%
Was any additional evidence served in a timely manner	25 of 27	92.6%
Were special measures applied for correctly	16 of 21	76.2%
Was the application timely	15 of 16	93.8%
Was a bad character application made correctly	6 of 12	50%
Was the application timely	5 of 6	83.3%
Was a hearsay application made correctly	8 of 12	66.7%
Was the application timely	5 of 8	62.5%

Ineffective and cracked trial hearings*

Magistrates' courts	Number	%
Cases in which there was one or more ineffective trial hearing	21 of 74	28.4%
Overall number of ineffective trial hearings	30	N/A
Ineffective trial hearings attributable to prosecution	11 of 30	36.7%
Cases which cracked on the day of trial	13 of 74	17.6%
Cases where prosecution action could have avoided the trial cracking	3 of 13	23.1%



Crown Court	Number	%
Cases in which there was one or more ineffective trial hearing	15 of 55	27.3%
Overall number of ineffective trial hearings	27	N/A
Ineffective trial hearings attributable to prosecution	8 of 27	29.6%
Cases which cracked on the day of trial	27 of 54	50%
Cases where prosecution action could have avoided the trial cracking	3 of 27	11.1%

* An ineffective hearing is one where the case is adjourned on the date set down for trial. A cracked trial is one where the case is dealt with on the date set down for trial but without evidence being called, either because the prosecution withdraw the proceedings or the defendant pleads guilty.

Disclosure of unused material

	Number	%
<i>Magistrates' court cases</i>		
Primary/initial disclosure dealt with correctly	36 of 71	50.7%
Primary/initial disclosure timely	65 of 70	92.9%
All relevant material listed	68 of 70	97.1%
Listed adequately	67 of 68	98.5%
Defence statement received	9 of 43	20.9%
	(all adequate)	
Secondary/continuing disclosure dealt with correctly	9 of 9	100%
Secondary/continuing disclosure timely	7 of 9	77.8%
<i>Crown Court cases</i>		
Primary/initial disclosure dealt with correctly	44 of 65	67.7%
Primary/initial disclosure timely	63 of 65	96.9%
All relevant material listed	63 of 65	96.9%
Listed adequately	62 of 65	95.4%
Defence statement received	38 of 45	84.4%
Defence statement adequate	21 of 38	55.3%
Inadequate defence statement challenged	1 of 16	6.3%
Secondary/continuing disclosure dealt with correctly	28 of 38	73.7%
Secondary/continuing disclosure timely	28 of 38	73.7%

Recording of decision making and file endorsements

	Number	%
<i>No prosecution cases</i>		
CMS endorsed adequately with prosecutors decision	54 of 71	76.1%
<i>Magistrates' court cases</i>		
CMS endorsed adequately with prosecutors decision	77 of 92	83.7%
Key decisions recorded clearly on file and CMS	80 of 98	81.6%
Outcome of each hearing recorded clearly on the file	74 of 98	75.5%
Bail custody status recorded clearly	75 of 95	78.9%
Necessary post-hearing action recorded clearly on file	79 of 91	86.8%
Case outcome recorded clearly on file for each charge	82 of 97	84.5%





	Number	%
<i>Crown Court cases</i>		
CMS endorsed adequately with prosecutors decision	43 of 68	63.2%
Key decisions recorded clearly on file and CMS	46 of 67	68.7%
Outcome of each hearing recorded clearly on the file	51 of 67	76.1%
Bail custody status recorded clearly	51 of 67	76.1%
Necessary post-hearing action recorded clearly on file	48 of 55	87.3%
Case outcome recorded clearly on file for each charge	62 of 67	92.5%

Timeliness

	Number	%
<i>No prosecution decisions</i>		
Timely police response to RFIs	14 of 16	87.5%
Timely communication of decision to victim*	34 of 39	87.2%
<i>Magistrates' court cases</i>		
Timely police response to RFIs	5 of 15	33.3%
Timely communication of decision to victim*	16 of 16	100%
Timely response to correspondence	34 of 37	91.9%
<i>Magistrates' court discontinuance</i>		
Did discontinuance take place at the earliest opportunity	41 of 54	75.9%
<i>Crown Court cases</i>		
Timely police response to RFIs	8 of 36	22.2%
Timely communication of decision to victim*	11 of 12	91.7%
Timely response to correspondence	53 of 57	93%

* Where decision was communicated

Appendix 5

Table of PPS Casework Outcomes 2006-07

Magistrates' Court

Total Magistrates' Courts case outcomes 2006-07		
	Number	%
Successful*	16,250	86.1%
Unsuccessful**	2,621	13.9%
Total***	18,871	100%

* Comprises all cases where the defendant was convicted of one or more charges, either on a plea of guilty or after trial.

