# The use of early guilty pleas in the criminal justice system in Northern Ireland

February 2013

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

# The use of early guilty pleas in the criminal justice system in Northern Ireland

Laid before 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) by the Department of Justice.

February 2013

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

# Contents

# List of abbreviations

| | |
|---|---|
| **CJI** | Criminal Justice Inspection Northern Ireland |
| **CJOs** | Criminal Justice Organisations |
| **CJS** | Criminal Justice System |
| **CJSSS** | Criminal Justice Simple Speedy Summary initiative |
| **CPO** | Case Progression Officer |
| **CPS** | Crown Prosecution Service (in England and Wales) |
| **DoJ** | Department of Justice |
| **HMCPSI** | Her Majesty's Crown Prosecution Service Inspectorate |
| **HMIC** | Her Majesty's Inspectorate of Constabulary |
| **NICTS** | Northern Ireland Courts and Tribunals Service |
| **NI** | Northern Ireland |
| **NILSC** | Northern Ireland Legal Services Commission |
| **NIO** | Northern Ireland Office |
| **NIPS** | Northern Ireland Prison Service |
| **PBNI** | Probation Board for Northern Ireland |
| **PCMH** | Plea and Case Management Hearing |
| **PPS** | Public Prosecution Service for Northern Ireland |
| **PSNI** | Police Service of Northern Ireland |
| **RFI** | Request for Further Information (by Public Prosecution Service) |
| **SC** | Sentencing Council |
| **SLAB** | Scottish Legal Aid Board |
| **VHCC** | Very High Cost Cases |
| **VSNI** | Victim Support Northern Ireland |

# Chief Inspector's Foreword

Facilitating an offender who fully admits their guilt to be fast tracked through the criminal justice process should be relatively straightforward. Unfortunately, that is not always the case with significant numbers of pleas being entered late in the process as this inspection clearly shows.

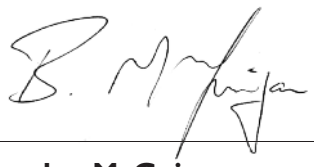
Entering an early guilty plea and getting the case to court for hearing and disposal has become a complex and protracted process. While we fully appreciate the right of an accused person to plead as they wish, more needs to be done to ensure that those who want to plead guilty are encouraged and facilitated to do so.

The Department of Justice (DoJ), the police, prosecution and court service realise the benefits that can be achieved for victims, witnesses and offenders and have taken significant steps to try to move this issue in the right direction. Getting this right has the potential to lessen the impact on victims, deal with the offending behaviour sooner, save money and reduce the pressures on the courts and the judiciary.

We accept that it will take a joint approach to improve the current situation and it is clear that the Minister of Justice and the Department are focussed on the critical issues of:

- changes to criminal legal aid payments;
- the development and delivery of a co-ordinated criminal justice wide early guilty plea scheme; and
- other legislative reform including committals and statutory case management (which we have recommended on previous occasions).

We have made two strategic recommendations for the DoJ and a number of operational recommendations for criminal justice agencies to facilitate the progress of this important issue. This inspection was led by Derek Williamson and James Corrigan of CJI. My sincere thanks to all those who participated.



**Brendan McGuigan**
Chief Inspector of Criminal Justice in Northern Ireland
February 2013

# Executive Summary

At the outset it needs to be made clear that this inspection (and report) sets out to ensure that the rights of an accused person to plead as he/she wishes are protected. Consequently, Inspectors do not seek to increase the numbers of those who plead guilty. The central concern of this inspection was to assist and encourage those who wish to plead guilty to do so at the earliest possible opportunity, achieving an improved experience for victims, and realising efficiency gains for the criminal justice system while continuing to protect the fundamental rights of the accused.

It is broadly recognised that for those who intend to plead guilty, an early plea avoids the need for a trial thus saving any witnesses and the victim from having to give evidence, and reducing the costs to the public. It also condenses the time between the commission of an offence and sentence; providing the offender with certainty and, importantly, facilitating an earlier intervention to offending behaviour. Earlier and more guilty pleas mean fewer trials which will reduce the backlog of cases waiting to be tried. A reduction in waiting time assists offenders, victims and witnesses, particularly those who may be young and or vulnerable. It may also allow a re-allocation of resources to other cases. This clearly benefits everyone.

The impact of a compressed timeframe for defendants is considerable. During the course of fieldwork, Inspectors heard time and again from those who had been convicted that they wished to see their cases progressed swiftly - to have certainty in terms of sentence and outcome.

Inspectors found overwhelming support for early guilty pleas amongst the vast majority of those spoken to. There were also convincing arguments of the need for early guilty plea schemes. For Inspectors, the debate therefore was not, and is not, one concerned with whether early guilty pleas should or should not be encouraged. Rather, the debate may properly be focussed on how best to effectively deliver mechanisms to support and assist earlier guilty pleas for those who wish to plead guilty.

Inspectors considered that achieving the benefits of early guilty pleas requires a number of inter-dependent factors to be considered. These inter-dependencies are significant and exist across a range of areas. First, for example, in the range of agencies involved (from police, prosecution, defence practitioners and the courts). Secondly, in terms of the range of factors influencing and creating the landscape in which early guilty pleas operate. These can include, for example, matters such as the availability and early service of core evidence, and the legislative framework for the transfer of cases to the Crown Court and for case progression generally.

In common with the position elsewhere, the exact or indicative costs of late pleas in Northern Ireland (NI) were difficult to calculate. However, during 2010-11 some 2,395 defendants changed their pleas across the Magistrates' and Crown Courts and Inspectors estimated the costs arising from this were in excess of £4m[1]. Assuming that those who changed their pleas were guilty and wished to plead guilty, these are additional costs. Inspectors considered therefore that achieving considerable savings by impacting on these late pleas are realisable. Indeed, bearing in mind other additional potential efficiency savings identified in this report, Inspectors suggest that this estimate is a most conservative one and potential savings range between £3.4-£5.6m per annum.

Notwithstanding the costs referred to, evidence provided to Inspectors demonstrated a significant proportion of defendants who did not plead guilty at the outset. This averaged 60% across all court tiers in 2010-11. Similarly, significant numbers of those guilty pleas received come after the first sitting across all court tiers and once again this averaged around 40%. Consequently, concentrating on getting these significant numbers of later pleas (8,539 in

1 Estimated costs were calculated using the cost per case used by the London Criminal Justice Partnership and allowing a tolerance of minus 10% to compensate for the difference between cases and defendants.

2010-11) at an earlier stage must be a key objective. Taken in conjunction with the indicative savings already sketched out above, it is clear that significant financial and efficiency savings may be achieved in the local context by addressing early guilty pleas.

With regard to user perspectives, Inspectors sought to examine the opinions of the public in general, of victims and of offenders. It was found that the public often perceive sentencing as too lenient and that frequently this lenience works in favour of offenders, rather than providing justice for victims. However, there is increased support for sentence reductions if a guilty plea is entered at an early stage where the benefits - both economic and emotional - are clearly more tangible at this point. There is little support for a reduction for a guilty plea made at the court door or once a trial has started. However, a small number of victims of more serious offences often felt that reductions at this stage could be acceptable. Interestingly, those who have experienced the justice system, especially as a victim, were more likely to be supportive of sentence reductions (and consequently guilty plea schemes) than the general public.

Arising from extensive work by Inspectors in seeking the views of offenders, it was clear that defendants themselves saw scope to improve the current system and increase the number of guilty pleas entered at an early stage. The key factors considered by offenders before entering any plea were:

- the weight of evidence;
- legal advice;
- the level of charging and scope for reduced charges;
- the certainty of sentence reductions; and
- transparency in sentencing.

Consequently, Inspectors considered potential areas for improvement fall chiefly into the following areas:

- early disclosure of the case to the defendant;
- arrangements to fast-track guilty pleas for sentencing;
- greater certainty about the available sentence reductions; and
- greater transparency in sentences handed down.

Arising from a comparative analysis of practice in some similar jurisdictions, Inspectors found evidence of practice elsewhere that may be considered helpful in terms of creating the landscape that would assist early guilty pleas locally. These included:

- evidence of the benefit of a number of early guilty plea schemes in England and Wales;
- plea before venue hearings in England and Wales;
- 'accelerated hearings' for those who wish to enter a guilty plea in Scotland; and
- some legislative differences including statutory case management, wasted costs orders and the direct transfer (committal) process in England and Wales.

With the exception of wasted costs orders, Inspectors recommend that these are matters which are considered in the context of encouraging early guilty pleas.

Inspectors considered that in encouraging early guilty pleas there were a number of landscape issues which currently do not assist in the delivery of effective early guilty pleas and indeed there were a further number of obstacles in that terrain.

The landscape issues incorporate matters which may require legislative reform and these include issues such as fundamental and progressive reform of the committal process. This is a significant barrier to the progress of

cases (delay), receiving pleas at an early stage in the Magistrates' Court and sentencing without delay. Further issues concern the payment of legal fees where Inspectors considered that there could be a temptation to escalate matters to a contest or to the higher court. This is so given a significant differential between contest/trial fees and the basic guilty plea fee rates. Consequently, Inspectors recommend a single fee structure for criminal legal aid payments in the Magistrates' Courts. A similar approach, but bearing in mind the significant differences, in Youth Courts and Crown Courts is recommended by Inspectors. An additional derived benefit of a single fee in the Magistrates' Court would be the efficiency savings available in terms of the administration of the single fee.

Inspectors diagnosis was that obstacles within the overall terrain included for example, 'over-charging', reduced/withdrawn charges, case readiness, case file quality, and early service of evidence. Inspectors considered that these issues also need to be addressed as a priority, but in parallel with the other issues highlighted being simultaneously addressed.

Consequently, alongside a key recommendation to deliver structured early guilty plea schemes, Inspectors also make a number of other interconnected recommendations which are aimed at assisting in the delivery of effective early guilty pleas schemes. Examples include:

- the use of Case Progression Officers (CPOs) to assist in the administration of early guilty plea schemes;
- the utilisation of the Witness Care Units to address the needs of victims;
- the early service of evidence and early disclosure;
- arrangements to fast track sentencing in suitable cases;
- greater certainty in the credits available for early pleas; and
- greater transparency in sentencing (including a statutory basis for setting out the reductions applied or withheld in individual cases).

Overall, there are clearly a number of persuasive arguments in favour of early guilty pleas. Conversely, Inspectors heard little convincing argument as to why structured and well managed early guilty pleas schemes would not bring some additional benefits. The investments necessary to deliver relevant schemes are limited and can be offset against efficiencies gained. As a result, Inspectors recommend that clear early guilty plea schemes are developed for both the Magistrates' and Crown Courts in NI. Inspectors felt however that the most benefits would be gained by commencing with the Crown Courts, where incentives and the advantages could bring more immediate tangible benefits.

These issues must be regarded as a suite of measures mutually supporting and encouraging early guilty pleas. If one element is not addressed in parallel it will have a ripple effect and the potential to derail the over-arching objectives and success. There is thus an overarching need for the commitment of all in the justice system to play their part in support of early guilty pleas. Key elements of this will be the requirement for the judiciary to oversee early guilty plea schemes and for defence practitioners to support relevant schemes.

Inspectors acknowledge that the DoJ and others are already engaged in significant work in many of these areas, including setting out proposals with their August 2012 *'Report on responses and way forward'*[2]. This addresses both reform of committal processes and early guilty pleas. In addition, Inspectors acknowledge the significant work being advanced by the DoJ to further reform legal aid and the separate but interconnected work by the Lord Chief Justice's Office who have established a Sentencing Group to advise the Judicial Studies Board on matters of sentencing. The Lord Chief Justice has also recently sought to appoint lay members to this Sentencing Group. The recommendations made by Inspectors seek to assist and build on that ongoing and positive work.

2 *'Encouraging Earlier Guilty Pleas and Reform of Committal Proceedings: Report on responses and way forward'*, Department of Justice, August 2012 available at http://www.dojni.gov.uk/index/public-consultations/archive-consultations/early-guilty-pleas-and-committal-reform-report-on-responses-and-way-forward-report.pdf.

# Recommendations

## Strategic recommendations

Inspectors recommend that a structured and co-ordinated plan is overseen and developed by the DoJ to deliver:

- a clear early guilty plea scheme in both Magistrates' and Crown Court tiers; and
- supporting infrastructures for the above including:
  - reform of committal procedures;
  - statutory reform supporting case management;* and
  - data collection and sharing (*Paragraph 5.6*).

We repeat the recommendation made in the CJI report of December 2011, *'The care and treatment of victims and witnesses in the criminal justice system in Northern Ireland'* which stated: *'Inspectors recommend that case management is placed on a statutory footing with timescales, and incentives designed to deliver the most efficient and effective case progression...'** (*Paragraph 3.39*).

Early action should be taken by the DoJ to create a single criminal legal aid fee structure in the Magistrates' Courts. A separate fee structure, but following the principle of a single fee formation for comparable summary offences, is recommended in the Youth Courts. A single fee in the Crown Courts is more challenging, but the principle of the removal of incentives to prolong cases must also be followed there (*Paragraph 3.49*).

## Operational recommendations

Inspectors recommend that data is collected by the NICTS (on the same basis as that in England and Wales) on cracked, effective and ineffective trials and that this is made available publicly on an annual basis (more often for justice agencies by arrangement)* (*Paragraph 1.36*).

As a wider part of the work on delay, Inspectors recommend that the DoJ consider how sanctions could be applied to the issue of delay and wasted time in the courts. This could include statutory or other provisions to address wasted costs* (*Paragraph 2.31*).

The PPS should develop management data on the numbers and reasons for withdrawn/reduced charges in the Magistrates' Courts and advance an action plan to address trends and variances from policy. This should have the ultimate objective of reducing the overall number of charges withdrawn or reduced (*Paragraph 3.7*).

Inspectors recommend that a joint agreed policy for implementation of the streamlined file initiative is established between the PSNI and the PPS without further delay (*Paragraph 3.22*).

Inspectors recommend that the Criminal Justice Delivery Group oversee the development of CJS wide early guilty pleas schemes. This should have 'buy-in' from all sections of the CJS, including defence practitioners* (*Paragraph 3.23*).

The CPO mechanisms across the CJS should be utilised where possible to help facilitate and reinforce the effective delivery of early guilty plea schemes. This could be further supported by providing a statutory basis for this work and on a similar basis to that in England and Wales (as provided for in the Criminal Procedure Rules 2010). In order to enable consistency of operational delivery, Inspectors further recommend that the DoJ consider a framework for them, again where possible and appropriate, to support early guilty plea schemes. * (*Paragraph 3.38*).

As part of the Witness Care Unit project previously recommended by Inspectors, the PPS and the PSNI should ensure that victims are informed of early guilty plea processes (where and when implemented), the outcomes arising and their meaning* (*Paragraph 4.10*).

Inspectors recommend that in order to address the needs of certainty and transparency in sentencing the following factors are given due weight by the DoJ in developing work on the sentencing frameworks and in early guilty plea schemes. They are:

- providing statutory sentencing rules which while retaining a strong judicial discretionary element also more firmly prescribe the kinds of sentence reductions which must (subject to exception) be provided for an early guilty plea; and
- a firm (again, if necessary, statutory) requirement for transparency in sentences delivered, including the reductions applied and withheld* (*Paragraph 4.33*).

A simple leaflet explaining the process and effect of early guilty pleas should be given to all detainees in police custody at the same time as other notices informing them of their rights. The PPS could usefully utilise the same leaflet to issue with court papers served on defendants and thus act as a further reminder to the early guilty plea processes* (*Paragraph 4.34*).

A CJS wide poster should be devised and made available in all police stations and court buildings explaining the process and effect of early guilty pleas* (*Paragraph 4.35*).

Inspectors recommend that any future early guilty plea scheme is screened by the DoJ for equality impact* (*Paragraph 4.47*).

## Areas for improvement:

The withdrawal of charges in the Youth Courts is an issue which all relevant CJOs and in particular the PPS will wish to keep firmly in their focus in order to achieve efficiencies (*Paragraph 3.5*).

The evidence of impact on early guilty pleas from early charging advice by prosecutors leads to the conclusion that this must not be left to PSNI 'gatekeepers' alone and Inspectors will want to see continuing and sustained improvement over time in the broad area of partnership between the PSNI and the PPS (*Paragraph 3.12*).

Inspectors encourage the PPS to consider secure e-mail facilities with legal representatives as an area for improvement. This could act to encourage the early service of evidence and early engagement (*Paragraph 3.25*).

Early service of evidence (or summaries), early disclosure and early engagement with the defence need to be central features of encouraging early guilty pleas (Paragraph 3.26).

* Denotes linked recommendations.

Section 1

# Inspection Report

CHAPTER 1:

# Introduction and background

1.1 The issue of early guilty pleas has considerable impact, among other areas, in the overall confidence in the criminal justice system. The outturn of confidence in the NI criminal justice system was 37.6% in 2010-11[3]. The similar figure for England and Wales was 41%.[4] In addition, it has been identified as a significant issue in avoidable delay. No less critical in terms of impacts are the needs and concerns of victims and witnesses or indeed the needs and concerns of offenders. Supporting earlier guilty pleas for those who choose to do so is thus regarded as a critical element in both avoidable delay and in confidence in the criminal justice system (CJS). Consequently, Criminal Justice Inspection Northern Ireland (CJI) undertook a thematic inspection of the issues in early guilty pleas commencing in late December 2011.

1.2 It must be stated clearly at the outset that in referring to early guilty pleas there is no intrusion on the rights of an accused person to plead as they wish. Rather, the purpose of inspection and this report, was centrally driven by a concentration on improvements which would see those who choose to admit their guilt doing so at the earliest possible opportunity. This aligns with the CJI strategic intent to promote the efficiency and effectiveness of the CJS and, in this particular context, to remove unnecessary waste and inefficiencies from the system. It is also in order to ensure that defendants and their families can have certainty and to mitigate the effects of late guilty pleas on victims and witnesses.

1.3 It is broadly recognised that for those who intend to plead guilty, an early plea avoids the need for a trial thus saving any witnesses and the victim from having to give evidence, and reducing the costs to the public of dealing with the case. It also condenses the time between the commission of an offence and sentence providing the offender with certainty and, importantly, facilitating an earlier intervention to offending behaviour. Earlier and more guilty pleas (and conversely fewer late pleas), mean fewer trials which will reduce the backlog of cases waiting to be tried; this in turn reduces the time witnesses and indeed defendants, have to wait before their case is listed for trial. A reduction in waiting time is better for witnesses, particularly those who may be young and or vulnerable. It may also allow a re-allocation of resources to other cases. This benefits not only the courts, but also the prosecution service, the police and ultimately the public. The impact of a compressed timeframe for defendants is also considerable and during the course of fieldwork, Inspectors heard time and again from those who had been convicted that they wished to see their cases progressed swiftly - to have certainty in terms of sentence and outcome. Conversely, the effects of late pleas include increased costs, delay to the process of justice and consequent pressure on court time, together with

3 *'Department of Justice KPI 1: Confidence in the fairness and effectiveness of criminal justice system'*, Source Northern Ireland Crime Survey available at http://www.dojni.gov.uk/index/statistics-research/performance_ indicators-2.htm.

4 *'Crime in England and Wales 2009-10'*, Findings from the British Crime Survey and police recorded crime (Third Edition), Home Office Statistical Bulletin 12/10, July 2010.

negative impacts on victims and witnesses. Furthermore, defendants are remanded for long periods of time. This is time during which offending behaviour and rehabilitation is minimally addressed. The significance of the issues are apparent for example from the estimated costs in England and Wales where it was stated by Her Majesty's Inspectorate of Constabulary (HMIC)[5] that '*...if the guilty pleaded guilty earlier, the savings to the CJS are in the region of £150 million...*'

1.4 Arising from this, it is evident that the debate in terms of early guilty pleas is not one which is, or should be focussed on whether a process which facilitates early guilty pleas is necessary. This is so despite the views of some who, quite properly, pointed out to Inspectors that early guilty pleas would, in fact, be unnecessary if the CJS was working effectively and without delay. That is a laudable objective for the CJS and one which should remain as a core principle. However, in order to assist in that objective and to reduce delays in the CJS, the debate is one fundamentally concerned with improving current practice. That includes, amongst others, for defendants and for victims and witnesses. During the course of fieldwork it was clear to Inspectors that there was almost universal support for early guilty pleas, where an accused intends to plead guilty. It is on this basis that this report advances.

1.5 The aims of the inspection were informed by the issues identified above and included the following core areas:

- assess current policy, practice and procedures surrounding early guilty pleas;
- analysis of current data (in completed cases) and its significance in terms of outcomes;
- provide comparative analysis, where possible, drawing on best practice in other jurisdictions and highlighting any structural differences between NI and other jurisdictions;
- consider and assess the impact of other issues on current practice (for example, the payment schemes for legal fees); and
- consider and assess where additional improvements to practice can be made.

1.6 Full terms of reference for the inspection are set out at Appendix 1. The inspection methodology is set out at Appendix 2.

1.7 The inspection took place at a time when the DoJ were engaged in consultation on the issue of early guilty pleas. The inspection effort sought to further inform the ongoing work by DoJ surrounding early guilty pleas and provide recommendations for improvement. Similarly, Inspectors work on delay will be relevant to draw upon, but will not be unnecessarily repeated.

1.8 In assessing the overarching issues, Inspectors considered that achieving the benefits of early guilty pleas require a number of inter-dependent factors to be considered. These inter-dependencies are significant and exist across a range of areas. First, for example, in the range of agencies involved (from police, prosecution, defence practitioners and the courts). Also, in terms of the range of factors influencing and creating the landscape in which early guilty pleas might operate. These can include, for example, matters such as police file quality, the availability of core evidence (such as forensic and medical reports), and the timely service of prosecution evidence.

1.9 For the defence, the stage at which a plea might be entered has relevance in the context of legal aid remuneration, timely disclosure of the prosecution case and the certainty of early plea reductions. Some other issues are outside the scope of either the prosecution or the defence and include legislative reform touching, for example, on the process of committal. It is already widely recognised within the CJS that in improving the productivity and performance of the CJS in terms of early guilty pleas, a number of these landscape issues are critical.

5 '*Stop the Drift: A Focus on 21st century Criminal Justice*', Her Majesty's Inspectorate of Constabulary, November 2010.

1.10 These issues were apparent from Inspectors' fieldwork and also from examination of the various schemes designed to encourage early guilty pleas in similar jurisdictions.

