

Securing Attendance at Court

May 2011

Criminal Justice Inspection
Northern Ireland
a better justice system for all





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List of abbreviations

CJB	Criminal Justice Board
CJI	Criminal Justice Inspection Northern Ireland
CLT	Community Liaison Team (in PPS)
CPS	Crown Prosecution Service
DoJ	Department of Justice
HMCPSI	Her Majesty's Crown Prosecution Service Inspectorate
HMIC	Her Majesty's Inspectorate of Constabulary
HMICA	Her Majesty's Inspectorate of Court Administration
NICHE	PSNI Records Management System provided by Niche Technology Inc
NICTS	Northern Ireland Courts and Tribunals Service
Options	PSNI Computerised Detailing System
PBNI	Probation Board for Northern Ireland
PE	Preliminary Enquiry
PPS	Public Prosecution Service
PSNI	Police Service of Northern Ireland
WCU	Witness Care Unit
YJA	Youth Justice Agency



Chief Inspector's Foreword

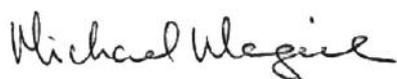
The attendance at court of the various parties to a criminal case is essential for the effective and efficient operation of the courts, and this has been highlighted in a number of previous Criminal Justice Inspection Northern Ireland (CJI) reports. The Northern Ireland Courts and Tribunals Service (NICTS), the Public Prosecution Service (PPS) and the Police Service of Northern Ireland (PSNI) all have a vital role to play and, for the system to operate effectively, it is important that the three organisations work in a collaborative manner.

The current working arrangements of the courts impact operationally and financially on the Police Service and the PPS. There are a number of initiatives underway by the NICTS, the PPS and the PSNI in an attempt to improve and streamline the process. This is welcomed and CJI would encourage the criminal justice agencies to work together to make further improvements in this area.

The inspection made a number of recommendations aimed at enhancing current arrangements including: the need to gather more detailed management information about non-attendance; improving PPS access to the PSNI's detailing system; improving internal PSNI systems to provide information on police officer and police staff duty availability to the PPS; the need for police officers to gather and maintain sufficient information about victims and witnesses to allow the PPS to contact them about the case; that the PPS Community Liaison Team (CLT) staff receive training in dealing with people by telephone and in the prosecution and court process; and that the PPS review the working practices, accessibility and technology available to the CLTs to maximise their ability to contact victims and witnesses to prosecution cases.

The overall responsibility for victims and witnesses during the prosecution process is split between the PPS and the PSNI; however Victim Support Northern Ireland's Witness Service and the National Society for the Prevention of Cruelty to Children also have a role to play. This, and some of the other areas touched on herein, will also be covered in more detail in the forthcoming CJI thematic inspection of the care and treatment of victims and witnesses in the criminal justice system in Northern Ireland.

The inspection was undertaken by Dr Ian Cameron and Stephen Dolan. My thanks to all those who participated in the inspection process.



Dr Michael Maguire
Chief Inspector of Criminal Justice
in Northern Ireland
May 2011

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Executive Summary

The attendance of victims, witnesses and defendants for criminal cases is central to the efficient and effective operation of the courts. Cases in the criminal courts cannot progress without all the relevant parties being present, and the absence of witnesses and injured parties can cause adjournments, delay and create inefficiency and increase costs.

The Northern Ireland Courts and Tribunals Service (NICTS), the Public Prosecution Service (PPS) and the Police Service of Northern Ireland (PSNI) all have a role to play in ensuring those required attend when needed, to allow cases to be heard at court.

The listing of cases for hearing in Magistrates' and Crown Courts and case management is a judicial responsibility and is therefore an area where Criminal Justice Inspection Northern Ireland (CJI) has no statutory responsibility.

A number of issues relevant to securing attendance at court have been highlighted in previous CJI reports.

In England and Wales joint Crown Prosecution Service (CPS) and police Witness Care Units (WCUs) have been established, aimed at improving the experiences of prosecution victims and witnesses to ensure they are better informed, better prepared and better supported when attending court. External inspection found the WCUs to be a key factor contributing to the significant improvement in the general level of service provided to prosecution witnesses.

The statistics recorded by the NICTS categorise the reasons for adjournments but it is difficult to get an accurate picture of attendance rates for the various parties to criminal court proceedings and the scale of non-attendance is unclear.

