

# Avoidable Delay

June 2010

Criminal Justice Inspection  
Northern Ireland  
*a better justice system for all*



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# Avoidable Delay

**Incorporating an inspection of the interface  
between the Police Service of Northern  
Ireland and the Public Prosecution Service  
for Northern Ireland**

June 2010

Presented to the Northern Ireland Assembly under  
Section 49(2) of the Justice (Northern Ireland) Act 2002,  
as amended by paragraph 7(2) of Schedule 13 to The  
Northern Ireland Act 1998 (Devolution of Policing and  
Justice Functions) Order 2010.

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## List of abbreviations

<b>CJI</b>	Criminal Justice Inspection Northern Ireland
<b>DoJ</b>	Department of Justice
<b>DSM</b>	Data Sharing Mechanism (in Causeway IT system)
<b>NICTS</b>	Northern Ireland Courts and Tribunals Service
<b>NIO</b>	Northern Ireland Office
<b>NIPS</b>	Northern Ireland Prison Service
<b>PBNI</b>	Probation Board for Northern Ireland
<b>PPS</b>	Public Prosecution Service for Northern Ireland
<b>PSNI</b>	Police Service of Northern Ireland
<b>YJA</b>	Youth Justice Agency



## Chief Inspector's Foreword

Tackling the problem of avoidable delay goes to the heart of the justice system as it involves all the major justice organisations and impacts widely on the 'users' of the justice system whether they are victims, witnesses or defendants. The old adage 'justice delayed is justice denied' illustrates the problems of delay. As time passes legitimate interests may be adversely affected, witnesses disperse and can lose credibility, and further costs are incurred which ultimately can affect public confidence in the delivery of justice.

Our inspection report shows that despite the major efforts to address the problem of avoidable delay since the previous inspection report in 2006, these initiatives have made a relatively limited impact. The length of time it takes the justice system to process individuals through to disposal by a court is too long.

The question considered in this report is what needs to be done differently to reduce the amount of time people spend in the justice system. My overall conclusion is that a step change is required in the performance of justice organisations if they are to meet the challenge of reducing avoidable delay.

A starting point is the need for justice organisations to work more closely together in the delivery of a joined-up approach to criminal justice. In particular, there needs to be a stronger working relationship between the Public Prosecution Service for Northern Ireland (PPS) and the Police Service of Northern Ireland (PSNI). The original intention of the Criminal Justice Review (now 10 years old) was important in the desire to separate investigation from prosecution. This should not be at the expense however, of a collaborative justice system that recognises the respective roles of organisations but requires effective working. There is a need for a shared vision between the PSNI and the PPS on respective roles, supported by a clear operational protocol that underpins this shared view in operational activity. The justice architecture that was designed for 10 years ago may not be as relevant to today, particularly if it causes unnecessary delay within the system.

It also means addressing directly the causes of adjournments before they get to the Court process. This requires the focus, of not only justice organisations (police, prosecution and forensic science) but also linkages with other departments such as health, with the provision of timely and quality medical evidence.



A second major point relates to the need for organisations – at an operational level – to deal **now** with those issues directly contributing to the causes of delay within the system. In relation to the police this means, for example, improving the quality and timeliness of files submitted to the PPS. Across the system there is a requirement for better case management and case progression. This is particularly important within the PPS and the Northern Ireland Courts and Tribunals Service (NICTS).

Finally, at a strategic level there is a need for improved Ministerial oversight of performance. The capacity to hold organisations directly to account for performance is an important benefit of devolved policing and justice. This can be supported by a more focused role for the Criminal Justice Board and regular and appropriate management information.

Throughout the inspection process we have been working closely with all the justice organisations in discussing the nature of the problems and the way forward. As a direct result of this engagement, the system has been undertaking a series of new approaches to dealing with the problems of avoidable delay. This can only be to the good of the system and those who come into contact with it. It is, as everyone recognises however, the beginning of a journey rather than an end. Our report provides a clear pathway for further activity.

The inspection was carried out by James Corrigan and Dr Ian Cameron from CJI and colleagues from Her Majesty's Inspectorate of Constabulary, Her Majesty's Crown Prosecution Service Inspectorate and the Northern Ireland Prison Service (NIPS). I would like to express my thanks to the inspection team and all those who participated in the inspection process.

**Dr. Michael Maguire**

Chief Inspector of Criminal Justice in Northern Ireland  
June 2010



## Executive Summary

Criminal Justice Inspection Northern Ireland (CJI) published its inspection report on avoidable delay in May 2006. The initial response of the Criminal Justice System in Northern Ireland was positive in that an avoidable delay strategy was developed and a range of actions to improve performance were identified. This included the setting-up of a Delay Action Team to support the work of the Criminal Justice Board and the introduction of specific timeliness targets known as performance standards, which formed part of the Public Service Agreement between the Northern Ireland Office<sup>1</sup> (NIO) and Government.

Performance against these standards has flat-lined and current performance data indicates that just one of the five standards will be achieved by the Public Service Agreement deadline of April 2011. The time to deal with youth defendants is a particular concern as it took an average of 148 days to process a charge case and 283 days for a summons case in 2009-10. Comparisons with the most similar justice system in England and Wales, shows that Northern Ireland is significantly slower.

Some of the challenges are more strategic and will need to be delivered over a medium term perspective. This includes the necessity of transforming the working relationship or interface between the Police Service of Northern Ireland (PSNI) and the Public Prosecution Service for Northern Ireland (PPS). The way that these two organisations work together to deliver a common service has significant implications for the overall workings of the justice system. A common vision is necessary which encompasses issues such as pre-prosecution advice, police discretion on disposals and the streamlining of the process for the submission of criminal case files to the PPS. Agreement on these issues should be incorporated into a new joint protocol.

Separately, each of the justice agencies should immediately implement change across a number of key areas. For the PSNI, the main task is to realise its vision of 'getting it right first time' for case files. This has the potential to improve the overall end-to-end times for cases as it will aid decision making in the PPS and help to address the causes of adjournments in the courts. But this requires a greater prioritisation in the PSNI, including enhanced quality assurance checks on files, targeted training of officers, dedicated resources and more meaningful focus on managing performance.

Whilst performance times have improved in the PPS, there is scope to further reduce avoidable delay, particularly in addressing the dead time when files are waiting to be allocated to a prosecutor or needing further information before a decision can be taken. Data produced by the justice system show that it takes about 28 days to take a decision on an adult summons and 41 days for a youth summons – charge cases are actually faster.

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<sup>1</sup> The criminal justice remit and responsibilities of the Northern Ireland Office were devolved to the Department of Justice for Northern Ireland on 12 April 2010.



The summons process is of particular concern due to the fact that it is taking over three months from issue of all summonses to first appearance in court. This is well outside the proposed target times set by the Criminal Justice Board. While primary responsibility rests with the PPS in terms of their issue and service (postal), other justice organisations have a key role in terms of the summons process. The PPS should therefore take the lead on co-ordinating an inter-agency response. The current proposals to change the method of how summonses are signed, and to extend the use of postal service is welcome, particularly as 80% of summonses are being served by post first time.

The importance of inter-agency case progression was covered in some detail in the last CJI inspection of avoidable delay with recommendations to establish case progression officers and develop joint case progression groups. The former was delivered by the Northern Ireland Courts and Tribunals Service (NICTS), but the latter was not implemented due to resource constraints. Inspectors support the decision of the Criminal Justice Board to re-assess the contribution of locally-based case progression groups as this is a model which has worked effectively in England and Wales. It needs to be supported by live and regionally available case data, preferably through the Causeway IT project.

The length of time that cases spend in court is determined by a number of factors. They include the readiness of the prosecution team or defence to proceed with the case and the timing of a plea by the defendant, including the need to set a contest. These issues contribute to the high numbers of case adjournments and the length of court lists. Inspectors have observed the recent pilot project in Londonderry/Derry magistrates' court which records each application and would see merit in extending this approach to other court areas. This may help to understand for example, why youth summons cases are taking 84 days from first appearance to disposal – nearly twice as long as adult summons cases, while charge cases take about three months from PPS decision to disposal for adults and youths.

Delivering the required change on the ground is a key challenge for the justice system. This will require strengthened accountability and leadership, with a post devolution replacement for the joint ministerial Strategy and Delivery Group and direct political oversight for the Minister of Justice. The Department of Justice and the Criminal Justice Board should facilitate the work of the inter-agency project groups in areas such as case management and case progression and ensure delivery on the ground. The remit of the Delay Action Team should be re-focused towards a decision support role through the provision of timely and regular performance information.



## Recommendations and Issues to Address

### Recommendations

- **The PSNI and the PPS should incorporate the joint Criminal Justice Performance Standard into their respective corporate/business plans** (*paragraph 2.41*).
- **All of the main criminal justice agencies should set their performance targets and monitor progress on the basis of a common data set with the same counting rules** (*paragraph 2.42*).
- **An end-to-end measurement of performance, which is currently monitored by the Delay Action Team, should be the overarching objective of the criminal justice system** (*paragraph 2.42*).
- **Statutory time limits should be introduced by the Criminal Justice System as part of a longer term performance improvement strategy (i.e. within three years). They can therefore be implemented as a means of sustaining performance improvement** (*paragraph 2.42*).
- **The justice organisations should undertake a review of target setting in the context of the expiry of the current Performance Standards in April 2011** (*paragraph 2.43*).
- **The PSNI and the PPS should develop a shared vision on future co-operation which should seek agreement on (though not exclusively):**
  - **the scope and resources for pre-charge advice, including areas of integrative working (e.g. prosecutors working within Occurrence and Case Management Teams);**
  - **categorisation of offence types/offenders deemed eligible for PSNI decision on ‘no prosecution’ bearing in mind the findings of the pilot project; and**
  - **a bespoke file format, based on minimum standards, for case files which are sent to the PPS.**

The terms of agreement should form the basis of a new joint protocol which should be disseminated to all relevant staff (*paragraph 3.29*).
- **The PSNI should assess the varying utilisation of police bail across Districts with a view to implementing best practice and optimising the opportunity to have case ready files for court** (*paragraph 4.5*).



- **For the PSNI:**
  - **quality assurance checks need to be systematic and clearly understood and implemented at agreed points;**
  - **the points of quality assurance checks need to be adequately resourced with appropriately skilled staff and adequate priority accorded to this role;**
  - **enhanced linkages should be developed between police Districts and training departments within the PSNI;**
  - **greater integration with the IT training on the NICHE case management system should be continued;**
  - **the PSNI should continue to engage with the PPS on training needs and their provision; and**
  - **the internal PSNI reward and sanctions systems should incorporate a greater appreciation of performance with regard to file quality** (*paragraph 4.27*).
- **The PSNI and the PPS should utilise Request for Further Information data to identify the specific causes of poor quality files and implement a joint Action Plan** (*paragraph 5.12*).
- **The PPS and the PSNI should ensure that prosecution witness attendance at court is improved** (*paragraph 6.27*).
- **The establishment of a network or cadre of case progression personnel within the three main justice organisations should be expedited** (*paragraph 6.43*).
- **The Criminal Justice Agencies should develop a joint Action Plan to address the specific problem of avoidable delay with regard to youth defendant cases** (*paragraph 7.14*).
- **Strengthened accountability and leadership with a post devolution replacement of the joint ministerial Strategy and Delivery Group and direct political oversight for the Minister of Justice** (*paragraph 8.7*).

### **Issues to Address**

- **A regional breakdown of performance data should be incorporated into the reports prepared for the Criminal Justice Board** (*paragraph 2.23*).
- **A breakdown of the main types of criminal cases (e.g. motoring; major/minor offences) should be incorporated into the performance reports prepared for the Criminal Justice Board** (*paragraph 2.39*).



- **Pre-prosecution advice should be extended, where demand is demonstrated** (paragraph 3.12).
- **The PSNI should review its NICHE system with a view to improving ease of use for frontline officers** (paragraph 4.29).
- **Regional variations in court performance should be explored in more detail to identify areas where best practice can be shared** (paragraph 6.7).
- **The practice of combining youth cases with longer-running adult or youth cases should be restricted to exceptional circumstances** (paragraph 6.11).
- **The pilot adjournment project should be extended to include a representative sample of court areas** (paragraph 6.29).
- **The PBNI should continue to work closely with sentencers to increase the proportion of Specific Sentence Reports in accordance with the recent PBNI audit** (paragraph 6.50).





## CHAPTER 1:

# Introduction



- 1.1 *Avoidable Delay: A thematic inspection of delay in the processing of criminal cases in Northern Ireland* was published by Criminal Justice Inspection Northern Ireland (CJI) in May 2006. The report included 30 recommendations with 11 key areas for improvement as a means of achieving a more effective, efficient and joined-up criminal justice system. This inspection assesses progress against each of these recommendations, including determining the stage of delivery (see Appendix 1).
- 1.2 The publication of the CJI report was followed by a series of justice system initiatives aimed at reducing avoidable delay and responding to the inspection recommendations. This strategy was published in late 2006. Many of the actions in the intervening period have been in respect of the delivery of this strategy.

### Why avoidable delay?

- 1.3 The focus of this inspection is not delay per se – instead it is about minimising the negative consequences of avoidable delay for those who are users of the justice system, whether they are victims, witnesses or defendants. Indeed, some types of

orderly and rational delay can enhance the justice system and provide better outcomes for those affected by crime. The focus is therefore on avoidable or unnecessary delay, when cases are stalled by bureaucratic inefficiencies, outdated practices and wasted effort. The end result or outcome is not speed, it is improved justice.

- 1.4 The 2006 CJI inspection and the response from the criminal justice system was an acknowledgement that avoidable delay was a major challenge for all the justice agencies and that major actions were necessary to address its many consequences. The feedback from victims and witnesses was that avoidable delay was undermining their confidence in the justice system. Defendants, particularly young offenders, were disadvantaged by the wait for measures aimed at addressing their offending behaviour. The overall additional costs of avoidable delay were regarded as substantial by most justice organisations. A comparison with the most similar criminal justice system in England and Wales showed that cases were taking significantly longer in Northern Ireland.



## The approach of the Criminal Justice System

- 1.5 The initial response of the criminal justice system to the CJI report was to establish an inter-agency group tasked with developing a shared strategy in response to the CJI recommendations. Some key aspects of this strategy and associated collaboration were the reconstitution of the Delay Action Team, the setting of performance targets and their incorporation into the Northern Ireland Office (NIO) Public Service Agreement. A number of new initiatives were also developed regarding specific aspects of avoidable delay such as the Early First Hearing project in Ballymena and the piloting of Case Progression Groups for youth defendant cases.
- 1.6 CJI had recommended that shared targets should be developed and implemented as a means of fostering a joined-up approach to this common problem. While the report did not specifically recommend end-to-end targets, it stated that a high level joint target could include more specific end-to-end targets. The critical issue was not the targets as such, but the means, through inter-agency co-operation, to achieve a step change in performance. The feedback from victims and witnesses to Inspectors was that the end-to-end process was the only meaningful assessment of their experiences of the justice system.
- 1.7 The inter-agency group tasked by the Criminal Justice Board with developing a shared strategy accepted
- the merits of the end-to-end approach but were unable to achieve consensus on the need for specific end-to-end targets. A difficulty for the judiciary was that measuring the time for Crown Court trials in particular, did not serve any purpose and that each trial is different and should take as long as it needs to ensure the defendant receives a fair hearing. The agreement was that end-to-end times would be monitored, except for the length of trials in the Crown Court, and that the justice system performance standards would stop at the point of first appearance in the magistrates' courts and at the point of PPS decision for Crown Court cases. These standards have been included in the NIO Public Service Agreement with a delivery date of April 2011.
- 1.8 Each of the criminal justice agencies made a commitment to amend existing strategies and targets to align with the joint strategy on avoidable delay and implement a range of specific actions (some multi-lateral and some agency specific) to improve performance. This included looking at the use of police bail, improving the timeliness and quality of police files, enhancing file processing systems in the PPS, developing more effective inter-agency case management including earlier guilty pleas and undertaking a proper analysis of the reasons behind court adjournments. All of these issues were addressed in the common strategy. Progress against these recommendations is assessed in Appendix 1 of this report.



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## Outputs of the Criminal Justice System

1.9 The PSNI record about 100,000 crimes per year. This in turn led to 54,767 files being submitted to the PPS in 2008-09.<sup>2</sup> Provisional figures for 2009-10 show that 61,254 files were submitted to the PPS which is an increase of almost 12% on the previous year. In the period 2008-09, the PPS took 67,485 decisions of which 18,310 (28%) were 'no prosecution' and 10,829 (16%) were diversions<sup>3</sup>. A total of 38,346 decisions, or 57% of all PPS decisions, were prosecutions of which 5% were indictable. In 2008-09, a total of 36,183 summonses were issued of which 14,385 (40%) were served by post. Data provided by the Northern Ireland Courts and Tribunals Service (NICTS) shows that 51,385 defendants were dealt with in the adult magistrates' courts in 2008 and 3,091 defendants in the youth courts. In the same period, a total of 1,733 defendants were dealt with in the Crown Court.

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2 A total of 56,864 files were submitted to the PPS in 2008-09 of which 2,097 were from Northern Ireland Government Departments and Agencies.

3 Diversion decisions by the PPS covers cautions, informed warnings, youth conferences and NI Driver Improvement Scheme.



Section



# Strategic context



## CHAPTER 2:

# Performance

### Data sources

- 2.1 The primary source of performance data for the justice system is prepared by the Delay Action Team and taken from the PPS Case Management System. This was considered an interim measure until the next Data Sharing Mechanism phase of the Causeway system became operational. A performance update is produced every quarter to show performance against the criminal justice standards and also to monitor end-to-end case processing times. It is this data which is used as the basis of analysis in this inspection report.
- 2.2 Performance data was made available for three financial years plus the first seven months of the 2009-10 financial year.<sup>4</sup> The data for 2006-07 is incomplete as the PPS was not fully rolled out at this stage and not all case data was therefore available. The subsequent year (2007-08) is more reliable though the PPS was not fully implemented until October of 2007. It was this data set, which

was used to establish baseline performance and set the performance standards.

- 2.3 All of the data refers to defendants rather than specific cases – some cases will therefore involve more than one defendant. The number of defendants which were counted towards the criminal justice performance standards for 2008-09 was as follows: Crown Court pre-committal stages (857), Crown Court post-committal stages (1,651) and magistrates' courts (29,046) (Table 1).

**Table 1: No. of defendants for Criminal Justice Standards 2008-09**

Crown Court	
Pre-committal stages	857
Post-committal stages	1,651
Magistrates' Court	
Adult Charge	6,686
Adult Summons	20,148
Youth Charge	529
Youth Summons	1,683

Source: *Criminal Justice Performance Standards: Performance Update, 2008-09, Delay Action Team (DAT).*

<sup>4</sup> The most recent data made available to CJI relates to the period 1 April to 25 November 2009 (i.e. up to the launch of Causeway DSM1). The incomplete data for Quarter 3 was due to the large number of changes to the PPS CMS system after the launch of DSM1. This did not affect Crown Court post-committal data which includes information up to 31 December 2009.



2.4 A number of defendants/types of cases do not count towards the performance standards. This includes all defendants who were not disposed of via the courts such as diversionary cautions, warning and youth conferences. For youth defendants in particular, this means that an increasing proportion of youths are not counted towards the performance standards. The PPS data for 2008-09 show that 1,056 youth conference decisions were taken by the PPS. In the same period, 2,212 youth defendants were disposed of in the youth courts. The standards also excludes defendants issued with a bench warrant and custody charge cases which were dealt with on a plea of guilty at first remand.

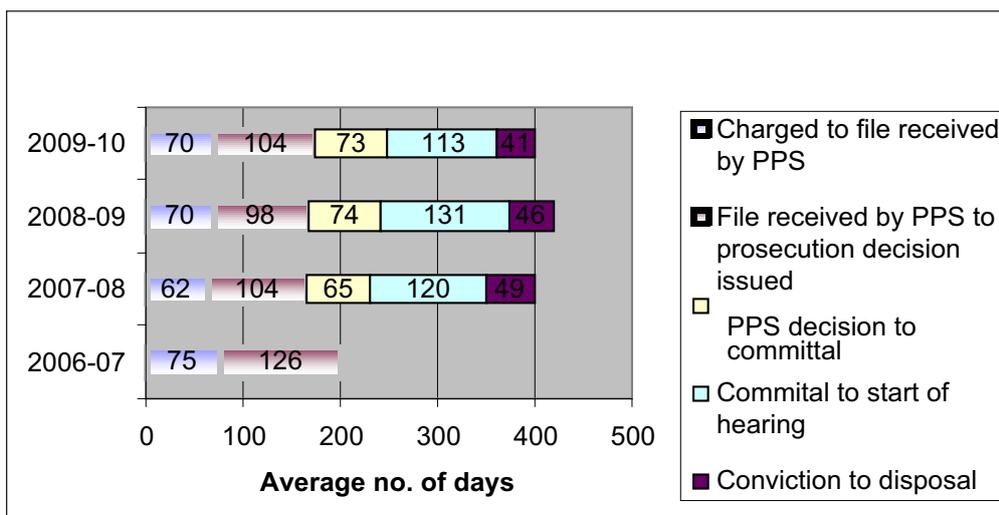
2.5 It is also significant that only cases initiated by the PSNI count towards the targets. This means that all prosecution cases undertaken by

Government Departments are excluded for this purpose. These account for 4% of all files submitted to the PPS in 2008-09, but a much larger 30% of all adult criminal defendants disposed of in the magistrates' court.<sup>5</sup> The equivalent figure was 4% for youth defendants in the magistrates' courts.

### Defendants in the Crown Court

2.6 Crown Court performance data is divided into pre and post-committal stages of case progression, however just the pre-committal stage counts towards the performance standards i.e. the period from when a defendant is charged to when a PPS decision is issued (see highlighted area in Graph 1). The data in Graph 1 also includes part of the post-committal stage of cases (i.e. all time is counted except for the period from start of a trial to conviction).

**Graph 1: Case processing times for Crown Court defendants**



Source: Criminal Justice Performance Standards, Performance Updates

<sup>5</sup> A total of 4,106 departmental prosecutions were disposed of in the magistrates' court in the October to December quarter of 2009. The total number of adult disposals was 13,795 during this quarter. Data taken from NICTS Magistrates' Court Bulletin, October to December 2009.

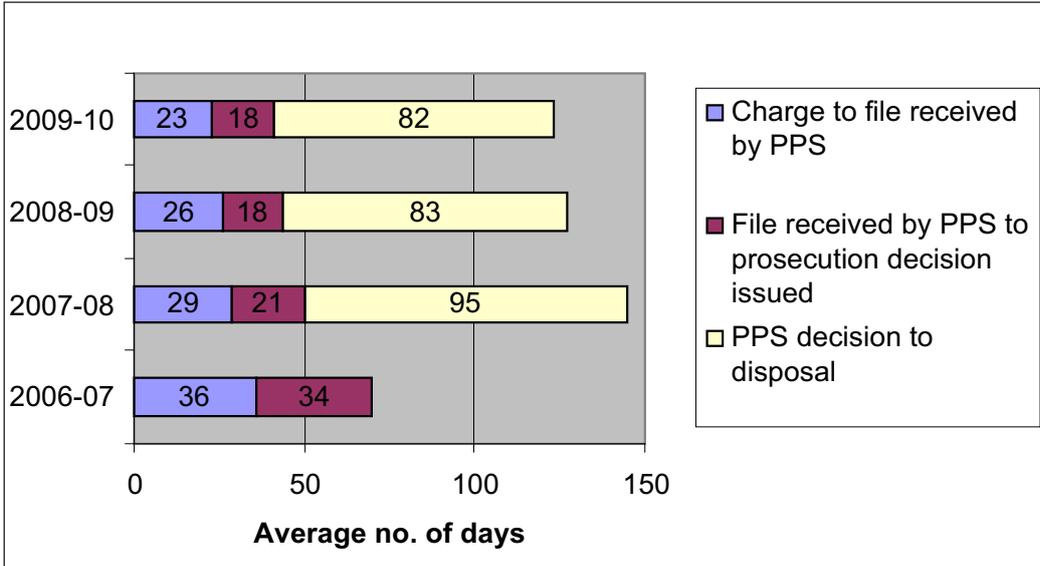


- 2.7 The desired performance standard, to be achieved by April 2011, for the pre-committal stages of Crown Court cases is an average of 140 days from charge to a PPS decision being issued. This is represented by the first two stages in Graph 1. It shows an average of 168 days in 2008-09 and 174 days for 2009-10. This means that the justice system needs to achieve an average reduction of 34 days or 20% from current performance to achieve the standard.
- 2.8 A review of case processing times for defendants in the post-committal stages of the Crown Court show a small reduction in the average times from PPS decision to committal, and a more significant reduction in the average times from committal to start of hearing (Graph 1). The average times from conviction to disposal have decreased over the past three years.