** Comprises all cases where the defendant was acquitted of all charges, or the proceedings were withdrawn (including those where the summons was not served)

*** Excluding the 417 cases which were withdrawn for the defendant to be bound over, where the defendant elected Crown Court trial or those categorised by the PPS as Other

Crown Court

Total Crown Court cases outcomes 2006-07		
	Number	%
Successful^	1,299	88.5%
Unsuccessful^^	169	11.5%
Total^^^	1,468	100%

^ Comprises all cases where the defendant was convicted of one or more charges, either on a plea of guilty or after trial.

^^ Comprises all cases where the defendant was acquitted of all charges, the prosecution offered no evidence, the Judge directed no Bill or the proceedings were stayed.

^^^ Excluding the 40 cases where the jury disagreed, those marked not to be proceeded with, and those categorised by the PPS as Other



Outcomes by regions

Magistrates' courts defendant outcomes by region/section April 2006 - March 2007

	Eastern	Northern (Ballymena & Londonderry*)	Southern* & Western	Belfast	Fraud/Dept/ Central casework	Total	% of Total Outcomes
Acquitted on merits (all charges)	21	27	45	176	35	304	1.5%
Acquitted by direction (all charges)	34	33	19	87	1	174	0.9%
Acquitted – no jurisdiction (all charges)	0	3	1	2	0	6	0.1%
Mixed outcome (convicted of at least one offence)	297	169	1403	1752	125	3,746	19.0%
Convicted on plea of guilty (all charges)	1271	792	3527	5053	875	11,519	58.5%
Convicted on all charges after trial	81	70	232	308	48	739	3.8%
Convicted – case proved in absence of defendant	16	17	127	207	111	478	2.4%
Other	6	4	23	7	8	48	0.2%
Withdrawn (all charges)	170	176	920	906	83	2255	11.4%
Summons not served (all charges)	1	0	31	2	3	37	0.2%
Acquitted – proceedings out of time (all charges)	1	0	3	1	0	5	0.1%
Elect for Crown Court trial	23	9	27	141	1	201	0.1%
Withdrawn for binding over order	24	11	13	133	3	184	0.9%
TOTAL	1945	1311	6371	8775	1294	19696	100%

* Not yet fully operational

Crown Court defendant outcomes by region/section April 2006 – March 2007

	Eastern	Northern (Ballymena & Londonderry*)	Southern* & Western	Belfast	Fraud/Dept/ Central casework	Total	% of Total Outcomes
Acquitted all counts	5	2	3	7	1	18	1.1%
Acquitted by direction (all charges)	2	6	6	5	2	21	1.3%
Acquitted by judge on merits (all charges)	1	1	3	4	1	10	0.6%
Acquitted by jury on merits (all charges)	10	7	10	12	3	42	2.5%
Mixed outcome (convicted if at least one offence)	65	76	69	28	15	253	15.4%
Convicted by judge on merits (all charges)	1	3	10	48	2	64	3.9%
Convicted by judge of lesser charge	0	0	3	3	0	6	0.4%
Convicted by jury on merits (all charges)	4	30	10	9	4	57	3.5%
Convicted by jury (lesser charge)	1	1	0	4	0	6	0.4%
Convicted on plea of guilty (all charges)	173	100	145	346	27	791	48.0%
Convicted on plea of guilty to lesser charge accepted by Crown	30	35	52	70	5	192	11.7%
Convicted of any offence	5	7	3	45	5	65	3.9%
Crown offers no evidence	10	14	28	21	4	77	4.7%
Jury disagreed (all charges)	1	1	0	2	0	4	0.2%
Marked "not to be proceeded with etc." (all charges)	0	10	5	12	0	27	1.6%
No bill (all charges)	0	1	0	3	1	5	0.3%
Other (see comments)	0	0	4	1	0	5	0.3%
Sentence deferred or case adjourned	0	0	1	1	0	2	0.1%
Convicted by a jury of lesser charge	1	1	0	4	0	6	0.4%
Prosecution stayed for abuse of process (all charges)	0	1	1	1	0	3	0.2%
Prosecution stayed for other reasons	0	1	0	0	0	1	0.1%
TOTAL	309	296	352	621	70	1648	100%