The overall responsibility for the victims and witnesses during the prosecution process is split over a number of bodies. For Magistrates' Court cases the PPS Community Liaison Teams (CLTs) take the lead, but with assistance of the PSNI where necessary. In the Crown Court the relevant papers are prepared by the PPS but are then passed to the police Investigating Officer for the case. Overlaying this is the role of Victim Support Northern Ireland's Witness Service and the National Society for the Prevention of Cruelty to Children.

PPS CLTs have been established in each of its regions to provide a range of services to victims and witnesses for the prosecution of cases to be heard in the Magistrates' and Youth Courts.

The exchange of information between the PSNI and the PPS about contact information for victims and prosecution witnesses was not as effective as it could be, and this was due to technical and procedural issues.



The Criminal Justice Board (CJB) has an objective of improving PPS access to the PSNI computerised detailing system (Options). This has the potential to provide efficiency savings for both organisations. There is good liaison at local level between the CLTs and the police, and this could be further improved by extending Options to those police officers and police staff who are not currently included on the system, or by establishing a single point of contact to allow the PPS CLTs improved access to police officer and police staff duties and court availability.

CLT staff often had to deal with anxious and emotional victims and witnesses on the telephone, and would benefit from customised training to support and assist them in this function. A review of the accessibility and technology available to the CLTs to contact victims and witnesses, together with their working practices, could improve their effectiveness and impact on court attendance.

The duties of police Investigating Officers in respect of Crown Court cases can be onerous, particularly for major trials with large numbers of witnesses, and in the current climate of reducing budgets, this is likely to come into sharper focus.

As a result of the current arrangements, there are implications for the criminal justice agencies, which impose costs and impact on effectiveness and efficiency. The listing arrangements of the courts impact on the PPS and PSNI. The requirement for police officers and police staff to attend court is recognised, but when they are called and not required to give evidence, this has implications for the PSNI in terms of staff attendance, backfill, productivity and visibility.

However, despite senior staff in both the PPS and the PSNI being aware of how these outcomes impact on the effectiveness of their respective organisations, neither the PPS nor the PSNI were able to provide Inspectors with an accurate assessment of these costs, although Inspectors recognise the difficulties in calculating such costs.

The practice of some defence lawyers of refusing to agree prosecution witnesses can increase costs to the PSNI and the PPS.

The PPS, PSNI and the NICTS are all involved in various initiatives in an attempt to address these issues.

The forthcoming CJI thematic inspection of victims and witnesses will examine the criminal justice process from a victim and witnesses' perspective. Whilst not wishing to pre-empt the report's findings, it would be the preliminary view of Inspectors, based on the work carried out for this inspection, that a number of the issues highlighted in this report could be addressed by a Witness Care Unit (WCU) structure, similar to that already operating in England and Wales, dealing with all criminal cases, to provide a caring service, targeted at those victims and witnesses with most needs, from the point of charge (or report) to the conclusion of the case. The thematic inspection will consider these issues further.



Recommendations

- The NICTS should consider enhancing the statistics gathered during the Adjourment Reasons pilot, to provide specific details of attendance rates at court by the various parties to a case, so that the scale of non-attendance can be accurately assessed across the various courts, and remedial action taken if trends indicate there is a problem in a particular court area or with a particular group (*paragraph 1.42*).
- The CJB should take the necessary steps to achieve its target of ‘*improving Public Prosecution Service access to the PSNI detailing system with each regional office to have direct access by April 2011*’ (*paragraph 3.11*).
- The PSNI should consider implementing a system for PPS CLTs to access the duties of all police officers and police staff through Options. If this is not practical, there should be a single point of contact at either district or regional level to provide the PPS with police officer and police staff duty details and court availability (*paragraph 3.14*).
- The PSNI should remind officers, through the internal communication process and in training, of the need to ensure that they obtain and maintain sufficient information about victims and witnesses (including work, home and mobile telephone numbers, email addresses etc.) to allow the PPS to contact them about the case (*paragraph 3.18*).
- The PPS Community Liaison staff receive training in telephone techniques and dealing with people on the telephone, together with familiarisation training on the prosecution and court process and the lay-out and facilities available for victims and witnesses at court buildings in the relevant PPS region (*paragraph 3.20*).
- The PPS should review the working practices, accessibility and technology available to the CLTs to maximise their ability to contact victims and witnesses about availability and attendance at court and to issue reminders as the court date approaches (*paragraph 3.23*).