## The overall context of delay

1.11 Tackling the problem of avoidable delay goes to the heart of the justice system and involves all the major justice organisations. It 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. Inspectors have made clear from a number of reports that the time taken to deal with cases is too long. The most recent such report highlights some improvements and some good work in tackling the issues. However, in CJI's 2012 report[6] Inspectors also said, *'... progress has been slow in a number of areas and performance has deteriorated for Crown Court cases and also for Magistrates' Court cases which commence through report and summons. This is particularly problematic for youth cases as this group requires an immediate and effective response in order to challenge offending behaviours and ensure that they are dealt with effectively by the criminal justice system. The most recent average of 289 days from being informed of a prosecution through to disposal by a court, is simply too long and it is disappointing that this is 30 days longer on average compared to 2010-11.'* Significantly, Inspectors also reported that, *'The exception is charge cases which have continued to improve over the past four years.'*

1.12 In the context of early guilty pleas, also in their January 2012 report on '*Avoidable Delay*', Inspectors commented:

*'In the longer term, there is an anticipation among the justice agencies that the benefits of a broad range of initiatives on non-court disposals such as Fixed Penalty Notices, case ready charging, improved file quality, streamlined decision making in the Public Prosecution Service (PPS), joint case management, earlier guilty pleas etc. will contribute to a significant reduction in avoidable delay. There are also plans to introduce new legislation in areas such as reform of committals and measures to encourage earlier guilty pleas. These activities can also be supported by ongoing judicial case management and further reforms to legal aid (e.g. fixed fees similar to Scotland).'*

1.13 The above report further commented:

*'The introduction of case ready charging, which is being piloted in one court area, has the potential to significantly change the way justice is delivered. Its success will ultimately depend on preparedness for court – i.e. that all parties are ready to proceed at the earliest opportunity. Any failure will simply move the pre-court delays into the courts.'*

1.14 It is clear therefore that many of the issues in terms of supporting early guilty pleas insofar as they relate to delay have already been identified by the criminal justice agencies and to some extent work to address these is already under-way. Examples include the DoJ consultations on both early guilty pleas and committals and also work by the Police Service of Northern Ireland (PSNI) to introduce streamlined files.

## The scale of the issues - pleas

1.15 There was a range of data available to Inspectors during the course of this inspection (largely provided by the Northern Ireland Courts and Tribunals Service (NICTS)). The core elements of this information are provided in the tables and graphs which follow. While there are some limitations to this data, Inspectors considered that among the core issues from the accessible statistics were the following:

- Table 1 indicates that the average number of defendants across all court tiers who did not plead guilty at the outset[7] was around 60%.

6 *'Avoidable Delay: A progress report'*, CJI, January 2012.

7 'The outset' refers to defendants who only ever entered a guilty plea on all charges, having never previously entered any not guilty pleas.

- Table 1 also indicates that the average time to change of plea across all court tiers was over 12 weeks.
- Graph 1 indicates that while a fifth of defendants plead guilty at the outset[8] in the Crown Court and over a third do so in the Magistrates' Court; the converse of this is that when averaged across all court tiers rather than being received at the outset, more than 69% of pleas to all counts come later in the process. Clearly however, this particular indicator of pleas excludes noteworthy numbers of pleas, for example, those who may plea guilty to some charges but not all.
- Graph 2 indicates that while the majority of all pleas at the outset come at first hearing[9] (with over 60% in the Magistrates' Courts and 70% in the Crown Courts), on average across all court tiers more than 40% of pleas come after the first sitting. This equated to 8,539 accused in 2010-11.

Indeed in addition to some of the limitations, other issues also clearly impact on the overall scale of the issues and this includes, for example, cracked and ineffective trials which are discussed later. However, the overall conclusion must be that there continues to be considerable problems with the number of later pleas, changed pleas and the average time taken for the latter. Some further indicators of the nature of the problem and associated costs are considered post.

1.16 In terms of the numbers of trials in the NI courts, the numbers of defendants and the overall percentage of contests Tables 1 and 2 below provide an overall representation of the position.

**Table 1: Trials and Contests in the Crown and Magistrates' Courts 2010-11[10]**

| Court tier | Number of defendants | Number who did not plead guilty at the outset | | Number who changed their plea | | Average time to change of plea in 2010 (weeks) |
|---|---|---|---|---|---|---|
| **Crown** | 1,604 | 1,268 | 79.05% | 347 | 21.63% | 13.81 |
| **Magistrates'** | 43,067 | 23,262 | 54.01% | 1,903 | 4.42% | 13.39 |
| **Youth** | 2,169 | 1,029 | 47.44% | 164 | 7.56% | 9.96 |

1.17 For 2011 the Judicial Statistics[11] indicates as follows:

**Table 2: Cases and defendants committed/disposed of/contests 2011[12]**

| | Crown Court | | Magistrates' Court | | Youth Court | |
|---|---|---|---|---|---|---|
| **Cases received** | 1,621 | | N/A | | N/A | |
| **Defendants committed/received** | 2,110 | | 53,320 | | 2,799 | |
| **Defendants disposed of** | 1,948 | | 53,772 | | 3,023 | |
| **Contests*** | 1,111 | 57% | 18,108 | 33.6% | 759 | 25.1% |

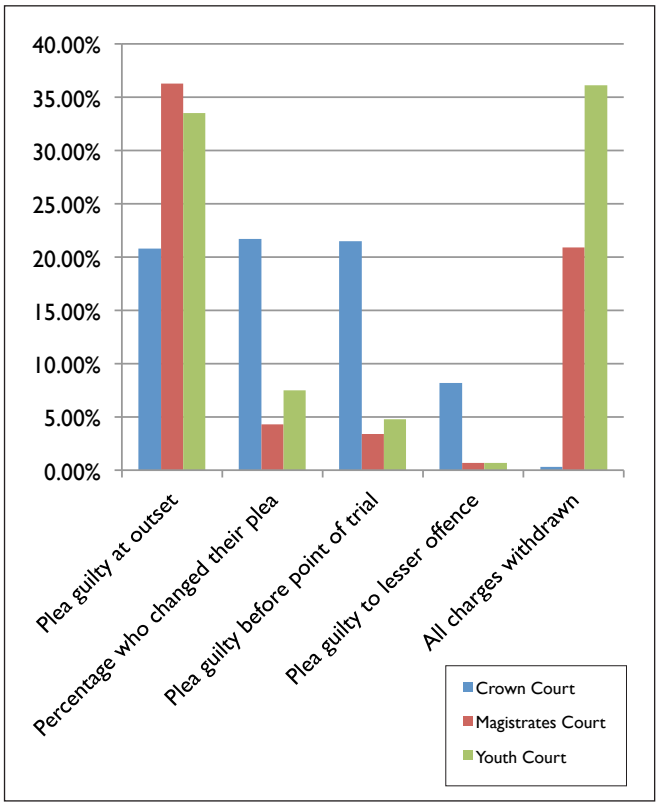
*contests have been calculated adding the total of cases in which a plea of not guilty on at least one charge was entered but the defendant was found guilty on at least one charge and the numbers who pleaded not guilty and were acquitted on all charges.

8 'The outset' refers to defendants who only ever entered a guilty plea on all charges, having never previously entered any not guilty pleas.
9 'Hearings' include all sittings/listings.
10 Determined from data supplied by the NICTS.
11 Judicial Statistics 2011, Northern Ireland Courts and Tribunals Service, Northern Ireland Statistics and Research Agency.
12 Data supplied by NICTS.

1.18 We can conclude from this that in 2011 some 43% of defendants disposed of in the Crown Courts concerned pleas while some 67% concerned pleas in the adult Magistrates Courts and close to 75% in the Youth (Magistrates') Courts.

1.19 The following graph represents a combination of data for 2010-11 in which both the absence of early pleas (at the outset) and changed pleas are informative.

**Graph 1: Percentage of pleas and reduced/ withdrawn charges by court tier 2010-11**[13]



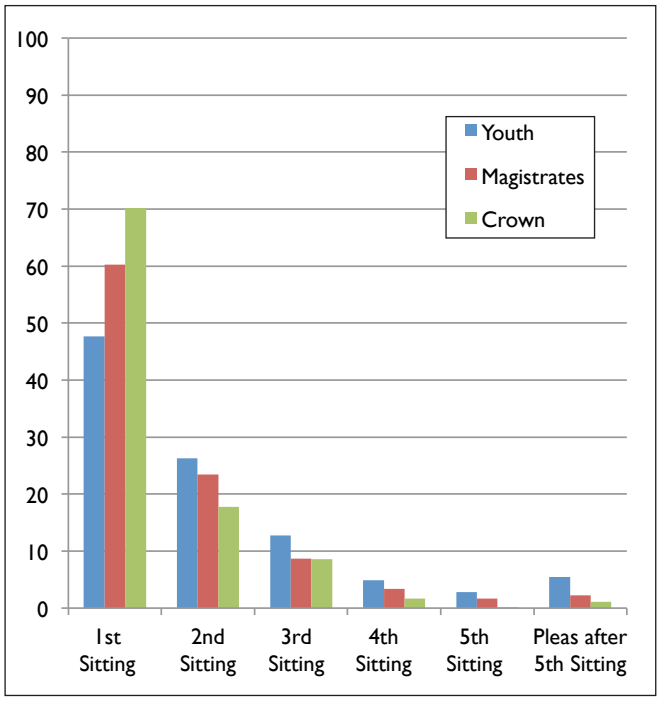

1.20 In terms of the numbers of defendants who change their plea at any point in the Crown Court, it is instructive to consider this over a longer period. The following data presents an illustration over a four-year period from 2008 to 2011 and from which we can conclude that the average change of plea over this period is 20.32%. This further supports and underpins the data at Table 1.

**Table 3: Crown Court percentage who changed plea 2007-08 to 2010-11**[14]

| | 2007-08 | 2008-09 | 2009-10 | 2010-11 |
|---|---|---|---|---|
| Total who plead not guilty to one or more charges at the outset but who at any point thereafter changed their plea to guilty | 324 | 364 | 331 | 347 |
| Total Crown Court defendants dealt with | 1,789 | 1,735 | 1,603 | 1,609 |
| Percentage of total dealt with who changed plea | 18.11% | 20.97% | 20.64% | 21.56% |

1.21 Graph 2 represents the stage at which guilty pleas to all counts received are entered in the various court tiers:

**Graph 2 - Stage of pleas (by percentage) and sitting for defendants who pleaded guilty at the outset 2010-11**[15]




* For the Magistrates' Court figures exclude defendants dealt with via fixed penalty or committed to the Crown Court.

13 Data supplied by NICTS representing cases in which a plea is entered.
14 Ibid
15 Ibid

1.22 In terms of the percentage of guilty pleas received at the outset [36.3%] Graph 2 clearly demonstrates a clear sliding scale towards those guilty pleas which are entered as predominantly occurring at the early stages. The rate of cases dealt with at first hearing in the Magistrates' Court in England and Wales was 61% in 2010[16] and this seems to be on a par with that in NI where the rate in the Magistrates' Court (adult) is 60.3%. The corresponding figures in the Magistrates' (Youth) Court is 47.7% and in the 70.2% Crown Court. However, the total number of pleas coming after the first sitting remains sizeable at 8,539 (or 40.1%). This latter figure is once again decisive in the context and alongside the issues highlighted in Paragraph 1.15, is significant to the issue of costs.

## Indicative costs

1.23 Cautious and indicative costings of the savings which are possible arise from concentrating on a range of available data including the numbers of defendants who plead guilty before point of trial. During 2010-11 the numbers of defendants who changed their pleas equated with 347 defendants in the Crown Court and 2,067 in the Magistrates' and Youth Courts. Criminal justice organisations in NI do not for a variety of reasons have available average costing data on the cost of cases – and the savings accrued from early pleas. It is thus difficult to precisely cost potential savings. However, using costing data from the London Criminal Justice Partnership[17], it was calculated that the savings per case were £1,300 in the Magistrates' Courts and £4,000 in the Crown Courts. The potential savings are therefore in the region of £4.07m per annum in NI. When considering these costings from the perspective of the numbers who plead after the first sitting the figures are 8,539 in the Magistrates' and Youth Courts and 100 in the Crown Courts. Using the same costing data as previously, but allowing for only half of these later pleas to be achieved at the first sitting, the potential savings are £5.6m. In both cases these are non-cashable efficiency savings. However, Inspectors repeat that these estimates are conservative and that further efficiency savings are possible - given that these costings are restricted only to those who plea before point of trial and to halving the numbers of these 'late' pleas. Indeed, taking account of these matters and in combination with other initiatives (such as the reform of committal - where costs in criminal legal aid were in excess of £2m in 2010-11), the savings conservatively range between £3.4-£5.6m and may be significantly increased by building upon other initiatives. For example, the total of criminal legal aid paid for a guilty plea 2[18] case in 2011-12 was £11.7m. If those latter fees (essentially representing a changed plea) were impacted by changes to the fee structures, the savings could be even greater than £5.6m.

## Cracked and ineffective trials

1.24 The significance of early guilty pleas and conversely the effect of late pleas, may also be illustrated by the numbers of 'cracked' and effective/ineffective trials. The classification of each is as follows:

*Effective Trial:* A trial that commences on the day it is scheduled, and has an outcome in that a verdict is reached or the case is concluded.

*Cracked Trial:* On the trial date no further trial time is required and the case is closed. This may be because the defendant offers acceptable pleas or the prosecution offers no evidence.

*Ineffective Trial:* On the trial date, the trial does not go ahead due to action or inaction by one or more of the prosecution, the defence or the court and a further listing for trial is required.

16 Judicial and Court Statistics 2010, Ministry of Justice, June 2011.
17 Quoted in 'Stop the Drift: A Focus on 21st century Criminal Justice', Her Majesty's Inspectorate of Constabulary, November 2010.
18 See table 7 for an explanation of criminal legal aid fee bands.

1.25 In terms of the data which underpins the issues it is apparent, for example, that the numbers of cracked trials in NI is a matter of concern. Inspectors have previously highlighted the issue in their December 2011 report *'The care and treatment of victims and witnesses in the criminal justice system in Northern Ireland'*[19]. Inspectors then stated:

*'… In terms of the number of 'cracked' trials in Northern Ireland - by which is meant those that do not proceed because of a guilty plea or the withdrawal of the case at trial, this is not routinely measured in performance data and indeed Inspectors noted in their follow-up review of the PPS in June 2009 that, file examination indicated the reasons for ineffective trials were not always endorsed on files. However, available data for 2010-11supplied by the NICTS shows that 28% of trials in the Crown Court are 'cracked'. In 2010-11, out of 1,264 Crown Court trials where the defendant pleaded not guilty, 354 resulted in a 'cracked' trial. This figure is more pronounced in the adult Magistrates' Courts where 38% of cases are 'cracked'.*

*'While direct comparisons are not possible for a number of reasons, this latter data seems to be broadly in keeping with statistics from England and Wales where in 2007-08, 42% of Crown Court trials were described as 'cracked'. However, there appears to be a very large disparity concerning 'ineffective' trials (i.e. those where there are adjournments). In this case the figures in England and Wales are 18% for Magistrates' Court cases, whereas in Northern Ireland the figure is closer to 36%.*

*'While exact cost figures for Northern Ireland are unavailable, using the same approximate figures as those used by the Victims' Commissioner for England and Wales that preparation for a Crown Court trial costs the Crown Prosecution Service alone some £2,200, then the notional costs in Northern Ireland would be 354 x £2,200 totalling £778,800. This does not take account of police costs, witness costs and more importantly the emotional costs to victims and witnesses.*

*Magistrates' Court data shows that in 2010-11 some 13,245 trials were 'cracked'. The costs of preparation in the Magistrates' Courts are significantly less and Inspectors have calculated, preparation costs in the Magistrates' Courts at one quarter of that in the Crown Court, at £550. The costs of 'cracked' trials in the Magistrates' Courts are thus some £7.28m. Added to the costs of 'cracked' trials in the Crown Courts the annual costs are in the region of £8.06m. Consequently, if for example, the number of 'cracked' trials were to be halved then the saving to the public purse could be in excess of £4m per annum. It was clear to Inspectors that exact costs either for 'cracked' or 'ineffective' trials are not available, and hence the real costs and impacts are also unknown. It occurs that there are also many factors and cross agency issues involved, meaning that indicative costs here may not be pinpointing all relevant factors.'*

1.26 In December 2011 Inspectors consequently recommended as follows:

*'The DoJ should consider how it can measure the costs and issues arising in 'cracked' and 'ineffective' trials highlighting where costs can be saved and outcomes for victims and witnesses improved'.*

1.27 The action plan co-ordinated by the DoJ in response to the recommendations of the CJI report on *'The care and treatment of victims and witnesses'* commented as follows:

*'The NICTS started recording data about the number and reasons for 'cracked' and 'ineffective' trials in January 2012. Work is likely to take six to nine months completing in autumn 2012. In tandem the Speeding Up Justice Team is developing a model to measure the cost of criminal cases and to identify savings that could be realised if the number of 'cracked' and 'ineffective' trials were reduced.'*

1.28 Also in their 2009 PPS follow-up inspection[20] Inspectors commented:

*'The Management Board should agree with the Northern Ireland Court Service (NICtS) to collect*

19 *'The care and treatment of victims and witnesses in the criminal justice system in Northern Ireland'*, CJI, December 2011.
20 *'The Public Prosecution Service for Northern Ireland A follow-up inspection of the 2007 baseline inspection report recommendations'*, CJI, June 2009.

*and analyse reliable data relating to the proportion of Magistrates' Courts late vacated, cracked and ineffective trials, and take remedial action where necessary.*

*Findings from follow-up:*
*The Northern Ireland Courts Service (NICtS) now provides PPS regions with a monthly breakdown of the 'cracked' and 'ineffective' magistrates' court trials and the reason for either outcome (in Belfast this is broken down to individual court rooms). This NICtS data could be a useful tool for regional managers to assess where case preparation could be improved and whether proceedings are being withdrawn unnecessarily late in the day.*

*Currently, the data is based on the courts' view as to where responsibility for the cracked/ineffective trial lies. It would be beneficial if the prosecution, defence and courts agreed the reasons prior to the production of the data. Despite the improvement in the quality of data provision since our full inspection, some Public Prosecution Service (PPS) managers seem either unaware or unsure of what use to make of this information. File examination indicated that the reasons for 'ineffective' trials were not always endorsed on the file.'*

1.29 It was clear from this inspection that the data referred to at paragraph 1.28 was not readily available or being used systematically to drive performance improvement. Inspectors consider it remains important to do so both in the context of the previous recommendation and secondly, in the context of effective management going forward. PPS, for example, at a strategic management level need to be aware of both the rate of cracked and ineffective trials but also the reasons for these so that performance improvements can be tracked and improved over time. Such data would be an important indicator of performance. This links to the recommendation made by Inspectors at paragraph 1.39.

1.30 In terms of the numbers of adjournments and hence 'ineffective' trials some data made available by the NICTS for the Magistrates' Courts in 2010 has indicated that of 11,932 contests 4,279 were adjourned. That represents a percentage of 35.8% which were potentially 'cracked'. However, this figure while indicative needs to be treated with caution for a variety of reasons. CJS organisations are unable to supply the costs of preparation for these cases, however, it is clear that the costs in terms of wasted time for CJOs is considerable. Further management data indicating the reasons for adjournments in 2011 was available from NICTS. Inspectors emphasise this was provisional data. However, this showed:

**Table 4: Adjournment reasons 2011**[21]

| | Adult Magistrates' Court adjournment reasons reasons | | Youth Magistrates' Court adjournment Crown | | Crown Court adjournment reasons | |
|---|---|---|---|---|---|---|
| **Case progression stage** | 84.2% overall | | 72.6% overall | | 60.2% overall | |
| | Prosecution attributed*[22] | 48.1% | Prosecution attributed | 42% | Prosecution attributed | 13.6% |
| | Defence attributed | 47.9% | Defence attributed | 51.3% | Defence attributed | 47.5% |
| | Court attributed | 3.8% | Court attributed | 6.5% | Court attributed | 38.8% |

*continued over*

21 Provisional data provided by NICTS.
22 Attribution may include a range of reasons including, for example, the unavailability of evidence from other quarters.

Table 4: Continued

| | Adult Magistrates' Court adjournment reasons reasons | | Youth Magistrates' Court adjournment Crown | | Crown Court adjournment reasons | |
|---|---|---|---|---|---|---|
| **At hearing stage** | 3.6% overall | | 2.9% overall | | 19.1% overall | |
| | Prosecution attributed | 45.7% | Prosecution attributed | 54% | Prosecution attributed | 3.8% |
| | Defence attributed | 29.9% | Defence attributed | 33.4% | Defence attributed | 5.4% |
| | Court attributed | 24.3% | Court attributed | 12.5% | Court attributed | 90.6%[23] |
| **Post-conviction stage** | 12.1% overall | | 24.3% overall | | 20.6% overall | |
| | Prosecution attributed | 5.9% | Prosecution attributed | 5.4% | Prosecution attributed | 6.6% |
| | Defence attributed | 39.0% | Defence attributed | 38.1% | Defence attributed | 21.4% |
| | Court attributed | 54.9% | Court attributed | 56.3% | Court attributed | 71.8% |

1.31 For England and Wales, the Judicial and Court Statistics 2010[24] indicates that, of the total number of trials recorded, 43% were recorded as effective, 39% were recorded as 'cracked', and 18% were recorded as 'ineffective'.

1.32 A defendant entering a late guilty plea has consistently been the main reason for a 'cracked' trial in England and Wales and in 2010, this represented 63% of all 'cracked' trials[25]. Other reasons for cracked trials included the prosecution accepting a plea of guilty to an alternative charge (17%) and the prosecution ending the case (18%).[26]

1.33 There seems to Inspectors to be some mixed evidence of the effectiveness of the range of initiatives dealing with early guilty pleas and delay in England and Wales. Some of the former are discussed later. However, in the context of cracked trials, over the period between 2006 and 2010 the rate of cracked trials in England and Wales has increased by 4% to 43%. However initiatives taken have led to a fall in the ineffective trial rate. Since 2000 it has fallen by 11% to a rate of 14% in 2010. It is also interesting to note that the proportion of guilty pleas (all counts) has been rising incrementally over the period from 2001 to 2010. The rise has been in the order of 10%[27] Despite the mixed evidence the latter in particular indicates that collective action can achieve change; even if a modest one.

23 The high figure of adjournments in this court tier reflects the position where the proceedings are formally adjourned at the end of each hearing day while the trial continues the next day.
24 Judicial and Court Statistics, Ministry of Justice national Statistics, Published 30 June 2011, Revised July 2011.
25 Ibid
26 Ibid
27 Ibid

1.34 One of the conclusions of the Judicial and Court statistics for England and Wales[28] is, *'Good listing practice, inter-agency communication and efficient case progression inevitably lead to a higher number of effective trials.'* While this is useful to consider in the context of the practice in Northern Ireland, what is clear from this preliminary analysis is that there remain very clear issues to be addressed where late guilty pleas are entered and unnecessary delay is extant. This, for example, includes:

- the numbers of pleas which come after first sitting (8,539 in 2010-11);
- the numbers of 'cracked' trials; and
- the numbers of cases where charges are withdrawn or reduced.

1.35 The kind of data available in England and Wales allows a consideration of a number of important and informative matters including the reasons for 'cracked' and 'ineffective' trials. Some of these are illustrated by way of example in the graphs at Appendix 4.

1.36 Inspectors encountered some difficulty in obtaining comparative data and it was clear that NICTS do not record data in the same way as in England and Wales or to the same level of detail. This is exactly the kind of data which Inspectors believe should be recorded with the addition of some further discerning features in terms of 'other' categories and court administration problems. Given the potential significance of such data this should be regularly recorded. Unless and until effective monitoring is in place focussed action cannot be taken to identify the real problems and further improve performance. Indeed the absence of a clear data set surrounding these issues has previously been highlighted by Inspectors. However, while Inspectors understand that the NICTS is considering how comparative data might be delivered, for the sake of clarity, **Inspectors recommend that data is collected by the NICTS (on the same basis as that in England and Wales) on cracked, effective and ineffective trials and that this is made available publicly on an annual basis (more often for justice agencies by arrangement).**
*(This recommendation may be linked with that at paragraph 5.6)*

1.37 It is also interesting to note that the average percentage of cases completed at first hearing (i.e. no adjournments) in England and Wales is 61%. This is relatively high and while an exact comparator for NI is unavailable Inspectors conclusions were that there continue to be noteworthy numbers of pleas which are not heard at first instance and this clearly creates additional costs and significant concerns for criminal justice system users. Bearing in mind that 85% of defendants either plead or are found guilty, and the cost issues highlighted by Inspectors these remaining noteworthy gaps require action.