* Not yet fully operational



Appendix 6

Sensitive Case Outcomes 2006-07

Overall sensitive cases outcomes

	Crown	Magistrates'	Total
Successful	53	302	355
Unsuccessful	10	143	153
Total	63	445	508
Success rate	84.1%	67.9%	69.9%

No prosecution

Diversion	86	
No further action	511	
Total	597	
Overall success rate*		39.9% (1105 cases)

* Successful outcomes where there is a prosecution decision and diversions where there is a no prosecution decision against all cases (1105) where a decision has been made.

Domestic violence case outcomes

	Crown	Magistrates'	Total
Successful	16	222	238
Unsuccessful	3	121	124
Total	19	343	362
Success rate	84.2%	64.7%	65.7%

No prosecution

Diversion	52	
No prosecution decision	440	
Total	492	
Overall success rate		34% (854 cases)



Racial case outcomes

	Crown	Magistrates'	Total
Successful	1	23	24
Unsuccessful	0	7	7
Total	1	30	31
Success rate	100%	76.7%	77.4%

No prosecution

Diversion	9	
No prosecution decision	22	
Total	31	
Overall success rate		53.2% (62 cases)

Sectarian case outcomes

	Crown	Magistrate'	Total
Successful	28	56	84
Unsuccessful	0	10	10
Total	28	66	94
Success rate	100%	84.9%	89.4%

No prosecution

Diversion	25	
No prosecution decision	49	
Total	74	
Overall success rate		64.9% (168 cases)

Child abuse casework outcomes

	Crown	Magistrate'	Total
Successful	8	1	9
Unsuccessful	7	5	12
Total	15	6	21
Success rate	53.3%	16.7%	43%





Appendix 7

PPS Key Performance Data

Caseload

Cases received by the PPS by region, including work handled at headquarters are illustrated in the following table:

**Files received by Region/Section
April 2006-March 2007 and April 2005-March 2006***

Region	06-07	05-06	% Change
Belfast Region	15,750	11,144	41.3
Western	8,797	7,441	18.2
Eastern	6,867	1,954	251.4
Northern – Ballymena	2,525	1,044	141.9
Northern – Londonderry**	1,138	864	31.7
Southern**	1,322	782	69.1
Departmental	1,667	1,419	17.5
Fraud	25	19	31.6
Total	38,091	24,667	64.7

* Includes County Court Appeals

** Not yet fully operational

Case decisions

**Decisions Issued by Region/Section
April 2006-March 2007 and April 2005-March 2006**

	Eastern	Northern (Ballymena & Londonderry*)	Southern* & Western	Belfast	Fraud & Dept	Total
2006-2007						
Indictable	337	354	403	489	42	1,625
Summary	3,480	1,949	6,726	10,248	1,405	23,808
No prosecution	2,058	1,396	3,455	3,818	258	10,985
Caution	601	244	1,266	2,114	0	4,225
Informed warning	358	168	387	1,017	0	1,930
Youth conference	122	61	233	297	0	713
Total	6,956	4,172	12,470	17,983	1,705	43,286
2005-2006						
Indictable	366	321	328	484	27	1,526
Summary	840	1,265	3,853	7,512	1,443	16,915
No prosecution	965	1,126	2,710	2,011	243	7,055
Caution	n/a	n/a	807	1,252	0	2,059
Informed warning	n/a	n/a	270	576	0	846
Youth conference	n/a	n/a	83	115	0	198
Total	2,171	2,712	10,053	11,950	1,713	28,599

* Not yet fully operational

As with the cases received data, the significant variations in some regions between the 2005-06 and 2006-07 performance reflect the fact that some did not become fully operational until part way through 2006-07.