**Adult defendants in the magistrates' court**

- 2.9 There are two separate performance standards for adult defendants in the magistrates' courts: those who are charged and those who are informed that a report will be prepared for a prosecution in the courts.
- 2.10 The desired standard for adult charge cases is an average of 54 days from charge to a PPS prosecution decision being issued. Actual performance for the first two quarters of 2009 was 41 days which was three days better than 2008-09. This target is likely to be achieved as it has been well within the expected performance range over the past three years (Graph 2).
- 2.11 A review of end-to-end times for adult charge cases shows an average of 123 days in 2009-10, which is a reduction of four days from the

**Graph 2: Case processing times for adult charge defendants**



Source: Criminal Justice Performance Standards, Performance Updates. Based on 5,368 defendants in 2009-10; 6,686 in 2008-09.



previous year. It does however show a more significant reduction from 2007-08 when the average charge to disposal time was 145 days. All three stages of adult charge cases have shown a reduction during this period.

2.12 Defendants in the adult court whose cases commence via a report and summons account for the majority of defendants processed in the criminal justice system – 20,148 in 2008-09 which represents 70% of all defendants in the magistrates’ courts. These cases take considerably longer than charge cases with an end-to-end time of 226 days for the first two quarters of 2009. That is a reduction of 12 days from 2008-09 (238 days) but longer than 2007-08 (Graph 3).

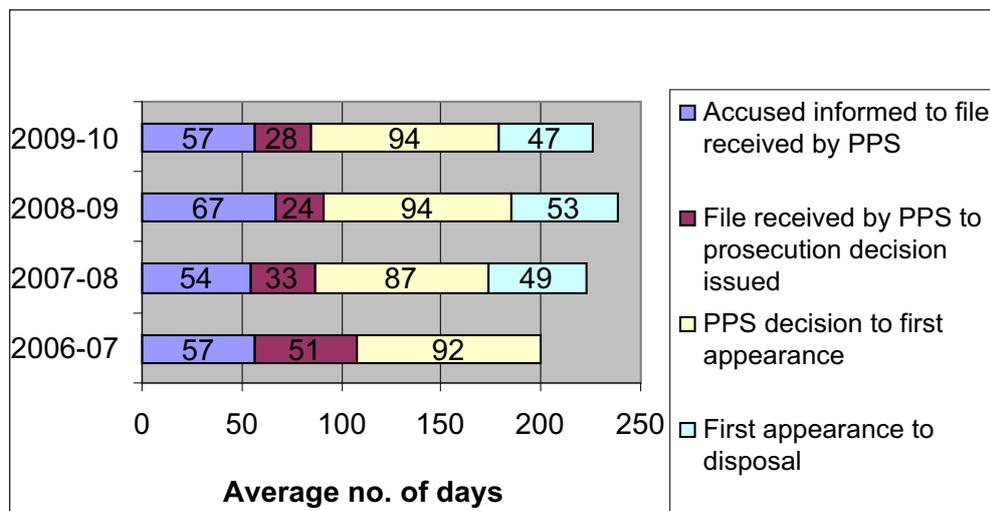
2.13 The first three stages of a summons case are covered by the performance standards – i.e. accused informed to date of first appearance. The average processing time for these two stages in 2009-10 was 179 days compared to

185 days in 2008-09. The performance standard for April 2011 is 146 days which means that the justice organisations need to achieve an average reduction of 33 days or 19% improvement on current performance to achieve the target.

### Youth defendants in the magistrates’ court

2.14 Youth court cases were a specific concern for Inspectors in the original CJI inspection in 2006, which made a number of specific recommendations. The Delay Action Team data for the first seven months of 2009-10 shows that it took on average 148 days to process a charge case, which was 23 days less than 2008-09 performance and 26 days less than 2007-08 (Graph 4). Whilst this is a positive trend and shows a similar trend to adult charge cases, it is noticeable that youth charge cases are taking on average 25 days longer than adult cases in 2009-10.

**Graph 3: Case processing times for adult summons defendants**



Source: Criminal Justice Performance Standards, Performance Updates. Based on 13,954 defendants in 2009-10; 20,148 in 2008-09.

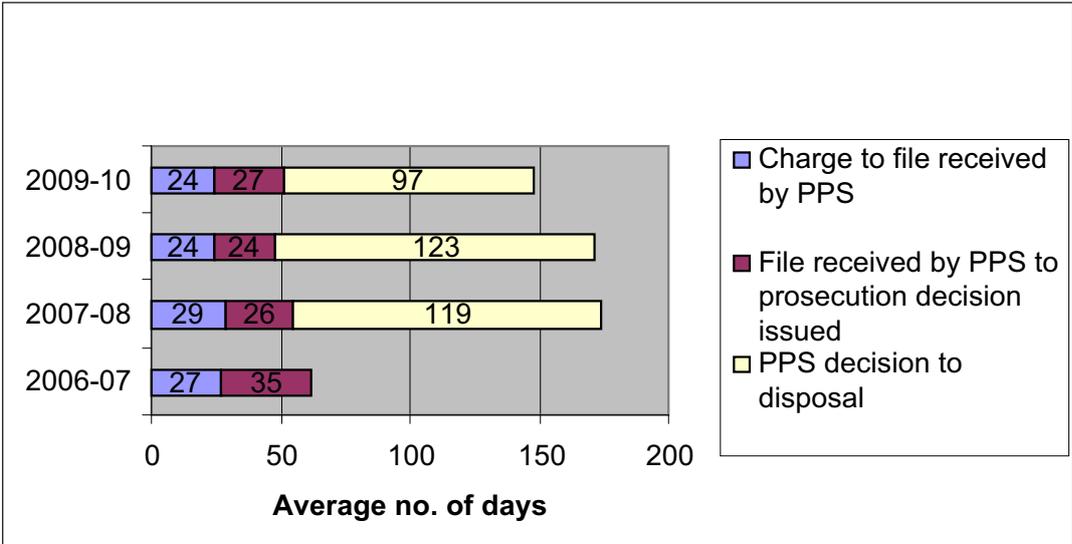


- 2.15 The most evident difference between adult and youth charge cases relates to the prosecution stage where the time taken between the file being received by the PPS to a decision being issued, took 18 days for adult cases and 27 days for youth cases (i.e. 50% longer for youth defendants). Adult charge defendants took an average of 82 days from PPS decision to disposal compared to 97 days for youth court defendants (i.e. 19% longer).
- 2.16 Accepting the recent significant improvement in performance for youth charge cases, it must also be recognised that current performance is well outside the desired Standard for April 2011. The Standard, which covers the period up to PPS decision issued, is 35 days, which means an

average reduction of 16 days and a 32% improvement is required.

- 2.17 Case processing times for youth summons defendants is longer than any other category of magistrate court case. The average end-to-end time was 283 days in 2009-10 which was slightly better compared to 2008-09 (291 days) and worse compared to 2007-08 (Graph 5). Youth summons defendants are taking 57 days longer to process than adult summons cases, with poorer comparator performance in all four stages of youth cases. The biggest variations relate to the stage from file received to prosecution decision issued stage, which is taking 64% longer for youths and the first appearance to disposal stage which is taking 79% longer for youths.

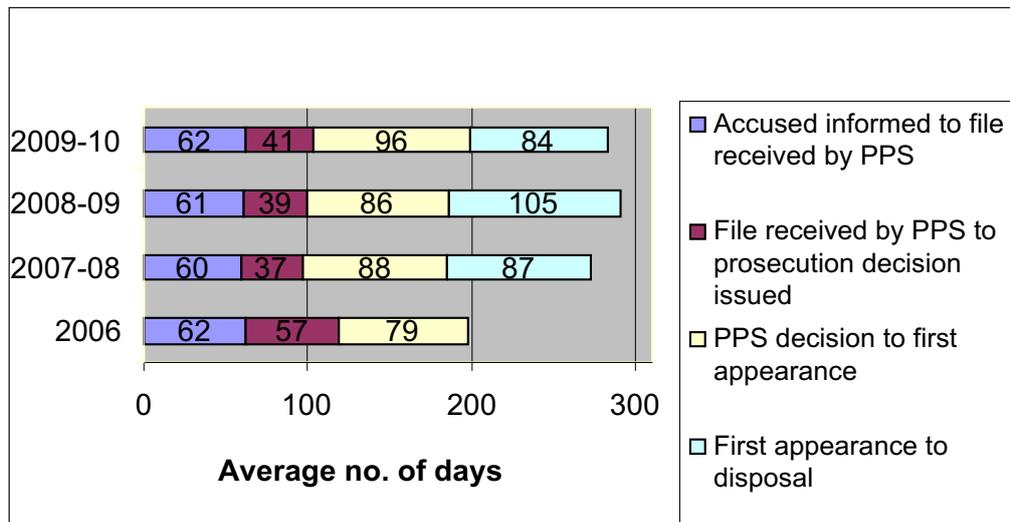
**Graph 4: Case processing times for youth charge defendants**



Source: Criminal Justice Performance Standards, Performance Updates. Based on 395 defendants in 2009-10; 529 in 2008-09.



**Graph 5: Case processing times for youth summons defendants**



Source: Criminal Justice Performance Standards, Performance Updates. Based on 1,051 defendants in 2009-10; 1,683 in 2008-09

- 2.18 The distinction between youth defendants who were informed and those who were charged is striking (i.e. summons cases are taking on average 135 days longer). The first stage of accused informed/charge to file received by the PPS took 2.59 times longer for summons cases, file received by PPS to prosecution decision issued took 1.52 times longer and PPS decision to disposal took 1.22 times longer.
- 2.19 The performance standard for youth summons defendants is 132 days from accused informed to first appearance. Performance in 2009-10 was 199 days which is 67 days off target. Achieving this target will require a 34% improvement on current performance – the biggest challenge for any of the performance standards.
- 2.20 One factor which may be impacting on youth summons cases in particular is the increasing use of diversionary options for young offenders, meaning that fewer cases are disposed of in

the courts. An analysis of case processing times by the Youth Justice Agency (YJA) in 2007 found that it was taking 223 days to process a youth case from charge/informed to disposal (excluding diversionary conferences). The time was reduced to 209 days when such diversionary conferences were included. Whilst this is a reduction, it was relatively small. It is likely however, that defendants who would be more inclined to plead guilty earlier are now being diverted away from the courts and therefore not counted in the performance standards.

### Regional variations

- 2.21 One of the notable gaps in published case processing data relates to regional performance. This was raised as an issue in a number of interviews among the justice organisations, most particularly by those working at an operational level. The performance report produced by the Delay Action Team does not



include regional performance figures, though relevant regional data is available from the PPS Case Management System.

2.22 A breakdown of this data, by PPS regions, was made available to Inspectors (see Table 2). It shows that there is a discernable difference in performance between Belfast and Eastern regions compared to Southern and Western regions. Defendant's cases are taking longer in Belfast in four of the six categories – the exception was charge cases for adults and youths (see Table 2). Eastern and Northern Ballymena were in the main placed fourth or fifth in terms of performance ranking. The best performing region was Southern (first in four magistrates' court categories) and Western (first in the two Crown Court categories). Northern Foyle showed above average performance in five of the six categories of cases – the exception was youth reported cases.

2.23 A number of interviewees within the justice organisations, including some on the Criminal Justice Board, considered that it would be beneficial

to have access to a regional breakdown of performance, as part of the regular Performance Updates. This could also help to identify areas where best practice is more apparent. CJI would advise that **a regional breakdown of performance data should be incorporated into the reports prepared for the Criminal Justice Board.** Any regional analysis of performance will also require a consideration of actual file numbers and emerging trends. For example, the recent increase in files submitted to the PPS shows significant variations across PPS regions with the Eastern region showing an increase of almost 22% over the year while the increase is about 7% in the Western and Southern PPS regions.

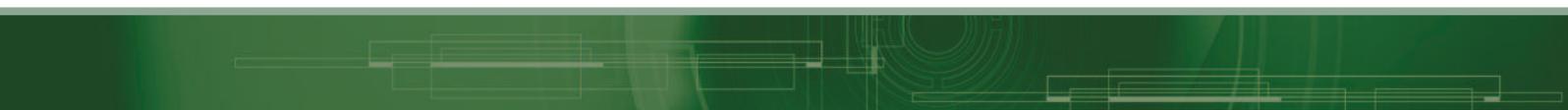
### Comparisons with England and Wales

2.24 Making comparisons between any two criminal justice jurisdictions is problematic due to different legislative provisions, policies, practices and cultures. Even a legal jurisdiction like England and Wales, which is the closest comparator to Northern Ireland, has different legislative arrangements and working

**Table 2: Average end-to-end processing times by PPS region 2008-09**

Region	Crown Court		Adult Defendant		Youth Defendants	
	Charge	Report	Charge	Report	Charge	Report
Belfast	492	641	140	296	158	338
Eastern	424	491	151	239	219	314
N. B'mena	423	550	170	241	208	282
N. Foyle	412	486	98	216	136	302
Western	338	399	101	197	163	250
Southern	384	486	79	183	119	226
<b>Average</b>	<b>437</b>	<b>527</b>	<b>128</b>	<b>238</b>	<b>171</b>	<b>295</b>

Source: PPS CMS, October 2009





practices, which impact on case processing times – though practices and cultures will also vary across justice boundaries within England and Wales.

- 2.25 Inspectors understand the limitations of comparative analysis and are therefore limiting the quantitative analysis of timeliness to an end-to-end perspective, though there is also a recognition that the starting time can also differ due to different pre-charge arrangements in each jurisdiction and the greater proportion of cases which commence via charge in England and Wales. It was for this reason that a recommendation was made to “*more accurately identify offence to charge/summons times in Northern Ireland*” in the last CJI inspection as a means of better understanding performance relative to England and Wales. An important question that a victim or a witness might ask is how long on average might they have to wait for the justice system to deal with a broadly similar case in either jurisdiction. The comparator processing times are not intended to be definitive, but to be used as an indicator of relative performance.
- 2.26 The Criminal Justice Simple Speedy Summary Justice initiative, which was launched in England and Wales in 2006, set a target of 42 days from charge to disposal for an adult charge case in the magistrates’ courts. The actual performance for 2008-09 was 48 days. Adult charge cases took 127 days to disposal in Northern Ireland

which is 2.65 times longer.

- 2.27 The average charge to completion time for youth defendants in England and Wales magistrates’ courts was 38 days in June 2009 (75 days when offence to charge times are included).<sup>6</sup> This compared to 148 days for youth charge cases in Northern Ireland (3.9 times longer) and 283 days for youth summons cases (7.45 times longer) in 2009-10.
- 2.28 Some comparative analysis of performance was conducted by the NIO in 2007, which concluded that while definitive comparisons were problematic, there was merit in measuring the end-to-end points in each jurisdiction. It found a 15% difference in magistrates’ court cases (i.e. England and Wales operating more quickly). The biggest variation related to youth court cases which took 213 days in Northern Ireland compared to 90 days in England and Wales.

### Workload

- 2.29 It was shown at the time of the last inspection that the increasing caseload was putting additional pressures on the system, which added to avoidable delay. This trend has continued. The PPS received 56,211 criminal cases in 2008-09, which were 2,000 more than the previous year. Provisional figures for 2009-10 show a significant increase of almost 12% in files submitted to the PPS. It is not certain at this stage whether that increase is a one-off caused in part by

<sup>6</sup> Time Intervals for Criminal Proceedings in Magistrates’ Courts: June 2009, Ministry of Justice Statistics Bulletin, 27 August 2009.



the introduction of the next phase of Causeway or is part of a longer term trend. The implications for avoidable delay may be significant, particularly for the PPS and the courts. The Crown Court received 1,436 cases in 2007, which was the highest in the period since 2004. This was reduced to 1,288 in 2008.<sup>7</sup> The number of youth court defendants has fallen from 3,350 in 2007-08 to 3,011 in 2008-09, which was a fall of 10%,<sup>8</sup> and most likely related to a corresponding increase in youth diversions.

### Internal targets and performance

2.30 All of the justice organisations have their own performance targets as part of their business planning and reporting arrangements. CJI had recommended in the last inspection that each agency should amend existing strategies and targets to align with the joint strategy on avoidable delay.

2.31 The targets for the PSNI are set by the Northern Ireland Policing Board, which are published in the annual Policing Plan. These included increasing 'the percentage of prosecution cases processed to the required standard within administrative time limits'. The limits were:

- 90 days for custody cases; and
- 110 days for bail cases.

These two targets were replaced by the Criminal Justice Performance Standards from 1 April 2010.

2.32 Two additional targets were added to the 2009-10 plan since the last CJI inspection:

- to process 80% of indictable reported cases within 91 days for adults and 75 days for youths (a 5% increase on the previous year); and
- to process 70% of summary reported cases within 49 days for adults and 35 days for youths (a 10% increase on the previous year).

2.33 Performance against the targets in the year April 2008 to March 2009 shows:

- custody cases were 8% below target;
- bail were 5% below target;
- indictable cases were 21% below target; and
- summary were almost 20% below target.

It is positive that the PSNI targets are now better aligned with those of the justice system (Criminal Justice Performance Standards). The next step, particularly in terms of developing a shared vision and responsibilities with the PPS, is the incorporation of the combined standards into the respective corporate and business plans of the two justice organisations. This is covered in more detail later in this chapter.

2.34 The PSNI performance against the Performance Standards is shown in Graph 6. It shows little change for the serious cases which go to the

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<sup>7</sup> Northern Ireland Court Service Judicial Statistics, 2008, NICTS.

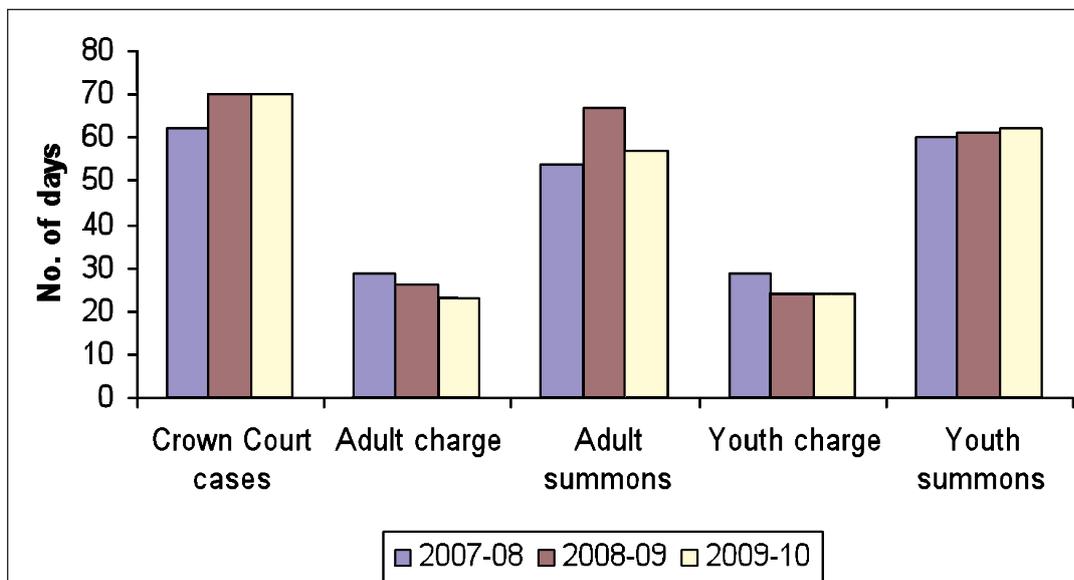
<sup>8</sup> Northern Ireland Court Service Annual Report 2008-09, NICTS.



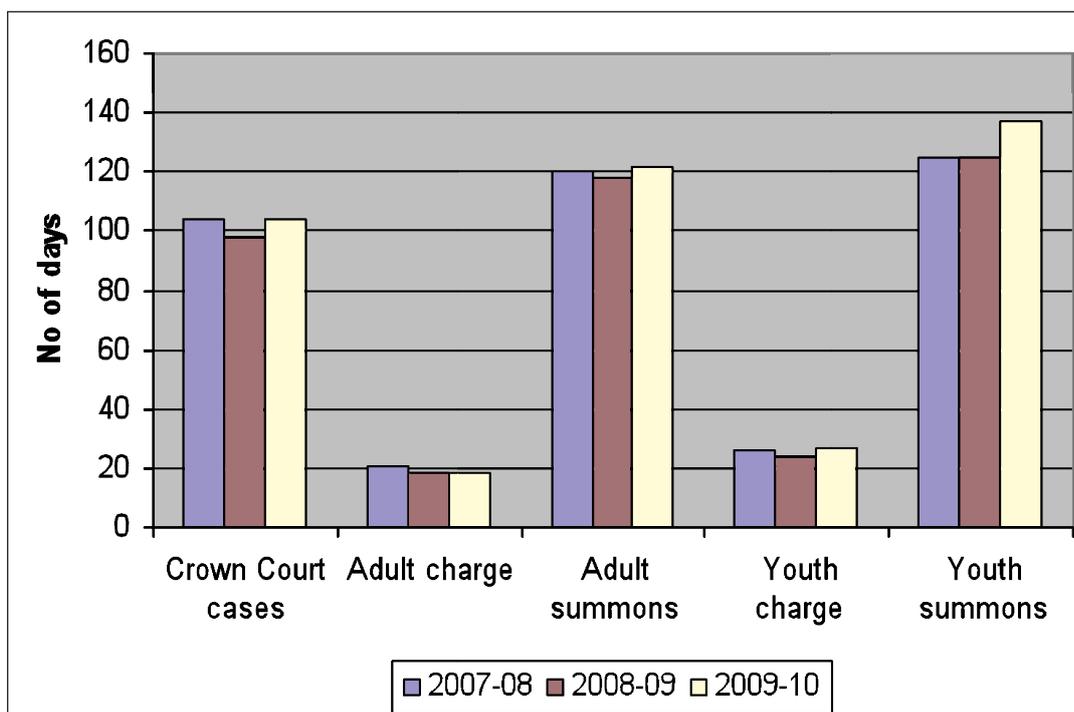
Crown Court, but some improvement for adult defendants in the magistrates' courts. Youth defendant cases, which commence via a charge, have not changed while the time to submit summons files has deteriorated.

2.35 The PPS has set performance targets for that part of the process, for which they are directly responsible i.e. up to the time that a decision is issued. These targets are aligned with the criminal justice Performance Standards and now include Request

**Graph 6: PSNI performance on Criminal Justice Performance Standards**



**Graph 7: PPS performance on Criminal Justice Performance Standards**





for Further Information times for example. Performance against these targets is reported in the Annual Report with an improvement in all categories, except for youth summons defendants, shown for 2008-09. The Annual Report charts progress relative to internal targets rather than the criminal justice performance standards. These internal targets have been comfortably achieved in each of the categories.