Section



Inspection Report



CHAPTER 1:

Introduction and background



Introduction

- 1.0 The attendance of injured parties, witnesses and defendants for criminal cases is central to the efficient and effective operation of the courts. Cases in the criminal courts cannot progress without the attendance of all relevant parties. The absence of witnesses and injured parties can cause adjournments and delay and create inefficiency and increase costs.
- 1.1 The Northern Ireland Courts and Tribunals Service (NICTS), the Public Prosecution Service (PPS) and the Police Service of Northern Ireland (PSNI) all have a role to play to ensure those required, attend to allow cases to be heard at court.
- 1.2 The scope of this inspection has deliberately focused on the specific issue of securing attendance at court. It does not stray into areas of, for example, victims and witnesses experiences of, and confidence in, the wider justice system. These will be covered in the forthcoming Criminal Justice Inspection Northern Ireland (CJI) major thematic inspection *'Improving the Provision of Care for Victims and Witnesses within the*

Criminal Justice System in Northern Ireland'. This thematic will examine in greater detail a number of areas referred to throughout this report. Furthermore, this inspection has not examined areas already highlighted in the recent CJI report on Avoidable Delay published in June 2010.¹

Previous CJI reports

- 1.3 Securing attendance at court was identified (as noted above), as an issue in the 2006 CJI report on Avoidable Delay² in the Criminal Justice System, which found that in the analysis of reasons for court adjournments, one category was cases adjourned due to the defendant or other witnesses not turning up at court. Part of the problem was due to poor communication between the police and the PPS, with the police not recording all the necessary information about witnesses on the files³, and internal PPS processes were criticised as being too slow in issuing invitations to police and civilian witnesses to attend court resulting in increased non-attendance. The report concluded that witness availability did not appear to be a priority in the setting of trial dates as there was limited information on

¹ Avoidable Delay: A thematic inspection of avoidable delay in the processing of criminal cases, CJI June 2010 – www.cjini.org

² Avoidable Delay: A thematic inspection of delay in the processing of criminal cases, CJI May 2006 – www.cjini.org

³ The 2007 CJI inspection of the PPS agreed and found that often the lack of accurate information from the PSNI contributed to the delay caused by adjournments, and impacted on the effectiveness of the PPS CLTs as staff had to spend unnecessary time trying to contact witnesses to establish their court availability.



availability and no consultation in relation to suitability. The report recommended that *'the PPS and PSNI should ensure that ownership of witness attendance is agreed and that communication and liaison are enhanced'*. In 2010 this recommendation was found to have been *'achieved'* with the PPS having accepted overall responsibility for witness attendance and the role being carried out by PPS Community Liaison. However, while the ownership issue was clearer, the nature of the problem – prosecution witnesses not attending court at the specified time/date was still a problem which required continuing attention⁴.

- 1.4 The more recent 2010 CJI inspection of Avoidable Delay found that in some areas the vast majority of adjournments continued to be due to witness difficulties, civilian witnesses not invited and police not being available due to operational and other issues. The PSNI referred to the failure of the PPS to understand police officer availability and to take account of shift rotas, rest days and night duty arrangements. Case Progression Officers in Belfast told Inspectors that witness problems were the main cause of adjournments with the PPS not having the resources to follow-up on witness problems. As ownership of witness attendance was the dual responsibility of the PPS and the PSNI, the report made the recommendation that the PPS and PSNI should ensure that prosecution witness attendance at court is improved.⁵

- 1.5 The Criminal Justice Board (CJB) joint Action Plan on the CJI recommendations from the 2010 report has a target to improve PPS access to the PSNI detailing system with each regional PPS office to have access by April 2011. The Action Plan states that this has been implemented in Belfast, however during the fieldwork for this inspection, Inspectors were advised that the PPS access to the PSNI system was not yet operational in Belfast. Also on the Plan is an action to review requests for attendance at court including recommendations for improvement to commence in January 2011, with findings and recommendations to be circulated by April 2011.⁶ This work is linked to the Case Preparation Project and PSNI Local Crime and Justice Programme Board, and Inspectors would hope that the review will take cognisance of the findings of this inspection report.