Appendix 8

Local Representatives of Criminal Justice Agencies and other organisations who assisted in our inspection

Judiciary

The Rt. Hon. Sir Brian Kerr Lord Chief Justice
Mr Justice Hart
His Honour Judge Burgess, Recorder of Belfast
Her Honour Judge Kennedy
His Honour Judge McFarland
His Honour Judge Markey QC

Resident Magistrates

Mrs F Bagnall
Mr G Connor
Mr A White
Mr Hamill
Mr Bates

Office of the Police Ombudsman for Northern Ireland

Mrs N O'Loan
Mr J Felice
Mr S Pollock

Northern Ireland Office

Mr S Leach

Northern Ireland Court Service

Mr K Barr
Mrs V Brennan
Mr A Cartwright
Mrs J Durquin
Mrs M Elliott
Mrs S Hughes
Mrs M Kilpatrick
Mrs J McGonigle
Mrs C McNamee
Mr M Tierney

Police

Sir Hugh Orde OBE, Chief Constable
Assistant Chief Constable D Harris
Assistant Chief Constable P Sheridan
Chief Superintendent C Best
Chief Superintendent P Clarke
Chief Superintendent M Gilmore
Chief Superintendent H Irvine
Chief Superintendent W Kerr
Chief Superintendent M Skuce
Chief Superintendent B Williamson
Superintendent J McCaughan
Superintendent N Purce
Superintendent T Wiggins
Chief Inspector C Noble
Detective Inspector A Little
Detective Inspector I Wilson
Inspector O Barton
Inspector A Brisbane
Inspector S Graham
Inspector P McCracken
Inspector J McCleery
Inspector P Marshall
Inspector D Rice
Inspector M Seffen
Inspector A Speers
Inspector I Stewart
Inspector J Stewart
Inspector B White
Inspector A Woods
Detective Sergeant M McCartan
Detective Sergeant Griffin
Sergeant N Collins
Sergeant H Garrett



Sergeant G Smith
Sergeant R Tinsley
Sergeant G Willis
Constable G Dalton
Inspector Eric Chambers

HM Revenue and Customs

Mrs A-M Gordon
Mr J McGuigan

Social Security Agency

Mr J Nevin
Mr G Boyle
Mr J Hood
Mrs P McIlroy

Victim Support/Witness Service

Mrs F Greene
Miss G Hanna

Youth Conferencing

Mrs A Chapman

Bar Counsel

Mr K McMahon QC
Mr C Murphy QC
Mr N Connor

Defence representatives

Mr B Archer
Mr A Carlin
Mr P Corrigan
Mr M Crawford
Mr F MacElhatton
Mr S McCann
Mr B McGrory
Mr R Murphy
Mr N Phoenix
Mr K Winters

Children's Law Centre

Miss T Caul
Miss P Kelly

Committee for the Administration of Justice

Ms A Gilmore
Ms M Beirne

NIACRO

Mrs O Lyner

NICEM

Mr P Yu

NSPCC

Mr A Bowser

Pat Finucane Centre

Mr A Bracknell
Mr P O'Connor

Women's Aid

Mrs A Graham
Ms Eithne Gilligan

Political parties

Democratic Unionist Party
Sinn Fein
United Kingdom Unionist Party

Other political parties were invited to contribute



Appendix 9

Wider Criminal Justice System Issues in Northern Ireland

We set out briefly in this appendix a number of issues which were identified during our inspection which caused administrative difficulty to the PPS and other agencies. We consider that these merit further attention to determine whether they are still necessary. In respect of each issue, there are potential cost and time savings if the procedures were to be amended or ceased.

Connecting the defendant to the charge

A police officer attends the first hearing of any defendant who has been bailed to attend court or been kept in custody by the police for this purpose. They are then required to give evidence on oath connecting the accused with the offence so that an arrest warrant can be sought in the event of non-attendance on that or any subsequent day. Where a remand in custody is sought, the officer must make a short deposition to that effect.

There appeared to be different arrangements in place at the various magistrates' courts. At some courts individual officers attend to connect the defendant to the charge for each case in the list whereas at other courts one officer would act as the 'court liaison' officer for a particular list and connect every relevant defendant to the charge in their cases.

This is a convention that has developed over time which is resource intensive for the PSNI, as it can involve a number of officers attending court for a considerable length of time to carry out a process that lasts a matter of minutes.