- 2.36 The performance of the PPS against the Performance Standards is shown in Graph 7. The overall trend is that performance has started to deteriorate in 2009-10 following a period when all categories of cases had shown improvement. The times for summons cases includes the period from the PPS decision to first appearance, when the PPS shares responsibility with other justice organisations.
- 2.37 The Lord Chief Justice has set targets to facilitate the efficient disposal of business. There are some similarities with the criminal justice performance standards in that separate targets have been set for the timely processing of Crown Court and magistrates' court defendants – the latter is also separated into adult and youth defendants. The differences are more substantial in that separate data sets and counting rules are applied (e.g. government departmental cases are counted) and measurement of performance is based on percentiles rather than an average figure for all cases. Crown Court cases are measured from the date of committal meaning that the stage between a PPS decision being issued and the date of

committal (73 days for 2009-10) is not subject to these targets or the criminal justice Performance Standards. Recess and vacation times are also not included in the calculation.

- 2.38 The Lord Chief Justice's targets for 2009-10 are published by the NICTS in its corporate literature. They are:
- 80% of Crown Court defendants will be arraigned within six weeks (42 days) of committal;
  - 80% of Crown Court defendants will start their trial within eighteen weeks (126 days) of committal;
  - 80% of Crown Court defendants will be sentenced within six weeks (42 days) of a plea or finding of guilt;
  - 80% of magistrates' courts defendants will have their case disposed of within nine weeks (63 days) of first listing;
- A finding will be reached within twelve weeks (84 days) from first listing for 80% of youth court defendants.
- 2.39 Judicial Statistics for 2008 provide a more comprehensive insight into the types of business undertaken by the courts and a better understanding of where avoidable delay may be more persistent. It shows that 69% of all adult charges (PSNI/PPS prosecutions) were motoring offences (28,804). A total of 1,059 youth cases disposed of in 2008 were motoring which represented 32% of all cases. There is however, no additional data on the timeliness of particular types of cases which could help to confirm whether motoring cases are taking shorter/longer times on average



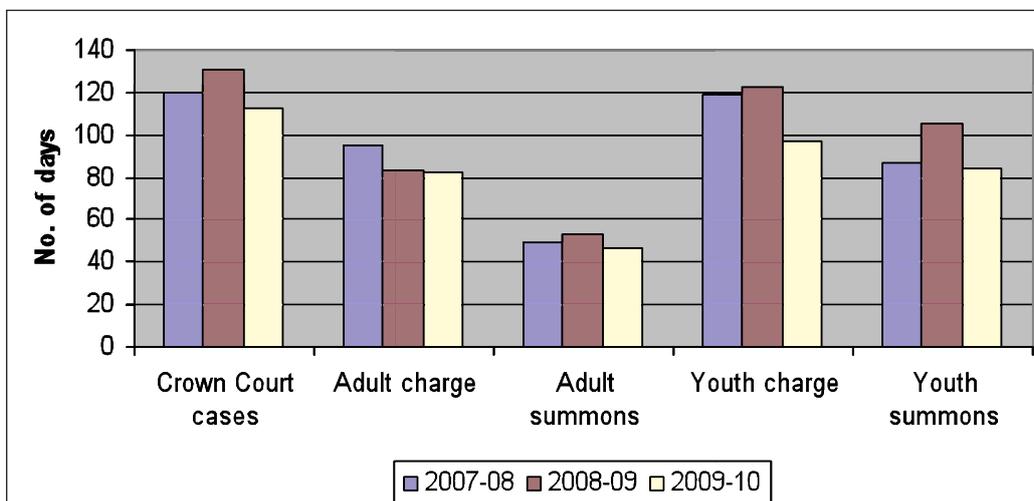
compared to other types of cases. Observations in court by Inspectors indicated that a significant number of motoring cases were disposed at an early stage with some pleas at first hearing – this was most apparent for drivers with non-UK driving licences who were required to attend court as the fixed penalty option could not be applied by the PSNI. As a means of better understanding the nature of avoidable delay and therefore of targeted efforts at areas of most need, Inspectors are advising that **a breakdown of the main types of criminal cases (e.g. motoring; major/minor offences) should be incorporated into the performance reports prepared for the Criminal Justice Board.** Inspectors understand that a newly established inter-agency project on case management has looked at the possibility of measuring eight categories of minor and major offences with the intention to identify proportionate processes/targets that could be introduced.

2.40 An analysis of the data provided by the Delay Action Team in relation to the court stages of cases is shown in Graph 8. After a period when most categories of cases were taking longer (2008-09), there has been an improvement in all categories of cases for the first seven months of 2009-10 with the most noticeable difference in relation to youth defendants. There is nevertheless a significant variation in times between adult and youth cases in general. For example, the average time from first appearance to disposal for a youth defendant (summons) was 84 days in 2009-10 compared to 47 days for an adult defendant. The variation is not as significant for charge cases, which are monitored from a PPS decision being issued to disposal in the court, which was 82 days for adults and 97 days for youths.

### Moving forward on targets

2.41 Inspectors are aware of the differing views on performance targets and their likely impact on performance

**Graph 8: NICTS performance on Criminal Justice Performance Standards**





improvement. There is however a general acceptance that performance needs to be measured and that process should aid rather than hinder the required changes. CJI is therefore recommending a holistic review of internal and criminal justice performance standards with an emphasis on joined-up rather than separate targets. The difficulties of separate performance targets is best demonstrated at the interface between the PSNI and the PPS, where a police emphasis on internal timeliness has negatively impacted on the quality of files, whilst also affecting the broader timeliness of cases (i.e. when files leave the PSNI). It is recommended that **the PSNI and the PPS should incorporate the joint Criminal Justice Performance Standard into their respective corporate/business plans.**

2.42 The experience of the past four years shows that it may be difficult to deliver a common end-to-end timeliness target for the whole criminal justice system, particularly one that is framed as part of a governmental target and/or incorporated into the corporate/business plan of the NICTS. This does not however preclude the development of a better joined-up approach to tackling the problem of avoidable delay. Indeed, recent discussions between the justice organisations and the Lord Chief Justice's Office point towards greater consensus around the definition and measurement of 'cumulative targets'. Inspectors are therefore supporting these initiatives and recommending a range of actions to facilitate a more

common approach. They include the following:

- **all of the main criminal justice agencies should set their performance targets and monitor progress on the basis of a common data set with the same counting rules;**
- **an end-to-end measurement of performance, which is currently monitored by the Delay Action Team, should be the overarching objective of the criminal justice system.**

The means of delivering the objective, via targets, can be variable to take account of judicial independence (e.g. the court stages of case progression need not form part of any new Public Service Agreement). CJI is restating the merits of statutory time limits as recommended in the original inspection report which were also recommended by the Criminal Justice Review. There is however little benefit in developing time limits on the basis of current performance.

**Statutory time limits should be introduced by the Criminal Justice System as part of a longer term performance improvement strategy (i.e. within three years). They can therefore be implemented as a means of sustaining performance improvement.** There may be merit in phasing their introduction with an initial focus on priority cases such as youth defendants.

2.43 The current Criminal Justice Performance Standards expire in April 2011. This will be an opportunity for the justice system to re-assess the benefits and scope of the existing targets and to consider



improvements. Inspectors recommend that **the justice organisations should undertake a review of target setting in the context of the expiry of the current Performance Standards in April 2011**. This should include:

- ensuring that the performance targets encompass a greater proportion of case work within the justice organisations. This may incorporate the need to include other categories of cases such as youth diversions and overnight charge cases;
- developing targets which reflect the end-to-end times of cases, which is the most meaningful time period for users of the system such as victims and witnesses. This may mean the establishment of a common end-to-end measurement of the time it should take for criminal cases; and
- accepting a common method of counting and measuring performance, which may be feasible in the new phase of the roll-out of the Causeway project. The counting rules for eligible defendants/cases should be transparent to aid a more targeted approach to performance improvement.

## CHAPTER 3:

# The PSNI/PPS Interface



### Background

- 3.1 The Office of the Director of Public Prosecutions was created in 1972 and took on responsibility for prosecutions in all courts, other than summary cases such as motoring offences. Consideration was given to the Director of Public Prosecutions prosecuting all cases, but this was rejected on the grounds that 'trifling' cases could be processed through the courts more expeditiously by the police. The police continued to investigate and prosecute up to 80% of criminal cases.
- 3.2 Separating the functions of investigation and prosecution was a central tenet of the Review of Criminal Justice in 2000 which led to the establishment of an independent PPS with the responsibility to take decisions on all prosecutions. The Review did consider whether responsibility for prosecuting 'trivial' cases could remain with the police, principally on the grounds of delay, but felt that this would dilute the principle of independence for little practical gain.
- 3.3 The role and responsibility of the PPS is best described by its Director when he stated that the '*public interest*

*is served by maintaining the independence of the investigative and prosecution processes from each other'.* In many ways, this has served the respective interests of both the PPS and the PSNI over the past decade, particularly in some high profile and sensitive cases. There is also an acceptance by the PPS that certain low level offending would not require a formal prosecution decision and could be dealt with by the police without the need to submit a file to the PPS.

- 3.4 A noticeable trend over the past decade, particularly in England and Wales, has been the increasing levels of co-operation between police and prosecution services in areas such as prosecutor's advice on investigations and the submission of case files. The introduction of co-location, where prosecutors are based in police stations, was based on the timely and effective provision of this pre-prosecution advice. At the same time there has been a wider debate, particularly within policing, around the need to provide a more timely and effective response to local community needs in areas such as anti-social behaviour. This has included the option of giving police more discretion to make more



immediate decisions on a range of what are described as 'low level' offences.

### The transition to devolution

- 3.5 The devolution of policing and justice powers to the Northern Ireland Executive and Assembly has taken place in the context of these wider debates and changes in policing/prosecution functions and responsibilities. It has also been the concluding phase of a period of significant change in Northern Ireland when attitudes, experiences and expectations of the criminal justice system have significantly shifted across the community. The circumstances which determined the responses to issues such as prosecutorial independence in the Review of Criminal Justice, are not necessarily the same as 10 years ago. It is therefore an opportune time, in the context of avoidable delay, to broaden the debate around the workings of the system, particularly in relation to the PSNI/PPS interface.
- 3.6 Inspectors have spoken with the senior management and a cross section of staff in both the PSNI and the PPS as part of this inspection. Both organisations accept the need for change and Inspectors are aware of ongoing discussions at senior level to address the issues of common concern. The PSNI position is that police officers should be given discretion to take a decision on a wider range of offences which are currently sent to the PPS. This is

founded on the view that these earlier interventions can better address the causes of offending. One of the results of widening police discretion is that officers will be freed up from the need to submit detailed files to the PPS. They would therefore be able to spend more time on front-line policing and focusing on the more complex investigations. Some significant legislative and procedural changes such as the expansion of non-court disposals (e.g. Fixed Penalty Notices) are part of a process of dealing with more offences at source whilst minimising the impact on the PPS and the courts.<sup>9</sup>

- 3.7 The position of the PPS to date has been more cautious in respect of police discretion on prosecution decisions. The view, as expressed by the Director, is that '*the time is not right...to make radical changes*' to the PSNI/PPS functions and responsibilities. There is however an acknowledgement that the issue of prosecutorial independence is '*not an immutable principle*' as it is not defined in legislation and there is support to broaden non-court disposals such as Fixed Penalty Notices, whilst also identifying those offences where a decision on prosecution could be taken by the PSNI. A pilot project on allowing solely police prosecution decisions on some offences was taking place at the time of this inspection. There is also a recognition within the PPS that their workload and that of the PSNI could be reduced by implementing a

<sup>9</sup> The PSNI commenced a pilot project on 'discretion' as part of its Speedy Justice programme in March 2010, which was extended to all of C District in May 2010. It allows police officers to use discretion to resolve minor crime to the satisfaction of victims and the community and not to submit the file to the PPS.



more streamlined approach to the content of prosecution files, which are sent to the PPS. Inspectors are supportive of current discussions between both organisations and have identified some key areas for change in the context of avoidable delay.

## Communication

- 3.8 The formal working relationship between the PSNI and the PPS is set out in an agreed protocol. The protocol covers issues such as the circumstances where charging is appropriate, the information required by a prosecutor to make a decision and mechanisms to resolve problems. The issue of concern is that this protocol dates from 2006 and whilst a new version was seen by Inspectors, it has not been signed by the Chief Constable and is not applied in either organisation. Interviews with police staff in particular, indicated a broad awareness of the protocol but limited access or knowledge of its content.<sup>10</sup>
- 3.9 Interviews and focus groups with staff at all grades and responsibilities in both organisations, as well as with other stakeholders were undertaken to better understand the dynamics of this key relationship. There was acceptance, at the time of the fieldwork, that the relationship at senior management level was tense and based on respective 'independence' positions rather than fostering collaboration. This was due to a number of factors – the PSNI for example complained of a lack of feedback on prosecutions/no

prosecution decisions and there was a widely held view among many officers that the PPS were asking for too much information to take a decision. This is described as 'bureaucratic' and a 'needless waste' of resources and applied particularly to minor offences.

- 3.10 The PPS in contrast felt that the PSNI were submitting incomplete and poor quality files to meet their own targets and some prosecutors referred to themselves as being used as an "MOT service" for files. Prosecutors were also frustrated by the PSNI over use of charging, which they linked to the police targets on crime clearance. The PPS considered this over-use of charging as contrary to the agreed joint protocol, though this must be considered in the context of a general lack of knowledge of its content.
- 3.11 Inspectors were informed by senior management in the PSNI and the PPS in May 2010 that the relationship at senior management level had improved and there were recent examples of strategic and operational collaboration. Inspectors observed and were informed of practical co-operation which included networking events and collaborative working in Omagh, Ballymena and Londonderry/Derry. There was also evidence of a developing relationship between Occurrence and Case Management Team Inspectors and PPS prosecutors in areas such as Newtownards. The PSNI Liaison Officers were regarded by many as providing an invaluable service in

<sup>10</sup> The CJI baseline inspection of the PPS, published in 2007 referred to few staff in the PSNI and the PPS as having ready access to the protocol and therefore many were not familiar with the detail.



problem solving and providing information on practical issues such as information technology problems at the interface and dealing with Requests for Further Information.

### Pre-prosecution advice

- 3.12 The position of the PSNI in relation to pre-prosecution advice, including pre-charge, is that it should be extended, in line with current practice in England and Wales. Many in the PSNI commented on the projected benefits of having a prosecutor co-located in the police station. The PPS are more circumspect in that they are reluctant to extend this type of advice as Regional Directors have stated that it is currently under-utilised and they claim to be constrained by resources. There is flexibility however to provide this service where demand is clearly demonstrated. There is therefore no principled opposition to the extension of pre-prosecution advice and both organisations accept that such advice for major investigations is considered a good service. One Liaison Officer in the PSNI did state that its use may have been under-recorded as prosecutorial advice is often ad hoc and therefore not electronically recorded. The position of CJI is in line with its previous recommendation that **pre-prosecution advice should be extended, where demand is demonstrated.**
- 3.13 There is stronger resistance to co-location in the PPS due in part to the

view that it could ‘*affect perceptions of the independence of the PPS from police*’.<sup>11</sup> There is also a view that the roll-out of Causeway has provided an alternative electronic co-location which can aid timely advice and decision making. At the same time, there is some evidence emerging from England and Wales that co-location is not delivering all of the anticipated benefits and that it is being rolled-back in places.

- 3.14 One of the main differences with England and Wales is that the Crown Prosecution Service is part of a wider involvement of the prosecution service in the pre-charge stage of case progression. A statutory charging scheme was first introduced in 2004 which allowed the Crown Prosecution Service to determine whether or not a suspect should be charged with an offence. An independent review of this scheme in 2008 found that it had facilitated progress on improving criminal case management and reducing delays in the courts but that many of the interface problems remained between the two organisations.<sup>12</sup> An out-of-hours charging advice service to all police forces is separately provided via Crown Prosecution Service Direct.
- 3.15 In view of the emerging findings from England and Wales and in recognition of the different approaches to pre-prosecution advice in Northern Ireland, Inspectors do not consider co-location to be an essential part of improving issues at the interface

11 Letter from Director of PPS to Keir Starmer, CPS dated 16 June 2009.

12 The joint thematic review of the new charging arrangements, HMCPSI/HMIC, November 2008.



between both organisations. There will however be an ongoing need for specific staff to work closely together on key issues such as file quality, the work of the Occurrence and Case Management Teams and serious/complex investigations and this should entail more collaborative working arrangements.

### Dealing with 'minor' offences

3.16 There is a generally understood maxim that the justice system should differentiate between different types of offences/offending and that the investigation/prosecution processes should be proportionate in that regard. This is currently reflected in the trend towards diversion outcomes for young offenders in particular and the governmental preferences for more effective out of court disposals for lower level offences. This is taking the form of cautions, informed warnings and Fixed Penalty Notices as opposed to sentences at court. Aligned with the notion of out of court disposals is the view that certain low level offending should be dealt with at source and therefore may not involve sending a file to the PPS or indeed having any PPS input in terms of advice or decision.

3.17 The position of the PSNI is that *'in the public interest for swift and efficient decisions as to prosecutions to be taken... justice is not served by adding a layer of bureaucratic decision making and delay to such cases'*. It goes on to state that *'public confidence is weakened by excessive bureaucracy or*

*delays in obvious or trivial cases'*.<sup>13</sup>

While there are strong arguments in favour of administrating justice at or near the point of offending, particularly for relatively minor offences (which are often anti-social in nature), the PPS position is that this must be balanced against the rights of an offender to opt for an alternative disposal (i.e. PPS decision and prosecution in the courts). The PPS state that any disposals decisions made by the police must be seen as transparent, accountable and subject to external scrutiny.

3.18 Data provided to Inspectors by the PPS show that its decisions differ in respect of 40% of police recommendations for caution, 57% in respect of informed warnings, and 71% of police recommendations for youth conferencing. A significant proportion did however receive an alternative form of diversion (31% in respect of police recommendations for caution and 49% of police recommendations for informed warning).

3.19 CJI is supportive of any actions which provide a more timely, effective and efficient service with tangible outcomes in areas such as better offender behaviour and reduced recidivism. There are clear benefits to both the PSNI and the PPS in streamlining existing processes and re-directing resources to areas of most need. Inspectors therefore support the recent initiatives of both organisations to re-assess existing working arrangements and to determine how 'minor offences' can

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<sup>13</sup> PSNI letter from Criminal Justice Dept to PPS dated 27 July 2009.



be expedited. This should not necessarily mean the exclusion of the PPS, as a more timely decision from a prosecutor has clear benefits for both organisations.

### No prosecution files

3.20 One of the biggest frustrations expressed by police officers to Inspectors was the requirement to produce detailed electronic files in cases that were ‘no prosecution’ decisions by the PPS. The comment of a senior officer of “*excessive bureaucracy...in obvious...cases*” refers at least in part to the amount of effort taken to prepare files which are deemed ‘no prosecution’ by police and subsequently confirmed by the PPS. Some of this frustration is also shared by the PPS in that they are also required to read these files and assess the evidence before determining that the case will not proceed as a prosecution to the courts. The PPS ‘no prosecution’ cases do not count towards the performance standards for avoidable delay, though it is acknowledged by all that the impact on the standards is substantial in terms of dedicated workload and resources.

3.21 However ‘no prosecution’ decisions can be very controversial in that they often cause hurt and disappointment to victims and in some cases whole communities and can involve serious allegations of sectarian, race or sexual crimes. It is therefore crucial that all of the available evidence should be critically examined prior to any decision on prosecution. The

issue is firstly whether this decision should be taken by the police or by the PPS, and secondly what level of information (evidence) is required to make the decision.

3.22 Whilst this inspection is primarily focused on how the police and the PPS deal with PSNI ‘no prosecution’ recommendations, Inspectors are acutely aware of the sensitivities around the higher volume PPS ‘no prosecution’ decisions, particularly where the police had recommended a prosecution. This issue was covered in some detail in the CJI baseline inspection and follow-up inspection of the PPS. That original inspection report recommended that *‘directing lawyers should explain fully their reasoning...in cases where they direct no prosecution, or where their decision is different from that recommended by the investigator’*. PPS prosecutors claim to often speak with the police officer in charge of a case to discuss issues and explain their reasoning. However Inspectors previously reported that no record of these conversations was endorsed on either the paper file or the Case Management System.<sup>14</sup>

3.23 The PPS view is that prosecutors are best able to make these decisions as they are the professionals in terms of reviewing the pivotal evidence in a case. They would also point out the PPS decision differs to the police recommendation in many types of offences including no prosecutions. Data provided by the PPS to Inspectors show that for 2008-09, the PPS differed in respect of 26% of police recommendations. This

<sup>14</sup> The PPS NI, A follow-up inspection of the 2007 baseline inspection report recommendations, CJI, June 2009.



included 6% (635) of the 10,504 police recommendations for 'no prosecution'. While this is not a large percentage relative to other PPS decisions, it should be noted that 32 persons received custodial sentences with respect to the police recommendations for 'no prosecution'.

- 3.24 The potential benefits of reducing the workload for 'no prosecution' cases in general is substantial in that the PPS took 18,310 'no prosecution' decisions in 2008-09 which represented 28% of all PPS decisions. Any attempt to streamline the processing of these case files and/or transfer some decisions to the police would have considerable implications for resources, most particularly within the PPS. Any benefits of a streamlined approach/transfer of decision making for the PSNI would need to be balanced against responsibilities for decision makers (e.g. police Inspectors<sup>15</sup>) and the need to take on existing PPS commitments such as communication with victims.
- 3.25 There is agreement in the PSNI and the PPS that certain 'no prosecution' cases should continue to be sent to the PPS for a decision on prosecution. This includes what the PSNI has termed as 'serious and serious harm'. All of these cases will continue to be submitted to the PPS regardless of the initial police recommendation. The cases of contention are those which sit between serious and those low level

discretionary disposals which are currently dealt with by the police.

- 3.26 The task of determining what cases should not be sent to the PPS has started with the initiation of a pilot project on new arrangements for dealing with 'no prosecution' cases. This involves the police taking no prosecution decisions in certain types of cases without sending a file to the PPS. The type of eligible cases is restricted as it does not include any serious or high profile offences with 18 categories of offence specifically excluded though this means that about 4,000 files per annum would in theory meet the criteria.<sup>16</sup>
- 3.27 The early feedback on this pilot project is that the number of cases deemed suitable for a police decision appears to be small in number, though this may represent some caution by the PSNI at this stage.
- 3.28 The broader issue for Inspectors is whether the PSNI is best equipped to make a decision on up to 4,000 'no prosecution' cases per annum and then whether that decision making process can deliver the anticipated benefits for the police. The view of Inspectors at this stage is that the case for this type of change is not proven in that this responsibility will entail additional workload for the police – in essence the PSNI will be required to have a similar test for prosecution based on the available evidence as the PPS currently apply and there will also be a need to have

15 The PSNI has stated that a decision not to submit a police investigation file should be approved by a person holding the rank of inspector or their nominated deputy – which is sergeant rank. An audit trail must be maintained.

16 It was calculated that for 2008-09, there were 7,072 files with no prosecution as the only recommendation by PSNI and that if the 18 categories were excluded, this would have meant that 4,000 files would not have been submitted.



direct contact with victims and witnesses – a full audit trail will also be required to meet external assurance requirements. The projected benefits – of taking a quicker decision based on a reduced file format – could, and should be, achievable under the current arrangements.