28 Judicial and Court Statistics, Ministry of Justice national Statistics, Published 30 June 2011, Revised July 2011.

CHAPTER 2:

# Comparative practice

## Practice in Northern Ireland

2.1 An offender who pleads guilty may expect some credit in the form of a reduction or concession in sentence. The juridical provisions surrounding reductions in sentence for a guilty plea are contained both in statute and in case law. The relevant statutory provision is Article 33 of the Criminal Justice (Northern Ireland) Order 1996. This states:

***'Reduction in sentences for guilty pleas***

*33. (1) In determining what sentence to pass on an offender who has pleaded guilty to an offence a court shall take into account -*
*(a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and*
*(b) the circumstances in which this indication was given.*
*(2) If, as a result of taking into account any matter referred to in paragraph (1), the court imposes a punishment on the offender which is less severe than the punishment it would otherwise have imposed, it shall state in open court that it has done so.'*

2.2 Several guiding cases refer to the NI context and these are summarised at Appendix 5. However, one of the principle cases is the Appeal Court ruling in the case of Attorney General's Reference (Number 1 of 2006) McDonald, McDonald and Maternaghan (AG REF 11-13 of 2005) delivered on 24-2-06[29] This case set down the guiding principle that credit for early guilty pleas should start at the police station interview stage. The judgement in this case stated as follows:

*'If a defendant wishes to avail of the maximum discount in respect of a particular offence on account of his guilty plea he should be in a position to demonstrate that he pleaded guilty in respect of that offence at the earliest opportunity. It will not excuse a failure to plead guilty to a particular offence if the reason for delay in making the plea was that the defendant was not prepared to plead guilty to a different charge that was subsequently withdrawn or not proceeded with.*

*'To benefit from the maximum discount on the penalty appropriate to any specific charge a defendant must have admitted his guilt of that charge at the earliest opportunity. In this regard the attitude of the offender during interview is relevant. The greatest discount is reserved for those cases where a defendant admits his guilt at the outset. None of the offenders in this case did that. All either refused to answer or denied guilt during police interview. On no basis, therefore, could any of them expect to obtain the maximum reduction for their belated guilty pleas. We wish to draw particular attention to this point. In the present case solicitors acting on behalf of two of the offenders appear to have advised them not to answer questions in the course of police interviews. Legal representatives are, of course, perfectly entitled to give this advice if it is soundly based. Both they and their clients should clearly understand, however, that the effect of such advice may ultimately be to reduce the discount that might otherwise be available on a guilty plea had admissions been made at the outset.'*

2.3 In NI the amount of concession which is appropriate for an early guilty plea remains within the discretion of the sentencing Judge

29 Neutral Citation No. [2006] NICA 4.

and depends on the particular circumstances of each individual case. It is clear that the sorts of matters which should be being taken into account include; public protection, the weight of evidence and whether the early plea indicates real and genuine remorse. Importantly, there are also those extraordinary cases where it is appropriate to impose the maximum sentence; even when an early plea has been entered. These may include circumstances where an accused has deliberately delayed pleading or where there is an 'open and shut' case against him/her. The possibility of a maximum sentence will also increase if the offender has a substantial or serious criminal record of a similar type. However, the imposition of a maximum sentence in these circumstances is regarded as an exceptional event.

2.4 The Sentencing Council (SC) has produced its Definitive Guideline for Reduction in Sentence for a Guilty Plea (Revised 2007). While this is not strictly related to NI it is nonetheless used as part of the sentencing framework in NI and may be referred to by the courts in the practice of sentencing. The approach to its applicability in this jurisdiction has been set out by the Court of Appeal in Attorney General's Reference (Number 1 of 2008) Gibbons et al. [2008] NICA 41 at paragraph 44. This states; '*As we have repeatedly made clear, the guidance provided by the Sentencing Guidelines Council must always be regarded as secondary to the guidelines provided by the Court of Appeal in this jurisdiction. There will be occasions where the guidelines accord with local experience in which case they may be followed but there will also be occasions where they should not be applied.*'

2.5 And also in R v. Devine [2006] NICA 11 at paragraph 14: '*On occasions in the past this court has adopted recommendations made by the [Sentencing Guidelines] Council (see, for instance, in the field of sexual offences AG's reference (No 2 of 2004) [2004] NICA 15) but we have also declined to follow the approach of the Council in other areas such as whether there should be a reduction of the discount for a plea of guilty where the defendant has been caught red-handed – see R v Pollock [2005] NICA 43. Recommendations of the council will be applied in this jurisdiction where they are appropriate to locally encountered conditions; where they do not they will not be followed.*'

2.6 The SC guidelines provide for:

- judicial discretion; and
- a sliding scale of reduction for an early guilty plea.

2.7 Overall, the level of reduction in sentence for a guilty plea is to be regarded as a proportion of the total sentence imposed calculated by reference to the circumstances in which the guilty plea was indicated, in particular the stage in proceedings. The greatest reduction will be given where the plea was indicated at the 'first reasonable opportunity'. The 'first reasonable opportunity' may be the first time that a defendant appears before the court and has the opportunity to plead guilty, but the court may consider that it would be reasonable to have expected an indication of willingness even earlier, perhaps whilst under interview. Annex 'A' to the SC definitive guideline sets out guidance on the matter of first reasonable opportunity in order to help Courts adopt a consistent approach. For example, in a case where a defendant is convicted after pleading to a lesser charge to that which he/she had pleaded not guilty, the first reasonable opportunity may be the time the defendant first formally indicated to the court a willingness to plead to that lesser charge. Inspectors have also observed cases in which the courts have indicated the first reasonable opportunity as including those cases where a lesser charge is accepted by the prosecution at a very late stage. Inspectors understand that this is generally regarded as the first opportunity a defendant will have had to plead to the lesser offence. This may be regarded as an additional imperative in ensuring that the correct charges are applied at the outset.

2.8 The kind of scale reductions recommended under the guidelines are set out as follows:

*In each category, there is a presumption that the recommended reduction will be given unless there are good reasons for a lower amount.*


2.9 As we have indicated, there are a number of significant caveats to scale reductions and, for example, consideration of extraordinary circumstances such as 'dangerousness' are taken into account. This may mean that a reduction is withheld. A further example might be where an offender is caught 'red-handed'. These are already features of the experience and guideline cases in NI.

2.10 Arising from their fieldwork, it was apparent to Inspectors that there were was a range of knowledge amongst CJS professionals, defendants, victims and others as to what were the kinds of sentencing practices and reductions in existence. Inspectors encountered evidence during the course of inspection that:

- many outside of the legal professions have difficulty in understanding sentencing practice;
- victims are often uninformed of the sentence calculations or the explanations provided fail to achieve true understanding among many victims;
- defendants often do not understand the sentence reductions and do not have any confidence in advance as to how these might be applied; and
- a perception exists among a section of defendants in NI that credit will be given no matter when a plea is entered.

2.11 In terms of sentencing practice and policy in NI at the time of inspection, the DoJ were in the course of presenting draft proposals to the Committee for Justice following a period of consultation. These proposals included enhanced provision of information on sentencing practice on the NIDirect website. Inspectors regarded this as an important element of education and transparency moving forward and is also linked to the findings at Chapter 4. Consequently, Inspectors do not make any specific recommendations with regard to this subject at this stage except to say that for early guilty pleas to be optimised it is vitally important that defendants have certainty and transparency in sentencing. This is further addressed at Paragraph 4.31.

## Early guilty plea schemes in Northern Ireland

2.12 During the course of fieldwork, Inspectors learned that there had been a number of localised attempts to encourage early guilty pleas. The most recent was an example in Ballymena known as the 'Early First Hearing initiative'. This was an attempt to identify cases which could be brought to court early with a timely disposal. This commenced as a pilot project in Ballymena and was then rolled-out in the 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, 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.

2.13 The initial findings from the Ballymena pilot were anecdotally positive and there was evidence of some reduction in delays. However, a more comprehensive evaluation of the rolled-out initiative in the region was

completed at the end of 2009. Inspectors were advised 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.

2.14 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 was significantly less than anticipated. The PSNI has accepted that part of the problem was a lack of corporacy; meaning that police Districts/areas took a different approach to case progression in key areas such as pre-charge bail. This was an area Inspectors identified in their January 2012 *Delay* report[30]. It was then stated, *'This is an area where a more centralised approach by the PSNI could be beneficial.'* There were also other problems formally identified in the evaluation report which included the absence of key principles and structures and also that the scheme was personality led.

2.15 Despite some evidence of intent, it was apparent to Inspectors that there were no formal structured and embedded early plea schemes operating in either the Magistrates' or Crown Courts in NI. These are matters which are referred to in some depth later with an associated recommendation. However, this and the comments above, should be considered in the light of the streamlined file initiative discussed later.

## The position in England and Wales

2.16 Similar to NI a statutory credit scheme for guilty pleas operates in England and Wales. This was introduced by the Criminal Justice Act 2003. It provides that the court, in passing sentence on an offender who has pleaded guilty, *must* take into account:

- the point at which the indication to plea was given; and
- the circumstances in which the indication was given.

2.17 The SC has developed guidance on the application of credit for an early guilty plea. There is a presumption that the recommended credit will be given unless there are good reasons for a lower amount. Failure to apply the guidance can be grounds for an appeal. The provision as to sentence reductions are identical to those outlined above at paragraph 2.8.

2.18 In a number of areas the courts manage administrative schemes to encourage early guilty pleas; in some instances this forms part of a national pilot and in others there are locally devised schemes. The locally designed schemes such as those in Merseyside and Essex tend to have slightly higher potential benefits than the national pilot. This is usually related to their willingness to accept a streamlined file that reduces the amount of preparation work involved across the criminal justice system when defendants do plead guilty at the first hearing.

2.19 To make the scheme work to its optimum requires the co-operation of multiple stakeholders. The Crown Prosecution Service (CPS) need to show good judgement in selecting potential cases for the scheme; the police need to deliver an appropriate file for the early hearing; and, the Probation Service needs to have the capacity to prepare reports in advance of the hearing. In addition, the approach of defence practitioners is important. The role of the judiciary is crucial in proactively managing the cases and the scheme overall.

2.20 At the time of inspection the Ministry of Justice was planning to roll the scheme out across England and Wales as part of a wider package of reforms. Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) Inspectors in England and Wales consider that the overall outcomes and evidence of success are still

30 *'Avoidable Delay: A progress report'*, CJI, January 2012.

mixed and have yet to be optimised. For example, the level of Crown Court defendants who eventually pleaded guilty in 2011-12 was 83.2% of the total, and yet the percentage of cases with an early guilty plea was only 39.3%. Outcomes from a selection of five sites using an early guilty plea scheme ranged from 37.3% to 52.4%. At national level the average number of hearings for cases that resulted in a guilty plea has increased slightly which is not the desired outcome; however, in three of the five sites with an early guilty plea scheme performance had improved and was better than the national average.

2.21 The level of variance among sites that have a scheme indicates the importance of all parties playing their part in making the process work effectively. Examples observed by Inspectors include:

- poor selection of cases by lawyers where the likelihood of a guilty plea was extremely low (this leads to additional hearings);
- files not available for the early first hearing;
- Probation Service could not produce all the required reports leading to cases with a guilty plea being adjourned for sentencing; and
- not guilty pleas being entered despite the level of evidence available.

2.22 Whilst all sites with a scheme are achieving some benefits, it is clear that there is still significant variation in the level of potential benefits being realised. The concept is sound and should lead to greater efficiency, lower cost, benefits for victims and witnesses, all with no impact on justice being served. At the present time, Inspectors consider that there is still scope for significant improvement in the effectiveness of some of the schemes. Early guilty pleas schemes are not a panacea but can make a significant contribution to improving the effectiveness of Crown Court work.

2.23 Also, across England and Wales a new initiative was introduced in January 2012. Entitled *'Stop Delaying Justice'* this is an initiative led by the judiciary in the Magistrates' Courts. The intention is that contested trials will be fully case-managed at the first hearing and take place at the first listed trial hearing, or not at all. The programme emphasises the unfairness to innocent defendants, as well as victims and witnesses, and justice itself when cases are adjourned and delayed.

2.24 The briefing material[31] for the initiative comments:

*'The first part of the challenge is for judges and magistrates to accept their responsibility for delay. When a trial collapses, adjourns, or cracks, then very often that could have been avoided had the case been properly case managed at the first hearing. If the wrong charge was preferred, why did we not notice it? Why did we not ensure that all agreed facts were clearly reduced to writing and only disputed evidence called? Did we tolerate the provision of a streamlined bundle that did not include key witness statements when a trial was always likely? Should we be insisting that disclosure is made at that first hearing, as often it is in fact available? Should we allow the prosecutor a few minutes to phone or text his witnesses to ensure availability?*

2.25 Credit for an early guilty plea and a requirement on sentencers to explain the circumstances in which the credit is given are common to all of the schemes outlined above. These are already features of the practice in NI.

2.26 Other schemes known to Inspectors include those in Chester/Birmingham. The Birmingham Crown Court early guilty plea hearings were introduced in July 2011 with a practice direction from the presiding Judge, the Recorder of Birmingham. As is common with a number of other schemes, the prosecutor is obliged to consider and identify cases suitable for the scheme. Primary disclosure is made at the same time as service of the key evidence.

2.27 The Director of Public Prosecutions in England and Wales speaking about a pilot scheme in

31 Accessed via the London Criminal Courts Solicitors Association website, http://www.lccsa.org.uk/ blog.asp?ItemID=39: accessed 15 May 2012.

Reading, Winchester and Bristol has stated: *"..these early guilty plea schemes are demonstrating increasing numbers of early pleas and that a good proportion of those can, in fact, be disposed of at first hearing."* He went on, we believe, significantly to comment, *"...What is required is better preparation. The first court appearance should be the end of the process and dialogue between the parties, not the beginning, as is often the case at the moment."*[32]

2.28 In Scotland, England and Wales the schemes have been augmented, either through legislative or procedural reform, to ensure that the prosecution and defence engage early and to make the existing arrangements for the application of credit more transparent. These underpinning themes are considered in more detail later in this report.

2.29 In addition, in England and Wales a range of other reforms have had the effect of assisting in encouraging early guilty pleas. Among these are:

- The Criminal Procedure Rules 2005 (as amended by the Criminal Procedure (Amendment) Rules 2011).[33] These provisions were first introduced in April 2005. These statutory rules set out a number of matters impacting on case progression and hence on early pleas. An illustration of the relevant sections are included at Appendix 6.
- In addition, the Criminal Case Management Framework[34] in England and Wales is issued by the Lord Chief Justice and the Attorney General.
- Since the 15 January 2001, all 'indictable only' cases have been 'sent for trial' to the Crown Court after they have had their first appearance in a Magistrates' Court. This procedure under Section 51 of the Crime and Disorder Act 1998 replaced committal proceedings and reduces the number of hearings these cases have at Magistrates' Court. While the time that 'indictable only' cases spend in the Crown Court will increase, the overall time spent in the CJS from arrest to sentence will decrease. One of the significant differences with NI is that a Magistrates' Court may not list a case for an early guilty pleas hearing in the Crown Court. Without reform of the committal process in NI this cannot therefore happen.
- A number of changes to court procedures have contributed to a shift in workload between Magistrates' Court and the Crown Court. The 'plea before venue' procedure, which was introduced in the Criminal Procedure and Investigations Act 1996, and by which the accused would be asked whether he intended to plead guilty or not guilty before determining whether the case would be dealt with summarily (by the Magistrates' Court or on indictment to the Crown Court), substantially reduced the number of trials received in the Crown Court. It also doubled the number of cases committed for sentence to the Crown Court. However, these hearings require much less resource.
- The number of trials received in the Crown Court increased upon the introduction of 'sent for trial' cases in 2001. These are 'indictable only' cases which are sent under Section 51 of the Crime and Disorder Act 1998 to the Crown Court because the offence is so serious that only the Crown Court has jurisdiction to deal with it.

## Wasted costs

2.30 One other relevant feature of the topography in England and Wales is the availability of wasted costs orders. While not strictly part of the early guilty plea landscape, it may arguably be considered to be an important element in assisting case management.

32 Challenge and Opportunity - DPP's Address to the London Justice' Clerks' Society, March 2011 available at http://www.cps.gov.uk/news/articles/challenge_and_opportunity.

33 Since fieldwork began the Criminal Procedure Rules have been superceded by the Criminal Procedures Rules 2012 coming into force on 1 October 2012. All references to Criminal Procedure Rules should be considered in this context.

34 The Criminal Case Management Framework, CJS, Second Edition, July 2005.

2.31 The position in NI is somewhat different insofar as wasted costs orders are provided for in a range of civil cases, but Inspectors understand that no statutory provision exists for wasted costs orders in criminal cases in the Magistrates' Courts. Inspectors are unable to assess the benefits in terms of the practice in England and Wales, but did hear some evidence that their use was limited. This may be in part a consequence of evidence that the costs of recovery significantly outweigh the benefits. Inspectors learned for example, that for Judge initiated actions for every £1 recouped £21.34 is spent (including on satellite litigation)[35]. Nonetheless, Inspectors considered that the existence of a framework of sanctions to address unnecessary delay and wasted time in the courts, alongside other statutory provisions available elsewhere (such as the Criminal Procedure Rules 2010), could have a positive impact on the progress of criminal cases. The latter has already been referred to by Inspectors in a previous report on Victims and Witnesses[36]. **As a wider part of the work on delay, Inspectors recommend that the DoJ consider how sanctions could be applied to the issue of delay and wasted time in the courts. This could include statutory or other provisions to address wasted costs.** It is difficult to envision how a coherent argument for the absence of a helpful framework, including some based in statute, would do anything other than lend assistance to those who are charged with the delivery of efficient and effective criminal justice.

## Conclusions on the practice in England and Wales

2.32 Overall, it was clear to Inspectors that the various schemes in place across England and Wales had varying levels of success. It was for example clear that the commitment of a range of interested parties was necessary for any significant success. This includes police, prosecution, courts and defence. Common to all of this was the need for an independent lead, a driver and an arbiter. It is instructive in this context to consider the comments of the Lord Chief Justice for England and Wales who delivered a speech on the matter on 7 July 2011 entitled '*Summary Justice In and Out of Court*' at Drapers Hall. Speaking about delay and using a football analogy to illustrate how he viewed the issues he said:

"*Dealing with it superficially, the judge or magistrates are referees. But until recently the role of this particular type of referee has been to wait on the pitch until the teams turn up. Wait for as long as they wished. That is no good. We need referees who will go into the changing rooms beforehand, tell each side how the game will be played, warn the players who may go offside that they are being watched, and as for those who foul, that they will be sent off. And having prepared the teams for the kind of refereeing they will expect, to lead the teams out on to the pitch and put the ball down in the middle of the centre circle at the time when the kick-off is supposed to take place. And the proceedings played once.*"

2.33 Additionally, in terms of the roll-out of early guilty plea schemes across England and Wales, in a recent written in answer to a question on the effectiveness of early guilty plea schemes the Justice Secretary stated: "*The Early Guilty Plea Scheme is a judicial initiative of the Senior Presiding Judge. The Early Guilty Plea Scheme is a process intended to produce an effective and prompt disposal of Crown Court guilty pleas but still producing a just and expeditious outcome for all concerned, including victims and witnesses. The pilots were evaluated by the judiciary in November 2011 and following positive findings it was agreed that implementation in the Crown Court in England and Wales would be commenced from January 2012. The phased implementation of the Early Guilty Plea Scheme is being led by resident judges and overseen by the senior presiding judge. Any future evaluation of the Early Guilty Plea Scheme will be made by the judiciary.*"[37]

35 *'The wasted Cost Jurisdiction'*, Modern Law review, Volume 64: Issue 1 - January 2001, Hugh Evans.
36 *'The care and treatment of victims and witnesses in Northern Ireland'*, CJI, December 2011.
37 House of Commons Hansard Written Answers 30/4/12 available at http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120430/text/120430w0003.htm.

Inspectors conclude on this basis that in order to achieve success a similar approach to leading early guilty pleas must be adopted in NI.

## The position in Scotland

2.34 It was frequently represented to Inspectors that the position in Scotland was more advanced and consequently the following analysis of the Scottish position is more wide-ranging.

2.35 Following concern about the efficiency of the processing of cases through the High Court in Scotland and, in particular, the phenomenon of the 'churning'[38] of cases, Lord Bonomy was appointed in December 2001 to carry out a review of High Court practice and procedure. His key proposal, namely the introduction of mandatory 'preliminary hearings' between the service of the indictment and the trial, and various other associated measures were implemented by the Criminal Procedure (Amendment) (Scotland) Act 2004, which came into effect on 1 April 2005.

2.36 In practice the High Court in Scotland, among other matters, deals with those cases similar to the Crown Court in NI. When sitting as a court of first instance, it deals with the most serious crimes such as murder, rape, culpable homicide, armed robbery, drug trafficking and serious sexual offences.

2.37 The purpose of a preliminary hearing is to identify those cases in which a trial is necessary and to assign a trial diet.[39] The court is *statutorily* required to ascertain a number of matters, including: whether the accused intends to plead not guilty; which of the witnesses listed by the parties will be required to attend trial; the state of preparation of the parties; and the extent to which the parties have complied with their duty to seek agreement of evidence. Preliminary hearings also provide an opportunity to resolve certain other matters prior to the trial, such as disputes over the admissibility of evidence which one party intends to lead and requests for special measures for vulnerable witnesses. As a development of the new procedures described, courts now receive the case papers up to two weeks in advance of preliminary hearings.

2.38 The main possible outcomes of a preliminary hearing are as follows. First, the accused may tender a plea of guilty which is accepted by the Crown. Secondly, the court may appoint a trial date for the case. Thirdly, the court may continue the case to a further preliminary hearing if the parties' state of preparation is not sufficiently far advanced to allow a trial date to be appointed.

2.39 Resulting from the significant changes in the Scottish system, the Scottish Executive commissioned research into the changes.[40] The aim of this research was to assess the extent to which the new regime in the High Court was successful in overcoming the problems of adjournment and delay. Inspectors highlight the following by way of summary of that evaluation:

- *'Preliminary hearings'[41] are working effectively. Only 33.3% of cases in the post-reform sample required a trial diet compared with 94% of cases in the pre-reform sample. Only 4.5% of cases in the post-reform sample involved an adjournment of a trial diet compared with 32.6% of cases in the pre-reform sample.*
- *The use of the "section 76 procedure" for accelerated guilty pleas has increased. However, the number of continued preliminary hearings is higher than anticipated. The most common outcome of a preliminary hearing was*

38 This refers to the increasing number of cases listed for trial where the trial does not go ahead and the case is adjourned to a future trial date, a process that is often repeated several times before the case is finally resolved.

39 In Scotland 'diet' is the equivalent of a hearing in Northern Ireland.

40 An Evaluation of the High Court Reforms Arising from the Criminal Procedure (Amendment) (Scotland) Act 2004, Chalmers et al, University of Aberdeen School of Law, Scottish Executive Social Research, 2007.