- 1.6 The 2007 inspection of the PPS referred to the service of committal papers by the police. The Preliminary Enquiry (PE) papers are prepared by the PPS and the PSNI are then required to carry out the service of the PE papers personally on the defendant, and on the court. In England and Wales it is the practice of the prosecution service to serve the committal papers on the defendant and the court which is a more streamlined process and limits avoidable delay at this stage in the process. Similar to the service of summonses, the service of PE papers does not fit easily with the operational priorities of the PSNI. The report considered that the current

4 *'Avoidable Delay - A thematic inspection of delay in the processing of criminal cases in Northern Ireland'*, CJI, May 2006. www.cjini.org

5 *'Avoidable Delay - Incorporating an Inspection of the Interface between the Police Service of Northern Ireland and the Public Prosecution Service'*, CJI, June 2010. www.cjini.org

6 *'Speeding up Justice'* CJB joint Action Plan on CJI Avoidable Delay recommendations.



procedures should be amended to allow for postal service of the papers on the defendant and the court, although this would require legislative change.⁷

- 1.7 The report also commented on invitations to attend court and said that the *'invitation to attend'* can give the impression that attendance is optional and therefore makes it more difficult to act upon and seek a witness summons if a witness fails to attend. The report went on to say that the PPS should consider a change of terminology for this process, for example *'witness warning'* or *'requirement to attend as witness'* to reinforce the fact that it is a public duty with consequences for non-attendance. This has now been changed and correspondence to witnesses is entitled *'witness requirement to attend'*.
- 1.8 During the inspection a number of members of the judiciary expressed concerns about the effectiveness of the requirement to attend process, and Inspectors would suggest that their views should be sought as part of the forthcoming CJB review referred to above.
- 1.9 The 2007 CJI inspection of the Public Prosecution Service⁸ outlined some tensions between the PPS and the NICTS particularly in respect of listing issues. The working practices of the NICTS have a substantial impact on the efficiency and effectiveness of the PPS and relationships between the two organisations should be improved.

The report went on to say that consideration should also be given to improving the regular discussions that take place between the two organisations and a formal protocol agreed.⁹

- 1.10 As previously mentioned, the listing of cases and case management is a judicial responsibility and as such CJI has no statutory inspectorate responsibility.
- 1.11 From a NICTS perspective the court listing system aims to ensure there is adequate utilisation of court time that it can reduce delay, ensure the efficiency of the courts and minimise down time for court staff and the judiciary when there are adjournments or cracked trials.¹⁰ Balancing this against the needs of victims and witnesses and police availability is a difficult task. From a PPS and PSNI perspective, listing had resource and operational implications for their respective organisations.
- 1.12 It was evident to Inspectors that there is regular communication between the NICTS and the PPS in respect of listing issues. Listing had operational and resource implications for both the PPS and the PSNI to ensure the case was prepared for court and the necessary arrangements made for witnesses, and police officers and police staff to appear at court.
- 1.13 The 2007 Report also examined the effectiveness of the CLTs and made recommendations that the PPS should

7 *'An inspection of the Public Prosecution Service for Northern Ireland'*. Conducted by Her Majesty's Inspectorate of the Crown Prosecution Service (HMCPSP) under the delegated statutory authority of the Chief Inspector of Criminal Justice in Northern Ireland, July 2007. www.cjini.org

8 An inspection of the Public Prosecution Service for Northern Ireland, CJI July 2007. www.cjini.org

9 *'An inspection of the Public Prosecution Service for Northern Ireland'*. conducted by HMCPSP under the delegated statutory authority of the Chief Inspector of Criminal Justice in Northern Ireland, July 2007.

10 If a defendant chooses to chance a plea to guilty during a contest, the trial is known as 'cracked.'



ensure that the effectiveness of the CLTs is improved, and in particular that:

- the roles and responsibilities of the CLTs are clarified, including their role in the handling of general telephone calls (the subsequent follow-up inspection found that there had been some progress¹¹);
- CLT processes are set out clearly (substantial progress);
- all CLT staff are trained in all aspects of their role (some progress);
- standard form letters should be amended to ensure defendant queries are dealt with by the relevant casework team (some progress); and
- the provision of poor quality police witness information should be addressed through the Criminal Justice Unit liaison meetings (no progress).