**The terms of agreement should form the basis of a new joint protocol which should be disseminated to all relevant staff.**

3.29 Inspectors are assured that senior management in the PSNI and the PPS have discussed these interface issues and that varying levels of progress has been made in areas such as the recently established pilot project on ‘no prosecution’ decisions by the PSNI. Tackling the more fundamental challenges of this relationship is a medium term project<sup>17</sup>. It is recommended that **the PSNI and the PPS should develop a shared vision on future co-operation which should seek agreement on (though not exclusively):**

- **the scope and resources for pre-charge advice, including areas of integrative working (e.g. prosecutors working within Occurrence and Case Management Teams);**
- **categorisation of offence types/offenders deemed eligible for the PSNI decision on ‘no prosecution’ bearing in mind the findings of the pilot project; and**
- **a bespoke file format, based on minimum standards, for case files which are sent to the PPS.**

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17 A discussion with the Chief Constable indicated a one year time period to seek agreement on key interface issues with the PPS.

Section



# Operational delivery



## CHAPTER 4:

# Accused informed/charged to file received by the PPS



4.1 Where a crime is detected, an accused may be arrested and can either be charged or informed that a report will be prepared with a view to prosecution. The justice clock, in terms of the performance standards, starts at the point of charge or when the accused is informed that they will be reported. There are however some considerations to be made by the police prior to charge or report which may impact on the subsequent progression of a case.

### Police bail

4.2 The option for the police to give bail to an accused so that further investigations can take place prior to charging or report is contained in legislation.<sup>18</sup> While the Police and Criminal Evidence Act (PACE) now sets no maximum time limit, the PSNI Service Procedure and intranet training material stress that excessive periods are likely to be challenged and that Custody Sergeants and Investigating Officers should be able to justify the bail period.

4.3 The reasons for bail longer than the previous 28 day period include: multiple lines of enquiry to be concluded; awaiting forensic results; or a key witness is unavailable. It is stressed that while pre-charge bail is an investigative tool to allow enquiries to be made it is an opportunity for officers to complete the prosecution file.<sup>19</sup> This is similar to the practice in England and Wales and has many benefits in terms of more robust decisions. It can however be problematic if the bail period is used to prolong any decision or re-bail – this was raised by CJI in a separate inspection of police bail.<sup>20</sup>

4.4 It is the view of the PPS that the granting by police of pre-charge bail is currently under-utilised. However a number of PSNI officers and managers told Inspectors that police bail was well used in their Districts and that its use was encouraged by management. Bail data provided to Inspectors by the PSNI show that in total 27% of defendants who were arrested had been released on bail.

18 Article 48 of PACE (NI) Order 1989 was amended in the 2007 and 2008 Criminal Justice (NI) Orders to give police powers to attach conditions to pre and post charge bail.

19 PSNI Service Procedure 28/2009 – Police Bail. Issued 1 September 2009

20 *Handling Volume Crime and the Use of Police Bail*, CJI, December 2006.



The use of police bail varies significantly across Districts with the lowest recorded levels in Belfast and eastern Districts and the highest in the three western and northern Districts.

- 4.5 While the Legal Services Commission has referred to the problem of offenders re-offending whilst on bail, which then reduces confidence in the justice system, this is likely to be more of a problem for those on long-term bail and where conditions may not have been imposed. The benefits in terms of better investigations balanced with appropriate bail conditions offers improved timeliness at the post charge/report stages, and may correlate with the more timely progression of cases in areas where bail is more fully utilised. Inspectors are recommending that **the PSNI should assess the varying utilisation of police bail across Districts with a view to implementing best practice and optimising the opportunity to have case ready files for court.**

### File preparation processes

- 4.6 The responsibility of preparing timely and quality files with a view to prosecution is a critical function of the police. The transfer of files from the PSNI to the PPS links the two fundamental roles of a criminal justice system: investigation and prosecution. The prosecution process is not however one of the core priorities for the PSNI, as evidenced by internal timeliness targets which end at point of file submission, and a lack of quality assurance for prosecution files. The broader

policing priorities in terms of clearance rates may also focus resources on the early stages of case progression rather than the actual prosecution and court-based outcomes.

- 4.7 The optimum business process is one that links an effective police investigation with the needs of a prosecutor and which is founded on the principles of quality, timely and proportionate justice. The PSNI have produced a strategic intent based on 'quality and timely evidence right first time' – in effect getting it right first time will ensure a quality and timely file. A related principle of the PSNI is proportionate justice, where different types of offences are dealt with by the most effective and efficient means. This translates into the need for an expanded use of police disposal options as well as a more streamlined approach to different types of case files submitted to the PPS.
- 4.8 The business model for the production of quality, timely and proportionate files has been in a constant state of flux in many police and prosecution jurisdictions and can be related to the institutional re-organisation of the investigation and prosecution functions. At one end of the spectrum is the integrated model where one organisation has ownership of the overall process. This was the case for most summary offence files in Northern Ireland up until the establishment of the PPS when the police prepared and prosecuted their own cases. The other end of the spectrum is where all decisions on prosecution, including



most low level offences, are taken by an independent authority. This requires the transfer of all relevant files to the prosecutor. Northern Ireland, since the Criminal Justice Review of 2000, has moved towards the latter model.

- 4.9 The transition towards the separate investigation/prosecution model has coincided with significant organisational and cultural change within the police. The PSNI have moved away from specialised file preparation units, responsible for preparing, quality assuring and sending files to the prosecutor, towards greater individual officer responsibility. The latter focuses attention on the up-skilling of all officers in terms of investigation/file preparation with specialist support arrangements in terms of technology and electronic submission. This does depend on timely and effective supervision as a means of achieving quality assurance.
- 4.10 Inspectors examined the process of file preparation in some detail as part of the work on avoidable delay and also as a key component of the inspection of the interface between the PSNI and the PPS. The process is that files are prepared by the Investigating Officer, checked by a supervisor and then submitted to an Occurrence and Case Management Team for preparation and submission to the PPS. The actual practice across Districts is not uniform in that different levels of supervision were evident to Inspectors and some Occurrence and Case Management Teams have filled the void by taking

on increasing responsibility for quality assurance of files. This includes checking the quality of evidence as well as the format of the overall file. While the latter approach is not necessarily the corporate approach, as outlined by senior management, it does correspond to those areas which have achieved relatively better quality and timely files.

- 4.11 The future development of the file preparation process, with quality assurance at its centre, will require consideration of the supervision arrangements. The strategic intent of senior management in moving officers from desk-based roles to frontline policing will require consideration of the impact on file quality and timeliness as any diminution in quality assurance within Occurrence and Case Management Teams will either require a new dedicated resource (e.g. specialist civilian staff) or enhanced supervision by Sergeants and Inspectors. The view expressed by supervising Sergeants to Inspectors was that competing demands would make any enhancement of this role problematic.

### File timeliness

- 4.12 The issue of file timeliness is a corporate priority for the PSNI as evidenced by the Northern Ireland Policing Board targets and the statutory six month time limit for certain summary offences to have a prosecution decision. But the PSNI is having difficulties in achieving the Policing Board timeliness targets as covered in Chapter 2.



4.13 One of the symptoms of late file preparation is the need for the PSNI to request an extension to the six month statutory time limit for certain summary offences. That extension, known as a Form 1 request to the PPS, entails the granting of additional time to the police and prosecution in taking a decision on prosecution. Data supplied to Inspectors show that 872 cases needed a Form 1 application in the 12-month period up to the end of August 2009. The PPS accepted 20% of these applications with the remainder either rejected (36%) or deemed null<sup>21</sup> by the PPS (45%). The PPS expressed concern that a large proportion (49%) were late (i.e. application made less than 14 days before the statute barred date with the largest number in Foyle (44 cases). An additional 38 cases (5%) had an application made after the statute barred date, which included five in North Belfast and four each in Coleraine and East Belfast. (PPS Form 1 applications are covered in Chapter 5).

4.14 The implication of not making a Form 1 application or leaving it too late is serious in that the case is unable to proceed. A total of 467 cases, involving 547 persons, became statute barred in a one year period up until end of August 2009 due to delays in file submission by the PSNI/caution not administered. For 402 of these cases, the file was submitted to the PPS after the earliest statute barred date with no request for a Form 1 extension. It is not known how many of these cases involved a direct

victim. The highest number of cases was recorded in South Belfast (81) and Lisburn (57) while Ballymena had just one case in this period. The work of the PPS in dealing with Form 1 applications including cases approaching their statute barred date is covered in Chapter 5.

### Measuring the quality of police files

4.15 The PSNI do not have a specific measurement or target for file quality. Instead core activities such as the investigation of a crime scene, the gathering and presentation of evidence and detection work are all seen as contributing to a good prosecution file. Whilst this is not disputed, the actual production of that file was seen as variable across the PSNI and there was an acceptance among many officers, including those at senior level that the strategy of 'getting it right first time' has 'a way to go'.

4.16 As there is no specific measurement of file quality in the PSNI, CJI Inspectors have relied on the assessments of the PPS, once a file is received, and the many views expressed by the PSNI, the PPS and other criminal justice staff during the course of this inspection. The issue was identified as one of the key areas for improvement in the previous CJI report with three specific recommendations.

4.17 The PSNI/PPS protocol, in place at the time of the last inspection, does outline the requirements of a good

21 The vast majority of 'null' Form 1 entries occur where the prosecutor has made the prosecutorial decision following the Form 1 request, *prior* to the statute barred date i.e. the Form 1 has not been required.



file. In practice, this document is not widely used within the PSNI and is regarded as too generalist for specific types of case files. At the same time, the priority of the PSNI is the achievement of its Policing Board targets, which include getting a file to the PPS within agreed timescales and where relevant, in advance of a statute barred date. There is therefore little organisational priority for any additional time required to address file deficiencies.

- 4.18 The only systematic measurement of file quality is undertaken by the PPS on the basis of what its prosecutors require to make a decision on prosecution. Files where more information is required to make a decision generate a Request for Further Information which is then sent to the PSNI. Published data by the PPS in its Annual Report for 2008-09 show that there were a total of 15,439 Requests for Further Information to the PSNI which represents a 29% RFI to file received proportion.<sup>22</sup> The PPS provide a further breakdown of the types of requests showing that 3,279 related to full file requests, 944 were related to medical and forensic reports and the remainder related to evidential and incomplete files.
- 4.19 A separate detailed analysis of Requests for Further Information by the PSNI, compiled by a PPS Liaison Officer, showed that for the period 1 April to 4 October 2009, there were 35,108 files submitted to the PPS of which there were 8,798 Requests for Further Information – a 25% RFI to

file rate. That percentage varied from a high of 42% in Belfast's 'A' District to 15% in 'E' and 'F' Districts. An earlier report of file preparation and submission, commissioned by the PSNI found a 27% RFI to file rate for the period from 1 July 2007 to 30 April 2008. PSNI senior management confirmed to Inspectors that Request for Further Information rates rose to over 30% in 2008 and that the proportion was much higher for indictable cases (PPS data showed a RFI to file rate of 64% for indictable cases in 2008-09).

- 4.20 The big variation in Requests for Further Information as a proportion of overall cases demonstrates the scope for improvement in large volume areas such as Belfast and there is a clear onus on the PSNI to further identify and implement best practice. There is also an onus on both the PSNI and the PPS to better understand the reasons behind the need for Requests for Further Information. For example, the issue of full file requests counting as a Request for Further Information was raised by a number of police officers. Inspectors understand that there is a draft agreement between both organisations that full file requests will be recorded separately in the future. There is also a need to address information requests which are outside the direct control of the PSNI such as medical and forensic reports – though the provision of the latter forms part of a Service Level Agreement between the PSNI and Forensic Science Northern Ireland (FSNI).

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22 Some files will have more than one Request for Further Information.



4.21 The PSNI data show that the average number of days for the PSNI to complete Requests for Further Information was 50 days which ranged from a high of 77 days in 'C' District to 23 days in 'H' District – the target is 21 days. There were also significant variations within PSNI Districts – 'F' District as one of the best performing areas had a Request for Further Information to file percentage range of 9% in Strabane to 19% in Omagh and Fermanagh. The average number of days to complete a Request for Further Information in 'F' District was more clustered within the range of 23-33 days meaning that about 50% of Requests for Further Information were responded to within the 21 day target. Just over 20% of Requests for Further Information were responded to within 21 days in 'A', 'B' and 'C' Districts.

### Factors affecting file quality

4.22 Inspectors visited a number of PSNI Districts to help determine the factors behind varying performance on timeliness and quality. Those areas where performance is better (e.g. 'F' District) claimed that their Occurrence and Case Management Teams were taking some responsibility for the quality assurance of files (i.e. dip sampling before submission to the PPS). There was also reference made to good working relationships with the local PPS. Other factors which may be impacting on file quality include the experience of individual police officers and supervisors, workload and competing demands on officers, the nature of offences and the

experience and working practices of particular prosecutors. All of these variables may be exerting some impact over the timeliness and quality of files.

4.23 A considerable amount of work has been undertaken by the PSNI and the PPS to identify the factors associated with poor quality files. Data published by the PPS show that the need for further statements/evidence constitutes the largest proportion of Requests for Further Information requests (43% when excluding full file requests). This is followed by further enquiries/investigation (30%), interview summaries/transcripts (15%) and medical/forensic reports (8%). A small proportion of other requests are grouped together. Due to the evidential basis of many of these requests, the PPS in conjunction with the PSNI, have looked at a sample of these requests to determine whether they could be justified. The overall verdict was that the vast majority of requests from the PPS were justified on the basis of the information contained in the files.

4.24 There is however an important distinction between those Requests for Further Information which are required to take a decision and those which are needed at the post-decision stage in order to take a prosecution. Inspectors were told that both organisations are looking at this issue, though no data was made available to CJI at the time of the fieldwork. The distinction is important in that pre-decision requests, by their very nature, should only refer to the pivotal evidence required to make a decision. This



may be less than that needed to take a prosecution in a contested case. This issue is considered in more detail in Chapter 5.

- 4.25 A good example of the issue is the need for medical evidence. Inspectors were told that the wait for medical evidence in relation to patients seen in hospitals can be lengthy. This is due to factors such as competing priorities in hospitals, the time that it takes to do a full medical report and the practice of many doctors moving between hospitals. The consequences can be severe in terms of timeliness as police files are incomplete, prosecutors are unable to take a decision or, courts are required to adjourn hearings until all the evidence is received. In response, the Delay Action Team has developed a proposal that the medical notes from an examination could be used instead of a full medical report and that these notes could be made available at the earliest stage (i.e. by the police in its file preparation). The feedback is generally positive in that prosecutors are now using medical notes and the courts as well as the defence, have generally accepted the new arrangements. There are however, some concerns that some notes can also be very slow and others are illegible meaning that a report is still required.
- 4.26 The issue which is not disputed is that the overall timeliness of cases through the criminal justice system is clearly related to the quality of police files and that this quality varies across the police Districts. There is also considerable acceptance that the current Policing Board timeliness

targets are counter-productive in terms of quality as they encourage incomplete files to be submitted to meet internal targets. The setting of these targets by the Policing Board, requires a greater degree of co-operation/interface from the justice organisations.

- 4.27 The issue of file quality remains one of the top challenges for the PSNI with major implications for other justice organisations. There is therefore a need to revisit the specific recommendations of the last CJI report and urge greater action in a number of areas. It is recommended that:

- **quality assurance checks need to be systematic and clearly understood and implemented at agreed points** (i.e. by Investigating Officers, supervising Sergeants within Occurrence and Case Management Teams). Districts displaying best practice should be considered in this regard;
- once agreed, **the points of quality assurance checks need to be adequately resourced with appropriately skilled staff and adequate priority accorded to this role;**
- **enhanced linkages should be developed between police Districts and training departments within the PSNI** to address any gaps. Inspectors were told that whilst training for new recruits on file preparation has improved in recent years, there are some concerns for supervisors and officers with more years of service. **Greater integration with the IT training on the**



**NICHE case management system should be continued;**<sup>23</sup>

- **the PSNI should continue to engage with the PPS on training needs and their provision; and**
- **the internal PSNI reward and sanctions systems should incorporate a greater appreciation of performance with regard to file quality.**

### Information technology

4.28 The introduction of new and enhanced electronic case management systems offers the potential to streamline existing processes and bridge the interface between justice organisations. The Causeway IT project, which links and enhances existing IT systems in the main criminal justice organisations, had the reduction of delay as one of its key outcomes. The next stage of its rollout became operational at the time of this fieldwork. Many of the interviewees in the PSNI and the PPS stated that this stage of Causeway was critical in that it linked the PSNI and the PPS case management systems and enabled a common data set with real time data (a recommendation of the original CJI inspection).

4.29 The roll-out of new IT systems can often be challenging, at least in the short term, in terms of efficient and effective processes. Whilst many PSNI officers considered the Niche case management system to be a good intelligence and management

information system, it was stated that its complexity and newness can inhibit the preparation and quality checking of files. Response Sergeants and Constables interviewed by Inspectors preferred the existing interim case preparation system. Their view of NICHE was that it is 'far too complex' and that it has too many steps in preparing and sending a file to the PPS. There was a view that expertise in the use of the system would be better invested in a dedicated skilled resource (e.g. within Occurrence and Case Management Teams) rather than across the broader police service. Inspectors would advise that ***the PSNI should review its NICHE system with a view to improving ease of use for frontline officers.***

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23 The Police College has provided training on Niche since January 2009. It was previously provided as separate training.

## CHAPTER 5:

# File received by PPS to decision/first appearance in Court



5.1 The vast majority of PSNI files are submitted to the PPS via the Causeway IT project and registered on the PPS Case Management System.<sup>24</sup> A total of 54,767 were sent by the police in 2008-09 which was more than 2,000 on the previous year.<sup>25</sup> The provisional figure for 2009-10 was 61,254 files.

### File allocation

5.2 After registration, files are allocated to prosecutors for a decision on prosecution. Indictable case files are allocated manually by regional directors. All other files are placed in 'the unallocated summary case queue' and are either selected by prosecutors or referred to prosecutors due to the urgent nature of the file. When the supply of files exceeds the capacity of prosecutors, backlogs will develop which means that some files can be left unallocated in this queue for months. This is effectively 'dead' time for case progression. A significant finding from a commissioned management consultancy investigation into delay a few years ago was that files spent 97% of their time in a state of waiting

(i.e. there is only active consideration of each file in under 3% of the time that they are being processed by the PPS). A similar result was found in a Causeway Programme report on delay across the justice system which stated that just 5% of the elapsed time in a case is spent on professional work.

5.3 Data provided to CJI by the PPS show that the size of the non-allocated work queue has increased over the past year with the biggest increase evident in Belfast and Lisburn regions. One manager confirmed that some files are sitting in the queue for more than three months. The file review conducted by CJI found one file that had rested in the queue for 15.5 weeks – the average was 7.5 weeks. Another file had reached the stage of becoming statute barred by the time it was allocated (in queue for 6 days with a Form 1 request) and the prosecutor was unable to obtain the additional information to make a decision.

5.4 The number of Form 1 requests made by the police over a 12-month period (September 2008-August

24 Certain paper files in complex cases are still sent by the PSNI.

25 Other organisations sending files to the PPS include the Driver Vehicle Agency, Northern Ireland Environment Agency, Social Security Agency and HM Revenue and Customs.



2009) was 872. During the same time period, the PPS made Form 1 requests in respect of 3,301 defendants/suspects. This was made necessary by the number of cases which were approaching the statute barred date *after* their submission to the PPS (i.e. delays before a decision is taken by a prosecutor).

- 5.5 Managing the work queue, including planning for any spikes in file submissions (e.g. due to specific crime initiatives by the police) and working within internal resource constraints, remains a major challenge for the PPS. The impact of administrative and avoidable delay at this stage is that cases will take longer to come to court. The PPS told Inspectors that various options are under consideration including the provision of temporary prosecutors who could be employed to take decisions rather than do court based prosecutions.<sup>26</sup> There is also scope to obtain increased productivity through internal changes to existing structures and processes. The issue of developing a more flexible, multi-skilled workforce including the optimum deployment of administrative managers was a recommendation of the CJI baseline inspection of PPS in 2007.<sup>27</sup> A follow-up inspection<sup>28</sup> last year reported progress in developing a more flexible workforce but only limited progress on organisational efficiency including the compartmentalised approach to work. The report concluded that these organisational issues were contributing to avoidable delay.

## Case management

- 5.6 The CJI baseline inspection of the PPS in 2007 referred to ‘a *duplication of effort, a lack of case ownership and convoluted workflows*’ which contributed to avoidable delay within and across the criminal justice system. The report made a number of recommendations which had an avoidable delay dimension. For example, it was recommended that ‘*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)*’. The follow-up review in 2009 found that only ‘*some progress has been made in relation to the development of case management, effective organisational structures and improved performance management.*’ It was accepted however by Inspectors that some of this improvement was dependent on the roll-out of the next phase of the Causeway IT system, which had not occurred at the time of that inspection.
- 5.7 The anticipated benefits of Causeway to the PPS were expected to be:
- efficiency gains due to the automation of some current processes;
  - a reduction in tasks for PPS administrative staff, offering redeployment opportunities;
  - improvements in the timeliness of some processes; and
  - more accurately recorded information following reductions in

26 The PPS advertised for temporary (51 weeks) public prosecutors in February 2010.

27 A baseline inspection of the Public Prosecution Service for Northern Ireland, CJI, July 2007

28 The PPS, A follow-up inspection of the 2007 baseline inspection report recommendations, CJI, June 2009.



the need for each agency to key in the same data.

CJI will undertake a full inspection of Causeway in 2010 which will examine the realisation of projected benefits including the reduction of avoidable delay.

- 5.8 Expanding the scope and numbers of non-court disposals such as Fixed Penalty Notices and implementing a more streamlined approach to certain types of files should deliver significant savings to the PPS which in turn can be directed towards dealing with delays and focusing on more complex and serious cases. An internal PPS paper prepared in response to a PSNI proposal to widen its scope on the disposal of cases (e.g. increased use of Fixed Penalties Notices, police doing more cautions and warnings) and to take 'no prosecution' decisions estimated that 'if all changes advocated by police were made there would be a reduction of about 33%' meaning a reduction of 22 prosecutor posts and 42 administration posts.

### Decision making

- 5.9 In the majority of cases, the PSNI will report a suspect which will entail a summons to attend court if a prosecution is directed. A smaller proportion of cases are charged before the PPS makes a decision on prosecution. In the most serious cases, the defendant can be held in custody or bailed with conditions. If the PPS prosecutor disagrees with the police decision to charge, then the proceedings are withdrawn.

- 5.10 The prosecutor is bound by the PPS Code for Prosecutors in terms of their decision making. That decision making is dependent on the quality of the file submitted by the police as covered in previous chapters of this report. A prosecutor is also constrained by the fact that more than one Request for Further Information is sometimes required and that the average time for the police to respond to each request is 50 days (84 days at the time of the last inspection in 2007). This also adds to the time to read and re-read the file and become familiar with its contents (at least in complex cases). Most of this delay is avoidable and can account for a large proportion of the processing time on a case at the pre-court stages. The Delay Action Team performance update report shows the PPS times for decision making if Request for Further Information time was excluded. The biggest difference relates to Crown Court pre-committal defendants which would decrease from 174 to 70 days. The difference is less in the magistrates' courts where adult charge cases would be nine days less and summons would be four days less. Youth court charge defendants would decrease to 25 days (three days less) and summons would be 21 days (six days less).

- 5.11 Reducing the need for a Request for Further Information is the responsibility of both the PSNI and the PPS. The PPS for example, has an onus to ensure that the process for requesting and dealing with Requests for Further Information is effective and consistently applied across the



PPS. While there will always be a variation between prosecutors - and available evidence of request reviews points towards their justification and necessity - there is still a responsibility on the PPS to ensure consistency of approach and application of best practice. Inspectors were told of and observed good working relationships in areas such as Omagh which were also the areas with the least numbers of requests. While this may be due to a range of factors, police officers and prosecutors in Omagh referred to a good understanding of each other's requirements and limitations and a joint approach to dealing with the challenges.