41 In Scotland the majority of cases that are dealt with in the High Court commence in that court by means of a preliminary hearing. At this hearing, the Judge will require to be satisfied that the case is in a sufficient state of preparation to enable him or her to appoint the case to a trial diet. This new procedure is designed to cut down the number of cases having to be adjourned at the trial diet due to their not being in a position to proceed.

*for that preliminary hearing to be continued. The growing number of continued preliminary hearings has the potential partially to undermine the success of the reforms. It was stated as being vital to the long term success of the reforms that Judges were prepared to be proactive in managing preliminary hearings.'*

2.40 Arising from the evaluation described above, the table below illustrates those cases that were settled by a guilty plea and shows the point at which the guilty plea was tendered pre and post reforms.

**Table 5: Disposal point (for cases that concluded with a guilty plea only)**

| Disposal point | % Pre-reform | % Post-reform |
|---|---|---|
| Section 76 accelerated hearing | 10.3 | 30.7 |
| Preliminary hearing 1 | n/a | 46.8 |
| Preliminary hearing 2 | n/a | 8.5 |
| Preliminary hearing 3 (or above) | n/a | 7.1 |
| Trial hearing 1 | 67.6 | 6.2 |
| Trial hearing 2 | 15.3 | 0.2 |
| Trial hearing 3 (or above) | 6.8 | 0.5 |

2.41 The main point to be drawn from the above table is that it was unusual in the post-reform sample for a guilty plea to be tendered at a trial hearing (in other words leading to a 'cracked trial'). Only 6.9% of guilty pleas were tendered at a trial hearing in the post-reform sample. This provides a strong indication that preliminary hearings are operating effectively in encouraging the tendering of guilty pleas at a stage earlier than the trial, saving court time and all the attendant inconvenience and distress this may cause to any witnesses who have attended unnecessarily. This also ensures swifter justice for all parties, including the accused.

2.42 The table also shows clearly that it was far more common to tender a guilty plea at a Section 76 hearing in the post-reform sample (where 30.7% of guilty pleas were tendered at a Section 76 hearing) compared to the pre-reform sample (where only 10.3% of guilty pleas were tendered at a Section 76 hearing).

2.43 One further point drawn from the table is that the proportion of 'early pleaders' had not changed, which suggests that there is a relatively stable proportion of accused who are pre-disposed to plead guilty at the earliest possible opportunity (or conversely, a relatively stable proportion of accused who will always wait until the last possible opportunity to plead, no matter what incentives are on offer for early guilty pleas). What *did* change, as was noted above, is that more of these 'early pleaders' are choosing to plead guilty at a Section 76 hearing, rather than waiting until the first scheduled hearing. This seems to be a further indication that, *'where it is possible to influence behaviour, incentives designed to encourage the early tendering of guilty pleas are proving effective'.*

2.44 In its overall closing the Scottish evaluation[42] concluded: *'It is clear that, on many measures, the reforms have been extremely successful. Compared to the pre-reform position, far fewer cases now proceed to a trial diet at all; trial diets are rarely adjourned; and guilty pleas are rarely tendered at trial. The consequent reduction in witness inconvenience and stress is likely to have been considerable. The only potentially significant problem is the extent to which preliminary hearings are continued.'*

2.45 Preliminary (i.e. pre-trial) hearings were created as a result of significant reforms in Scotland. Where the accused is held in custody pending trial, a preliminary hearing must be commenced with 110 days of his being committed for trial. Where he is at liberty, it must be commenced within 11 months of the date of his first appearance. Both of these periods can be extended by the court.

42 An Evaluation of the High Court Reforms Arising from the Criminal Procedure (Amendment) (Scotland) Act 2004, Chalmers et al, University of Aberdeen School of Law, Scottish Executive Social Research, 2007.

## Accelerated hearings in Scotland

2.46 Under statutory arrangements in Scotland an accused may give notice in writing *'that he intends to plead guilty and desires to have his case disposed of at once'*. In such a case - assuming that the Crown accepts the plea - no preliminary hearing will be necessary. Because such pleas save the greatest amount of court time and result in as little inconvenience to victims and witnesses as possible, they are likely to result in a substantial reduction in sentence in recognition of the guilty plea.

## Sentencing discounts in Scotland

2.47 Legislation on sentence discounting first came into force in Scotland, initially in Section 33 of the Criminal Justice (Scotland) Act 1995 and now in Section 196 of the 1995 Act. Section 196 of the 1995 Act now stipulates that the court "shall" take into account an early guilty plea. In other words, the court must recognise this fact in passing sentence; it is not optional. As such, Section 196(1) of the 1995 Act now states as follows:

*'(1) In determining what sentence to pass on, or what other disposal or order to make in relation to, an offender who has pled guilty to an offence, a court shall take into account -*

*(a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and*

*(b) the circumstances in which that indication was given.'*

Section 196(1A) of the 1995 Act requires that the court must, in passing sentence, state whether the sentence imposed has been reduced as the result of a guilty plea, and that reasons must be given if a discount is not applied. Similar provisions already exist in NI

2.48 The amendment of the 1995 Act, however, only incorporated into statute what had already been stated in case law, such as that in *Du Plooy*,[43] where the court held that a guilty plea should result in a discount normally no greater than one-third of the sentence which would otherwise have been imposed, and that the extent of the discount should be stated by the Judge in open court. The extent of the discount will depend on a number of factors, primarily the timing of the plea. Broadly speaking, the earlier a plea is tendered, the greater the discount. Again, this reflects a similar position in NI.

## Legal aid fees in Scotland

2.49 The second most significant reform introduced by the Scottish Government was that to standardise legal aid fees in summary cases. This was to ensure that fewer cases go to court needlessly and to speed up the court process. A flat fee of £485 is paid, regardless of whether the offender pleads guilty at the earliest point or the case goes to trial. In June 2008, ahead of the reforms, the number of guilty pleas entered at the earliest opportunity was 17,606. Following the new measures, in June 2009, this number more than doubled to 46,704. The overall number of guilty pleas remained broadly the same.

2.50 It was a key part of the legal aid reform that the then differing fee structures created a perverse incentive to solicitors to plead not guilty in order to secure a significantly enhanced fee. For example the guilty plea fee pre-reform in the equivalent of the Magistrates' Court was £70, whereas the not guilty plea fee in the same court was £300 - a differential of some 328%. Inspectors consulted with the Scottish Legal Aid Board (SLAB) and learned that the revised payment system was said to be working well and supports the earlier resolution of cases. The SLAB stated, for example, that between June 2008 and July 2008 (the first month of the reforms) that the increase in guilty pleas tendered at the first hearing increased from 9.8% to 23.9% in Glasgow and from 31.6% to 43.9% in Dundee.

43 Du Plooy -v- H M Advocate, Scotland Appeal Court, High Court of Justiciary, Appeal Nos: XC109.03 available at http://www.scotcourts.gov.uk/opinions/xc109_03.html.

However, overall caution needs to be applied in making direct comparisons. There are a significant number of differences in the Scottish legal system, including direct transfer (committal) and in the nature of cases dealt with at various court tiers.

2.51 It was clear to Inspectors that there were some potentially meritorious aspects of the Scottish system and in terms of overall outcomes much to commend. For example, the substantial increases in pleas entered at the first opportunity. Secondly, the reform had introduced accelerated hearings. However, while the increases in pleas at first hearing in Scotland are undoubtedly welcome, in NI direct comparisons are particularly complex given variances in the nature of the data. On that basis, Inspectors do not feel that, of itself the Scottish example, is a basis on which to make recommendations for significant change, except perhaps to the legal aid payments and accelerated hearings.

2.52 It is also important to consider the position in Scotland in the light of the fact that statutory time limits operate in that jurisdiction and, in combination with some of the other reforms described, provide a framework of discipline assisting the early resolution of cases. Statutory time limits have already been recommended by Inspectors and the Minister of Justice in NI has committed to their introduction. Initially these will apply to cases before the Youth Court.

## The position in the Republic of Ireland

2.53 Similar to the current position in NI, awarding of credit for a guilty plea is provided for in the Criminal Justice Act 1999. This provides that, if the court considers it appropriate to do so, it can take into account the stage in the proceedings when the individual indicated that they intended to plead guilty and the circumstances in which the indication was given. Broadly, the position is similar to that in NI with the matter being left largely to judicial discretion based on case law. As is the case elsewhere there are a number of guideline cases including:

- D.P.P. -v- McC & D;
- D.P.P. -v- P.S.; and
- D.P.P. -v- Brian Wall.

However, Inspectors did not find any noteworthy best practice in their review of the practice in the Republic of Ireland.

## Overall comparative conclusions

2.54 We can thus conclude from the analysis of comparative practice that there are a number of matters of material difference from the NI context. Noteworthy examples include:

- accelerated hearings (in Scotland);
- a number of formal and structured early guilty plea schemes (in England and Wales);
- plea before venue hearings (in England and Wales); and
- some legislative differences including wasted costs orders, criminal procedure rules dealing with case management and the direct committal process.

CHAPTER 3:

# Enablers and inhibitors

3.1 As we express in the introductory chapter there was clear evidence that in supporting early guilty pleas there are a series of inter-dependencies. At the strategic level Inspectors considered that these could usefully be characterised by:

- inter-agency working and co-operation; and
- landscape issues (or matters supporting the use of early guilty pleas).

In addition to and linked with these inter-dependencies, Inspectors also considered there were a number of impediments to the effective delivery of early guilty pleas. Each of these matters which either enable or inhibit the delivery of early guilty pleas are discussed subsequently.

## Alternative charges and over-charging

3.2 In the course of this inspection Inspectors heard variously about concerns that defendants 'held off' on entering a plea expecting that the prosecution case would either collapse or that charges would be reduced. While some defendants spoken to by Inspectors did refer to this, Inspectors' judgement was that this was not the most critical factor for them.

3.3 Nonetheless, it was apparent that some defendants did delay entering a plea. In fact, there are a considerable number of instances where cases are either discontinued or alternative charges are substituted. In respect of the key reasons for cracked trials it is apparent that in the Crown Courts in England and Wales the proportion of cases in which the defendant pleaded to an alternative charge (accepted by the prosecution) was 17% in 2011[44]. In a further 18% of cases the prosecution ended the case. In total therefore some 35% (or well over one third) of cases end in alternative charges or the end of the prosecution. In the Magistrates' Courts the figures are 8% plead to an alternative charge and 37% where the prosecution case is ended. That represents an overall figure of 45%.

3.4 In NI the available statistics indicate as follows:

**Table 6: Charges withdrawn and alternative/lesser charges 2010-11[45]**

| | Crown Court | Magistrates' Court | Youth Court |
|---|---|---|---|
| **Charges withdrawn[46]** | 0.3% | 20.9% | 36.1% |
| **Plea to alternative/ lesser charges** | 8.2% | 0.7% | 0.7% |

3.5 Inspectors have also been provided with separate data which indicates that in the Magistrates' Court in 2010 of 11,932 cases, 929 had all charges withdrawn. That represents a figure of 7.7%. As the table above indicates, the rate of charges withdrawn in the Youth Courts is significantly higher than elsewhere (in the region of 36% in 2010-11). A large part of the reason for this will lie in the fact that often a restorative conference is offered or an

44 Ministry of Justice, Judicial and Court Statistics 2011available at http://www.justice.gov.uk/downloads/statistics/courts-and-sentencing/jcs-2011/judicial-court-stats-2011.pdf.
45 Data supplied by the NICTS.
46 Withdrawn cases will cover a range of circumstances, including cases where charges are withdrawn to proceed by way of summons.

alternative disposal is agreed. Inspectors heard that the PPS will always consider the eligibility of young people for an alternative disposal, however, in the absence of admissions the PPS are unable to pursue this avenue leading to criminal proceedings. It is very often only at court that formal agreements (admissions) can be reached and this leads to the withdrawal of charges. It occurred to Inspectors that this was an inefficient process leading to the preparation of full cases in up to 36% of Youth Court matters which will ultimately become redundant. However, the issues have been recognised by the PPS and others and Inspectors understand that the development of youth engagement systems and the extension of early cautions are being discussed. Nonetheless**, the withdrawal of charges in the Youth Courts is an issue which all relevant CJOs and in particular the PPS will wish to keep firmly in their focus in order to achieve efficiencies.**

3.6 The specific reasons for alternative charges or cases being withdrawn are not formally recorded by the NICTS or by the PPS for statistical purposes. However, we can determine from other available data that in the Magistrates' Courts the rate of charges withdrawn was close to 21% in 2010-11[47]. The former represents some 11,422 defendants who had charges withdrawn or alternative charges put in total. Inspectors have also learned that during 2011-12 'No Bill' applications in relation to all charges were granted in respect of 43 defendants in 34 cases. In addition, Inspectors have been provided with data in relation to contested hearings in which, for the three month period between January to March 2012, the average percentage of cases withdrawn was 8.4% and cases in which the prosecution offered no evidence stood at 12.1%[48]. Collectively, these estimates represent a sizeable number of cases and furthermore have an impact on legal aid (both in respect of payments for the case as a whole and insofar as the majority of those cases withdrawn will be paid at the higher fee rates as a contest).

3.7 On one analysis, the rate of charges withdrawn/altered is not significantly concerning compared to those in England and Wales (29.2% NI -v- 43% in England and Wales in the Magistrates' Courts and 8.5% NI -v- 35% England and Wales in the Crown Courts). In the Crown Court the rate of withdrawn/alternative charges is significantly better at 8.5% than those in the Magistrates' Courts. Inspectors consider that this rate more adequately reflects the nature of changing circumstances and the matters set out in the Code for Prosecutors as properly requiring a change to the original direction, rather than the much higher rates in the Magistrates' Courts where some one-fifth of cases result in an alternative/withdrawn charge. This kind of data is currently largely absent from the PPS monthly internal performance reports, albeit that the numbers of successful 'No Bill' applications are recorded and some relevant information is available to the PPS. However, Inspectors found weak evidence that such information was being used to support performance management (as opposed to performance monitoring – which largely fails to address the underlying issues). **The PPS should develop management data on the numbers and reasons for withdrawn/reduced charges in the Magistrates' Courts and advance an action plan to address trends and variances from policy. This should have the ultimate objective of reducing the overall number of charges withdrawn or reduced.** The data will be an important indicator of effective casework decision-making and, for example, trends in the reasons for changed circumstances which might be addressed earlier. It would also clearly indicate the numbers and types of cases in which police had 'over-charged' – an issue which was raised by some in the course of fieldwork. Indeed, this evidence was verified by the findings of Inspectors who identified that the PPS did not

47 Data supplied by the NICTS.
48 Data supplied by the PPS and originating from the NICTS.

sufficiently challenge the charging of police in many of the case file samples examined as part of the fieldwork supporting an inspection of PPS[49].

3.8 Ultimately, Inspectors believe that the restraint of statutory time limits, previously recommended by them, will impose a discipline on issues of over-charging regardless of its source. But, the PPS needs to maintain and use management information to assist in learning and improvement. Progress in this area may also have a positive effect on overall criminal legal aid expenditure given that this is paid on the basis of first charge (rather than the ultimate offence proceeded with).

## Improving case quality

3.9 Last year (2011-12) the PPS received 53,308 files.[50] The vast bulk of these were forwarded by the PSNI for a wide range of offences ranging from theft, for example shop lifting, to the more serious offences such as murder, complex fraud cases or protracted international investigations. Of those files, almost 6,000 (11%) relate to the most serious offences, of which many by their very nature are extremely complicated – these types of cases are generally known as 'indictable' cases.

3.10 The PSNI has over the past number of years concentrated significant effort on improving case file quality, including the restructuring of their Case Management teams. Also, in an effort to address issues including file quality, the PSNI have introduced a number of Inspectors known as 'gatekeepers'. Their role is to quality assure, among other matters, cases entering the streamlined file system, charging decisions and to dip sample files for quality. These experienced officers provide instant advice and guidance to frontline officers in relation to case file quality and content. In terms of the 'gatekeepers' role in charging decisions, Inspectors will want to see sustained improvement in the issues surrounding over-charging in due course, however, this should ultimately be regarded as a matter for partnership working (see paragraph 3.12).

3.11 It was clear during the course of this inspection that the PSNI and the PPS had been working together to update protocols which will ensure that, in the more complicated and complex cases, officers have access to PPS advice and guidance and have the ability to hold case conferences to discuss evidential and other issues at an earlier stage.

3.12 Inspectors commend the commitment of the PPS and the PSNI to work together to provide both training and advice which is commensurate with the needs of each and also encourage a growing collaboration on issues such as charging advice. Supporting this stance there is evidence elsewhere that such matters can make a difference in supporting early guilty pleas. It has been stated, for example, that:

*'Initiatives in the Crown Court and other agencies, such as offering an early plea discount and providing early charging advice from the Crown Prosecution Service at police stations, have helped to increase the guilty plea rate. Moreover, other initiatives have not only helped to reduce the number of extraneous hearings, but promote early guilty plea decisions.'*[51]

The success of this co-operation will have a bearing also on the success of the matters described immediately afterwards and also overall on the success of early guilty plea schemes. This is a central and indispensible element of encouraging early guilty pleas. **The evidence of impact on early guilty pleas from early charging advice from prosecutors leads to the conclusion that this must not be left to PSNI 'gatekeepers' alone and Inspectors will want to see continuing and sustained improvement over time in the broad area of partnership between the PSNI and the PPS.**

49 CJI inspection (unpublished) of Corporate Governance in the PPS.
50 *'Annual Report and Resource Accounts 2010-11'*, PPS.
51 Judicial and Court Statistics, Ministry of Justice National Statistics, Published 30 June 2011, Revised July 2011.

## Case readiness

3.13 It is apparent and commonly agreed that for successful early guilty pleas to be encouraged that case files need to be ready on time and be of an acceptable standard (containing all the necessary proofs). At the time of inspection, in order to address this and to speed up the CJS, the PSNI were developing a 'streamlined file to first appearance' process as part of the 'speedy justice' initiative. It is hoped by the PSNI that this will, among other benefits, provide an opportunity for early pleas to be taken. The principle tests for a streamlined file are:

- the evidential test is met;
- the public interest test is met;
- the victim supports a prosecution and is willing to attend court;
- a full file including all the evidence can be prepared within 28 days (i.e. no medical/forensic or other evidence is outstanding);
- the offender admits the offence but diversion is ruled out;
- offender denies the offence but sufficient evidence is available to provide a reasonable prospect of conviction; and
- charging is both proportionate and appropriate.

3.14 The PSNI have provided its officers with a guide to streamlined files which includes, for example, a list of offences for which the streamlined file may be appropriate. Significantly, the following are excluded from the scheme:

- all indictable offences;
- all serious assaults (including sexual offences);
- drugs offences with the exception of possession of cannabis for personal use;
- road traffic prosecutions involving fatal or serious injury; and
- complex investigations or those involving multiple defendants.

3.15 Officers are required to submit streamlined files within seven days from the date of charge. This in turn should mean that at first appearance in court the accused will be expected to enter their plea (guilty or not guilty), having been served with case papers by the PPS. Where a guilty plea is entered there should ordinarily be no further requirement for case papers from police. In other words, a case file proportionate to the needs of a case.

3.16 Where a not guilty plea is entered an early contest/trial date is set and the investigating officer is required to submit a full file within 28 days.

3.17 In effect, this means that investigating police officers will be required to shift the culture towards case ready charging and to ensure investigations are complete prior to charge. This will also mean that a more intelligent use of bail is required. Inspectors also considered that this approach will ultimately lead to increased use of charging (as opposed to summonses) and, as we say at paragraph 3.12, this will require detailed co-operation between the PSNI and the PPS.

3.18 The PSNI approach to streamlined files while commendable, had clearly not had time to 'bed down' by the end of inspection fieldwork and outcomes were unable to be assessed. Some initial positive indicators were apparent in terms of Inspectors comments in their January 2012 report on delay when we stated:

*'...evidence would point towards improved file quality by the PSNI, which is facilitating more timely decision by the PPS and better case readiness at the courts.'* Inspectors also at that time commented, *'The evidence to date on file quality is mixed - the PPS report that the number of Requests for Further Information (RFI) has remained high, particularly with regard to the more complex indictable cases where more than 50% of pre-committal files required more information before a decision could be taken by the PPS.'*

3.19 In the course of inspection work Inspectors again heard concerns that some processes which reverted to the paper based file system were retrograde. However, these further changes were also being implemented at a time when a number of other significant changes were being introduced and some PSNI staff spoken to indicated that this was not the optimum time for these changes to be introduced. While it is clear that a specific focus needs to be maintained on the full roll-out and delivery of the streamlined file scheme, Inspectors were concerned that the optimism of the PSNI in implementing this scheme was not shared by other critical CJS partners. In particular, PPS staff indicated concerns which may be encapsulated by the following:

- a continuing lack of file quality;
- a lack of good quality interview summaries in streamlined files creating a risk for the PPS;
- prosecutors wishing to see the full file of evidence prior to making any decisions; and
- nervousness that the streamlined file would be misapplied by the PSNI to some cases simply for expediency.

3.20 Inspectors learned that the PSNI were taking an 'incremental' approach to the issues and were content to see the scheme established and matured before expanding further in terms of the range of cases. Such caution may indeed be justified when viewed from the perspective of the PSNI. However, viewed from a wider perspective across the justice system and bearing in mind the potential benefits for defendants, for victims and in the issue of delay, this approach may fail to realise the full potential arising. But, bearing in mind the significant other changes being adopted, Inspectors are content, for the time being, to see the streamlined file initiative bear fruit before further roll-out. But, thorough evaluation and decisions on further progress must not be unduly delayed particularly in light of the experiences elsewhere (described immediately after). In addition, Inspectors see the success of the streamlined file initiative and its ultimate extension as being a key element supporting early guilty plea schemes.

3.21 In England and Wales a similar streamlined file scheme has been in operation under the auspices of the Criminal Justice Simple Speedy Summary (CJSSS) initiative. This is a cross-agency programme of work that aims to ensure that volume Magistrates' Court cases are dealt with and managed simply and swiftly, in a manner that is efficient, effective and proportionate.[52] According to the findings of the National Audit Office that Streamlined Process had not had a negative impact upon the progression of cases through the Magistrates' Courts nationally. A key aim of the Streamlined Process was that the introduction of the guidance would not lead to an increase in adjournments for prosecutors to obtain more evidence, nor would it discourage defendants from entering early guilty pleas. Nationally, the analysis suggests that early guilty plea rates have not altered, and there has been no rise in adjournments with the new streamlined process. A completion report on the Streamlined Process commissioned by the Prosecution Team Change and Delivery Board found that the use of more proportionate prosecution files supports the delivery of effective and speedy case outcomes in the Magistrates' Courts. Police forces visited which had embedded the guidance fully did not have lower guilty plea rates or higher numbers of adjournments in court.[53]

3.22 Inspectors considered while there was some merit (based on evidence of poor file quality) in the PPS concerns, there was also an element of over-cautiousness. What was clear is that the PPS and the PSNI need to agree the joint approach to streamlined files with both organisations moving at analogous speeds. The PPS/PSNI Protocol has been reviewed and re-written but had not at the time of inspection,

52 *'Annual Report and Resource Accounts for the period April 2008 - March 2009'*, The Crown Prosecution Service.