The custody sergeant, under the provisions of the Police and Criminal Evidence Act must satisfy themselves that there is sufficient evidence to charge the defendant, and the practice of connecting the defendant to the charge at court does not appear to add any evidential value.

If the defendant fails to answer bail at the first or any subsequent hearing then the charge sheet or subsequent bail notice should be sufficient proof to enable the court to issue a warrant for their arrest.

Signing of a summons

The PPS, following a direction to prosecute, print off the defendant's summons and arrange for it to be signed by a lay magistrate before it is issued. In practice the PPS presents batches of summonses to lay magistrates who do not have the opportunity to consider each case in any detail. Moreover the fact of a magistrate having signed a summons is not recorded anywhere in the court system or used for any follow-up purpose. In reality this cannot be regarded as a quasi-judicial function, nor does it have any administrative or managerial consequence. But it does not add a lot of time to the process in the general



run of cases. It is bureaucratic by nature and the requirement to go back to the same magistrate in the event of failure to serve the summons within the required time can be problematic.

This issue was the subject of a recommendation in the Criminal Justice Inspection Northern Ireland (CJI) report *'Avoidable Delay: A Thematic Inspection of Delay in The Processing of Criminal Cases in Northern Ireland (May 2004)'*. The recommendation was termed as 'Alternative arrangements for the signing of summonses should be implemented. This should include the use of electronic signatures which are authorised by a PPS prosecutor (Para 7.13)'. Action needs to be taken to ensure this recommendation is progressed.

Postal service limitations

In Northern Ireland there are statutory exceptions which enable a summons to be served by post, these exceptions are limited and unless they are applicable it becomes a police responsibility to effect personal service of the summons on the defendant.

On receipt of the signed summons from the magistrate, the prosecutor passes it to the police for service on the defendant. This is not a high priority task in policing terms and in some cases the police are unable to serve summonses in time for the return date. In such circumstances the document is returned to the prosecutor who has to get it re-endorsed by the magistrate who originally signed it and the process is re-activated; this can add several weeks to the timeline.

In addition to the impact on avoidable delay that often results from the process and the inefficient use of resources, serving summonses is not a task that fits easily with the operational priorities of the police and should more appropriately lie with the prosecuting authorities or the courts. Problems around service would be addressed in part by the extension of the use of the postal summons.

During the evaluation of the PPS pilot sites it was suggested that given the favourable attendance rates of postal service summonses in comparison to those served by personal service, the Implementation Team should submit a request to the Northern Ireland Office for legislative change to expand the use of postal service summons. In addition, following the CJI Report on 'Avoidable Delay' the Delay Action Team responded with *'A strategy and action plan to reduce avoidable delay in the Northern Ireland criminal justice system.'* The plan proposed that the Court Service will aim, by June 2007, to effect the necessary Rule change to enable postal summonses to be served in respect of all summary proceedings. Action needs to be taken to ensure these proposals are effected.

Service of committal papers by the police

The preliminary enquiry (PE) papers are prepared by the PPS and sent to the PSNI either using the Police Courier service or by arranging a date with the police investigating officer to attend the relevant PPS office to collect the papers. The police are then required to carry out the service of the PE papers on the defendant, which must be personally, and on



the court, but only when the papers have been served on the defendant. The police must also make the original statements available to the court and the defence at the PE hearing.

In England and Wales it is the practice of the prosecution to serve the committal papers on the defendant (or their agent) and on the court. This is a more streamlined process and thereby limits avoidable delay at this stage. Similarly to the service of summons, service of PE papers does not fit easily with the operational priorities of PSNI.

We consider that the current procedures should be amended to allow for postal service of the papers on the defendant or his representative and the court.

The empanelling of juries in non-contested cases

During the inspection we observed from the file sample and received anecdotal evidence of a custom whereby a jury is empanelled in a case although it is clear that the prosecution is going to offer no evidence. Similarly in a case where the defendant may plead guilty but seeks an indication as to sentence in open court (known as a 'Rooney' hearing) a jury may be empanelled and 'put in charge' of the defendant.

Despite extensive research we could find no basis for this convention and we could see no obvious benefit. However, it may incur unnecessary expenditure of public funds; invariably there appears to be an increase in fees to counsel following the empanelment of a jury in a case.



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