- 5.12 Inspectors are encouraged by the increased analysis of the numbers and trends (e.g. by District) relating to Requests for Further Information. The gathering of much of this information and its analysis has been undertaken by police staff in the PPS Liaison Offices. The PPS have also conducted internal reviews of a sample of requests to assess their necessity and this information is now available to both organisations. Inspectors would now wish to see a strengthening of joint efforts in identifying the specific causes of RFIs. It is recommended that **the PSNI and the PPS should utilise Request for Further Information data to identify the specific causes of poor quality files and implement a joint action plan.**

## Case progression

- 5.13 The PPS has aligned its internal case progression targets with those of the Criminal Justice Performance Standards (see Graph 7 in Chapter 2 for performance data). Performance on Crown Court cases is shown in two separate stages within the PPS: file received to prosecution decision issued (104 days in 2009-10) and PPS decision to date of committal (73 days in 2009-10). The figures show that the time to take a decision has increased while the period from decision to committal has changed little. The length of time to take a decision is reflective of the complexity of many of these cases and is also linked to the need to obtain additional information from the PSNI in the vast majority of these files. There should however be more scope to reduce the period from decision to committal.
- 5.14 The period from a PPS decision to the start of Crown Court hearing involves committal and arraignment proceedings and had an average of 186 days in 2009-10. This is a reduction on the previous two years. Proposals to abolish committal proceedings and for cases to go directly to the Crown Court has been discussed since well before the last inspection. There are concerns, particularly within the judiciary, that the Crown Court could in effect become a remand court i.e. the delays at magistrates' court transferring to the Crown Court, but with the added costs of the Crown Court. It is therefore an issue which needs to be resolved in the context of reducing avoidable delay.



5.15 Magistrates' court cases are progressed either by charge or instead by report/summons of which the latter constitutes the largest proportion of files sent to the PPS. The performance data (in Chapter 2) show that decisions on charge cases are taken much quicker than reported cases, and PPS decision to disposal times are also significantly quicker for charge cases. Youth defendants processed by charge rather than report/summons are also much quicker for a PPS decision and from that decision to disposal in the courts.

5.16 The extent of the differences in the PPS processing times for charge and reported cases, as well as adult and youth defendants, does raise some issues regarding pre-court processes and practices. One of the most noticeable differences with reported cases is the requirement for the PPS to produce and issue a summons to a defendant to attend court. That summons can now be served either in person by the police or directly from the PPS by post. The Magistrates' Courts Rules now permit the postal service of all summonses.

### Use of summonses

5.17 The previous CJI inspection found that the summons process was too open-ended and suffered from a lack of ownership with the PPS or other justice organisations reluctant to include the time that it takes to deal with summonses in their own performance figures. Dealing with

summonses requires the input of various organisations - PSNI information on defendants and the service of summons; the signing of summons by lay magistrates; the availability of court dates by the NICTS. The interface of these organisational inputs can impact on the overall timeliness of the process, particularly when no one justice organisation includes this time in their internal targets. Improving performance will therefore require a collaborate approach by the justice organisations.

5.18 The Delay Action Team has looked at the process of summons cases in some detail since the previous CJI inspection, though changes have either been recent or are awaiting new legislation. For example, a decision has recently been taken to reduce the time from issue of a postal summons to first appearance in court by two weeks. This means that the target is now four weeks (28 days) for a postal summons – it remains eight weeks (56 days) for a personal summons. The most recent performance data for this stage of a reported case show that it took on average 96 days from PPS decision to first appearance for adult reported cases, and 97 days for youth defendants. The challenge is therefore considerable.

5.19 One area of the summons process where an immediate reduction in avoidable delay could be achieved would be a provision to allow the PPS to commence summons proceedings on their own authority



without having to seek permission from a lay magistrate. This was recommended by CJI in 2006 and accepted as part of the delay strategy. Progress however has been slow<sup>29</sup> – a consultation document was issued by the NICTS in March 2010, with the intention to make a change through primary legislation at the earliest opportunity. It will lead to a reduction in avoidable delay, most likely in areas outside Belfast where bundles of summonses are generally signed on a weekly basis at a court house – it is done on a daily basis in Belfast due to the volume involved. There will also be a saving for unserved summonses which must be re-dated and brought back to a lay magistrate to be re-issued. The savings to the PPS are estimated at £10,000 per annum on expenses and an additional saving in staff not having to attend courthouses to have summonses signed.<sup>30</sup>

5.20 The PPS has supported the expansion of the postal service of summonses as this is seen to be more efficient and timely and could potentially save 28 days (based on the different target times). A secondary benefit from a PPS perspective is that as the return date for a postal summons is now four weeks less than a personal summons – where service proves ineffective, this will be apparent four weeks quicker for a postal summons than it would otherwise have been if the summons had been served personally. It is also estimated by the PSNI that the annual resource cost of

serving summonses is about £2.4 million. At the time of the fieldwork, most summonses were served by the police, though summonses for a range of less serious offences were served by post. Data provided by the PPS in its annual report show that a total of 36,183 summonses were issued in 2008-09 of which 14,385 (40%) were served by post. The PPS have found that the success rate for summonses served by post is around 80%, which is broadly similar to the rate for summonses served personally.

5.21 The NICTS published a discussion paper in May 2009 which set out proposals to increase the use of postal service for summonses. The results of the consultation allowed for the greater use of postal summonses. The rules to extend the use of postal service by the PPS came into effect in September 2009 and have been implemented by the PPS since February 2010. It does however require the defendant to acknowledge receipt and can be counter-productive if repeat postal service/personal service is subsequently required. Inspectors support such efforts to reduce administrative delay in the summons process, but advise ongoing monitoring of performance to ensure the quality of the service and ensure that defendants and witnesses have enough time to prepare for attendance in court. Otherwise the problems may be transferred to the court stages in the form of adjournments for non-attendance.

29 A significant part of the delay has been due to the need to find a suitable legislative vehicle.

30 *Consultation Document: Proposal to allow the PPS to issue summonses*, NICTS, March 2010.



5.22 One of the findings from the review of the court processes including the reasons for adjournments is that many summons cases are not ready to proceed at first appearance in court. This is happening despite the considerable lapse of time between the PPS decision and first appearance (an average of 84 days for youth defendants). It is the view of Inspectors that this period could be better used by the prosecution team (PSNI and PPS) to ensure readiness for the first court appearance (i.e. no application for an adjournment by the PPS). This should include the resolution of any post PPS decision requests for information from the PSNI as well as improved preparation by prosecutors. It could also include a review of witness contact details should a contest be required.

### Early First Hearing

5.23 The Early First Hearing initiative was an attempt to identify cases which can be brought to court early with a timely disposal. It commenced as a pilot project in Ballymena and was then rolled-out in the Northern PPS region. The initial responsibility was on the police to identify and prepare appropriate cases before sending the file to the PPS who would then make a timely decision. The objective was that cases could be dealt with quickly at court, preferably through an early plea. The recommended times were: police to prepare and present the file to the PPS within 14 days of charge, the PPS to make a decision within seven days and to present papers for the defence 24-hours in advance of the first hearing. Charging rather than the use of report/summons was

considered appropriate for these cases.

5.24 The initial findings from Ballymena were positive and there was evidence of reduced delays. A more comprehensive evaluation of the rolled-out initiative in the Northern PPS region was completed at the end of 2009. Inspectors were told that the overall finding of this report, which was commissioned by the Delay Action Team, was that the initiative had delivered less than was originally anticipated and that there was little benefit in continuing/further roll-out of the project.

5.25 Some of the difficulties with this initiative could be seen as a microcosm of the broader challenges faced by the criminal justice system in dealing with avoidable delay. It was reported to Inspectors that the main problem was the first stage of the process – cases not ready at point of charge – meaning that cases were delayed at the PPS decision making stage and then when in court. It was confirmed that the proportion of early guilty pleas were significantly less than anticipated. The PSNI have accepted that part of the problem was a lack of corporacy meaning that Districts/areas took a different approach to case progression in key areas such as pre-charge bail – this is an area where a more centralised approach by the PSNI could be beneficial. Advocates of the initiative were also disappointed with the delay in the introduction of a new fixed fee structure for legal aid payments, which may have impacted on the approach of defence solicitors.



## Follow-up

5.26 A more detailed examination of many of these issues will be undertaken by CJI during an inspection of PPS Corporate Governance arrangements later in 2010. The inspection will be conducted according to the methodology used in other corporate governance reviews i.e. a focus on strategy, delivery and outcomes.

## CHAPTER 6:

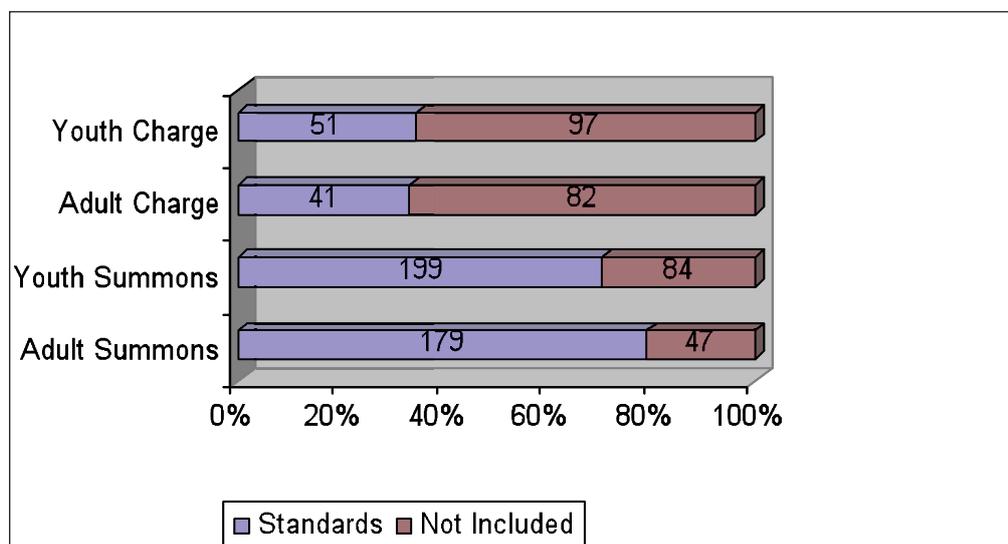
# First appearance in Court to disposal

6.1 The periods up to first appearance (summons cases) or PPS decision issued (charge cases) are counted towards the criminal justice performance standards. The standards were set to specifically not include the time that cases are in court. This is more problematic for charge cases, some of which appear in court shortly after arrest. This has been dealt with by two means: overnight charge cases where the accused appears in court immediately after arrest are excluded from the standards; and other charge cases are not counted after the time that the

PPS makes a decision on prosecution. This is not ideal from a criminal justice or victim/witness perspective but made necessary by targets which do not include the court stages of a case.

6.2 This means that around two thirds of the time spent on charge cases within the justice system does not count towards the criminal justice performance standards. The proportion is significantly less for summons cases - 30% for youth summons cases and 21% for adult summons cases (Graph 9).

**Graph 9: Proportion of case time covered by Criminal Justice Performance Standards 2009-10**





6.3 The decision to exclude court time from the criminal justice performance standards does not mean that this stage of case progression does not receive priority by the criminal justice system. The Criminal Justice Board, through the Delay Action Team, monitors end-to-end case processing times and many of its delay focused initiatives include the court stages of cases. NICTS staff have also taken an active engagement in the workings of the Delay Action Team, including holding the position of chair for a period of time and leading on specific avoidable delay initiatives. There is however an acknowledgement within the Criminal Justice Board that specific court focused initiatives, however beneficial for end-to-end processing times, are less relevant to the actual delivery of the Criminal Justice Performance Standards.

### Crown Court

6.4 The route to court for indictable cases is more complex than the less serious offences. When charged, defendants are either released on bail or remanded into custody while the investigation is undertaken and the PPS takes a decision on prosecution. Many defendants will have appeared in court on a number of occasions while this work is undertaken by the PSNI and the PPS. Data for 2009-10 show that it was taking over two months on average to send a Crown Court file to the PPS, about three and a half months for the PPS to make a decision and another two months to reach the date of committal. Once a case enters the Crown Court, it takes almost three months on average to the start of the hearing. Trial times

are not published by the NICTS. The period from conviction to disposal took a month and a half on average.

6.5 The two periods of Crown Court cases, which are measured, have shown an improvement from 2008-09 from the Delay Action Team figures. The separate NICTS data show that 79% of defendants started their trial within 18 weeks (126 days) of committal – the average time for this stage in the Delay Action Team figures was 114 days in 2009-10 and 131 days in 2008-09. NICTS data shows that 75% of defendants were sentenced within six weeks (42 days) of a plea or finding of guilt. The separate criminal justice standards data from the Delay Action Team showed an average of 45 days for this period 2009-10 and 46 days in 2008-09.

### Magistrates' courts

6.6 All summary cases for prosecution are sent to the magistrates' courts. The Criminal Justice Board monitors the timeliness of police charge cases from the date of PPS decision. Report/summons cases are measured from the later date of first appearance in court. Adult charge cases are taking on average about two and a half months from PPS decision to disposal. Summons cases take about a month and a half for adults and nearly three months for youths from first appearance to disposal, though this is an improvement on previous years.

6.7 A regional perspective on performance can be seen from data produced by the PPS (see Table 2 in



Chapter 2) and separate data published by court areas by the NICTS. This shows significant variations between court areas in terms of case processing times. For example, first hearing to disposal times for adult magistrates' defendants varied from 42 days in Belfast court division to 57 days in Antrim in October to December 2009. The better performance of Belfast in this NICTS data (compared to PPS data used earlier in this report) is most probably related to the high proportion of departmental cases counted in NICTS data but excluded by the criminal justice performance standards. A total of 34% of all adult disposals in Belfast Laganside magistrates' courts related to departmental prosecutions. Inspectors reaffirm the recommendation from the previous inspection report that these **regional variations in court performance should be explored in more detail to identify areas where best practice can be shared.**

## Youth court

- 6.8 There are a range of factors which can help to explain why youth cases are taking longer to process through the justice system. For example, Inspectors were told by some District Judges that they are more inclined to grant adjournments to give youths a better chance – “*you have to do everything in your power to divert youths from offending*”. Likewise the courts are more likely to request full Pre-Sentence Reports as a means of informing the sentencing options.
- 6.9 At the time of the last inspection, the

less frequent youth court sittings were mentioned as a factor of avoidable delay (i.e. longer adjournments required to meet less frequent sittings). The extension of youth courts to include 17-year-olds should have improved the situation as more youth defendants are coming into the youth courts. It also means more traffic offence cases, which are generally regarded as more straightforward with increased numbers of early guilty pleas. The NICTS has raised the proportion of youth court sittings by 50% and all courts sit at least twice per month.

- 6.10 Another factor is shown by Judicial Statistics (2008) which found that a third of youth cases were notified as contested and then changed to a plea or PPS withdrew the charges. The Case Progression Officers also stated that there is little incentive in the youth courts for defendants to make an early guilty plea. This can be related to the obligation on the court, with the defendant's consent, to order a youth conference and in that context the court, cannot give credit for an early plea.
- 6.11 The practice of combining youth and adult cases was raised by a number of interviewees. A concern raised by the courts in particular is the practice of youth cases being ‘rolled-up’ together and summonses being joined together. When this happens, it is the norm that the youth or adult case will follow the longest running case meaning that avoidable delay is added. It is recommended, as was the case in 2006, that **the practice of combining youth cases with longer-running adult or youth cases**



**should be restricted to exceptional circumstances.** The YJA would prefer not to see this packaging as it has a negative impact on the victim.

### The role of the Judiciary

- 6.12 As noted in the previous CJI inspection on avoidable delay, the judiciary are not subject to inspection by CJI. Inspectors are conscious of the importance of preserving the independence of the judiciary, and would therefore as a matter of principle make no recommendations directed at them.
- 6.13 The judiciary has a key role in that they have an overview of the system and problems/difficulties at the earlier stages of case progression which will be evident in court and often require judicial intervention. The Crown Court Judicial Committee has implemented various initiatives to expedite and render more efficient the criminal process including developing a set of 'Best Practice' points for judges governing the management of Crown Court cases and guidance on disclosure. In 1998, the then Lord Chief Justice, Lord Carswell issued a Practice Direction which introduced target times for Crown Court cases. Following up on this, Lord Chief Justice Kerr set up regular meetings of the Crown Court Judges and established a Crown Court Judicial Committee to monitor workload patterns and performance against target times. This has continued under the new Lord Chief Justice. Judicial initiatives in the magistrates' courts have included the implementation of a protocol on criminal case management to ensure

that cases are dealt with justly and efficiently.

- 6.14 Conversations with members of the judiciary, including the Lord Chief Justice, were undertaken by Inspectors. The judiciary is keen to support actions which can reduce avoidable delay and have taken an active role in initiatives such as Early First Hearing and the current pilot of the recording of adjournment reasons in Londonderry/Derry magistrates' court. The Criminal Justice Issues Group, chaired by Lord Justice Higgins, has for example discussed the issue of avoidable delay and has held a workshop on the specific issues surrounding delay in youth cases.

### Adjournments

- 6.15 CJI is interested in the reasons that cause adjournments and not the judicial decisions. The last inspection of avoidable delay showed that the numbers and length of court adjournments constituted a large proportion of the overall end-to-end case time. Inspectors stated that there was an adjournment culture, which was putting increased pressure on the workings of the courts. A number of interviewees commented that the size of court lists, which is mainly caused by adjournments, is then putting pressure on all parties to further adjourn cases. Court observations by Inspectors in the last and this inspection, confirmed the rapid 'churning' of cases i.e. where numerous cases are listed, short proceedings take place and the case is then adjourned to a new date. The 2006 CJI report stated that



observations by Inspectors in courts showed that many questionable proposals for adjournment were not challenged in court by either the PPS or the defence. There are also no meaningful sanctions to address some of the key problems such as repeated failure to attend or failure to progress cases within a reasonable time.

6.16 Data provided by the NICTS shows that there were almost 140,000 adjournment orders for defendants in the criminal courts in 2008 (Table 3). This equates to an average of 6.44 per defendant in the Crown Court, 2.22 per defendant in the magistrates' court (adults) and 4.7 per youth defendant in the magistrates' court. The equivalent figures for England and Wales was 1.36 in the magistrates' court and 1.35 in the youth court.

6.17 The CJI review of PPS case files showed an average of six hearings per case that went to court (the number of hearings will be higher as the last appearance in court will not produce an adjournment). Over 50% of the hearings were deemed ineffective in that there was no tangible evidence of progress in the case. The number of adjournments must also be balanced against the length of

adjournments as one District Judge stated a preference to adjourn for short periods to enable more effective case progression. In such circumstances the adjournment may be beneficial to the overall progression of the case.

6.18 This lack of progress, when cases come to court, can also be demonstrated by the number/proportion of cases which are dealt with at the first hearing. NICTS data shows that just 12% of youth cases were dealt with at first hearing, though this may be linked to the numbers of youth defendants who are diverted at an early court stage into youth conferences for example. A much higher 42% of youth cases were dealt with at first hearing in England and Wales.

6.19 While adjournment applications are granted by the judiciary, the causes of adjournments are mainly due to non-court factors such as: prosecution or defence not ready to proceed; new evidence introduced; and the need to produce documentation such as driving licenses. There is also the distinction between adjournments which are deemed productive (e.g. to obtain necessary information such as pre-sentence reports) and those which could have been avoidable with

**Table 3: Number of adjournment orders made for defendants disposed of in the criminal courts in 2008**

	Adjournments	Average
Defendants in Crown Court	11,152	6.44
Defendants in Magistrates' Courts	114,262	2.22
Youth defendants in Magistrates' Courts	14,540	4.7

Source: NICTS





better advance planning (e.g. defendant/witness not turning up at court).

6.20 A number of studies in England and Wales, Scotland and the United States of America found that different patterns of delay and adjournments were closely associated with different 'court cultures'<sup>31</sup>.

6.21 CJI in its original report on avoidable delay made a recommendation that the reasons for adjournments should be agreed and recorded and then used to address the identified issues and problems. This recommendation has not been progressed as envisaged by Inspectors (see Appendix 1). The review of case files in the PSNI and the PPS showed that determining the cause of adjournments was extremely difficult. It is evident that this information, whether known or not in court, was not recorded on most files seen by Inspectors. Subsequent observation visits by Inspectors to eight courts, which involved an average of about 100 listed cases in each court, confirmed the high number of adjournments as well as the difficulties in determining the causes of these adjournments.<sup>32</sup>

6.22 Staff from the NICTS have taken the lead in re-visiting this recommendation and learning from the lessons of a pilot project which gathered information on adjournments. That project, which was led by the NICTS on behalf of the Delay Action Team, found that

almost 100 factors contributed to adjournments and that any analysis was therefore complex. The findings, which were based on one month's court sittings, were strongly disputed by the PSNI and the PPS.

6.23 A new project has now been initiated in Londonderry/Derry magistrates' court which is classifying each adjournment according to a code (of which there are 41). In practice, most of the adjournments are attributable to less than five codes of which the prosecution or defence not ready is the primary reason. The key difference is that the adjournment code is determined in open court by the District Judge and any objections noted. It also has the support of each party including the local solicitors.

6.24 Initial findings in the period 1 February to 23 April 2010 show:

Adult magistrates' court

- 84% of all adjournments (1,076) were at the case progression stage (i.e. pre-hearing applications) while 14% (180) were at the post-conviction stage;
- at the case progression stage, 37% (394) of adjournments were made by the Defence, 61% (653) were made by the Prosecution and 3% (29) were made by the Court;
- 73% (225) of cases at the case progression stage were adjourned because the case was not ready to proceed; and

31 See Raine and Wilson, *Organisational culture and the scheduling of court appearances*, *Journal of Law and Society*, 20(2), 1993; Leverick and Duff, *Adjournments of summary criminal cases in the Sheriff Courts*, Scottish Executive Central Research Unit, 2001; *Reducing court delays: five lessons from the United States*, The World Bank, Prem notes (34), December 1999.

32 The adjournments observed by Inspectors were invariably requested by the prosecution or defence.

- 38% (68) of cases at the post conviction stage were adjourned because pre-sentence reports were required, 58% (104) were made by the Defence and 4% (7) were made by the Prosecution.

#### Youth court

- 51% of all adjournments (106) were at the case progression stage (i.e. pre-hearing applications) while 48% (100) were at the post-conviction stage;
- at the case progression stage, 40% (42) of adjournments were made by the Defence, 56% (59) were made by the Prosecution and 5% (5) were made by the court;
- 85% (90) of cases at the case progression stage were adjourned because the case was not ready to proceed; and
- 42% (42) of adjournments at the post-conviction stage were made by the court, 56% (56) by the Defence and 2% by the Prosecution.

6.25 A further breakdown of the 'not ready' adjournment code would be beneficial in determining the specific organisational responsibility in terms of prosecution applications (i.e. the PSNI, the PPS or Forensic Science Northern Ireland). This could then be used to better determine the reasons why the PSNI or the PPS were not ready. Evidence gathered by Inspectors through interviews, case file analysis and court observations point towards a number of key issues. One of the most common is the prosecutor waiting on part of, or the full file. The need to obtain external information such as a forensic science or medical report is

often mentioned, yet the data suggests it is less frequent though some of the problem may be captured as file not received.