53 *'The Introduction of the Streamlined Process: Report by the Comptroller and Auditor General, national Audit Office'*, hc 1584session 2010–2012, November 2011, The Crown Prosecution Service.

been signed off by the parties. However, Inspectors now understand that the approach to joint working being undertaken by these organisations concerns policies and Service Level Agreements. Inspectors are less concerned with the method of delivery than the outcome; which in this case will be an agreed plan for implementation. **Inspectors recommend that a joint agreed policy for implementation of the streamlined file initiative is established between the PSNI and the PPS without further delay.**

3.23 On a more broad analysis of the latter issues and linking with paragraph 2.15, Inspectors considered this was also further evidence of a lack of a formalised and structured CJS wide approach to encouraging early guilty pleas. This absence of a formalised approach across the CJS ultimately limits the impacts of any initiatives which have been or are to be taken. Consequently, **Inspectors recommend that the Criminal Justice Delivery Group oversee the development of CJS wide early guilty pleas schemes. This should have 'buy-in' from all sections of the CJS, including defence practitioners.** [*This may be linked to the recommendation at Paragraph 5.6]*

### Early service of evidence/disclosure

3.24 Once again, in any attempt to encourage early guilty pleas it will be necessary to ensure that evidence (or an adequate summary) can be served at the earliest possible stage. There is a clear distinction in law and in practice regarding the early service of evidence and the disclosure of unused prosecution material. These two are not to be confused. While an effective early guilty plea scheme will clearly require the service of evidence (or in some cases a summary of the evidence), this should not be confused with the duties of the parties as set out in The Criminal Procedure and Investigations Act 1996 and the Criminal Procedure Rules 2011. The issue of disclosure concerns unused material in the possession of the prosecution. The duty of disclosure on the prosecution arises in the Magistrates' Court only after the defendant pleads not guilty and in the Crown Court after the case is committed for trial. While it is not the purpose of this inspection to examine the disclosure regime, it would nonetheless seem to Inspectors that the timing of the duty of disclosure does not assist early guilty pleas. Inspectors heard, for example, that many defendants or their representatives would hold off on entering a plea until post disclosure in order to examine additional papers. Similarly, Inspectors heard strident concerns of late and piecemeal disclosure of evidence by the prosecution. Such practices, where they might exist, operate to restrict early guilty pleas.

3.25 A feature of many successful early guilty plea schemes is not only that that there is early service of evidence and disclosure, but also early engagement between the prosecution and defence. Inspectors heard that this was generally limited or absent in the NI context. In addition, Inspectors were advised a feature of previous pilot schemes in NI were difficulties with the service of evidence with, for example, solicitors or their clients were expected to 'pick up' evidence bundles. In England and Wales increasingly early guilty plea schemes are using secure e-mail facilities for the 'service' of evidence. This will require defence solicitors to agree to this method of communication and Inspectors are also conscious that such methods will not be suitable for sensitive cases. However, there appears to be no significant reason why such an avenue could not be explored in NI for the vast majority of routine cases. Inspectors recognise that there may be some difficulties and cultural reluctances to be overcome in doing so. Indeed, in order to assist in managing risks of data loss, these are matters which appear to Inspectors to have advantage and deserve attention. While it is acknowledged that this is a subject being discussed by the PPS, **Inspectors encourage the PPS to consider secure e-mail facilities with legal representatives as an area for improvement. This could act to encourage the early service of evidence and early engagement.**

3.26 As we say at the outset, another issue in terms of the early service of evidence is the availability of medical and forensic evidence. Inspectors learned, for example, that in 2011 the number of adjournments attributable to prosecution 'not ready' was 32,697 and 41 of these were attributable to forensic and fingerprints. Not ready 'medical' accounted for six of the total.[54] At face value, it would seem therefore that this is not a significant issue. But, Inspectors consider that the more general category of 'not ready' cases will include an unknown number of matters where the reality is that forensic or medical reports are not available. In the general category of 'not ready' there were 74,354 adjournments at the case management stage representing over 80% of all adjournments.[55] Inspectors are conscious that these are matters which are being addressed in the wider context of delay and that some initiatives are already being taken by the criminal justice agencies to address shortcomings. Among these are plans to provide presumptive testing and staged reporting in forensic cases and the commitment to examine such initiatives are welcome developments. However, Inspectors will be conducting a further follow-up to their delay reports commencing in the 2012-13 financial year and will also be conducting a further inspection of Forensic Science Northern Ireland. The specific issue of forensic and medical reports will be examined in more depth during these inspections. Nevertheless, the overall conclusion here must be that **early service of evidence (or summaries), early disclosure and early engagement with the defence need to be central features of encouraging early guilty pleas** and the schemes recommended elsewhere by Inspectors. Clearly, this will require justice agencies to shift the focus of their procedures towards timely case readiness.

## Committal proceedings

3.27 As we have commented upon variously throughout this report, a further part of the landscape in terms of early guilty pleas is the practice surrounding committal proceedings in NI. In discussion on this topic Inspectors refer to committal proceedings as including preliminary enquiries, preliminary inquiry and mixed committal proceedings. The 1997 Narey review[56] stated, *'a substantial proportion of elections are little more than an expensive, manipulation of the CJS and are not concerned with any wish to establish innocence by a jury.'* In 2000 the Justice Review recommended reform and in 2004 the NIO (under direct rule) issued a consultation paper on reform of committal. No such reform took place and in January 2012 the Minister of Justice in NI issued a consultation paper on reform of committal proceedings. Following that consultation, the DoJ issued a *'Report on responses and way forward'*[57] document in August 2012. In terms of committal, the proposals include:

- the right to require oral evidence to be given, and to require the cross-examination of witnesses at committal proceedings will be abolished; and
- that a 'Project Group' be established which will develop proposals for more radical committal reform, to enable the transfer of cases from the Magistrates' Courts to the Crown Court, without committal, in certain circumstances – for example, where the defendant has indicated that they wish to plead guilty.

3.28 In England and Wales since 15 January 2001 all 'indictable only' cases have been 'sent for trial' to the Crown Court after they have had their first appearance in a Magistrates' Court. This procedure under Section 51 of the Crime and Disorder Act 1998 replaced committal

54 Data supplied by the NICTS.
55 Ibid.
56 Review of Delay in the Criminal Justice System: Home Office, February 1997.
57 Available at http://www.dojni.gov.uk/index/public-consultations/archive-consultations/early-guilty-pleas-and-committal-reform-report-on-responses-and-way-forward-report.pdf.

proceedings and reduces the number of hearings these cases have at Magistrates' Court. While the time that 'indictable only' cases spend in the Crown court will increase, the overall time spent in the CJS from arrest to sentence will decrease.'[58] Either way offences may be committed by Magistrates' Courts to the Crown Court for trial. The Magistrates are required to ask defendants to indicate their plea to the charge. Where a guilty plea is indicated, the summary trial procedure is deemed to have been complied with and the defendant is deemed to have pleaded guilty under it. The defendant can then be sentenced or committed to the Crown Court for sentence. Where a defendant indicates a not guilty plea or gives no indication of their plea, the court, having considered various factors, including representations by the prosecution and the defence, indicates whether it considers the offence more suitable for a summary trial or an indictment. A court may only proceed to summary trial with the consent of the defendant who may elect to be tried by a jury in the Crown Court. Where the defendant has a choice between summary trial and trial on indictment it is estimated that approximately *'...three out of four cases are dealt with summarily.'*[59]

3.29 One recommendation of the Review of the Criminal Justice System in Northern Ireland in 2000 was that *'consideration be given to introducing simplified procedures for transferring cases to the Crown Court in Northern Ireland, while ensuring safeguards for a defendant who wishes to argue that there is no case to answer'*. The Review commented that this could be *'accompanied by a major effort further to reduce time taken to bring cases to trial.'* In the implementation plan that followed the Review, it was noted in respect of this recommendation that opportunities to simplify procedures would be taken as they occurred as part of the continuing review of the criminal process in NI.[60]

3.30 What is clear to Inspectors is that very few cases fail to meet the 'prima facie' test to commit a person for trial. Indeed between 2007 and 2010 a total of 7,355 defendants were committed for trial. The total number dismissed was eight. This represents 0.1% of cases which were dismissed.[61] The administrative elements and costs of this process seem to Inspectors to be capable of being met in a different way. For example, Inspectors consider this is a test which the PPS, using the Code for Prosecutors, should be able independently to apply in the vast majority of cases. In balance, in a range of defined circumstances the defence should have the right to bring a 'no bill' application early in the proceedings. However, overall the protections necessary seem to be already extant as 'no bill' applications can take place in the Crown Court and the defendant is thus not disadvantaged. A further potentially significant issue is the cost of committals. In terms of legal aid alone this cost close to £3m in 2011-12. Clearly other costs in terms of court costs, resources and time for a number of agencies across the criminal justice sector will also be considerable. This expenditure must be regarded as highly questionable in light of the evidence of a lack of effectiveness to the entire process - a process which has been described by the Director of Public Prosecutions as, '*...a process within a process*'[62] and leading to delay.

3.31 The progress of reform of the committal process has clearly been protracted and has not assisted in the overall reform of the CJS insofar as encouraging early guilty pleas is concerned. Inspectors previously made reference to this matter in their January 2012 report *'Avoidable Delay: A Progress report'* when we stated, *'The long debated proposal to reform*

58 Judicial and Court Statistics, Ministry of Justice National Statistics, Published 30 June 2011, revised July 2011.
59 Judicial Statistics 2011, NICTS and Northern Ireland Statistics and Research Agency.
60 The Future of Committal Proceedings in Northern Ireland, Professors Jackson J and Doran S, September 2003, available at http://www.nio.gov.uk/the_future_of_committal_proceedings_in_northern_ireland.pdf: Accessed 3/4/12.
61 Northern Ireland Assembly Written Question by Mr Peter Weir AQW, answered on 6/10/11, Ref: AQW 2490/11-15.
62 Barra McGrory QC, Director of Public Prosecutions in Northern Ireland in evidence to the Justice Committee 21 June 2012.

*committal proceedings has prolonged a process, which many in the justice system regard as inefficient and ineffective.'* Inspectors recognise that there were and are significant complexities in the outright abolition of committals, including the fact that delay could simply be moved to a different court tier and secondly, that the experience in England and Wales has demonstrated the complexities as reform of committal there has been achieved only on an incremental basis. However, much more could and should have been achieved to expedite the recommendations (Paragraph 4.14) of the 2000 Criminal Justice Review. Of course, as we say elsewhere, this is just one small part of the overall picture, but it is nonetheless an essential part of the necessary landscape reform which will facilitate dealing with delay and encouraging early guilty pleas. Inspectors were acutely aware of the DoJ work and consultation on committals ongoing at the time of fieldwork and further that this was not of itself an inspection of the committal process and to that extent was narrower in focus. However, based on the evidence seen by Inspectors we encourage fundamental and progressive reform of committal.

## Case management

3.32 A very significant cornerstone of encouraging early guilty pleas is effective and consistent case management. For early guilty plea schemes to work well/at sufficient volume there needs to be energetic and consistent case management. Inspectors considered there was evidence of increasing attempts to do so, to narrow the difficulties and agree the essential issues. This follows the issue of practice directions by the Lord Chief Justice and the issuing of a 'Bench Book' by the presiding District Judge. The Lord Chief Justice in NI issued a practice direction (3/2011) in August 2011 concerning the listing of trials in the Crown Court. This practice direction makes it clear, for example, that Judges should (post arraignment) require resolution of the outstanding issues and timetable a hearing for all issues to be resolved within four - six weeks of arraignment.

3.33 In addition to the efforts described, arising from work on delay, a specific work strand on case management has been developed and in their recent 2012 report on the issue of delay Inspectors commented:

*'The aim of the case management work strand is to develop better ways to improve the conduct of criminal cases through the court process. It is chaired by the NICTS and has representation from the Office of the Lord Chief Justice. The input of the judiciary is recognition of their centrality to case management and is matched by a range of specific judicial initiatives around the progression of cases in the Crown and Magistrates' Courts. The Lord Chief Justice has recently issued a practice direction with the purpose to improve witness availability to ensure that avoidable adjournments can be prevented in the Crown Court. The practice direction has been operating in pilot form in Antrim and Belfast Crown Courts since September 2011.'*

3.34 Case management is also supported by case progression personnel in each of the main justice organisations. Case listing and management are the responsibility of the court; however CPOs provide support and work with other agency representatives to ensure that all procedural matters are effectively progressed by the parties in the case. This includes addressing issues such as:

- checking the availability of witnesses;
- managing the arrangements for special measures;
- monitoring disclosure applications;
- ensuring that courtroom technology and interpreter facilities are available; and
- monitoring the completion of specialist reports.

3.35 CPOs keep the court informed on progress. They are also responsible for monitoring and reporting on performance against targets, identifying potentially problematic cases, analysing caseloads and ensuring management information is timely and accurate. Evidence of progress is available in considering the fact

that waiting times in both the adult and Youth Courts has decreased (by 23% and 22% respectively) between 2007 and 2011[63]. However, the average waiting times in the Crown Court have been more erratic with a reversal in an upward trend in 2009 but an increase between 2010 and 2011 of over 13%, albeit the latter may be explained by the dispute affecting criminal legal aid in that period. The average waiting times in criminal cases were targeted with the introduction of CPOs in 2008.

3.36 The NICTS, for its part, has made a significant investment with the appointment of CPOs to work with other criminal justice agency officials and the judiciary to minimise delay. In the NICTS there are 15 CPOs who between them provide support to all seven Crown Courts and 21 Magistrates' Courts in NI.

3.37 In England and Wales the role of the CPOs is set out in statute. The Criminal Procedure Rules 2010 set out those duties and these are included at Appendix 6.

3.38 While there is evidence of increasing collaboration between case progression staff in relation to Crown Court cases and contested cases in the Magistrates' Courts, there is scope to better utilise this expertise now that more live time case information is becoming available via the Causeway data sharing mechanism and each justice agency's own case management systems. **The CPO mechanisms across the CJS should be utilised where possible to help facilitate and reinforce the effective delivery of early guilty plea schemes. This could be further supported by providing a statutory basis for this work and on a similar basis to that in England and Wales (as provided for in the Criminal Procedure Rules 2010). In order to enable consistency of operational delivery, Inspectors further recommend that the DoJ consider a framework for them, again where possible and appropriate, to support early guilty plea schemes.** As a part of a broader review in this area Inspectors will conduct a forthcoming inspection on the effectiveness of case progression across the justice system (2013-15 inspection programme).[64] This will be an inspection into the approach to and contribution made by Case Progression Officers (CPOs), primarily within the PSNI, the PPS and the NICTS. Inspectors also point out that there is an opportunity in developing statutory case management to impose a parallel discipline (via the case management framework and structures which support early resolution) on legal aid payments to reduce costs in this area.

3.39 Inspectors have previously expressed their views on statutory case management in their December 2011 report on victims and witnesses.[65] We then made a strategic recommendation as follows: **Inspectors recommend that case management is placed on a statutory footing with timescales and incentives designed to deliver the most efficient and effective case progression. The DoJ should ensure the issue is included in their strategic action plans and progressed by 31 May 2012.** We now repeat that recommendation.

## Criminal legal aid fee structures

3.40 A further part of the landscape in terms of encouraging early guilty pleas was represented to Inspectors as the differential in legal aid payments in NI. This was commonly stated to Inspectors to be both the difference between similar jurisdictions and the differential in terms of the fees as between stages. Inspectors heard evidence and concerns for example that there was an incentive to delay plea hearings which attract a higher fee, and also to escalate matters to a contest on the one hand and to the Crown Court where enhanced fees could be earned on the other. There was also concern in some quarters that ancillary

63 Judicial Statistics 2011, NICTS and Northern Ireland Statistics and Research Agency.
64 CJI Corporate and Business Plans, April 2012.
65 *'The care and treatment of victims and witnesses in the criminal justice system in Northern Ireland'*, December 2011.

applications were often made without merit, and simply to increase the fees payable. Further comment, based on the findings of Inspectors, on these matters ensues after.

3.41 Arising from this, Inspectors consulted with the Northern Ireland Legal Services Commission (NILSC) and were provided with a range of data on legal aid payments. Inspectors considered that the regime for legal aid payments in NI could usefully be distilled into the following broad areas:

3.42 The assessment which follows is based on criminal legal aid payments and the data provided in the Tables at Appendix 3. However, the following graphs derived from this data (Graphs 3, 4 and 5) are instructive and provide an overall picture of expenditure over the last two financial years. Only these two years have been included given the very substantial changes introduced in the 2009 Rules[68] for Magistrates' Courts (which became effective on 30 September 2009) and which would distort any wider comparison unjustly. Also, significantly, the data does not reflect volume to spend nor does it reflect the total business in the courts as not all cases are legally aided. In addition, the tables and graphs have excluded Very High Cost Cases (VHCC). This is in order

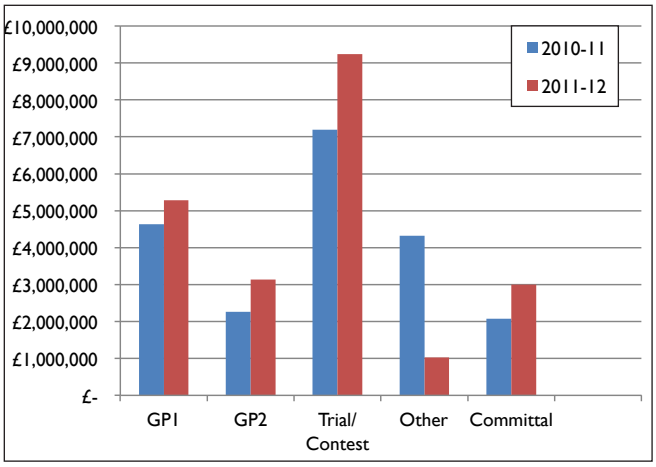
**Table 7: The basis of criminal legal aid payments**

| | Magistrates' Court[66] | Crown Court[67] |
|---|---|---|
| **Guilty Plea 1** | A Guilty Plea 1 Fee shall be payable in a case where the assisted person pleaded guilty to one or more charges and the case did not proceed as a contest. | A Guilty Plea 1 Fee shall be payable in a case where the assisted person pleaded guilty to one or more counts at the first arraignment and the case did not proceed to trial. |
| **Guilty Plea 2** | A Guilty Plea 2 Fee shall be payable in a case which was listed for, but did not proceed as, a contest because the assisted person pleaded guilty to one or more charges. | A Guilty Plea 2 Fee shall be payable in a case where the assisted person pleaded guilty to one or more counts after the first arraignment but before the end of the first full day of trial and the trial did not proceed further |
| **Contest/Trial Fees** | A Contest Fee is payable for a case in the Magistrates' Court where the assisted person pleaded not guilty to one or more charges and the hearing of the case proceeded as a contest. | A Basic Trial Fee is payable in a case where the assisted person pleaded not guilty to one or more counts and the trial proceeded beyond the first full day of trial (or it was otherwise completed as a trial within one day). |
| **Committal Fees** | Fees payable for the transfer (committal) of defendant(s) to the Crown Court | N/A |
| **Other Fees** | Inspectors used an amalgam of all other criminal legal aid payments including fixed fees, non standard fees, and in the case of Solicitor payments standard fees. | As Magistrates' Court |

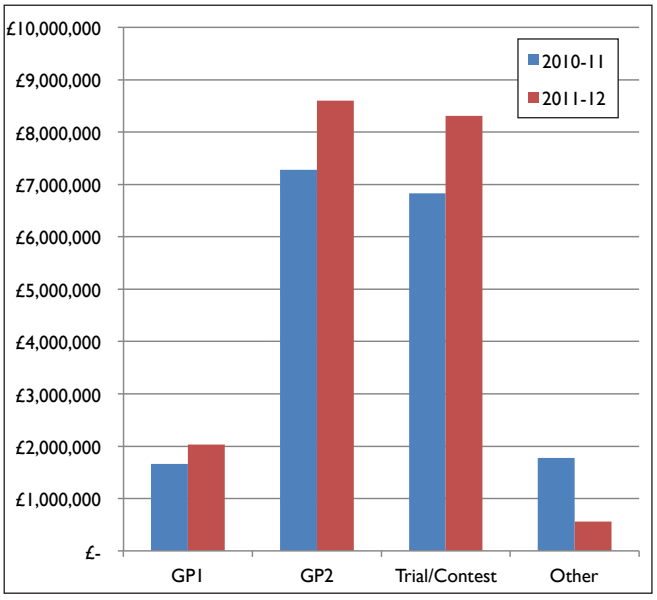
66 The Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009.
67 The Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005
68 The Legal Aid in Criminal Proceedings (Costs)(Amendment) Rules (Northern Ireland) 2009.

to assist in making some imperfect but still valuable comparisons. Bearing in mind these limitations, Inspectors would caution that trend analysis based on this data is difficult given the significant changes already referred to. Indeed, Inspectors heard from the Public Legal Services Division of the DoJ that they had been unable to extract meaningful trend data.

**Graph 3: Distribution of Criminal Legal Aid Expenditure – Magistrates' Court (£m) 2010-11 and 2011-12**[69]



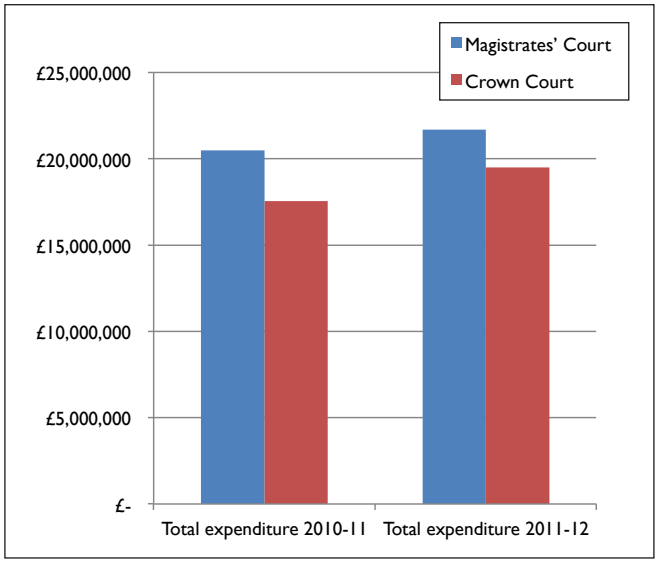

**Graph 4: Distribution of Criminal Legal Aid Expenditure - Crown Court (£m) 2010-11 and 2011-12**[70]




69 Data provided by the NILSC.
70 Ibid.
71 See Graph 1 where in 2010-11 almost 21% of defendants pleaded guilty at the outset in the Crown Court and Graph 2 where some 70% of all pleas come at first sitting.

The following graph (Graph 5) illustrates the totals of criminal legal aid expenditure for the financial years 2010-11 and 2011-12.

**Graph 5: Total criminal legal aid expenditure for the financial years 2010-11 and 2011-12.**




3.43 However, despite the limitations of the available data, Inspectors judge that there are nevertheless a number of important overall messages as follows:

- overall the total of criminal legal aid expenditure has risen from £31.4m in 2009-10 to £41.1m in 2011-12 (30.9%); and
- over the last two financial years (2010-11 and 2011-12) for the Magistrates' Court only:
  - 'other' category fees have fallen significantly by 16% (£3.2m);
  - GP1 fees rose by 1% (£0.6m);
  - GP 2 fees rose by 3% (£0.8m);
  - Trial fees have increased by 8% (£2m); and
  - Committals fees are up 4% (£0.9m).