- 6.26 Another frequently mentioned cause of adjournments relates to witness availability and lack of attendance in court. The PPS stated that they need to receive accurate information from the police concerning witness details in order to inform people in advance of hearings. They accepted that long delays in the processing of cases made it more difficult to contact witnesses. A senior Judge commented that the PSNI and the PPS operate in their 'own worlds' on witness availability e.g. the PPS not telling witnesses well in advance of a hearing. This is leading to longer trial times in the Crown and magistrates' courts according to the Judge.
- 6.27 Some Belfast prosecutors stated that the vast majority of adjournments are due to witness difficulties i.e. civilians not invited and police not made available due to diversion to operational issues, leave or sickness. The PSNI (operational planning) have referred to the failure of the PPS to understand the availability of police officers and take account of rotas, rest days and night duty arrangements. Short notice trials are also putting additional pressures on the police. Some Belfast Case Progression Officers have stated that witness problems are the main cause of adjournments – with the PPS not having the resources to follow-up on witness problems. As ownership of witness attendance is the dual responsibility of the PPS and the PSNI, Inspectors are recommending



that **the PPS and the PSNI should ensure that prosecution witness attendance at court is improved.**

- 6.28 Data from the Londonderry/Derry court pilot shows that 61% of case progression adjournments in the adult magistrates' court are attributable to the prosecution. If this trend is confirmed and applicable in other court areas, the main responsibility for action rests with the PSNI and the PPS. The position in the Londonderry/Derry youth court is different in that 56% of case progression adjournments are made by the defence and 40% by the prosecution. As stated earlier, the vast majority of case progression adjournments are due to one or more parties not being ready to proceed with the case.
- 6.29 One of the main views expressed by many interviewees in the last CJI inspection was the perception that many adjournments were due to the defence. This was disputed by the legal profession at the time. The limited data from the pilot, in the adult magistrates' court in particular, does not support this perception. There is however considerable anecdotal evidence, supported by court observations, that the circumstances in Londonderry/Derry may be different to other court areas such as Belfast. This issue can only be satisfactorily resolved when a more comprehensive data set is available. Inspectors are recommending that **the pilot adjournment project should be extended to include a representative sample of court**

**areas.** The data from this project will be invaluable to tackling the sources of the problem.

- 6.30 The introduction of a fixed fee arrangement for legal aid has potential to significantly change the defence approach to case progression. While it is envisaged that this may facilitate a reduction in avoidable delay, other unforeseen consequences may develop. It is therefore critical that this issue is monitored and assessed by the Delay Action Team.
- 6.31 The number of adjournment requests attributed to the court were relatively small and centered around availability of court staff and judges and the provision of facilities and equipment. There were some examples of insufficient court time and additional time. One of the main and necessary adjournments for the court is the need to get pre-sentence reports.

### **File analysis**

- 6.32 CJI requested the NICTS to review nine of the longer running cases from the sample of files to determine what information could be extracted from its Integrated Court Operation System. Limited information was available on adjournments from the PSNI and the PPS case management systems. These nine selected cases were considered extreme in terms of avoidable delay and accounted for 58 adjournments. The two Crown Court cases had seven adjournments in total of which the application is known in four (two by the court, one by the defence and one by consent).

The remaining magistrates' court cases had 51 adjournments of which the application and reason is known for 48. The prosecution (44%) and the defence (40%) requested a similar proportion of the adjournments and the main reason in most cases was attributed as 'not ready' to proceed with the case – 81% of prosecution adjournments are described as 'not ready' and 79% of defence requested adjournments.

**Table 4: Adjournment applications**

	Application	'Not ready'
Prosecution	21	17
Defence	19	15
Court	8	1

Source: NICTS

### Court observations

6.33 CJI Inspectors visited eight magistrates' courts, including one youth court, as part of the fieldwork for this inspection. The number of cases on the list varied from around 50 to 158 – the long list in the latter court was due in part to an earlier cancelled court date which occurred due to exceptional circumstances. The findings from these court observations were broadly in line with the findings from the earlier interviews and case file reviews and are therefore reflected in the body of the report.

### Late guilty pleas

6.34 Figures provided by NICTS<sup>33</sup> show that 44% of defendants pleaded guilty

on all charges in the Crown Court in 2008 (61% in 2004 in last CJI report). That figure is just 37% in the adult magistrates' court which was similar to that reported in the last CJI inspection report. A total of 39% of defendants pleaded guilty on all charges in the youth court which was much lower than the 53% reported in the last CJI inspection report (22% of youth defendants were found guilty on at least one charge). A total of 31% of all youth cases had all charges withdrawn. There is no data made available on when these pleas are taken, though it was commonly stated to Inspectors that many are taken at the latter stages of a case. The CJI review of PPS case files found that of the 103 guilty pleas, a total of 30 (29%) were assessed as late.

6.35 Late guilty pleas can be attributed to a number of factors, some of which are related to the prosecution and others to the defendant/defence. It is understandable and justifiable that a defendant will be reluctant to plead guilty in circumstances where the prosecution has not presented the required evidence and proof. This can be further reinforced where previous experiences of the justice system have either not led to a prosecution or where the defendant had pleaded guilty to a lesser charge.

6.36 Another factor is the level of importance that defendants and their solicitors place between pleading guilty and obtaining incentives for an early guilty plea as opposed to the chances of an acquittal following a contest. The motivation of a

33 Northern Ireland Court Service Judicial Statistics, 2008.



defendant (who is guilty) to make a plea of guilty at an early stage can be influenced by a number of factors. This includes the actual incentives for an early guilty plea. Article 33 of the Criminal Justice (NI) Order 1996 requires the court to take into account the stage in the proceedings at which the defendant indicated their intention to plead guilty (and the circumstances in which this indication was given) and for it to impose a less severe punishment on the defendant than it would otherwise have imposed to reflect the stage at which the plea was entered. A number of guideline cases refer to the maximum discount being reserved for those who plead guilty at the earliest opportunity. The Court of Appeal has handed down an important judgment on this issue.<sup>34</sup> In view of these guideline cases, there is an opportunity for a number of justice organisations to further publicise the benefits of an early guilty plea (e.g. provision of information in prominent locations in prisons, police stations and courts).

### Case management

6.37 The issue of case progression/management encompasses all stages of a case from investigation through to disposal in the court. There is however an increasing onus on inter-agency case management after the point in which the PPS has taken a decision to prosecute. This is the stage when the work of a number of justice organisations needs to be co-

ordinated. The main problem is one of ownership, as the case has moved to the court stage but continues to have an important input from the prosecution team (PSNI and PPS) and increasing involvement of the defence. All of these parties have their own priorities which need to be co-ordinated in the interest of effective case progression.

6.38 In October 2005, the then Lord Chief Justice established a group comprising representatives of the Resident Magistrates (now District Judges), the PSNI, the PPS and the NICTS to consider a number of issues that could help to reduce delay in the magistrates' courts. The appointment of a Presiding District Judge to provide leadership and momentum for effective case management linked to effective support from court administration was essential in this regard.

6.39 It is the view of the Judiciary that primary ownership of case management is their responsibility once a case comes to court. The Judiciary have prepared a *Protocol on Criminal Case Management in the Magistrates' Court* with the objective that criminal cases be dealt with justly including dealing with the case efficiently and expeditiously. It includes a list of the responsibilities of each party in relation to guilty pleas, not guilty plea cases, first remands and the court.

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34 A judgment of the Court of Appeal handed down on 24 February 2006 (Attorney General's Reference No. 1 of 2006 [2006] NICA 4) stated that if a defendant wishes to avail of the maximum discount in respect of an offence on account of a guilty plea, he should be in a position to demonstrate that he pleaded guilty in respect of that offence at the earliest opportunity. The greatest discount will be reserved for those cases where a defendant admits his guilt at the outset.



6.40 The original CJI inspection recommended that specific case progression meetings should be established and that it could be piloted for youth cases. A pilot was set-up in Belfast Laganside Courts from June 2007 to May 2008 which focused on youth defendants who were on remand (charge cases). An evaluation of the pilot was conducted by the Delay Action Team and found that while there was a noticeable improvement in case processing times, this could not be attributed to the Case Progression Group. Feedback from members of the Case Progression Group and other stakeholders pointed to limitations on what could be achieved given that many of the outstanding issues lay outside the control of the group. It was felt that issues within the remit of the group were already addressed by the case progression officers and their counterparts in other justice organisations. The Delay Action Team decided that the expansion of the initiative was not justified considering the resources required.

6.41 This finding was contrary to the experience and outcomes of similarly inspired initiatives in England and Wales, most particularly relating to Persistent Young Offenders. Case Progression Groups were deemed successful in that they targeted a subset of cases in all court areas, had operational participants from the three main justice organisations, had delegated authority to make decisions on cases and were held accountable to each other and the local criminal

justice boards for avoidable delays. All groups were chaired by one of the participants and had access to real time case information on all cases from point of arrest, which was used to address known and potential problems in specific cases (i.e. pro-active case progression). An important finding from a study of case progression initiatives in other jurisdictions was that a lack of trusted and accurate data means that participants *'discuss anecdotes rather than aggregates, precluding the possibility of system change.'*<sup>35</sup>

6.42 The issue of inadequate inter-agency case progression remains a root cause of avoidable delay at all stages of cases, but most particularly at the court stage where the actions of a number of justice organisations intersect. Inspectors have been told that a new initiative has been presented to the Criminal Justice Board which advocates a modified version of the case progression meeting format. This is welcomed by Inspectors but needs to be supported by defined terms of reference, appropriate operational members from the relevant justice organisations and a common data set of live case information (preferably available through Causeway).

6.43 A critical element of case progression is the need to have appropriate operational staff in place within each of the main organisations to take responsibility for case progression. The original recommendation to the NICTS to appoint Case Progression

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35 See D.Alan Henry, *Reducing Unnecessary Delay: Innovations in Case Processing, in Pathways to Juvenile Detection Reform Series*, Baltimore USA.



Officers has been fully implemented. There is however a lack of a collaborative approach and an absence of 'equivalent' staff in the PSNI and the PPS. This lack of collaboration may in part reflect a perception among other justice organisations that Case Progression Officers have been unable to make a significant input to practical case progression. A recent workshop/seminar has addressed this issue and Inspectors would recommend that **the establishment of a network or cadre of case progression personnel within the three main justice organisations should be expedited.** It is these individuals who will determine the effectiveness or not of local case progression meetings.

### Verdict to sentence

- 6.44 The time period from verdict to sentence (i.e. disposal) does not form part of the criminal justice performance standards nor is it monitored by the Delay Action Team except in the case of Crown Court defendants. In the Crown Court, the average time from conviction to disposal was 41 days in 2009-10 which is a reduction on the two previous years.
- 6.45 The separately published NICTS produced timeliness figures for October to December 2009 show a finding to disposal average time of five days for adult defendants and 25 days for youth defendants. The finding to disposal times in the last CJI report was eight days for adults and 34 days for youths so there is clear improvement over the past four

years on the basis of this data set. The published data, which includes data for each court is available on the NICTS website.

- 6.46 This stage of the case is primarily devoted to the gathering of information to inform the sentencing of a defendant after a finding/admission of guilt. Most cases are therefore adjourned for a Pre-Sentence Report to be prepared – this can be sometimes replaced by a Specific Sentence Report which is generally prepared more quickly by the Probation Board for Northern Ireland (PBNI). The PBNI is generally given 14 days to prepare a report, though this is higher in areas such as Londonderry/Derry (21 days) where the PBNI have asked for additional time to prepare cases – court adjournments are therefore three weeks.
- 6.47 There are two areas which could further reduce avoidable delay. Figures provided to Inspectors by the PBNI show that for 2008-09, a total of 5,672 Pre-Sentence Reports and 219 Specific Sentence Reports were produced for the courts (i.e. specific reports constituted about 4% of all reports). A PBNI audit in February 2009 showed that 25% of reports could have been done by Specific Report. A further audit conducted in February 2010 indicated that of the sample of Pre-Sentence Reports examined, 15% could have been supplied as a shorter Specific Sentence Report. A study undertaken in Greater Manchester found that 80% of reports were Specific Reports though this comparison is not like for like due to the different offences



dealt with by Crown and magistrates' courts in each jurisdiction. This is an issue, which has potential to reduce avoidable delay, but requires the input of different parties (i.e. probation and the courts in particular).

6.48 The head of the Probation Board commented that it had '*made concerted efforts to promote the Specific Sentence Report*'. The experience to date is that Specific Reports are used more in Belfast compared to rural areas, though this may also be due to the fact that it was piloted and re-launched in Laganside courts and also to the fact that the PBNI has an office in these courts which has access to the case management system.

6.49 A second indirect issue with these reports relates to youth conferences which failed to achieve a plan and were therefore adjourned for a Pre-Sentence Report. There are now more than 900 youth conferences per annum. The director of the NICTS was concerned at the high proportion of diversionary disposals (25% in 2007) which are aborted to become court disposals. The head of the YJA referred to the practice of youths refusing a diversionary conference, and then going to court and pleading guilty and then getting a court ordered youth conference as a sentence. This is adding more unnecessary time to cases.

6.50 The verdict to sentence stage of case progression is an important part of the justice process and offers potential benefits in terms of the timely and effective disposal of cases. More data should be made available to the Criminal Justice Board so that

a more collaborative approach is taken to the numbers and types of Pre-Sentence Reports required. Inspectors are re-stating the view from the last inspection that ***the PBNI should continue to work closely with sentencers to increase the proportion of Specific Sentence Reports in accordance with the recent PBNI audit.***



Section



# Conclusions



## CHAPTER 7:

# Impact of Delay



7.1 The old adages in French (*justice rétive, justice fautive*) and English (*justice delayed is justice denied*) provide a framework in which the negative impact of avoidable or unnecessary delay can be placed. It is founded on the view that as time passes, certain legitimate interests may be adversely affected, evidence disappears and new evidence has to be adduced, witnesses disperse and lose credibility, further costs are incurred and public confidence in justice is eroded. At the same time, defendants may be remanded in custody and actions designed to address offending behaviour are delayed, most particularly for young and first-time offenders. Lord Chief Justice Kerr speaking on 'avoidable delay' in 2008 commented that delay affects '*victims most acutely...the family of the victim, the witnesses who have to live with the stress and apprehension about giving evidence and...the defendant or defendants*'.<sup>36</sup>

### Legislative framework

7.2 The negative impact of avoidable or unnecessary delay is covered by the Human Rights Act, which came into force in the United Kingdom in 2000.<sup>37</sup> Article 6(1) of the European Convention on Human Rights states that '*everyone is entitled to a fair and public hearing within a reasonable time by an independent tribunal established by law*'. A more detailed explanation of the right states that '*people are entitled to have their case heard without excessive procedural delays*'. The United Nations Convention on the Rights of the Child guarantees the right '*to have the matter determined without delay*'. There is also specific Northern Ireland legislation under Section 53 of the Justice (NI) Act 2002 which places a statutory imperative on all criminal justice agencies to have regard for the impact of delay on the welfare of a child.<sup>38</sup>

36 Speech by the Right Honourable Sir Brian Kerr on 'Avoidable Delay', 18 February, 2008.

37 The Human Rights Act incorporates provisions contained in the European Convention on Human Rights, which came into force in 1953.

38 Section 53 of the Justice (NI) Act 2002 states that the 'principal aim of the youth justice system is to protect the public by preventing offending by children.' It further states that all 'persons and bodies must also regard the welfare of children affected by the exercise of their functions (and to the general principle that any delay in dealing with children is likely to prejudice their welfare)...'



7.3 The Attorney General in 2001 referred to the Court of Appeal two points of law on which he desired the opinion of that court.<sup>39</sup> The points were these:

- “Whether criminal proceedings may be stayed on the grounds that there has been a violation of the reasonable time requirement in Article 6(1) of the European Convention for the Protection of Fundamental Rights and Freedoms (“the Convention”) in circumstances where the accused cannot demonstrate any prejudice arising from the delay; and
- In the determination of whether, for the purposes of Article 6(1) of the Convention, a criminal charge has been heard within a reasonable time, when does the relevant time period commence?”

7.4 The Court of Appeal referred the points raised by the Attorney General to the House of Lords. The opinion of the House of Lords in 2003 on the two points referred by the Attorney General is to have substantially the same effect as that of the Court of Appeal.

- Criminal proceedings may be stayed on the grounds that there has been a violation of the reasonable time requirement in Article 6(1) of the Convention only if (a) a fair hearing is no longer possible, or (b) it is for any compelling reason unfair to try the defendant.
- In the determination of whether, for the purposes of Article 6(1) of

the Convention, a criminal charge has been heard within a reasonable time, the relevant time period commences at the earliest time at which a defendant is officially alerted to the likelihood of criminal proceedings against him, which in England and Wales will ordinarily be when he is charged or served with a summons.

7.5 The determination of a ‘reasonable time’ has proven problematic for the European courts including in Northern Ireland.<sup>40</sup> In this, they have taken regard of:

- the type and complexity of the case;
- the conduct and diligence in the case from both sides; and
- the conduct and diligence of the court.

A critical aspect is that the threshold for proving a breach of the time requirement is high and there is no absolute time limit and cases largely depend on individual circumstances. An absolute time limit is only transparent in those countries which have adopted statutory time limits.

### Victims and witnesses

7.6 The negative impact of avoidable delay can be severe for victims and witnesses and can undermine the quality of justice. It is known that the quality of evidence declines with time, which can put victims and witnesses under additional pressure in court. This can also undermine confidence in the justice system and contribute to a reluctance to report crime or act as a future witness.

39 [2003] UKHL 68 at paragraph 27.

40 See *The Queen v Kenneth Mackin, Raymond Mackin and James Patrick Convery*, Gillen J, delivered 8 December 2004, ref GILF5148; *The Queen v Maria Brogan, Patrick O’Kane, Lawrence Francis Claxton, Sean Burns*, Gillen J, delivered 20 December 2004, ref GILF5164.



7.7 There is also the more personal negative impact of avoidable delay. Inspectors met with Victim Support Northern Ireland as part of this inspection and also spoke with a victim and a representative of a victim. The experiences of the victims were broadly similar – a deep frustration with the system due to the number of adjournments which included the non-attendance of the defendant and the prosecutor not ready to present evidence in a contested hearing. These unnecessary attendances in court, which included some family members as witnesses, led to increased stress for the victim, the additional costs of travel and taking time off work and the frustration of waiting around court.

## Defendants

7.8 At the time of the last inspection, CJI were made aware of the numbers of defendants remanded in custody and awaiting trial. It was the view of the NIPS that part of this problem could be linked to delay in bringing defendants to court thus lengthening time spent on remand. The Prison Service has limited scope to address the offending needs of remand prisoners as their guilt has not been established. The Prison Service resettlement strategy states that the *'provision to reduce the risk of re-offending is inappropriate for prisoners who are remanded for trial'*.

7.9 Data provided by the Prison Service show that there were 506 prisoners on remand in November 2009 which represented 35% of the prison population – this is little changed in proportional terms over the previous

two years. The vast majority of remand prisoners are held in Maghaberry Prison (82%) with the remainder in the Hydebank Wood complex as young offenders or as female prisoners. A total of 26% of prisoners on remand were held for more than six months as of November 2009 – none were on remand for more than two years.

7.10 Identifying the numbers of remand prisoners whose time spent on remand may have been avoidable is problematic. A rough measure could be to isolate those prisoners who were discharged at court following a non-custodial sentence or when the charges are withdrawn. This amounted to 153 individuals in the period 1 January to 9 December 2009. Many of these would have been remanded in custody in any case due to the nature of the offence and some could have breached bail. Inspectors have therefore focused on this sub-set of remand prisoners who spent more than 90 days on remand which amounted to 16 persons. Those receiving a non-custodial sentence spent a total of 1,627 days in custody while those where the charges were withdrawn spent a total of 974 days in custody. The total cost of custody for these 16 prisoners was £590,000 (inclusive of all time spent in custody).

7.11 Inspectors and a member of Prison Service staff seconded to CJI for this inspection met with 18 prisoners who were held on remand. The common view expressed by many was a lack of understanding of the criminal justice system including any delays and many held a view of *'go with the flow'*.



This was more evident in the case of young offenders. Others referred to the negative impact of remand in custody including its financial consequences for their business, the separation from their family including young children and, the personal stress of waiting on their trial. One remand prisoner referred to their guilty plea as a means of getting out of prison, as time spent on remand was deemed as similar to any eventual sentence.

- 7.12 In England and Wales, by virtue of regulations made under the Prosecution of Offences Act 1985, time limits are fixed for the periods for which a defendant may be kept in custody pending a preliminary inquiry and pending trial. The maximum period of detention in respect of offences to be tried on indictment is 70 days from the first appearance until committal. After committal for trial the maximum period of detention between committal for trial and the commencement of the trial is 112 days. The overall limit from charge to commencement of trial is therefore about six months. The time limit for cases being tried summarily is 56 days (or in certain cases 70). The court has the power to extend the time limits if it is satisfied that there is good and sufficient cause for the extension and that the prosecution has acted with all diligence and expedition. Once the statutory time limits are exceeded, a defendant has a right to bail unless the court is satisfied that time should be extended. Northern Ireland law does not as yet impose statutory custody time limits.

- 7.13 Inspectors are taking a similar position on custody time limits as with the broader statutory time limits i.e. that the principle of introducing time limits should be seriously considered as a means of sustaining performance improvement. Significant improvement will be required before such limits could be established. Any attempt to introduce similar time limits as England and Wales would require a level of exemptions which would undermine the very purpose of the limits.

### Youths

- 7.14 There is a general acceptance, confirmed by the previous and the current inspection, that youths – whether that is defendants, victims or witnesses – are more negatively impacted by avoidable delay. This issue was considered in some detail in the last CJI inspection with a number of specific youth focused recommendations. Inspectors remain of the view that the reduction in avoidable delay should be prioritised for youth cases where the impact is most apparent and the length of time most evident. The situation in relation to youth summons defendants remains a major concern as performance has not improved and the criminal justice performance standard is unlikely to be achieved. Inspectors recommend that **the Criminal Justice Agencies should develop a joint Action Plan to address the specific problem of avoidable delay with regard to youth defendant cases.**

## Cost

- 7.15 The additional costs of avoidable delay are considered to be substantial, though no detailed examination has been conducted in Northern Ireland or neighbouring jurisdictions. The National Audit Office did look at the effective use of magistrates' court hearings for the Crown Prosecution Service in England and Wales, but this did not cover the other parts of the criminal justice system. No equivalent analysis has been conducted in Northern Ireland. In the absence of this level of information, CJI has provided some indicative costs for elements of the justice system.
- 7.16 The National Audit Office report in 2006 concluded that £173 million was wasted each year in the England and Wales criminal justice system as a result of wasted and ineffective hearings.<sup>41</sup> The unit cost per ineffective hearing was calculated at £85.81, while an ineffective trial was estimated at £687.79 and a cracked trial at £1,037.22. These National Audit Office costings were based in the main on the Crown Prosecution Service activity costing model as well as court costs from the Effective Trial Management Programme. Similar data is not available to the justice agencies in Northern Ireland.
- 7.17 A preliminary analysis of the cost of ineffective hearings in Northern Ireland could be made on the basis of the unit costs in England and Wales and an estimate of the likely

number/proportion of ineffective hearings in Northern Ireland. The National Audit Office costs could now be regarded as low as it is based on costs over four years ago and it is known that the overall costs of criminal justice are considerably less in England and Wales compared to Northern Ireland. It would therefore be prudent to apply an ineffective hearing cost of about £100 for Northern Ireland. On the basis of the 128,802 adjournment orders in the magistrates courts in 2008, it could be estimated that the cost would be:

- £6.4 million per annum if 50% of hearings were ineffective;
- £5.2 million per annum if 40% of hearings were ineffective; or
- £3.7 million per annum if 30% of hearings were ineffective.

These indicative costs do not include the costs of ineffective and cracked trials, nor does it include the costs of any hearings in the Crown Court. The costs for victims and witnesses in attending court are also excluded.