- over the last two financial years (2010-11 – 2011-12) for the Crown Court only:
  - 'other' category fees were down by 7% (£1.2m);
  - GP 1 fees rose by 1% (0.3m);
  - GP2 fees rose by 3% (£1.3m);
  - there are significantly more GP2 fees than those for GP1 in this court tier. This is unexpected, given that other figures[71]

provide evidence that the vast majority of all pleas in this court tier come at first hearing. The opposite is true in the Magistrates' Court where the majority of all guilty plea fees are in the GP1 category (as expected). While increases in guilty plea fees are largely welcome (as this indicates a growing number of pleas), it is simultaneously disquieting as the overall objective should be to receive pleas at the earliest possible stage (attracting GP1 fees); and

- trial fees were up by 2% (£1.4m).

3.44 Clearly, one potentially significant issue is in respect of the increase in contest/trial fees which represented over £3.4m across all courts in the last two financial years. On the contrary, Inspectors analysis suggests that the rise in contested cases in the Magistrates' Court was 3.2% between 2010 and 2011.[72] While Inspectors analysis is that some of the rise in contest fees may be explained by the actual increases in contested cases in the courts, the NILSC and the DoJ will want to keep this under close observation to ensure that any trend which is unexplained by court business is arrested.

3.45 It is clear that the percentage of 'other' fees (which includes fees for ancillary applications) is on a steep downward trend - positively reflecting appropriate pressures by those charged with administering criminal legal aid fees and the changes made in late 2009 with the introduction of the Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009. Therefore, in both court tiers ancillary fees are of less concern than was represented to Inspectors.

3.46 Given that the fee structures in both Scotland and in England and Wales have both moved (to varying degrees) closer to the single fee formation, the practice in NI might consequently be said to be lagging behind. As we observe in paragraph 2.50 the differential in legal aid payments in Scotland (pre-reform) were £230 in the Magistrates' Courts. That was said to create an incentive for not guilty pleas. Inspectors have calculated that the differential between guilty plea and contest fees for Solicitors in NI ranges between £130 - £390 (average £260). At its best, this differential is at least as significant as in Scotland and, on average, the differential is 13% higher.

3.47 On a similar note, the average difference between GP1 and GP2 fees is equally significant and, for example, the average fees for a solicitor in the Magistrates' Court stood at £356 for a GP1, whereas a similar GP2 fee averages £616[73] (or 73% higher). The average payment for a Solicitor in the Crown Court was £1,996 for a GP1 and £4,635 for a GP2 (some 113% higher). Similar significant differences in average payments occur for contest fees where, for example, the average Solicitor payment for a contest in the Magistrates' Court was £746 in 2011-12 (or 109% above that for a GP1). The corollary is that if the differential in Scotland led to the conclusion that there were perverse incentives, then the same is undoubtedly true for NI. Bearing in mind also the evidence of a trend to increased contest fees any suggestion of a fee incentive to contest cases must be carefully examined and a rate set which ultimately removes any such incentive. Inspectors considered that a single fee structure for the Magistrates' Courts would assist in that objective and in resolving cases earlier. Inspectors are aware that there is already a move towards a single guilty plea fee in both the Magistrates' and Crown Courts, but Inspectors encourage further more radical reform. The objective should be to leverage savings and efficiencies in the total criminal justice system - achieving both legal aid savings and efficiency savings for others including the police, the PPS, Courts and for victims and witnesses. Inspectors recognise that a single

72 Derived from Judicial and Court statistics 2010 and 2011 by adding the numbers who plead not guilty - found guilty on at least one charge and plea not guilty - acquitted on all charges.

73 Average Solicitor fee in the Magistrates court 2011-12 provided by NILSC.

fee structure in the Crown Courts is more challenging, but the principle of the removal of any incentives should be followed as far as possible.

3.48 Inspectors would also wish to point out and acknowledge that the structure for legal aid fees in the Magistrates' Youth Courts needs separate and detailed consideration. This is in consequence of the fact that all offence categories (including those on indictment with the exception of murder and those which the court itself refers to the Crown Court) may be dealt with in the Youth Courts. Accordingly, a single fee structure would not address the needs of access to justice for the more serious offences dealt with in the Youth Courts.

3.49 **Early action should be taken by the DoJ to create a single criminal legal aid fee structure in the Magistrates' Courts. A separate fee structure, but following the principle of a single fee formation for comparable summary offences, is recommended in the Youth Courts. A single fee in the Crown Courts is more challenging, but the principle of the removal of incentives to prolong cases must also be followed there.** In this way, the early resolution of cases may be encouraged. A further benefit will be the efficiency savings in the administration of a single fee.

3.50 Overall, the changes recommended should at worst be regarded as cost neutral and at best, represent a saving to the public purse. The overall benefits of such change will be the encouragement to early resolution of cases and the efficiency savings across both the public and private sectors. As we say at the outset, this should not be calculated to interfere in any way with access to justice. As the report on Access to Justice itself commented, '*...it will be important to ensure that differentials between remuneration levels for early or late pleas and contests are sufficiently narrow not to appear to incentivise the prolonging of cases.*' Nonetheless, Inspectors consider that the evidence presented indicates a confirmation of the incentivising, the prolonging of cases and the escalation of cases across all courts. There must now be a re-balancing exercise to remove any disincentive to resolve cases earlier. CJI will be undertaking a corporate governance inspection of the NILSC in this financial year. This may comment further on these issues.

CHAPTER 4:

# User perspectives

## The views of the public and of victims

4.1 In the overall context of early pleas the views of victims, as we have already outlined, are key considerations. It is apparent from fieldwork that there are strongly held views and indeed a lack of clarity in understanding in some quarters. Generally speaking, Inspectors heard clearly that many ordinary members of the public and victims did not want to see perpetrators receiving any credit for their pleas. It is commonly the view of the public that sentences are too lenient and these views were replicated in Inspectors findings. Many expressed strong views that offenders instead of being rewarded for an early guilty plea, should be punished more severely for pleading 'not guilty', once they are found guilty.

4.2 The broad findings of Inspectors are underpinned by research on public attitudes to sentencing which has found for example:

*'It was very evident from our focus groups that most people are angry about crime and cynical about sentencers and sentencing. We do not have to look far for some of the reasons: people are seriously misinformed about sentencing practice, and believe that the courts are much more lenient than they actually are.'*[74]

The research concluded on the difference between actual sentencing and public perception that, '*...we can be confident that the problem is one of perception rather than practice.*' Inspectors considered that this position is replicated in NI insofar as the majority of people surveyed in the NI Victims and Witnesses Survey 2010-11[75] (52%) indicated that the sentence given in their case was fair. But, it remains the case that a sizeable number (45%) did not feel the sentence was fair. However, the numbers of sentences which are appealed or referred to the Attorney General each year are exceptionally small indicating the gap between public perception and the reality of sentencing. In 2010 there were 45 appeals against sentence only and 21 against conviction and sentence. The sentence was varied in 18 cases[76].

4.3 Inspectors considered that a 'one size fits all' approach to pleas and sentencing is unlikely to work adequately and to deliver the kinds of outcomes which satisfy the complex needs of the public and victims on the one hand and defendants on the other. Similarly, the research considered by Inspectors also echoed this and commented, '*This survey also demonstrated that when considering sentencing objectives, the public reject a 'one size fits all' approach, and instead pursue different sentencing goals as the seriousness of the offence changes.*'

4.4 Clearly therefore, another significant factor in how sentencing and sentence reductions are viewed concerns the seriousness of offence. It is difficult for those outside the formal agencies of the justice system to assimilate the complexities of sentencing, the seriousness

74 Sentencing Advisory Panel, Research Report 6, Public Attitudes to the Principles of Sentencing, Hough et al, June 2009.

75 Performance of the Criminal Justice System from a Victim and Witness Perspective: Comparison of Findings from the 2008-09, 2009-10 and 2010-11 Surveys, Department of Justice and NISRA.

76 Judicial Statistics, NICTS available at http://www.courtsni.gov.uk/enGB/Publications/Targets_and_Performance/Documents/Judicial%20Statistics%202010/p_tp_Judicial-Statistics-2010.pdf. Accessed 13/4/12.

of offence and sentence reductions in a way which is easily illustrated or understood. The Sentencing Advisory Panel research, for example, concluded:

*'...people clearly found it difficult – and arbitrary – to rank very different forms of harm and culpability on a single ladder. Whatever the justifications may be for incorporating seriousness scales into systems of sentencing guidance, the way that the general public thinks about crime seriousness is clearly not one of these. In talking about crime seriousness, our focus group participants tended to construct narratives about possible criminal histories and motives which implied that severity of the criminal case has to be assessed by reference both to features of the offence and the offender.'*

4.5 Having also considered feedback and examined the recent findings from *Attitudes to Guilty Plea Sentence Reductions*,[77] Inspectors are content that the key findings of that research are and remain germane. The findings appear comprehensive and differ little from the evidence heard by Inspectors. Inspectors would therefore simply comment that the findings accord with the anecdotal evidence heard by them throughout the course of this inspection. The key findings include:

- *'The public often perceive sentencing as too lenient. They feel that too often it can work in favour of offenders, rather than providing justice for victims. For the public, sentence lengths given to offenders are an important indicator of justice being served.*

- *'The public in this research had limited knowledge of the workings of the CJS, especially sentencing, and they reported their views as being highly influenced by the media and word of mouth. Whilst the quantitative survey revealed a degree of familiarity with the principles of guilty plea sentence reductions, qualitative discussions indicated awareness was based on the broad concept of sentences receiving reductions, with participants less certain of the role guilty pleas played in determining sentence outcome. Therefore, the public were generally unaware of the nuances of the guilty plea reductions principle and initially tended to be generally unsupportive of reductions in sentencing for those entering a guilty plea.*

- *'Those who had a better understanding of the system and how it works were more likely to report confidence in the system and in sentencing policies. As such those who had been a victim or who had witnessed a crime were more likely to be supportive of sentence reductions than a broader general public audience.*

- *'While the general public's view of justice being served centred largely on the sentence handed down, victims and witnesses tended to have a more holistic view. They gave consideration to offender circumstances and whether the punishment allowed for rehabilitation and support as well as closure for victims and witnesses. For many, re-offending was a key concern and so there was support for punishments that acted as a deterrent and changed offender behaviour. Indeed, both the general public and victims and witnesses thought that persistent offenders, through their actions, have forfeited their right to a reduction.*

- *'The public assume that the key motivation for the guilty plea sentence reduction is to reduce resources (time and money), but they prefer the idea of it as something which helps prevent victims having to give evidence and experiencing emotional trauma whilst doing this. There is a strong sense that the drive for cost savings should not impact on a system effectively delivering justice.*

- *'There is more support for sentence reductions if the guilty plea is entered at an early point. The benefits – both economic and emotional – are more tangible at this point, and both the public and victims and witnesses are less likely to feel that the offender can 'play the system'.*

77 Sentencing Council, Attitudes to Guilty Pleas Sentence Reductions, Research conducted by Ipsos MORI with academic advice from Emeritus Professor John Baldwin, University of Birmingham , May 2011.

- *'There is generally little support for a reduction for a guilty plea made at the court door or once the trial has started amongst the public and many victims and witnesses, although the small number of victims of more serious offences included in this study often felt that reductions at this stage could be acceptable. There was an indication that the prospect and reality of attending court proved more traumatic for this group, and they therefore may be more open to late reductions.*

- *'For the general public, there was weak support for higher levels of reductions beyond the current guideline range of up to 33% and a fifth (20%) felt that there should be no reduction at all. Supporting this, when survey respondents were asked whether the reduction should be increased from a third if an offender pleads guilty at the earliest opportunity, 58% disagreed and only 22% agreed. A small number of victims of more serious offences were, however, more supportive if it spared them having to testify in court.*

- *'The public (and some victims and witnesses) do not like the idea of a universal approach to reductions – in fact, the public in the survey were less likely to say that an offender pleading guilty to an offence should be given a more lenient sentence in most/all cases (21%) and more likely to say it never should result in a more lenient sentence (29%). They instead think that this should depend on certain factors/circumstances relating to the offender or offence type. For instance, views were often much more punitive towards violent crimes as opposed to those against businesses, and likewise towards repeat offenders versus first time offenders.*

- *'The language and discourse of the reductions did not sit well with people. They were very resistant to the idea of an offender being 'rewarded' for admitting they were guilty of an offence; rather they spontaneously suggested that defendants should be further penalised for not admitting guilt if they are subsequently found guilty.'*

4.6 Inspectors also consulted with Victim Support Northern Ireland (VSNI) as part of their fieldwork surrounding this inspection. Insofar as early guilty pleas are concerned, there is a qualified support for encouraging these. VSNI does not believe, for example, that those who plead guilty at the last moment should be entitled to any significant reduction in sentence. Secondly, large concessions for those who are caught 'red handed' were seen as being unnecessary. Thirdly, the rationale for sentencing reductions should be clearly explained to victims. Lastly, VSNI considered that the sentencing of offenders should take account of restorative elements which are designed to assist victims.

4.7 Indeed, Victim Support (in England and Wales) had conducted its own research on the subject of sentencing. This found there was a clear feeling that not enough had been done to explain sentencing to victims or to the public. For example, it found that victims and witnesses often leave court without a full understanding of the sentence given to the perpetrator of their crime. The report commented, *'The research also found that when victims do not understand the sentence which has been passed it can lead not only to confusion, but also to anger, despondency and frustration. Ultimately, this impacts negatively on confidence in the criminal justice system.'* [78]

4.8 The views of Victim Support generally were clear to Inspectors. VSNI believes that the best way forward is to increase levels of transparency and openness in the system. In addition to providing detailed explanations to victims, all sentences, together with explanations of why decisions were reached, should be made available to the public on-line as part of a searchable database. This would include such matters as making it clear in passing sentence the total to be spent in custody and how much is to be spent in the community. More importantly, the very clear

78 'Victims Justice? What victims and witnesses really want from sentencing', Victim Support 2010 available at http://www.victimsupport.org/About-us/Policy-and-research/~/media/Files/About%20us/ News/Sentencing%20report%202010/Victim-Support-Sentencing-report-Dec-2010.

message is that victims want to have a say and be consulted in the process of criminal justice. This can help with understanding what has happened to them and the feeling of being part of the process in turn helps with bringing a form of 'closure'.

4.9 Inspectors considered that these views were apposite and could be given effect in future early guilty plea schemes simply and with little cost by, for example:

- informing victims/witnesses via the Witness Care Unit (once established), when a case is considered as suitable for an early guilty plea (and further explaining that process);
- where appropriate, considering the impacts of the crime on victims in the sentencing exercise by way of victim impact statements; and
- ensuring that victims are properly informed of sentences and their meaning via the Witness Care Units once established.

4.10 **As part of the Witness Care Unit project previously recommended by Inspectors, the PPS and the PSNI should ensure that victims are informed of early guilty plea processes (where and when implemented), the outcomes arising and their meaning.**

## The views of the accused

4.11 As part of their fieldwork Inspectors embarked on a qualitative study of defendants views on early guilty pleas. In total 62 sentenced defendants were interviewed in a mix of one-to-one interviews and two focus groups. The latter comprised 13 respondents while the remaining 49 were interviewed on a one-to-one basis. The reference group of 62 was drawn from those subject to probation supervision (via the Probation Board for Northern Ireland (PBNI)) and also from the prison population (via the Northern Ireland Prison Service (NIPS)).

4.12 All respondents were interviewed with their express consent. Inspectors were also careful in the sample to include a range of offenders and offences. Thus, the reference group included both male and female and also represented a broad range of ages from young offenders, (including those who were juveniles at the time of their offences), to older offenders. Also included were a range of minority groups including some from the Travelling Community and foreign nationals, including Chinese, Polish and Lithuanian nationals. The range of offences included were those from murder and manslaughter to motoring offences.

4.13 Inspectors considered that the views and experiences of these stakeholders were critical to an understanding both of current practice and secondly, to those issues which might make a significant difference to early guilty pleas going forward. A number of clear themes emerged from that work and these are discussed later in this report.

## Factors that help defendants plead guilty at an early stage

4.14 It was apparent from the evidence heard by Inspectors that defendants based their decision on entering a plea on a combination of factors. These fall in to three broad categories:

- sentence reductions;
- weight of evidence; and
- legal advice.

A further related and common factor for defendants was delay. Each of these issues are discussed further in this report.

## Sentencing reductions

4.15 Most, but not all, defendants were aware that under the present system, the court may reduce a sentence where a guilty plea is entered at a sufficiently early stage. The vast majority indicated that their knowledge of the scheme was primarily as a result of their previous experience of the CJS. Many of those defendants spoken to reflected that a fixed concession scheme would encourage more guilty pleas.

4.16 A small number said that while they understood the maximum reduction available was one third, few were able to articulate the extent of sentence concession they had actually received. One defendant commented: "*How can you know when the level of discount isn't fixed. There's no transparency in sentencing.*"

Another said: "*In hindsight I would have went to trial as the benefit of my early plea was not evident [compared to co-accused]. Others pleaded guilty later but I got the same sentence.*"

4.17 Many participants indicated that it would be useful to know about the level of credit that would have been awarded had an early plea been entered, but some also reflected they did not believe it would be appropriate for the Judge to mention it as part of the sentencing remarks.

4.18 One participant said that he eventually entered a guilty plea after his legal team requested an indication of sentence and he was able to weigh this up against what he could get if he contested the matter and was found guilty. This is an established practice in jurisprudence known as a 'Rooney' hearing. Other illustrative comments include:

- "*My co-accused got 10 years for one offence (after a trial) - so it's obvious that I received a good discount.*" (Sentenced to eight years in July 2009 for two counts of armed robbery);
- "*I didn't know what reduction there would be but I was advised there might be some reduction and a difference in how the court would view the offence. I pleaded guilty as soon as my solicitor advised me to - that's what I would go on - my solicitors advice, but if information had been made available earlier and it was clear on the effect on length of sentence that might encourage me to tell my solicitor I wanted to plead;*" and
- "*Why would you confess if the prosecution are coming in with the attitude of put them away forever?*"

## Weight of evidence

4.19 Defendants properly acknowledged the weight of evidence as a significant factor when deciding whether to plead guilty at an early point. A significantly high number of those spoken to indicated that they had entered a guilty plea during the police interview. Many of those who did so reflected that this was because they believed the evidence to be overwhelming. Some defendants particularly mentioned CCTV or forensic evidence which they regarded as irrefutable. Illustrative comments included:

- One young offender commented, "*I always go 'no comment' in the police station and wait to see the evidence and the charge.*"
- "*If I know I'm guilty I plead straight away. In this case, I was told to wait to see if the witness would turn up [solicitor's advice].*"

4.20 Notwithstanding the above findings there was also a smaller group of defendants who Inspectors assessed were more incorrigible and who did not or would only enter a guilty plea after a careful assessment of the evidence and the probabilities of sentence concessions balanced against their offending record. For example, one participant made clear that whilst he had entered a guilty plea in a motoring case, he had and would fight other cases where he felt there *'wasn't as much evidence'*, or the case was harder to prove. Another individual commented:

"*If I thought I could fight I would do it, but I know not to [mess with] the system - if I'm caught red handed then I would plead. I would be looking at the strength of the evidence - I make sure I do it - read all the papers.*"

4.21 In general, many of those defendants who had previous contact with the CJS related that they would wait for full disclosure of all evidence before considering whether to plead guilty. A small number of others considered that they may also delay entering a guilty plea to see if the chargeswere going to be reduced or dropped. These defendants were largely those who calculated that the greater benefit to them

may lie not in a sentence reduction, but in the gamble of evading justice due to some technicality or error in the prosecution case. This was reflected in comments such as this from one individual:

*"A one percent chance of getting off is still better than pleading guilty - I can't plead guilty."*

## Legal advice

4.22 The vast majority of those spoken to confirmed that their solicitors advised them about the credit available for pleading guilty early. To an extent this contradicts the findings that a significant number of defendants were only aware of sentence reductions via their previous contact with the CJS. However, it was clear from the fieldwork that the extent to which solicitors advice was followed varied. For example, many expressed the view that solicitors were never able to offer much advice about how much credit would be given, as the amount of the sentence reduction was a matter for the Judge. In other words, defendants were essentially expressing a desire for certainty in the process, before reaching a firm conclusion as to their plea.

4.23 Others, however, suggested that they decided to plead not guilty initially, against their solicitor's advice, as they preferred to wait for the full details of the case to emerge. As one participant put it: *"Solicitors try to get you to throw the hands up but once you have experience of the system you know to wait and see."* Another went on to say: *"You have to be assertive with solicitors or they don't guide you."*

4.24 During discussions a few participants highlighted that they may change their plea in court if they themselves perceived a Judge had a reputation for handing down longer sentences.

4.25 Overall, Inspectors considered that it could also be advantageous if there was a duty on the legal professions to advise their clients of the existence of early guilty plea schemes. There appear to be a range of ways in which this could be achieved. They include:

- a duty to inform the court that the client has been advised of early guilty pleas; and
- a duty to confirm in legal aid applications that the client has been advised of early guilty pleas.

Inspectors encourage the DoJ to further consider options in this regard.

## Delay

4.26 It was apparent to Inspectors from the range of interviews conducted that very many defendants were concerned about delay in their cases. Many volunteered examples of how delay had impacted adversely on them and their family.

4.27 One individual relayed that his parent's bank accounts had been frozen for the duration of his case which took almost four years to be completed. Another argued that their sentence, a three-year driving ban really amounted to four years as they hadn't in fact been allowed to drive since the date of the offence. Many also pointed out that the time spent on remand was wasted, particularly if the sentence was less than the remand time. Those participants who had spent time in prison said that serving time as a sentenced prisoner was preferable to remand, as there is a fixed date for release (certainty) and secondly, they were then able to achieve greater privileges in the prison regime. Those on bail complained that they got no credit for time spent under curfew when they were unable to leave their houses. Several individuals complained that their cases took months (and in some cases years) to complete, even though they had admitted their guilt at the police station. Inspectors considered there were a number of factors influencing this, including the committal process, and the fact that pleas cannot be entered until arraignment in the Crown Court. Secondly, the absence of any formal guilty plea schemes and/or the absence of accelerated hearings such as are available in Scotland or plea before venue hearings in England and

Wales. These are matters discussed elsewhere in this report.