- 7.18 The PSNI have undertaken some assessment of their costs in terms of file preparation and more specifically in terms of attendance at court. The PSNI commander in 'H' District told Inspectors that from 1 January to 31 July 2009, 6,589 hours of overtime was attributed to attendance at court. While it is not evident what proportion of this was avoidable, it does demonstrate the extent of additional costs in one policing District over a six month period.

41 *Crown Prosecution Service: Effective Use of Magistrates' Court Hearings*, National Audit Office, 2006.



7.19 Any detailed assessment of the additional costs of avoidable delay would require a systematic analysis of all workflows across the criminal justice system and a determination on what activities were avoidable. The overall cost would be substantial. But perhaps the greater challenge is not to determine what is already known (i.e. that the costs are substantial) but to determine where the likely savings can be re-directed within the justice system. Criminal justice budgets are set within certain parameters (e.g. the Comprehensive Spending Review) and many costs are fixed (e.g. salaries). The challenge is therefore to develop a more flexible approach to the utilisation of savings. For example, any savings on improved file quality could be directed towards the more complex cases in both the PSNI and the PPS.

## CHAPTER 8:

# Role of the Criminal Justice Board



8.1 The delivery structures, that would be expected, are in place in that the Criminal Justice Board has overall authority and is assisted by an information support body in the form of the Delay Action Team. The Delay Action Team has taken the lead in developing new initiatives and efforts to reduce avoidable delay. The issue of avoidable delay has been a standing item on the agenda of the Criminal Justice Board since the last CJI inspection. The problem is that these structures have not delivered the required and anticipated improvement in performance.

### Criminal Justice Board

8.2 A source of the problem may be the dynamics of the Criminal Justice Board, which is tasked with overall responsibility on avoidable delay. The Board, in the words of its own members, is essentially a 'voluntary coalition' of independent justice bodies, which meet to discuss areas of mutual concern. Whilst it is chaired by the Department of Justice, whose remit extends across the justice system, executive and operational leadership rests with each individual justice organisation, which in turn is reinforced by the 'independence' issue. In the main, the

Board is left to measure rather than manage performance.

8.3 Such limitations were in part recognised at the time of the last CJI inspection, when the Criminal Justice Board decided to nominate a 'Delay Champion' from within their membership. But the role lacked clear lines of accountability and remained vague even to its incumbent. The 'Delay Champion' had no executive responsibility and no explicit mechanism to make change happen in the other criminal justice organisations.

### Accountability

8.4 The delivery capability of the Criminal Justice Board is influenced by the broader accountability arrangements for criminal justice in Northern Ireland. Under direct rule, three different government departments were responsible for aspects of the justice system – the NIO for most justice bodies, the Attorney General for the PPS and the Lord Chancellor's Department in Northern Ireland for the Northern Ireland Court Service (now the NICTS). It was therefore more difficult to develop a joined-up approach, which in part was reflected

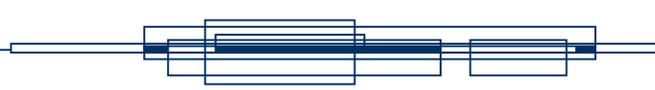


by the limitations of the Criminal Justice Board in dealing with avoidable delay. The new devolved arrangements for policing and justice transfers responsibility for most of the NIO agencies and bodies across to the new Department of Justice. It also brings the NICTS under the new Department of Justice as a government agency. The Minister therefore has direct accountability.

- 8.5 The position of the PPS is less clear in that the PPS will have a consultative relationship with the new Attorney General for Northern Ireland but will not be superintended by that person (i.e. the Attorney General). The type of relationship with the new NI Attorney General will need to be worked out in the interests of a more joined-up justice system – a point explicitly referred to by the Attorney General on his appointment in May 2010.
- 8.6 The Lord Chancellor was responsible for the judiciary in Northern Ireland up until 2006 when responsibility was transferred by the Constitutional Reform Act of 2005. Accountability from this date has been through the Lord Chief Justice.
- 8.7 Delivering the required change on the ground is a key challenge for the justice system. This will require **strengthened accountability and leadership with a post devolution replacement of the joint ministerial Strategy and Delivery Group and direct political oversight for the Minister of Justice.**

## Delay Action Team

- 8.8 The role of the Delay Action Team formed an important part of this inspection in that one of the main recommendations of the last inspection was the establishment of a more action-orientated inter-agency group. In part this has been achieved as the Delay Action Team has supported the decision making role of the Criminal Justice Board with the provision of regular performance updates. It has also taken a lead in initiating/strengthening inter-agency initiatives such as Early First Hearing and obtaining agreed positions on reducing the time for the issuing and service of summonses.
- 8.9 The success of the Delay Action Team in responding to the needs of the Criminal Justice Board contrasts with its stated objective to become more action-orientated (i.e. to initiate change within and across justice organisations). In that regard, it may have been limited by the role of its members and by the fact that membership from some justice bodies has regularly changed over the past four years. Views expressed by some senior managers within the justice system included the statement that the Delay Action Team was “*not close enough to practitioners*” and that it had “*run its course*”. This may be overly critical of the current membership, who has invested considerable efforts to address the problem of avoidable delay, but it does indicate a perception that the Delay Action Team has become too separate from responsibility for operational delivery on the ground. The next phase of implementation should therefore be



focused on bridging this gap between planning and delivery on the ground. It will also require a renewed focus and leadership from the Criminal Justice Board and Ministers.

- 8.10 Inspectors were informed, prior to publication of this report, that the Delay Action Team has been renamed as the Performance Standards Reporting Group with a new remit and a particular responsibility for reporting on performance through a new Governance and Accountability Project (see below).

### Recent initiatives

- 8.11 Inspectors gave two presentations on the preliminary findings of this inspection to the Criminal Justice Board and met with the board and senior management of the three main justice organisations to discuss ongoing and new initiatives aimed at reducing avoidable delay. The period since the first presentation to the Board has been marked by active engagement on the issue by the Board and main justice organisations. Inspectors have been told that four work streams are currently underway focused on:

- *Case Preparation* which is led by the PSNI and the PPS and focused on developing minimum standards for a range of interface issues such as file quality, no prosecution files, alternatives to prosecution etc. It is envisaged that a new agreed joint protocol should be in place in 2011 to reflect the outcomes of these actions;
- *Case Management* which is led by the NICTS and aimed at developing a more inter-agency

approach to cases including the implementation of case progression groups. The establishment of the Londonderry/Derry adjournment pilot project which is recording the reasons for all adjournments in the magistrates' court in the period 1 February to 31 March 2010 can be seen as part of this initiative;

- *Youth cases* focused group targeting a range of issues to tackle the more negative effects of avoidable delay on youth defendants; and
- Increasing *Governance and Accountability* including reviewing the work of the Criminal Justice Board and the Delay Action Team and responding to the devolution of policing and justice.

- 8.12 All of the above initiatives are a demonstration of the commitment of the justice organisations to tackle the problems associated with avoidable delay. The next phase is therefore critical – to implement and sustain the change at an operational level within and across the justice organisations. The solutions to avoidable delay are not short term and will require a range of complimentary actions sustained over a lengthy period of time. The Department of Justice has an important role in facilitating joined-up justice and the successful delivery of these inter-agency projects.

### Engaging the support of the wider justice system and external bodies

- 8.13 Solving the problems of avoidable delay requires a joined-up approach to what is a series of problems across



the various stages of case progression. Various parties, some external to the justice system, provide an input to specific stages of the process. This includes legal firms, who do defence work as well as specialist witnesses such as doctors who provide reports and give evidence in court. Members of the public have an input in the form of victims, witnesses or as members of a jury. All of these inputs need to be co-ordinated to ensure a smooth progression of a case.

priorities. This may partly explain the lack of performance improvement on avoidable delay following the last CJI inspection. CJI is therefore proposing to undertake an annual oversight of performance, which will include the preparation of a report for the Minister of Justice.

- 8.14 Engagement with the legal profession, both solicitors and barristers, is sometimes difficult due to their status as independent practitioners, though communication with their representative bodies has been useful on many issues. Broad based issues such as the recent changes to fixed legal aid payments were largely conducted through these structures and may have significant consequences for avoidable delay. One of the findings of the last inspection was a perceived view amongst some in the justice system that the system of legal aid payments was contributing to avoidable delay and adjournments in court. This was refuted by the defence. The impact of the new legal aid payment system on the timeliness of case progression was not known at the time of this inspection.
- 8.15 One of the difficulties in achieving a step change in performance, particularly where some of the key challenges can not be addressed in a short time span, is the tendency for organisations and individuals to lose momentum and be diverted to new

Section



# Appendices



# Appendix 1: Review of progress against CJI's 2006 inspection recommendations

## Section One – Criminal Justice System

1. *The Criminal Justice Strategy and Delivery Group should take overall responsibility for the development of a joint delay strategy, which encompasses all criminal cases.*

Status: **Achieved**

### Inspectors' Assessment

The Criminal Justice Board established the Delay Action Team in 2006 with the objective 'to develop a joint delay strategy to eliminate, within an acceptable timeframe, avoidable delay in processing criminal cases, both indictable and summary'. This strategy was delivered later that year and has formed the basis of subsequent actions, including the development of performance standards.

2. *The Criminal Justice Board should be more pro-active in co-ordinating a framework of shared targets (delay) and monitoring the contribution that agencies are making towards them. It needs to be given a clear mandate to this effect by the Strategy and Delivery Group, and it needs a joint secretariat properly resourced for this purpose.*

Status: **Achieved**

### Inspectors' Assessment

It is the Criminal Justice Board, through the inter-agency Delay Action Team, which took responsibility for the development of shared targets known as performance standards. Performance against the standards is measured using PPS data for prosecution cases which is then produced into a performance update report by the Delay Action Team. It is assisted in this task by a Secretariat, which is provided by the NIO (now Department of Justice for Northern Ireland) .

A report entitled *Criminal Justice Performance Standards: Performance Update* is prepared on a quarterly and annual basis and made available to the Criminal Justice Board and Ministers. The report provides data on the different types of cases as well as performance data on the different stages of a case – the latter provides information on the contribution of specific agencies to overall progress. A weakness in this process of performance monitoring is its reliance on historical data, which contribute to a reactive approach by the Delay Action Team and Criminal Justice Board to emerging trends and issues.

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3. *Each criminal justice agency should amend existing strategies and targets to align with the recommended joint Criminal Justice System strategy on delay.*

Status: **Part Achieved**

### **Inspectors' Assessment**

The Terms of Reference produced by the Criminal Justice Board asked for proposals for 'the amendment of existing individual agency strategies and targets to align with the joint strategy'. The resulting strategy produced by the Delay Action Team refers to the need for common and consistent language used in corporate and business planning documents that should take account of the overall criminal justice strategy and objectives on delay and the respective agencies' contribution to achieving them.

The Criminal Justice Board strategy and performance standards are now in place for three years, allowing sufficient time to amend existing strategies and targets. A review of the strategies and business plans of the main criminal justice organisations shows that reducing avoidable delay is a common objective – that is a positive development. The approach to delivering this objective is less consistent due to competing priorities and different business planning/target setting arrangements.

Improving the timeliness of case progression has been a performance indicator for a number of years in the PSNI. The Policing Plan 2006-09, in place at the time of the last inspection, had specific time limits for custody and bail cases. The subsequent Plan for 2007-10 included indictable and summary reported cases, which was further modified to distinguish between adults and youths in the 2008-11 and 2009-12 Policing Plans. Inspectors were told that the next Policing Plan will mirror the Criminal Justice Performance Standards.

Reducing avoidable delay, as a means of enhancing the prosecution process with stakeholders, is one of the strategic priorities of the PPS. The business plan for 2009-10 includes three specific activities: implementation of Causeway, Early First Hearing pilot scheme and Immediate (adult) Cautioning Scheme. Key Performance Indicators (KPIs) on the timeliness of decisions are aligned with the Criminal Justice performance standards i.e. distinction between indictable prosecution decisions (charge cases), summary prosecution decisions for charge cases (adults and youths) and summary prosecution decisions for summons cases (adults and youths).

Avoidable delay has been a priority for the NICTS and the judiciary for a number of years and this is reflected in its strategic and business plans. The NICTS staff have been core members of the Delay Action Team since its inception, including holding the position of Chairman in the period after the publication of the strategy. Members of the judiciary, including the Lord Chief Justice, have publicly expressed their concern around the problems of avoidable delay. The Judiciary have set separate judicial standards, which focus exclusively on the court stages of a case.



The view of the judiciary was outlined by the previous Lord Chief Justice in a speech to a criminal justice conference in 2008 when he stated that timeliness targets need to be realistic with an informed insight into the causes of delay.<sup>42</sup> It was decided that the DAT standards would end at point of court (or when the PPS decides on prosecution in the case of indictable cases). Separately, the NICTS and the Judiciary would continue to be responsible for monitoring and managing performance of cases in the court stages of the case.

The Probation Board has aligned its targets for Pre-Sentence Reports and Specific Sentence Reports to reduce avoidable delay from the verdict to sentence stage of cases.

Whilst there is a common objective to reduce avoidable delay, the practice of focusing on specific stages (i.e. the period when a case rests with or is the main responsibility of a specific organisation) is counter-productive in tackling the core problem. This is demonstrated in two ways: an organisational focus on a particular stage of the process even when a common target is in place; and the setting of separate timeliness targets. This recommendation can not be achieved until there is clear evidence that organisations are driven by a common objective rather than the part which relates to their specific organisation. This would mean, for example, that the PSNI targets, which are set by the Policing Board, should include the time after a case is submitted to the PPS. Likewise, the PPS performance should be based on time before receipt of file and after a decision is taken on prosecution.

4. *Specific delay targets should be set as part of the overall joint strategy on delay. Reduction in delay should become a PSA target in Northern Ireland as soon as this is practicable and no later than 2008. Performance against the targets should be reported in the Criminal Justice Strategy Annual Report.*

Status: **Achieved**

### **Inspectors' Assessment**

The Terms of Reference, prepared by the Criminal Justice Board asked the Delay Action Team 'to devise end-to-end targets for different categories of criminal cases'. The strategy did produce specific targets for Crown Court, magistrates' court and the youth court cases. However, end-to end targets were not possible due to strong reservations from the judiciary relating to covering the period covered by the court processes.

'Reducing time to trial in dealing with offenders' is deemed as critical to achieving a more effective, efficient and joined-up criminal justice system in the NIO Public Service Agreement<sup>43</sup> for 2008-11. The Public Service Agreement has five Key Performance Indicators, three of which relate to shortening the time taken to progress cases in the Crown Court, magistrates' court and the youth court. Separate targets are set for charge and summons cases in the magistrates' and youth courts. It is the intention of the Criminal

<sup>42</sup> Speech by the Right Honourable Sir Brian Kerr on 'Avoidable Delay', 18 February, 2008.

<sup>43</sup> Comprehensive Spending Review 2007, Justice for All, NIO, 2008.



Justice Board to publish performance on an annual basis, which was scheduled to commence in 2009.

5. *A separate youth target should be included in the delay strategy.*

Status: **Achieved**

### Inspectors' Assessment

The Key Performance Indicator to shorten the time taken to progress youth court cases has two specific targets: to reduce the time from charge to PPS prosecution decision issued to 35 days by 2010-11 and to reduce the time from accused informed to first appearance to 132 days.

6. *The Criminal Justice Board should give serious consideration, as part of its delay strategy, to identifying the numbers of persistent young offenders in Northern Ireland and then developing an appropriate strategy.*

Status: **Part Achieved**

### Inspectors' Assessment

The Criminal Justice Board Terms of Reference asked for 'specific proposals to target youth cases'. The Delay Action Team looked at the issue and concluded that insufficient data was available to support a decision to target persistent young offenders, along the lines of the initiative in England and Wales. It recommended this data should be made available by December 2006 in order to assess the viability of establishing pilot case progression groups for remand cases or persistent offenders.

The issue of how best to deal with persistent young offenders, within a reducing avoidable delay perspective, is still under consideration by the Criminal Justice Board and Youth Justice Agency. Inspectors were told by the PBNI and the Youth Justice Agency (YJA) that an initiative is being taken forward by both organisations to manage and reduce re-offending in 'priority' young offenders. The Priority Youth Offender Project is a co-located PBNI/YJA project established to work with higher risk young offenders within the Greater Belfast area.<sup>44</sup>

7. *The purpose, role, remit and membership of the Delay Action Group should be reviewed so that the group is more action-oriented and focused on all criminal cases from entry to the Criminal Justice System to disposal in the courts. The work of the youth group should be subsumed by the Delay Action Group.*

Status: **Achieved**

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<sup>44</sup> The target group includes medium and high risk offenders, those released from custody on JJC Orders or Custody Probation Orders, Youth Offending Centre under 18, serious and dangerous violence against the person, sexually harmful offences and car crime offences.



### Inspectors' Assessment

The Criminal Justice Board Terms of Reference to the Delay Action Team required proposals for 'appropriate delivery mechanisms...including a review of the role, remit and membership of Delay Action Group'. The strategy recommended the establishment of a standing inter-agency Delay Action Team charged with delivery and implementation of actions as well as monitoring and reporting on progress. It was envisaged that members would be of a similar level, able to exercise a degree of authority, and drawn from people in posts where they have responsibility for case progression issues.

The period after the publication of the strategy, when the Delay Action Team was formally constituted, was noted by significant activity in developing the specific targets and implementing the recommendations of the CJI inspection report and the related strategy. The broad range of activities and the able support of the secretariat, provided by the NIO, were mentioned in particular by a number of stakeholders in the criminal justice organisations. There was also a common held view that the time was right to review/assess the best use of the Delay Action Team and consider what changes might best deliver the required performance improvement. Inspectors were not provided with any evidence that such a review was undertaken since the inception of the Delay Action Team.

8. *Specific cross-agency case progression groups should be set up and operate across Northern Ireland. The new structure should be piloted for youth court cases. Terms of Reference for the operation of case progression meetings should be developed by the Delay Action Group.*

Status: **Achieved**

### Inspectors' Assessment

The strategy produced by Delay Action Team recommended that Case Progression Groups should be piloted prior to any decision to roll-out the initiative across Northern Ireland or for specific types of cases e.g. youth cases as recommended by CJI. The internal evaluation of the pilot by Delay Action Team was not to proceed with a roll-out of the Case Progression Groups due to a lack of evidence on delay reduction and the associated resource implications.

The lack of progress in tackling avoidable delay has led to a re-visiting of the concept of Case Progression Groups. The crucial issue for Inspectors is the need for Case Progression Groups to have local accountability and the ability to progress individual cases through practical actions/remedies.

9. *Statutory time limits should be introduced in Northern Ireland by 2009-2010. The time limits should include sanctions for non-compliance along the lines of those that currently operate in Scotland.*

Status: **Not Achieved**



### Inspectors' Assessment

It was the view of Inspectors in the original inspection that the introduction of statutory time limits should be considered as a medium term option to sustain any anticipated performance improvement. As this improvement has not materialised, there is little benefit in setting statutory time limits at this stage. There is merit however in considering the introduction of statutory time limits in the medium term as a means of encouraging performance improvement and sustaining any anticipated reductions in avoidable delay. Inspectors accept that there are strong held views in favour/against this issue and it will therefore be a decision for Ministers.

## Section Two – Agencies

10. *PSNI should select a sample of cases to more accurately identify offence to charge /summons times in Northern Ireland.*

Status: **Not Achieved**

### Inspectors' Assessment

The rationale behind this recommendation was the need to better understand the time spent by the police in the pre-charge and pre-informed stages of a case. Whilst this stage of a case is not covered by the performance standards, the actual time spent can have a significant impact on the post charge/informed stages. It was the view of the PSNI at the time of the original inspection that a comparison of case timeliness with England and Wales needed to take into account the different arrangements in both jurisdictions – the view being that police forces in England and Wales spend more time on investigating a case at the pre-charge stage and therefore benefit from improved timeliness after point of charge. Data produced by the Ministry of Justice in England and Wales shows that the average time from offence to charge/laying of information for all youth defendants in completed criminal cases in June 2009 was 36 days. The equivalent time for indictable/triable each way cases was 60 days.<sup>45</sup> A similar analysis for Northern Ireland would facilitate a greater understanding of the pre-charge/defendant informed stage of case investigation in the two legal jurisdictions.

Inspectors were told by the PSNI that the Niche case management system allows Occurrence and Case Management Team managers to search for time taken between offence being committed and suspect being charged/reported for prosecution. There was no evidence however that any data or analysis has been conducted by the PSNI.

11. *Prosecutorial and pre-charge advice by the PPS to the police should be extended beyond normal working hours.*

Status: **Partly achieved**

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<sup>45</sup> *Time Intervals for Criminal Proceedings in Magistrates' Courts: June 2009*, Ministry of Justice Statistics Bulletin, 27 August 2009.



### Inspectors' Assessment

Targeted and timely prosecutorial and pre-charge advice can aid a police investigation and help to minimise problems concerning file quality. The PSNI are broadly in favour of this type of service and would like to see an expansion across a wider range of cases and outside of normal working hours. The PPS also see the benefits, particularly in terms of improved file quality and police recommendations on a file (e.g. prosecution/no prosecution), but need to balance this need against available resources. There was a view expressed to Inspectors by individuals in the PPS that pre-charge advice is under-utilised by the PSNI.

Inspectors are aware that this issue is under consideration by both organisations and that a review of the prosecutorial advice service offered to police has been undertaken by the PPS. It is currently available for serious cases and has been utilised for special events, where the feedback has been positive. The benefits of further extending the service needs to be balanced against projected demand from the police and the likely additional costs to the PPS in particular.

12. *The PSNI should urgently address its problems with file preparation and address the widespread issue of non-compliance on file quality and timeliness. Individual performance should be linked to individual assessment reviews and ultimately to overall remuneration (e.g. Competency Related Threshold Payments).*

Status: **Not achieved**

### Inspectors' Assessment

The problem of poor file quality and timeliness was identified as a key area for improvement in the original inspection. This is a critical stage in the overall processing of cases as 'getting it right, first time, on time' within the PSNI has benefits for the further progression of a case by the PPS and the NICTS. Conversely a delayed file and/or one which lacks the required quality standards imposes difficulties on other criminal justice organisations.

The problem of file quality, including timeliness of file preparation is not new – it was identified as a specific problem when the police itself undertook the majority of prosecutions in Northern Ireland. Various targets and structural re-alignments have been used including the development of specialist case preparation units. The main argument against these specialist units was the potential negative impact on case preparation skills/knowledge of Investigating Officers.

Data made available to Inspectors on file quality and timeliness would indicate that this issue has not been satisfactorily resolved by the PSNI. Published performance against its timeliness targets shows that all of the targets were not achieved in the year April 2008 to March 2009 – custody cases were 8% below target, bail cases were 5% below target, indictable cases were 21% below target and summary cases were almost 20% below target.



The issue of file quality is more concerning due to its direct impact on the future progression of cases. The best indicator of quality (post submission of a file to the PPS) is the number and type of Requests for Further Information required by the PPS before a decision can be taken on a case. The PPS Annual Report states that 15,439 Request for Further Information were made to the PSNI in 2008-09. One third of these requests related to the Belfast PPS region while the lowest proportion (relative to files received) was in the Western PPS region. A separate analysis of Requests for Further Information, undertaken by the PPS showed that 40-45% of police files had generated a request in mid 2008 which included 82% of the more serious indictable cases. The situation had improved by mid 2009, when 14% of all cases required a Request for Further Information (64% of indictable cases). Whilst there has clearly been a significant improvement, the PPS continue to be concerned in relation to the quality of indictable cases in particular.

Addressing the problem of file quality requires a suite of complimentary actions ranging from increased priority at senior management level, the use of targets which incorporate quality and impact on partner organisations, effective supervision at operational level and better skills/knowledge of Investigating Officers supported by the appraisal and reward processes. The latter was part of this recommendation. The feedback from the PSNI is that the Human Resources Department looked at linking file quality to the new Performance and Development Review process and that a Core Leadership Development Programme module was prepared to deal with quality and timeliness. It stated that Competency Related Threshold Payments and Annual Performance Reviews are dealt with by the Human Resources Department but did not indicate what specific changes were made. It is a priority area which requires on-going attention by the PSNI.

- 13. An urgent review of training on file preparation should be undertaken and appropriate training should be implemented as soon as possible. The PPS should provide an input to the development of this training and also be involved in its delivery.*

Status: **Partly achieved**

### **Inspectors' Assessment**

Since the time of the last inspection, the PSNI have revised the modular approach to the training of Student Officers which now includes a more practical element (e.g. completion of five investigation files). In addition, as part of their Operational Development Programme (between graduation and tutorship), students receive training in the electronic case management system (NICHE Records Management System).

The feedback from the PPS, which provide a significant input to police training for Student Officers, was that the course is comprehensive and provides students with a good knowledge of case file preparation. This is borne out by the quality of the sample files prepared as part of the course. The PPS input to the training is informed by their experience of receiving files from the PSNI. In these respects the recommendation has been achieved.



The remaining concern to Inspectors, which is shared by the PPS, is that much of the benefits of this training appear to have become diluted as new officers become established within the Police Service. The reasons for this are uncertain: it may relate to competing priorities within the police, different cultural and operational practices around the importance of file quality, inadequate supervision or rapid loss of knowledge/skills. There is therefore a responsibility on the PSNI to address this loss of capacity/knowledge which should be addressed in part by more targeted training of operational officers, preferably with the input of the PPS<sup>46</sup>. Inspectors are aware that some regional training has taken place and would expect to see a more consistent and formalised approach to this challenge across the Police Service.

- 14. It is critical that more robust quality control mechanisms and processes are put in place, and that supervisors who are the gatekeepers between the Investigating Officer and the PPS, are targeted for enhanced training provision.*

Status: **Not achieved**

### **Inspectors' Assessment**

Improving the quality of police files is critical to reducing avoidable delay throughout the criminal justice process. It is therefore imperative that files should conform to recognised best practice and meet the requirements of the PPS (as agreed between the PSNI and the PPS through the protocol). Responsibility for this task currently rests with a number of officers/functions within the PSNI – the Investigating Officer who prepares the file; the more senior officer who acts as the supervisor; and the people who submit the file to the PPS. Quality control is currently 'shared' across these police staff/units and precise demarcation is not consistent across the Police Service. For example, Inspectors are aware that some Occurrence and Case Management Teams are undertaking a quality control role while others provide a more readily defined file submission process.

The function of quality control, whether it is undertaken by supervisory Sergeants or by police officers within the Occurrence and Case Management Team, is critical to improving file quality. Inspectors have been told that the inclusion of specific training and file quality training are being considered as part of the frontline supervisors course. Discussions are ongoing regarding the introduction of specific training as part of District Training. The introduction of an 'e-learning' package is also being considered. The PPS Liaison Inspector has visited two Districts to date to deliver Causeway Business Information Services training to Sergeants. This will continue to other Districts.

- 15. An accurate and agreed projection of future caseload should be undertaken by the PSNI and the PPS as it will have implications for how resources are used to tackle avoidable delay.*

Status: **Achieved**

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<sup>46</sup> The PPS provide input to PSNI training as part of the formal programme for trainee Constables as well as delivering bespoke seminars and talks on issues such as the development of trainee Detectives, file preparation, prosecutorial advice and broader legal issues. Specific training is also provided on complex and sensitive cases such as those involving rape and homicide.



### Inspectors' Assessment

The PPS Annual Report 2008-09 shows that it received 56,721 files in 2008-09 which was higher than the previous year (54,376). A total of 2,097 of these cases were Northern Ireland Departmental cases (i.e. not submitted from the PSNI). This is in line with the original prediction of the PSNI though significantly below assumptions made by the PPS in its original capacity model.

The 2008-09 Annual Report of the NICTS showed that 1,379 Crown Court cases were disposed, which was a 1% decline on the previous year (1,251 cases were received). This is a 14% reduction in received cases compared to the previous year. The same report shows a 6% decrease in the number of magistrates' court adult defendants (50,972) disposed in 2008-09 and a 5% reduction in the numbers received (52,058). The Youth Court has shown the biggest decline in cases disposed of in 2008-09 (-10%) and received (-15%). A total of 2,902 youth court defendants were received in 2008-09. Any further reductions in overall case load have significant potential benefits in freeing up resources across the system in tackling avoidable delay.

- 16. Better contingency arrangements are required for the future roll out of the PPS. The PPS should re-consider the timetable for the future roll-out of the service in areas where appropriate accommodation will not be available.*

Status: **Achieved**

### Inspectors' Assessment

The roll-out of the PPS is near completion. The location for the Newry office is now agreed. The PPS service to this region is delivered via Belfast. There are no specific concerns that any additional delay is caused by the present arrangement though benefits should accrue when the new regional office is operational. Lessons from the roll-out of other regional offices will be critical in this regard.

- 17. The process of file allocation needs to be urgently reviewed by the PPS and a more efficient file management system needs to be implemented as this is not appropriate for the current or projected volume of cases.*

Status: **Partly achieved**

### Inspectors' Assessment

The process of file allocation has been subject to an on-going review by the PPS. After a period of improvement, there is evidence that backlogs have re-appeared in some PPS regions. This is clearly an issue which needs to be constantly monitored by the PPS, particularly where the number of files has significantly increased.



18. *A standardised approach regarding 'direct contact' policy should be established between the PPS and the PSNI. A more formal means of feedback from the PPS to the PSNI is required.*

Status: **Partly achieved**

### **Inspectors' Assessment**

The protocol between the PSNI and the PPS outlines the type of formal contacts between the two organisations ranging from strategic senior management meetings (e.g. District commanders and regional prosecutors) to day-to-day interaction between operational staff. A good example of the latter was the establishment of liaison staff (police liaison officers are co-located in PPS regional offices) who enhance communication and solve problems on issues such as Requests for Further Information. This is generally a Sergeant with additional support where required. Inspectors are also aware of a number of bi-lateral and inter-agency forums which involve representation from both organisations (e.g. Delay Action Team, Requests for Further Information sub-group).

The overall view of Inspectors is that there is an evident tension between both organisations, most apparent at senior management level. There is scope to further strengthen this type of co-operation and identify where service improvements can be made. An agreed new protocol between both organisations is a necessity as is the roll-out of best practice from areas demonstrating improved performance.

19. *Alternative arrangements for signing of summonses should be implemented. This should include the use of electronic signatures which are authorised by a PPS prosecutor.*

Status: **Not achieved**

### **Inspectors' Assessment**

An inter-agency working group was established and concluded that primary legislation would be required to make the necessary changes. There appears to be an accepted view that this arrangement should be changed as it does not serve any purpose in the context of the new PPS. It is well overdue (the original recommendation assumed that this would have been a 'quick-win' – perhaps without the need for primary legislation) and the Delay Action Team strategy referred to implementation in 2007. It is envisaged that this change can be contained in new legislation planned for later in 2010.

20. *A short-term measure should include modifications to existing PPS processes (e.g. file allocation) with additional resources targeted at the reduction of current backlogs. The PPS, in conjunction with the other criminal justice agencies, should reconsider whether it needs to take all prosecution decisions.*

Status: **Part A: Achieved; Part B: Not achieved**



### Inspectors' Assessment

This is a two-part recommendation – the first (Part A) is being addressed through on-going process improvements in the PPS and monitoring of performance. Inspectors are assured that this is a priority for the PPS.

The second issue (Part B) is much broader and forms a critical element of addressing some of the fundamental interface issues between both organisations. The past year has seen considerable communication and discussion between senior management on re-defining the respective roles and responsibilities with the aim of delivering a more effective and efficient service of which reducing avoidable delay is one of the desired outcomes. This is covered in some detail by this inspection report.

21. *Regional variations in court performance should be explored in more detail to identify areas where best practice can be shared.*

Status: **Not achieved**

### Inspectors' Assessment

The rationale behind this recommendation was the need to examine different levels of performance and apply best practice more widely. The pre-requisite is readily available and reliable performance data at regional level. At the time of the last inspection, the only comprehensive end-to-end data available to Inspectors was provided by the NICTS. Inspectors are aware that the NICTS has examined regional differences in performance and that elements of best practice have been applied across the service. Both the Lord Chief Justice and the Presiding District Judge are taking this forward in relation to the courts.

A number of interviewees including members of the Delay Action Team suggested that the provision of regional performance statistics could help understand overall performance and provide an impetus for performance improvement. Inspectors consider that the provision of regional performance data should be produced as a means of better understanding avoidable delay and identifying best practice.

22. *With the agreement of the Lord Chief Justice, the Court Service should conduct a consultation exercise, to identify how it can best handle different types of business and also meet the changing needs of its users.*

Status: **Partly achieved**

### Inspectors' Assessment

Inspectors have been told that senior management in the NICTS work closely with the Judiciary in helping to deliver the most effective and efficient service. This has included the means to reduce avoidable delay. This work remains ongoing.



**23.** *The NICTS should appoint case progression officers for magistrates' court cases.*

Status: **Achieved**

### **Inspectors' Assessment**

The potential benefits of having specialist case progression officers was under consideration by the NICTS at the time of the last inspection. Inspectors considered this to be a progressive response to one of the critical causes of avoidable delay – inadequate preparation by most parties prior to a court hearing. Since the inspection, the NICTS have appointed 15 Case Progression Officers across the seven county court divisions and have therefore fulfilled the requirements of the recommendation.

The main challenge at present is maximising the benefits of the Case Progression Officers. Views expressed to Inspectors by the Case Progression Officers and senior NICTS management was that this important initiative and resource input has not been reciprocated by the partner criminal justice organisations. There is a commonly held view amongst Case Progression Officers that the role will only deliver the anticipated benefits when a comparable case progression resource/role is made available in the PSNI and the PPS. This lies at the heart of the problem – that the effective progression of cases can only be undertaken by a more joined-up approach within the justice system. A renewed impetus is now evident in relation to case progression with the NICTS taking the lead on strengthening linkages between the respective roles in each main justice organisation and utilising this expertise to roll-out case progression meetings across Northern Ireland.

**24.** *Detailed and ongoing case file analysis, which Inspectors consider to be essential, will require all the key agencies to agree how each type of adjournment is recorded in court. Data should be collected and disseminated by the courts, and IT systems should be modified for this purpose.*

Status: **Not achieved**

### **Inspectors' Assessment**

An agreed basis for the reasons behind court based adjournments is required before any meaningful measures can be taken to reduce avoidable delay when cases come to court. Since the last inspection, it has only been possible to compile data on court adjournments for one month (November 2008) and the subsequent report has not been disseminated (except for some key participants). The root of the problem is disagreement on who requests the adjournment and what are the reasons for it.

A pilot adjournment recording project is underway in Londonderry/Derry magistrates' court during February and March 2010. It is expected that this will be rolled out across a number of other courts and that the resulting information on adjournments will help to target resources and efforts.

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25. *The PPS and the PSNI should ensure that ownership of witness attendance is agreed and that communication and liaison are enhanced.*

Status: **Achieved**

### **Inspectors' Assessment**

Feedback to Inspectors prior to this review stated that the PPS had accepted overall responsibility for witness attendance and that this role was carried out by PPS Community Liaison. While the ownership issue is clearer, the nature of the problem – prosecution witnesses not attending court at the specified time/date is still a problem. While the recommendation is considered achieved, the underlying problem requires ongoing attention. This issue is covered in the inspection report.

26. *The PBNI should report separately on its performance in relation to Pre-Sentence Reports and explanatory letters, and should work closely with sentencers in relation to the extended use of Specific Sentence Reports.*

Status: **Achieved**

### **Inspectors' Assessment**

The PBNI has confirmed that it now reports separately in relation to Pre-Sentence Reports and explanatory letters. The substantive issue of using more Specific Sentence Reports as a timely alternative to Pre-Sentence Reports has been considered and applied where considered appropriate. Inspectors have been told that the extended use of Specific Sentence Reports has been a success in Belfast and that it is considered appropriate to apply across the other courts.

27. *Greater flexibility with regard to decisions on informal warnings and cautions to young people is required so that (in the words of the Criminal Justice Review) 'cases are dealt with expeditiously'. The PSNI should therefore assume delegated responsibility for decisions on youth warnings and cautions.*

Status: **Not achieved**

### **Inspectors' Assessment**

This recommendation can be linked with recommendation 20, though it is more specific to youth defendants as this is the area where greatest benefits of timely and effective justice can be achieved. As stated in the response to the earlier recommendation, there has been significant discussion around the issue by the PSNI and the PPS though no final decisions have been taken to date. A pilot scheme for adults was completed in two police Districts in mid 2007 and a new process for adult cautioning was agreed – this was a modification to the existing arrangements. In view of the extent of avoidable delay in relation to youth cases, Inspectors would consider that any new initiatives on cautioning should be focused on youth defendants.



- 28.** *Periods of remand (on bail and in custody) should be for the shortest time possible, particularly for young offenders. The criminal justice agencies should develop procedures on implementation to minimise time spent on remand.*

Status: **Not achieved**

### **Inspectors' Assessment**

One of the outcomes of delay, whether necessary or avoidable, is the number of defendants and length of time spent on remand in prison (see inspection report for details).

It is generally accepted that periods on remand are necessary where defendants pose a risk to society, is in danger of making contact with victims and witnesses or is charged with a serious offence. This must be balanced against the loss of freedom to someone who has not been convicted of an offence. This responsibility rightly rests with the courts. The likely benefits of any reduction in the number of defendants on remand are likely to come from reductions in time spent on investigations, prosecution processes and court administration. In other words, reducing avoidable delay should help to reduce the amount of expenditure spent on remand prisoners while freeing up resources to deal with defendants convicted by the courts – the Prison Service are limited in scope in addressing offending behaviour of remand prisoners.

- 29.** *More detailed plans are necessary for the PPS prioritisation of youth cases. They should be formulated in conjunction with other Criminal Justice Agencies, and implemented as quickly as possible.*

Status: **Partly achieved**

### **Inspectors' Assessment**

There is an organisational reluctance within the PPS to prioritise specific types of cases as this will impact (negatively) on other cases. There are nevertheless priorities in terms of decision making (e.g. cases approaching their statute barred date), which require a priority ordering of cases. Youth cases do receive a certain level of priority in that different targets are applied and youth champions are in place – the different targets though may be a reflection of realistic performance rather than a prioritisation of the cases as such.

Inspectors are of the view that any decision on the prioritisation of youth cases should be taken at an inter-agency level and aligned with specific initiatives in each of the criminal justice organisations. This type of co-ordinated initiative has not been taken as yet.

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30. *The practice of combining youth cases with longer-running adult or youth cases should be restricted to exceptional circumstances.*

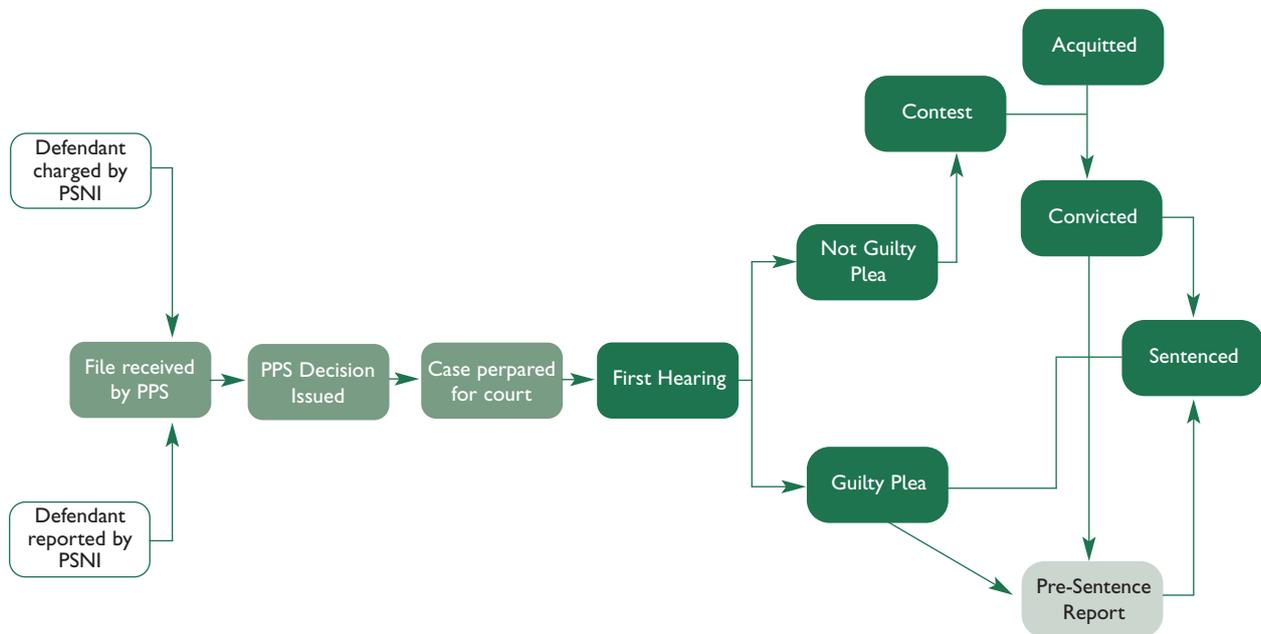
Status: **Not achieved**

### **Inspectors' Assessment**

There are two views on the proposal to limit the joining together or 'packaging' of offences involving a youth defendant: those against the recommendation argue that splitting the case creates an artificial demarcation of the case and can involve additional hearings for victims and witnesses in particular. Sentencing can be more problematic in this case. Those in favour state that the youth should be treated differently (this is already demonstrated through a separate youth court) and that a swifter process can have benefits in terms of addressing offending behaviour and minimising the negative impacts of delays. The result is that different practices are common within the justice system. The view of the NICTS is that this is a judicial decision. There is however some aspects which could be addressed without impinging on judicial decisions and these should continue to be explored.



## Appendix 2: Key stages in case progression



### The process stages of a criminal case

Arrest of a suspect for a criminal offence will be followed by evidence gathering by the PSNI with a decision taken on whether the suspect is charged or informed that a report will be prepared for the PPS. The decision to charge or report will depend on the nature of the offence, with the preferred option (according to the protocol agreed between the PSNI and the PPS) to report. Informing a suspect that a report will be prepared for the PPS allows the suspect to be released while evidence is collected and the PPS takes a decision on prosecution.

The alternative option, to charge a suspect with committing a criminal offence, will also be followed by evidence gathering and submission of a file to the PPS for a decision on prosecution. It may however, depending on the offence, lead to an early appearance in court to answer the charge and for the court to determine bail conditions. A defendant at this stage may be bailed to appear at a future court date or, in the case of serious offences/likelihood to re-offend, be remanded into custody.

In both of these cases (i.e. charge or report), the clock will start from the point that a suspect is charged or informed that a report will be prepared for the PPS. The exception would be if the PSNI decide to bail a suspect on police bail, whilst further enquiries are made. In these circumstances a defendant can be released, often with bail conditions, whilst the PSNI gather additional evidence with a view to prosecution. The suspect will be required to attend the police station, when a decision may then be taken to either charge or report. This practice of using police bail with conditions before a suspect is charged is more common in England and Wales.



Following a police decision to charge or report, the PSNI will continue to gather evidence and prepare a prosecution file. The content of a prosecution file will depend on the circumstances of a case, though a standard file will be expected to contain the pivotal evidence required for a prosecutor to make a decision on prosecution. This decision will be based on evidential and then a public interest test.

The Northern Ireland Policing Board has set timeliness targets for the PSNI to submit specific types of files to the PPS. These targets do not contain a quality measure, though the PSNI work to a vision of getting files ready first time and on time. Investigating Officers who are responsible for file preparation will however have other priorities which may impinge on the quality and timeliness of their files. There is however a supervision system in place which means that Sergeants are required to check the evidential quality of files before they are submitted to the PPS. Each file submitted to the PPS will include a police recommendation on prosecution or not. In the past, before the Patten reforms and the establishment of the PPS, most summary prosecutions in court were conducted by police Inspectors. At this time, files were submitted internally to a specialist case preparation unit.

The actual submission of a case file to the PPS is undertaken by Occurrence and Case Management Teams, which ensure that the file is ready to be submitted via the shared Causeway IT system. These teams include a mix of police staff and civilian staff and some police officers have assumed responsibility for quality assurance. Others do not quality assure files – they ensure that all the material is enclosed. Any problem with the actual electronic submission of the file to the PPS is dealt with by the Occurrence and Case Management Team.

The introduction of the electronic file submission system means that files are sent directly to the PPS. They are then registered by the PPS on their Case Management System and either allocated directly to prosecutors (priority cases) or placed in the unallocated summary case queue. There are separate lists of unallocated cases for each PPS regional office. Files are then selected from the list by prosecutors – the list is ordered according to priority. Separately, PPS administrative staff do a check on cases which are approaching the statute barred date (6 months from commencement of proceedings). If it is determined that a decision may not be made before the statute barred date, the PPS can request a Form 1 which provides for an extension of the time period to take a decision.

Upon allocation of a file, a prosecutor will check to see if all the required evidence is available to take a decision on prosecution. This includes things such as statements, medical reports and for some cases additional forensic evidence. If some pivotal evidence is not contained in the file, a prosecutor can make a Request for Further Information from the PSNI. Over the past two years, 20% - 40% of all files submitted to the PPS required further information.

Once the required information is available, a prosecutor will make a decision based on two tests – evidential and public interest. If these tests are not met, the case will be determined as a no prosecution. A number of prosecution options are available to the PPS depending on the status of the offender (e.g. youth) and the type of offence. For example, many young



offenders can be diverted away from the court system via cautions and youth conferences. Other more serious offences will be sent to the courts with the most serious indictable cases committed to the Crown Court.

The transfer of cases from the magistrates' court (where proceedings commence) to the Crown Court is known as committal. Unlike the practice in England and Wales where defendants are committed directly to the Crown Court, an intermediary stage happens in Northern Ireland when a defendant has an arraignment hearing. Proposals to change the committal proceedings have been under discussion for a number of years. All other prosecution cases are listed to appear in the magistrates' courts including the youth courts. Defendants are either charged to appear in court or in the cases of those who were reported will receive a summons to appear in court on a specified date.

The summons process takes longer than charge cases as the summons is required to be issued by the PPS, signed by a lay magistrate and served directly by the PSNI or increasingly by post. If it is not served or acknowledged by the defendant, it will need to be re-issued and re-served. The defendant will then have a set period of time (e.g. four weeks for a postal service) to attend court to answer the charges.

The first appearance in court is the first opportunity that all parties to the case will come together. The state is represented by the prosecution team (PPS prosecuting the police case) while the defendant will be represented by a defence solicitor (if a defendant cannot afford legal representation, the fees of the defence are paid through legal aid). The District Judge will hear the evidence in what is known as a contest hearing. A defendant may at any stage choose to make a plea – an early guilty plea will conclude the proceedings and attract a discount on the likely sentence if convicted after a contest. A guilty plea prior to a contest is known as an ineffective trial or hearing.

Contests (on the basis of a not guilty plea) will involve evidence from the prosecution and defence. If a defendant chooses to change a plea to guilty during a contest, the trial is known as cracked. Upon the completion of a contest, the defendant will either be acquitted or convicted. After conviction the judge may request a Pre-Sentence Report to inform the sentencing. This is done by Probation Board staff. For the purposes of the timeliness standards, the time of the acquittal or conviction is determined as the disposal of the case.



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