4.28 Some defendants, without any prompting, considered that there should be penalties for the justice organisation if cases are not progressed quickly. Similarly, other participants questioned how the costs of delay can be justified. One offender seen by Inspectors who had served sentences in England spoke of the much longer time-span and difference in the time taken to deal with their cases in NI. He said, *"It was two years before I was sentenced - far too long - it was not fair on my family."*

4.29 Some further unsolicited comments on delay included:

- *"My case took far too long, there were long delays and my case was in court 14 times. I was signing bail three times a week - my life was on hold."*
- *"Adjournments at court can be very negative for the offender - things are put back - everything takes too long - information should be made available. The extended period makes it difficult for offenders especially when on remand. My personal experience of nine weeks on basic regime at Hydebank leaves a lot of time to mull over things, especially when information (about the delays) is not given to the offender."*
- *"Pleas of guilty should be speeded up - no-one wants to be sitting in limbo."*
- *"I admitted being guilty as soon as I was stopped and at police interview. The waiting game is shameful - the papers were reporting my case all the time - remands etcetera."*
- *"The delay was forensics - it seemed they were dragging it out - excuses were made all the time. Information was received piecemeal - just provided going along."*

4.30 Again, tending to underpin and support the findings of Inspectors in their work, the commentary of the SC research[79] are important to consider alongside those of CJI. This stated:

- *'Offenders in this study were often unsure what their sentence was likely to be when weighing up how to plead, and felt that decisions on sentence lengths were inconsistent. This made it difficult for them to calculate exactly what the impact of a set reduction to their sentence would be. Offenders also questioned the extent to which reductions for early guilty pleas were actually being applied, with a number feeling that it was very difficult to understand exactly how their final sentence had been determined. However, when probed on the level of reductions, offenders in this study were broadly content with the current discount of a third for an early guilty plea, and felt that without the reduction, there was little incentive to admit guilt.*

- *'The main factor determining whether or not offenders plead guilty was the likelihood of being found guilty at trial. The key 'tipping point' here was when offenders realised that the chances of them being found guilty were greater than being found not guilty. Weight of evidence and advice from solicitors/barristers were pivotal in offenders' assessments of whether they were likely to be found guilty and therefore crucial in determining when a guilty plea was entered. There was little evidence from the research that increasing the reduction further would encourage more offenders to plead guilty at an earlier stage, given the reduction only becomes a driver of entering a guilty plea at such a point that an offender considers a conviction to be the likely outcome.'*

4.31 On the issue of sentencing practice, Inspectors heard no significant concern beyond the broad views of the public reflected above. Inspectors are of the strong view that the discretion applied by the Judiciary is the most effective mechanism to take the very complex matter of sentencing into account and we clearly support the principle of discretionary practices in this regard. While there clearly have been concerns raised with regard to a number of individual cases, the current practice which has evolved

79 Sentencing Council, Attitudes to Guilty Pleas Sentence Reductions, Research conducted by Ipsos MORI with academic advice from Emeritus Professor John Baldwin, University of Birmingham , May 2011.

to meet these complexities has served society generally well in the past. Notwithstanding these principles, it appears to Inspectors that there was also a need to provide a greater degree of certainty and transparency in sentencing so as to encourage earlier guilty pleas. That could mean, for example, while continuing to provide discretion, at the same time also providing more prescriptive guidelines or indeed a statutory sentencing framework allowing for early guilty plea credits. Inspectors recognise that this is a controversial issue and one properly for the Northern Ireland Executive to develop. However, it was clear that for many defendants the only way to encourage earlier guilty pleas is to provide certainty in terms of the sentence reductions.

4.32 There is considerable scope to improve the current system and to encourage and increase the number of guilty pleas entered at an early stage. In its consultation on a sentencing guidelines mechanism, the DoJ has stated, for example:

*'We have explored the drivers for change to the current sentencing arrangements: public confidence; transparency; public engagement; and consistency; and consider that any sentencing guidelines mechanism developed in Northern Ireland should make a contribution to the following objectives:*

- *to promote public confidence in sentencing;*
- *to provide greater transparency in sentencing practice;*
- *to engage the community in, and raise awareness of, sentencing issues; and*
- *to promote consistency in sentencing for similar offences committed in similar circumstances.'*[80]

In the published *'Summary of Responses'* to the DoJ consultation it was also stated:

*'A consistent theme running through the majority of responses was the need to achieve greater transparency and consistency in sentencing, with many respondents drawing attention to the impact that these issues had on public confidence.'*

Considering this and the other evidence presented, Inspectors therefore conclude that the required improvements fall chiefly into the following areas:

- early service of evidence and disclosure of the case to the defendant;
- arrangements to fast-track guilty pleas for sentencing;
- greater certainty about the amount of credit available; and
- greater transparency in sentencing.

4. 33 Inspectors acknowledge that the independent Judiciary are responsible for sentencing and sentencing practice. However**, Inspectors recommend that in order to address the needs of certainty and transparency in sentencing, the following factors are given due weight by the DoJ in work on sentencing frameworks and in developing early guilty plea schemes. They are:**

- **providing statutory sentencing rules which while retaining a strong judicial discretionary element, also more firmly prescribe the kinds of sentence reductions which must (subject to exception) be provided for an early guilty plea; and**
- **a firm (again, if necessary, statutory) requirement for transparency in sentences delivered, including the reductions applied and withheld.**

## Early guilty plea promotion

4.34 During the course of fieldwork Inspectors were provided with a poster on early guilty pleas which is made available by the NICTS. This is reproduced as Appendix 7. However, Inspectors considered that in assisting early guilty plea schemes and taking account of the matters above, there were a number of other ways in which early guilty plea schemes could be encouraged. **A simple leaflet explaining the process and effect of early guilty pleas should be given to all detainees in**

80 Consultation on a Sentencing Guidelines Mechanism, DoJ.

**police custody at the same time as other notices informing them of their rights. The PPS could usefully utilise the same leaflet to issue with court papers served on defendants and thus act as a further reminder to the early guilty plea processes.** Such a leaflet would clearly require to be carefully worded so as not to be regarded as an inducement or encouragement for those who do not wish to do so to plead guilty. This leaflet should be seen simply as an extension of informing accused persons of their rights and at the earliest possible stage. In speaking with defendants during the course of fieldwork, the overwhelming consensus of defendants was that this would be helpful. While some dismissed any leaflet handed out by police as open to suspicion, the majority saw any additional information as helpful. Even if distrustful, it may simply act as a reminder for some to engage their legal representative on the issue of an early guilty plea. Of course, Inspectors would also encourage that any such leaflet is quality assured and screened for ease of understanding and equality impact.

4.35 Further on this issue, **a CJS wide poster should be devised and made available in all police stations and court buildings explaining the process and effect of early guilty pleas.** This should support and draw attention to the leaflet described above which should also be available widely.

4.36 Inspectors are conscious that some other alternatives have been proposed and among these include a requirement for legal representatives to inform their clients of the concessions available, coupled with a requirement to so advise the court. Given the findings of Inspectors that the vast majority of legal representatives are already doing so, this suggestion could be kept under advisement.

4.37 A further connected matter for Inspectors was evidence that the level of literacy and understanding amongst many defendants was limited. A number of individuals seen by Inspectors did not (and to some extent still do not) understand the charges and consequently do not admit their guilt. This appeared to Inspectors to be a direct consequence of a lack of comprehension and understanding rather than any attempt to manipulate the system. This finding is underpinned by evidence that 48% of prisoners in NI were assessed as having literacy skills of Entry Level 3 (nine-year-old equivalent) or below, with 62% assessed at the same level for numeracy.[81]

4.38 In addition, it was also clear to Inspectors that for many defendants the process through the CJS is difficult to comprehend. One defendant, for example, commented, *"I can't remember the police station and the rest is a blur."*

4.39 These are matters linked to the discussion on equality impacts commencing at paragraph 4.42.

## The defence community

4.40 Those legal practitioners seen by Inspectors were clear in their views. They put forward a strong view that increasingly the payment regimes for defence solicitors penalises unnecessary adjournments and therefore it is in the defence solicitors best interests to quickly bring a case to a conclusion. There is mixed evidence of this with on the one hand, the majority of payments being made at the early stage (Guilty Plea 1 fee) and some 61% of defendants pleading guilty at the first hearing in the Magistrates' Courts and 70% in the Crown Courts. On the contrary, the amount of criminal legal aid expenditure on Guilty Plea 2 fees is over four times that of Guilty Plea 1. The difference in these fee rates would explain only a small fraction of this differential (similar to the matters highlighted at paragraph 3.44). The NILSC will wish to examine the issues surrounding this differential. However, one key concentration should now settle on those who change their plea and on rationalising the fees schemes in a manner in which is fair and removes any remaining disincentive to prolong cases.

81 Northern Ireland Assembly, Weekly Answers 4/5/12: Prisoners: Illiteracy and Innumeracy (AQO 1864/11-15).

4.41 It was obvious to Inspectors that in considering any changes, including the introduction of any early guilty plea schemes, there will be an apparent need for comprehensive engagement with the defence community in order that the expected outcomes can be agreed and ultimately achieved. Inspectors are conscious that this will take some time to deliver and embed.

## Equality impact

4.42 Across the broad range of individuals who are before the courts there are a wide range of vulnerabilities. This is a widely accepted principle. Indeed during the course of inspection, Inspectors heard from some consultees who expressed direct concern at the possibility of early guilty plea schemes impacting negatively on vulnerable defendants.

4.43 The Prison Reform Trust has, for example, said:

*'In order to exercise their right to a fair trial, enshrined in Article 6 of the European Convention on Human Rights, and to be deemed fit to plead, defendants must be able to understand and to participate effectively in criminal proceedings. In practice, many vulnerable defendants, such as those with learning disabilities, find their experiences of court extremely confusing and feel unable to participate in a meaningful way.'*[82]

4.44 The Prison Reform Trust have also concluded:

*'The prevalence of learning disabilities among defendants is difficult to measure. A review of research on prevalence, conducted as part of the No One Knows programme, concluded that there is a vast hidden problem of high numbers of men, women and children with learning difficulties and learning disabilities trapped within the criminal justice system';* and that between 20% and 30% of offenders *'have learning difficulties or learning disabilities that interfere with their ability to cope within the criminal justice system'* [83]

4.45 Many empirical studies strongly suggest that suspects and defendants with learning disabilities are 'vulnerable.' These can include vulnerabilities by reason of age (young or old) and those with mental health and cognitive understanding issues. Indeed Inspectors highlighted some of the issues in their 2010 report *'Not a Marginal Issue: Mental Health and the criminal justice system in Northern Ireland'*[84] when we said:

*'Evidence suggests that around 16% of those individuals who are placed into custody meet one or more of the assessment criteria for mental disorder. In addition, it is estimated that 78% of male prisoners on remand and approximately 50% of female prisoners are personality disordered – a figure seven times that of the general population.'*

In the course of fieldwork Inspectors did not hear any specific concerns on the negative effect of an early guilty plea scheme. However, we did experience a range of cognitive understanding amongst the group of offenders spoken to. This reinforced the need to ensure that whatever steps are taken to encourage guilty pleas that the range of vulnerabilities for those in the justice system are considered and given due weight.

4.46 Inspectors considered that in any early guilty plea scheme it will be important to ensure that the rights and understanding of an accused person in pleading guilty early are protected. This will largely mean that defence practitioners must ensure adequate advice is provided and that the courts should ensure unrepresented defendants are adequately informed of their rights. This may well link with the DoJ plans for the roll-out of the intermediaries scheme, including their use for defendants, in due course.

4.47 Ultimately, those accused with mental health impairments or a learning disability are better protected in a system where those

82 Vulnerable Defendants in the Criminal Courts: A review of provision for adults and children, Jacobson J and Talbot J, Prison Reform Trust, 2009.
83 Loucks, N. (2007) The prevalence and associated needs of offenders with learning difficulties and learning disabilities, Prison Reform Trust Briefing Paper, London: Prison Reform Trust.
84 *'Not a marginal issue: mental health and the criminal justice system in Northern Ireland'*, CJI, March 2010.

vulnerabilities can be addressed, rather than in a broad-spectrum system where vulnerability is less likely to be considered to the same degree. Nonetheless**, Inspectors recommend that any future early guilty plea scheme is screened by the DoJ for equality impact.**

## CHAPTER 5:

# Conclusions

5.1 Clearly there are a number of supporting and persuasive arguments to encourage early guilty pleas. Among these are the potential resource savings, the positive impacts for victims and witnesses and for defendants. These will not be repeated here except to state that Inspectors did not hear any significant or convincing rationale which would preclude the use of schemes. On the contrary, there were convincing arguments in favour of encouraging early guilty pleas but a current absence of clearly structured schemes to deliver early guilty pleas.

5.2 Inspectors concluded that the benefits of an early guilty pleas scheme would be more keenly felt in the Crown Courts where the incentives and advantages are more tangible. However, that does not preclude early guilty plea schemes operating also in the Magistrates' Courts where, while the incentives are less, the experience from other jurisdictions shows that the average time for hearings may also be reduced; thus impacting positively on delay. With over 1,880 defendants changing their pleas during 2010-11 in this court tier, Inspectors consider that despite the availability of clear incentives there are consequently significant efficiency savings possible. The key for the Magistrates' Courts will be removing any disincentives to prolong cases and in this respect Inspectors recommend a change to a single criminal legal aid fee structure.

5.3 In considering the issues surrounding early guilty pleas, it was clear that there was an architecture available in the Magistrates' Courts to deliver an early guilty plea scheme in the form of administrative guidance, together with sufficient existing protections to ensure that vulnerability and equality can be addressed. In other words, for the Magistrates' Courts, broadly speaking, the building blocks to deliver early guilty plea schemes are available and these would require only administrative change. Indeed, a pilot scheme had been operating in the Ballymena area but had been discontinued given a number of problems. This, it appeared to Inspectors, was evidence of a lack of connectivity between various elements of the CJS and the defence - rather than a fundamental absence or availability of supporting architecture. It may indeed be argued that the failure of the Ballymena pilot is also, in part, evidence of a cultural resistance to change. The expected benefits of that scheme dissolved due in large measure to a failure of corporacy in approach. This lack of corporacy in approach is further evidenced by the findings of Inspectors that the nexus between the PSNI and the PPS faces some challenges and could in some respects be enhanced with regard to the streamlined file initiative outlined in Chapter 3.

5.4 The position in the Crown Court is somewhat different. It was apparent to Inspectors that for an early guilty plea scheme to work effectively, particularly in the Crown Courts, that further landscape reform, for example, of the committal process, is required. In this respect, the greatest potential benefits for victims, defendants and the CJS as a whole, will come from the Crown Courts and Inspectors therefore consider that the priority in terms

of early guilty plea schemes should be concentrated here. This will require a number of supporting reforms to be addressed. However, Inspectors would also wish to reiterate that efficiency savings can also be gained from a comparable early guilty plea scheme in the Magistrates' Courts. This should be commenced as soon as practicable across the NI Magistrates' Courts.

5.5 Supplementary evidence of the lack of corporacy and connectivity described across the CJS is apparent when considering the findings of Inspectors arising from their work on delay. Specifically we found (and report at Paragraph 1.12) that a range of initiatives would lead to a significant reduction in delay. Among these is the issue of early guilty pleas, but there was little evidence found by Inspectors that any clear strategy was currently being adopted to promote early guilty pleas. In recognition of the barriers, it is widely recognised that the CJS architecture across the United Kingdom is not primarily designed for joint delivery and the performance regimes of the various disparate parts of the CJS can habitually lead to conflicting, or at least incompatible, delivery mechanisms. That is not the fault of any individual or any individual agency - that is how the CJS has developed in the common law system of the United Kingdom. However, Inspectors recognise that the DoJ work on the subject of early guilty pleas is an attempt to move beyond that position and is to be commended. As we also observe in the introduction, it is also clear that some of the issues in terms of supporting early guilty pleas (insofar as they relate to delay) have already been identified by the criminal justice agencies. What is currently lacking therefore is a sustained and co-ordinated approach to the issues and barriers.

5.6 Inspectors have concluded from their fieldwork that there was no existing single coherent approach in place to encouraging early guilty pleas going forward, albeit as we say that the DoJ are engaged in active work surrounding the issues. This is despite the previous pilots mentioned and a number of initiatives to resolve issues of delay. **Inspectors recommend that a structured and co-ordinated plan is overseen and developed by the DoJ to deliver:**

- **a clear early guilty plea scheme in both Magistrates' and Crown Court tiers; and**
- **supporting infrastructures for the above including:**
  - **reform of committal procedures;**
  - **statutory reform supporting case management; and**
  - **data collection and sharing.**

Inspectors encourage the issues highlighted at Paragraph 4.31 are included and given due weight in the development of such schemes. *[This may also be linked to the recommendation at Paragraph 3.26].*

5.7 Of course as we say, while many of the building blocks are already available for early guilty plea schemes, to work to their greatest effect Inspectors considered that moving forward this will require additional supporting infrastructure change. Crucially for Inspectors, an ongoing 'project management' – in other words oversight and control of the schemes – is also seen as vital. In the course of inspection Inspectors heard from some who put forward the view that incremental changes to existing processes would be insufficient. On this analysis, the issues were stated to require more fundamental reform. These reforms included areas such as:

- criminal legal aid;
- committal; and
- statutory case management.

5.8 These are all matters to which Inspectors have already referred and are also the infrastructure changes referred to. Of course, there are others. In particular, the convergence between issues of delay and the other issues underlying it are important in the context of early guilty pleas. The confluence between delay and early

guilty pleas (and vice versa) is apparent in issues already referred to in this report and, for example, include:

- case file quality;
- case readiness;
- alternative charges (over-charging);
- early service of evidence;
- education and transparency in sentencing;
- legal aid fee structures; and
- the needs of victims and witnesses.

5.9 It will require each of these matters and others addressed in this report to be tackled collectively and in parallel in order for early guilty plea schemes to work to their best effect. It is also worthwhile in this context again noting the rallying call we advocate in Chapter 2 which is: "*What is required is better preparation. The first court appearance should be the end of the process and dialogue between the parties, not the beginning, as is often the case at the moment.*"[85]

5.10 Alongside the key recommendation of Inspectors to deliver structured early guilty plea schemes, Inspectors make also a number of other recommendations which are aimed at assisting in the delivery of effective early guilty pleas schemes. All of these measures must be regarded as a mutually supporting suite of measures encouraging early guilty pleas. If one element is not addressed in parallel, it will have a ripple effect with the potential to derail the over-arching objectives and success. While some of the measures recommended by Inspectors might be regarded as more radical, many are not. However, the absolutely fundamental issues which need to be addressed are:

- the need for the commitment of all in the justice system to play their part in support of early guilty pleas; and
- the need for the suite of measures to be co-ordinated and addressed in parallel.

The Minister of Justice has recognised the issues in the delay context and in a Ministerial statement to the Assembly stated, "*The solution to the problem of delay is a long term commitment to reshaping our justice system through bold and innovative reform.*"[86]

5.11 As we have recommend at Paragraph 3.23 the issue of early guilty pleas requires to be incorporated as a work stream within the delay project overseen by the Criminal Justice Delivery Group. This is where the change recommended by Inspectors may best be co-ordinated

5.12 On the issue of sentencing practice, Inspectors heard no significant concern beyond the broad views of the public which are reflected in Chapter 4. These can be summarised as broadly supportive of early guilty pleas, with qualifications for dangerous/repeat offenders or those who are trying to manipulate the system. Inspectors are of the strong view that the discretion applied by the Judiciary is the most effective mechanism to take such complex matters into account and we clearly support the principle of discretionary practices in this regard. While there clearly have been concerns raised with regard to a number of individual cases, this has served society well in the past. Notwithstanding those principles, it appears to Inspectors that there was also a need to provide a greater degree of certainty and transparency in sentencing so as to encourage earlier guilty pleas. That could mean, for example, while continuing to provide discretion, at the same time also providing more prescriptive guidelines or indeed a statutory sentencing framework allowing for early guilty plea credits. Inspectors recognise that this is a controversial issue and one properly for the Northern Ireland Executive to develop. However, it was clear that for many defendants the only way to encourage earlier guilty pleas is to provide certainty in terms of the sentence reductions.

85 Challenge and Opportunity - DPP's Address to the London Justice' Clerks' Society, March 2011 available at http://www.cps.gov.uk/news/articles/challenge_and_opportunity.

86 Speeding Up Justice, Statement by the Minister of Justice David Ford MLA, 6 February 2012.

## Education and transparency

5.13 The language and discourse in respect of early guilty pleas is an important consideration and CJS professionals should be careful to avoid talking of early guilty pleas in terms of 'discounts'. Rather Inspectors suggest that the term credit, incentive, reduction or concession is used and that benefits are spoken of in terms of the reductions in stress and trauma to victims. That is not in any way to mislead or manipulate the messages, but rather to reflect the reality of advantages for the accused in terms of certainty and to victims in terms of the considerable advantages arising from their being spared the trauma of giving evidence. For the public, this reflects to a greater extent the realities of sentencing and the prospect of earlier interventions to offending behaviour and consequently to public protection. The subject of greater education and transparency in sentencing and public knowledge is also important in the context of the matters referred to at Paragraph 2.11 and the work of the DoJ in respect of it.

Section 2

# Appendices

# Appendix 1: Terms of reference

## A thematic inspection of early guilty pleas in the criminal justice system in Northern Ireland

## Terms of reference

### Introduction

Criminal Justice Inspection proposes to undertake a thematic inspection of early guilty pleas in the criminal justice system in Northern Ireland.

It is clear that the issue of early guilty pleas has an impact, among other areas, in the overall confidence in the criminal justice system and in particular has been identified as a significant issue in avoidable delay and on the experiences of victims and witnesses within the criminal justice system. Consequently, Criminal Justice Inspection proposes to undertake a thematic inspection commencing in December 2011.

### Context

It is broadly recognised that an early guilty plea avoids the need for a trial thus saving any witnesses and the victim from having to give evidence, and reducing the costs to the public of dealing with the case. It also condenses the time between the commission of an offence and sentence; facilitating an earlier intervention to offending behaviour.

Earlier and more guilty pleas (and conversely fewer late pleas), mean fewer trials which will reduce the backlog of cases waiting to be tried; this in turn reduces the time witnesses and indeed defendants have to wait before their case is listed for trial. A reduction in waiting time is better for witnesses, particularly those who may be young and or vulnerable. It will also allow a re-allocation of resources to other cases.

The criminal justice agencies have an important role in ensuring speedy justice, dealing with avoidable delay and, for the prosecution, protecting the victim's interests in the criminal justice process, not least in the acceptance of pleas and in the sentencing exercise.

Achieving the benefits of early guilty pleas will require a number of factors to be considered. Some of these are related to the prosecution and some to the defence. For the prosecution, it is necessary that the evidence upon which the case is based is expeditiously disclosed to the defence, in order that informed decisions can be made. Case ready charging is central to this. For the defence, the stage at which a plea might be entered has relevance in the context of legal aid remuneration, timely disclosure of the prosecution case and the certainty of early plea concessions.

This inspection takes place at a time when the Department of Justice (DoJ) is engaged in consultation on the issue of early guilty pleas. The inspection work will thus hope to inform that consultation and its outcomes.

### Aims of the inspection

Early guilty pleas are regarded as a critical element of impacting on avoidable delay in the criminal justice system. No less critical in terms of impacts are the needs and concerns of victims and witnesses. The aims of the inspection are centrally driven and informed by these.

The broad aims of the Inspection are to:

- to assess current policy, practice and procedures surrounding early guilty pleas;
- to analyse of current data (in completed cases) and its significance in terms of outcomes;
- to provide comparative analysis, where possible, drawing on best practice in other jurisdictions and highlighting any structural differences between NI and other jurisdictions;
- to consider and assess the impact of other issues on current practice (for example, the payment schemes for legal fees); and
- to consider and assess where additional improvements to practice can be made.

Bearing in mind the DoJ consultation on early guilty pleas, this inspection will want to inform the DoJ conclusions, draw on responses, but not repeat that work. Similarly, Inspectors work on delay will be relevant to draw upon, but will not be repeated.

## Methodology

The inspection framework will follow accepted CJI practice with the three main strategic elements as follows:

- strategy and governance;
- delivery; and
- outcomes.

Constants in each of these areas are:

- equality and fairness; and
- standards and best practice.

This inspection will specifically identify the statutory and procedural issues and responsibilities currently operated in the area of early guilty pleas.

The following methodology is proposed.

***Design and planning***

Preliminary research has been undertaken by Inspectors to inform these terms of reference. In addition, some preliminary meetings have been held with key stakeholders as a means to finalise these terms of reference.

Research will be undertaken into the current approach to early guilty pleas in NI, comparator jurisdictions, together with analysis of research and investigation reports into the area of early guilty pleas. Data analysis will also form a key part of this process. Inspected agencies and stakeholders will be asked to supply relevant documentation including policy, procedure and guidance documents. Inspectors will review these alongside documentation from the DoJ who are currently developing policy in this regard.

*Contact with agencies*

The agencies of the criminal justice system inspected will be the PSNI, the PPS, the NICTS, the PBNI and the Youth Justice Agency (YJA).

Contacts with each agency and key stakeholders (including the voluntary and community sector) will be agreed. The purpose is to liaise with the Lead Inspector and provide an overview of current systems in place, agree legislative and procedural references, and identify any links to objectives and associated targets, sources of information/research, supply of documentation and help to co-ordinate a specific timetable for the fieldwork.

***Delivery***

*Stakeholder consultation*

The major stakeholders are statutory agencies involved in processing cases to and through the courts as well as a range of interest groups. The stakeholder organisations will include:

- Childrens/Human Rights organisations;
- DoJ;
- The Attorney General for NI;
- The NI Legal Services Commission;
- The Judiciary;
- Bar Library;
- NI Law Society;
- Northern Ireland Courts and Tribunals Service;
- Northern Ireland Policing Board;
- Victim Support Northern Ireland;
- Extern;
- NIACRO; and
- MLA's.

In addition, the views of defendants and/or their representatives will be sought.

*Development of fieldwork plan*

Inspection fieldwork is scheduled to occur during December 2011 and January/February 2012. CJI will agree with each agency and stakeholders an outline programme detailing dates, times and people. It is hoped that data analysis will occur early during fieldwork to inform other aspects of the inspection. Fieldwork will consist of interviews with appropriate stakeholders and an examination of appropriate documentation including policies, records, files and management information.

The fieldwork may at any time consider other issues relevant to early guilty pleas which arise as the inspection progresses, but which are not specifically highlighted in these terms of reference.

***Publication and closure***

Analysis of research, fieldwork and other material will facilitate the development of emerging findings which will provide a structure for drafting the inspection report. Findings will be discussed with the agency contacts to clarify understanding. CJI intend to circulate a draft inspection report for factual accuracy checks in April/May 2012. Publication will follow, pending receipt of permission from the Minister of Justice.

# Appendix 2: Methodology

### Desktop research

The inspection commenced with desktop research of literature and guidance documentation which was reviewed in relation to early guilty pleas. Among the literature reviewed were the following:

- Access to Justice Review Northern Ireland, The Report, August 2011.
- Sentencing Advisory Panel, RESEARCH REPORT – 6 Public Attitudes to the Principles of Sentencing, Hough et al, June 2009.
- Sentencing Council, Attitudes to Guilty Pleas Sentence Reductions, Research conducted by Ipsos MORI with academic advice from Emeritus Professor John Baldwin, University of Birmingham, May 2011.
- Attorney General: speech to the Institute of Legal Executives , 19 May 2011
- The Crown Prosecution Service, The Introduction of the Streamlined Process: Report by the Comptroller and Auditor General, national Audit Office, hc 1584 session 2010–2012, November 2011.
- Birmingham Crown Court Early Guilty Plea Hearings: Practice Direction *Issued 25th July 2011*
- Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders, A response by Victim Support (England), March 2011.
- Challenge and opportunity - DPP's address to the London Justices' Clerks' Society, 11/03/2011, Crown Prosecution Service.
- Report further to recommendation 32 of the Criminal Justice Review, The Future of Committal Proceedings in Northern Ireland, Professors John Jackson and Sean Doran, Queens University, Belfast, September 2003.
- Breaking the Cycle Consultation - Response on Behalf of the Criminal Bar Association.
- A report to the Lord Chief Justice from the Sentencing Working Group, 23 June 2010.
- An Evaluation of the High Court Reforms Arising from the Criminal Procedure (Amendment) (Scotland) Act 2004, Chalmers et al, University of Aberdeen School of Law, Scottish Executive Social Research, 2007.
- The 2002 Review of the Practices and Procedure of the High Court of Justiciary by the Honourable Lord Bonomy.
- Judicial and Court Statistics, Ministry of Justice National Statistics, Published 30 June 2011, Revised July 2011.
- Northern Ireland Assembly, Research and Library Service Briefing Paper 20109 NIAR 000-00 Legal Aid: A Country Comparison.
- Northern Ireland Assembly, Research and Information Service Research Paper, Comparative Research into Sentencing Guidelines Mechanisms, June 2011.
- Vulnerable Defendants in the Criminal Courts: A Review of Provision for Adults and Children, Jacobson J and Talbot J, Prison Reform Trust, 2009.
- Sentencing Guidelines Council, Reduction in Sentence for a Guilty Plea, Definitive Guideline, Revised 2007.
- Victims' justice? What victims and witnesses really want from sentencing, Victim Support, November 2010.

The literature review conducted by CJI was used to inform interview questions during the fieldwork phase.

### Fieldwork

Fieldwork during the course of this inspection was conducted during December 2011, January, February and March 2012.

The questions used during the fieldwork for this inspection were informed by the areas of investigation undertaken during desktop research.

A number of focus groups and one-to-one interviews were conducted with a range of personnel within the relevant agencies. Interviews were also conducted with stakeholders who had a key interest in special measures.

Representatives from the following areas were interviewed during the fieldwork:

- **Stakeholders:**

1. Office of the Lord Chief Justice;
2. Northern Ireland Prison Service;
3. Probation Board for Northern Ireland;
4. NI Legal Services Commission;
5. NIACRO;
6. Belfast Solicitors Association;
7. Scottish Legal Aid Board; and
8. Department of Justice.

- **Agencies:**

1. PSNI;
2. PPS;
3. NICTS; and
4. PSNI (OCMT).

- **Prison visits:**

February and March 2012

- **Probation interviews:**

February and March 2012

In addition, Inspectors were kindly provided with the summary of comments from a DoJ victim focus group considering the issue of early guilty pleas which was conducted on 13 March 2012.

The following organisations did not respond to CJI invitations to participate:

1. The Bar Library
2. The Law Society of NI.

### User feedback

Inspectors considered that a critical part of the narrative in respect of guilty pleas was the experience of the accused. Consequently Inspectors set out to determine the views and experiences of those who had been criminal justice system users as defendants.

Inspectors spoke to a total of 62 defendants who were accessed either via the NIPS or the PBNI. Inspectors are most grateful to those from each of the agencies who kindly facilitated interviews.

The interviews were a mixture of focus groups and one-to-one interviews, however, predominantly the latter.

# Appendix 3: Criminal legal aid payments in Northern Ireland 2010-11 and 2011-12

The following tables represent criminal legal aid payments for the last two financial years from 2010-11 and 2011-12, together with separate analysis of payments for Very High Cost Cases (VHCC) (Table 3) and an analysis of criminal legal aid certificates issued (Table 4). It is important to note these are subject to the qualifications described after Table 2.

**Table 1: Legal aid fees by type in the Magistrates' and Crown Courts 2010-11**[87]

| 2010-11 | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Magistrates' Court | | | | | Crown Court | | | | |
| | Solicitor Costs incl VAT (£'000) | Counsel Costs incl VAT (£'000) | Disb* (£'000) | Total (£'000) | % of Total spend | Solicitor Costs incl VAT (£'000) | Counsel Costs incl VAT (£'000) | Disb* (£'000) | Total (£'000) | % of Total spend |
| GP1 | £4,142 | £413 | £78 | £4,633 | 23% | £874 | £678 | £110 | £1,661 | 9% |
| GP2 | £1,445 | £748 | £75 | £2,268 | 11% | £3,002 | £3,439 | £836 | £7,277 | 41% |
| Trial/Contest | £5,395 | £1,701 | £100 | £7,196 | 35% | £2,796 | £3,581 | £455 | £6,831 | 39% |
| Other | £3,397 | £665 | £256 | £4,318 | 21% | £525 | £1,200 | £53 | £1,778 | 10% |
| Committal | £1,730 | £300 | £42 | £2,072 | 10% | | | | | |
| **Totals** | **£16,109** | **£3,827** | **£551** | **£20,487** | **100%** | **£7,197** | **£8,898** | **£1,454** | **£17,547** | **99%** |

**Table 2: Legal aid fees by type in the Magistrates and Crown Courts 2011-12**[88]

| 2011-12 | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Magistrates' Court | | | | | Crown Court | | | | |
| | Solicitor Costs incl VAT (£'000) | Counsel Costs incl VAT (£'000) | Disb* (£'000) | Total (£'000) | % of Total spend | Solicitor Costs incl VAT (£'000) | Counsel Costs incl VAT (£'000) | Disb* (£'000) | Total (£'000) | % of Total spend |
| GP1 | £4,688 | £530 | £60 | £5,278 | 24% | £1,060 | £820 | £147 | £2,028 | 10% |
| GP2 | £2,046 | £1,020 | £74 | £3,141 | 14% | £3,604 | £4,265 | £728 | £8,598 | 44% |
| Trial/Contest | £6,864 | £2,206 | £165 | £9,235 | 43% | £3,533 | £4,171 | £603 | £8,307 | 43% |
| Other | £794 | £167 | £70 | £1,031 | 5% | £171 | £345 | £43 | £558 | 3% |
| Committal | £2,528 | £410 | £61 | £2,999 | 14% | | | | | |
| **Totals** | **£16,920** | **£4,333** | **£430** | **£21,684** | **100%** | **£8,368** | **£9,601** | **£1,521** | **£19,491** | **100%** |

* Disbursements are payments which are made by solicitors on behalf of their client for example for expert witnesses

87 Data provided by the NILSC.
88 Ibid.

1. All fees **exclude** Very High Cost Cases (VHCCs).
2. Payments include Consultation/view, late sitting fees, listening/viewing tapes, standby fees, mileage and travel time.
3. Other fees include non fixed fees as provided for under 1992 Rules that remain in the system.
4. Magistrates' Court payments include Youth Courts.
5. Payments in one financial year do not necessarily represent work done in that financial year.
6. Figures for 2011-12 are provisional.
7. Please note that spend in Magistrates' Court & Crown Court does not represent total Criminal legal aid spend.

**Table 3: Breakdown of VHCC costs (excluded from Tables 1, 2 and 3 above)**[89]

In addition to the figures above the table below illustrates expenditure on VHCCs in each year for each court tier:

| VHCCs | 2009-10 (£'000) | 2010-11(£'000) | 2011-12(£'000) |
|---|---|---|---|
| Crown Court | £29,107 | £19,340 | £6,107 |
| Magistrates' Court | - | £109 | £265 |

**Table 4: Criminal Legal Aid Certificates Registered by Court**[90]

| | Magistrates' Court | Crown Court |
|---|---|---|
| 2009-10 | 29,805 | 2,291 |
| 2010-11 | 34,464 | 2,594 |
| 2011-12 | 34,484 | 2,608 |

**Table 5: Adult defendants committed to the Crown Court**

| Year | Total Number of Defendants Committed |
|---|---|
| 2007 | 1,938 |
| 2008 | 1,764 |
| 2009 | 1,754 |
| 2010 | 1,899 |
| 2011 | 2,110 |

88 Data provided by the NILSC.
89 Ibid.

# Appendix 4: Data on cracked and ineffective trials for England and Wales [91]

**Chart 1: Magistrates' Courts: Cracked trials in England and Wales 2010**

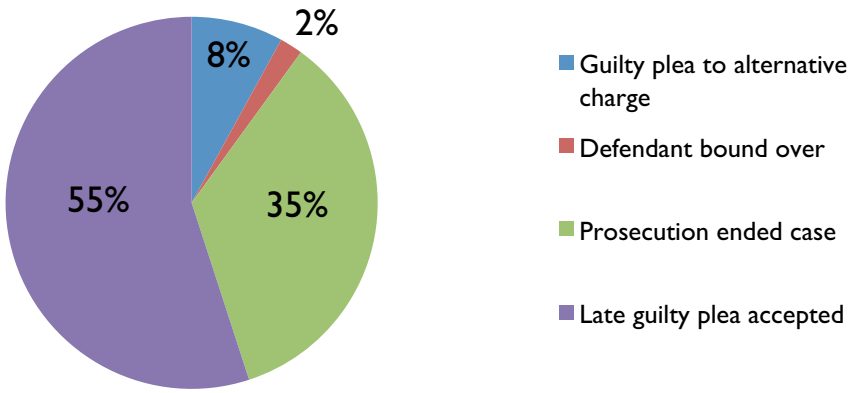
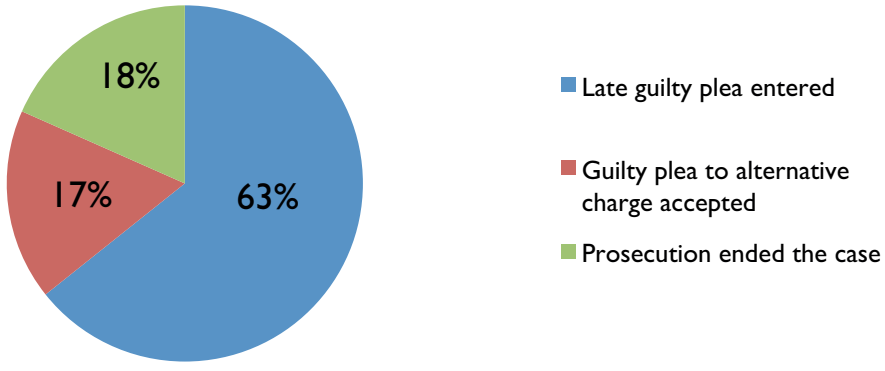



**Chart 2: Crown court: Cracked trials England and Wales 2010**




91 Judicial and Court statistics, Ministry of Justice national Statistics, Published 30 June 2011, revised July 2011.

**Chart 3: Magistrates' Courts: Reasons for ineffective trials in England and Wales 2010**

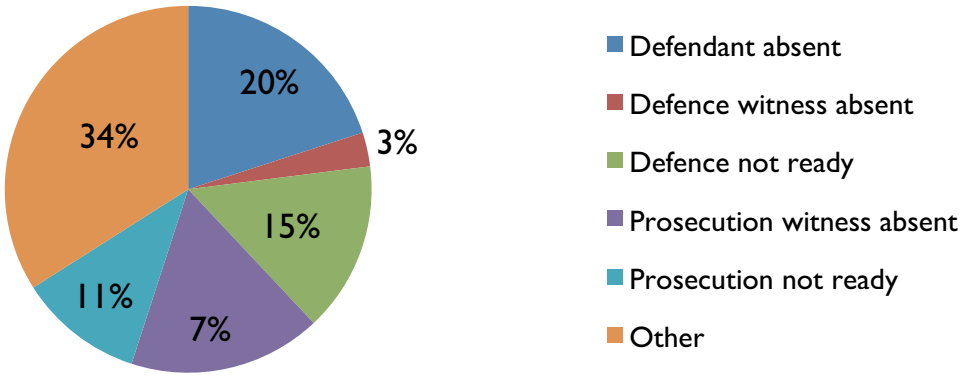
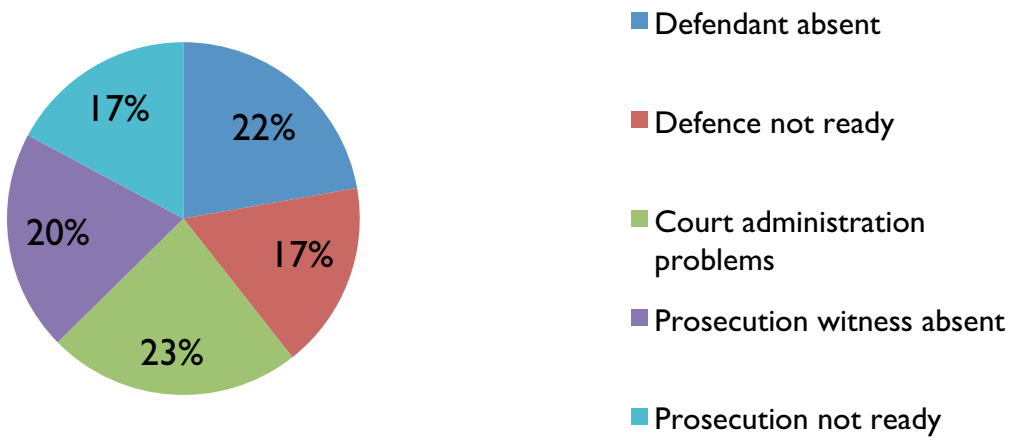



**Chart 4: Reasons for ineffective trials England and Wales 2010**



# Appendix 5: Guideline cases in Northern Ireland

R v. McKeown, Loyal & Glasgow (18-12-97)

R v. Baker & Another [1998] NI 130

R v. McShane [1998] NIJB 64

R v. Pollock [2005] NICA 43

Attorney General's Reference (No.1 of 2006) 2006 NICA 4

R v. James John Stewart Caswell [2011] NICA 71

# Appendix 6: Extracts from the Criminal Procedure Rules 2010

**The overriding objective**

**1.1.**—(1) The overriding objective of this new code is that criminal cases be dealt with justly.
(2) Dealing with a criminal case justly includes
(a) acquitting the innocent and convicting the guilty;
(b) dealing with the prosecution and the defence fairly;
(c) recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights;
(d) respecting the interests of witnesses, victims and jurors and keeping them informed of the progress of the case;
(e) dealing with the case efficiently and expeditiously;
(f) ensuring that appropriate information is available to the court when bail and sentence are considered; and
(g) dealing with the case in ways that take into account
(i) the gravity of the offence alleged,
(ii) the complexity of what is in issue,
(iii) the severity of the consequences for the defendant and others affected, and
(iv) the needs of other cases.

**The duty of the participants in a criminal case**

**1.2.**—(1) Each participant, in the conduct of each case, must
(a) prepare and conduct the case in accordance with the overriding objective;
(b) comply with these Rules, practice directions and directions made by the court; and
(c) at once inform the court and all parties of any significant failure (whether or not that participant is responsible for that failure) to take any procedural step required by these Rules, any practice direction or any direction of the court. A failure is significant if it might hinder the court in furthering the overriding objective.
(2) Anyone involved in any way with a criminal case is a participant in its conduct for the purposes of this rule.

**The application by the court of the overriding objective**

**1.3.** The court must further the overriding objective in particular when
(a) exercising any power given to it by legislation (including these Rules);
(b) applying any practice direction; or
(c) interpreting any rule or practice direction.

**The duty of the court**

**3.2.**—(1) The court must further the overriding objective by actively managing the case.
(2 Active case management includes
(a) the early identification of the real issues;
(b) the early identification of the needs of witnesses;
(c) achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;
(d) monitoring the progress of the case and compliance with directions;
(e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;
(f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;

(g) encouraging the participants to co-operate in the progression of the case; and
(h) making use of technology.
(3) The court must actively manage the case by giving any direction appropriate to the needs of that case as early as possible.

**The duty of the parties**

**3.3.** Each party must
(a) actively assist the court in fulfilling its duty under rule 3.2, without or if necessary with a direction; and
(b) apply for a direction if needed to further the overriding objective.

**Case progression officers and their duties**

**3.4.**—(1) At the beginning of the case each party must, unless the court otherwise directs
(a) nominate an individual responsible for progressing that case; and
(b) tell other parties and the court who he is and how to contact him.
(2) In fulfilling its duty under rule 3.2, the court must where appropriate
(a) nominate a court officer responsible for progressing the case; and
(b) make sure the parties know who he is and how to contact him.
(3) In this Part a person nominated under this rule is called a case progression officer.
(4) A case progression officer must
(a) monitor compliance with directions;
(b) make sure that the court is kept informed of events that may affect the progress of that case;
(c) make sure that he can be contacted promptly about the case during ordinary business hours;
(d) act promptly and reasonably in response to communications about the case; and
(e) if he will be unavailable, appoint a substitute to fulfil his duties and inform the other case progression officers.

**The court's case management powers**

**3.5.**—(1) In fulfilling its duty under rule 3.2 the court may give any direction and take any step actively to manage a case unless that direction or step would be inconsistent with legislation, including these Rules.
(2) In particular, the court may
(a) nominate a judge, magistrate or justices' legal adviser to manage the case;
(b) give a direction on its own initiative or on application by a party;
(c) ask or allow a party to propose a direction;
(d) for the purpose of giving directions, receive applications and representations by letter, by telephone or by any other means of electronic communication, and conduct a hearing by such means;
(e) give a direction without a hearing;
(f) fix, postpone, bring forward, extend or cancel a hearing;
(g) shorten or extend (even after it has expired) a time limit fixed by a direction;
(h) require that issues in the case should be determined separately, and decide in what order they will be determined; and
(i) specify the consequences of failing to comply with a direction.
(3) A magistrates' court may give a direction that will apply in the Crown Court if the case is to continue there.
(4) The Crown Court may give a direction that will apply in a magistrates' court if the case is to continue there.
(5) Any power to give a direction under this Part includes a power to vary or revoke that direction.
(6) If a party fails to comply with a rule or a direction, the court may—
(a) fix, postpone, bring forward, extend, cancel or adjourn a hearing;
(b) exercise its powers to make a costs order; and
(c) impose such other sanction as may be appropriate.

**Case preparation and progression**

**3.8.**—(1) At every hearing, if a case cannot be concluded there and then the court must give directions so that it can be concluded at the next hearing or as soon as possible after that.

(2) At every hearing the court must, where relevant

(a) if the defendant is absent, decide whether to proceed nonetheless;

(b) take the defendant's plea (unless already done) or if no plea can be taken then find out whether the defendant is likely to plead guilty or not guilty;

(c) set, follow or revise a timetable for the progress of the case, which may include a timetable for any hearing including the trial or (in the Crown Court) the appeal;

(d) in giving directions, ensure continuity in relation to the court and to the parties' representatives where that is appropriate and practicable; and

(e) where a direction has not been complied with, find out why, identify who was responsible, and take appropriate action.

(3) In order to prepare for a trial in the Crown Court, the court must conduct a plea and case management hearing unless the circumstances make that unnecessary.

(4) In order to prepare for the trial, the court must take every reasonable step to encourage and to facilitate the attendance of witnesses when they are needed.

**Readiness for trial or appeal**

**3.9.**—(1) This rule applies to a party's preparation for trial or appeal, and in this rule and rule 3.10 trial includes any hearing at which evidence will be introduced.

(2 In fulfilling his duty under rule 3.3, each party must

(a) comply with directions given by the court;

(b)take every reasonable step to make sure his witnesses will attend when they are needed;

(c) make appropriate arrangements to present any written or other material; and

(d) promptly inform the court and the other parties of anything that may

(i) affect the date or duration of the trial or appeal, or

(ii) significantly affect the progress of the case in any other way.

(3) The court may require a party to give a certificate of readiness.

## Appendix 7: Northern Ireland Courts and Tribunals Service Early Guilty Plea Notice

# NOTICE TO DEFENDANTS AND THEIR LEGAL REPRESENTATIVES

In accordance with The Criminal Justice (Northern Ireland) Order 1996

A reduction in sentence will be given for
an
**EARLY** plea of guilty

Please note that any credit given for a
plea of guilty will diminish the later the plea

First published in Northern Ireland in February 2013 by
CRIMINAL JUSTICE INSPECTION NORTHERN IRELAND
14 Great Victoria Street
Belfast BT2 7BA
www.cjini.org

**ISBN 978-1-905283-82-8**

Typeset in Gill Sans
Printed in Northern Ireland by GPS Colour Graphics Limited
Designed by Page Setup