1.14 Many of these issues are still relevant and will be referred to in later chapters. The PPS have instigated a review of the CLTs and at the time of writing it is anticipated that the report will be available in March 2011.

1.15 The CJI Domestic Violence inspection¹² of 2010 identified specific issues around securing attendance at court for some victims and witnesses, for example in cases of domestic violence, where, for many reasons, victims and witnesses may be reluctant to attend court.

1.16 The PPS sought to confirm the attendance of all victims and witnesses at court prior to the date of trial by way of letter. Along with the 'requirement to attend court' notification, the victim was

sent a form to be completed as to whether they do, or do not intend to appear. Should the PPS receive a form indicating that the victim does not intend to appear, then they would be able to take appropriate action for the case (for example, summons the victim or proceed on the basis of other evidence). Where the victim did not return the form, or where they indicate their intent to appear but then do not do so on the day, the prosecutor had to make a decision as to the next course of action in court. The PPS did not, as a matter of course, follow-up outstanding forms confirming attendance for any type of case. Inspectors were advised by some interviewees that it appeared as if, on occasions, prosecutors had not considered an alternative course of action should the victim not appear, which subsequently led to a further adjournment whilst they decided on the next course of action, such as whether to summons the victim. However, whilst this was in accordance with PPS policy it is clearly advantageous to have begun such considerations at the earliest possible stage.

1.17 In addition, failure to ensure the victim is attending court could lead to a situation where the District Judge, defence, prosecutor, police and other witnesses are all in attendance in the court and the victim does not appear; thus leading to wasted time and resources.

1.18 Whilst confirmation prior to the court date by the victim of their attendance will not necessarily guarantee they will not change their mind, it should give the victim further support, encouragement

11 'The Public Prosecution Service for Northern Ireland - a Follow-up Inspection of the 2007 Baseline Inspection Report Recommendations', CJI/HMCPSP, June 2009 - www.cjini.org

12 Domestic Violence and Abuse: An inspection of the handling of domestic violence and abuse cases by the Criminal Justice System in Northern Ireland, CJI December 2010 - www.cjini.org

and confidence to attend the trial and provide reassurances for the prosecutor. It also provides the prosecutor with an opportunity to consider alternative courses of action should the victim announce their intention to withdraw support for the prosecution at that stage, albeit that this may still result in an adjournment. The report recommended that the PPS should develop, and where possible, implement additional methods of seeking confirmation of the attendance at court of all victims of domestic violence and abuse prior to the trial date and consideration is taken as to potential alternative courses of action where it is believed the victim may not attend¹³.

England and Wales

1.19 There have also been a number of reports referring to attendance at court in England and Wales.

1.20 A 2004 report by the Comptroller and Auditor General examined the attendance at court of defendants who were not remanded in custody but given bail and so were responsible for attending court when required¹⁴. Most accepted their responsibility with 85% appearing. Defendants' failure to attend was found to be the second biggest cause of ineffective trials, following the non-appearance of prosecution witnesses.

1.21 In 2004-05 the National Audit Office found that of the 45,366 trials that did not proceed for reasons attributable to the prosecution, just under half

(48%) were due to the failure of the prosecution witness to attend court. This was the main reason for the prosecution requesting adjournments or dropping charges on the day of the trial¹⁵.

1.22 A report published in May 2009¹⁶ by three criminal justice inspectorates (HMCPSI, HMIC, HMICA) found that the general level of service provided to prosecution witnesses has improved significantly but that there was considerable scope for further improvement.

1.23 A key factor in the improvement had been the establishment of over 150 dedicated Witness Care Units (WCUs) across England and Wales. Other initiatives on the part of the criminal justice agencies, both individually and jointly, have contributed to a shift in attitude and created far greater awareness of the importance of considering and acting on the needs of victims and witnesses at each stage of the justice process.

1.24 Key findings of the report included:

- positive evidence of the impact of the establishment of WCUs, a major part of the No Witness No Justice initiative, in that:
 - a slow but steady increase of around 10% in witness attendance rates from a baseline of 77.3% (before WCUs were established) to 85.1% by August 2008;
 - the proportion of cases fixed for trial which could not go ahead on

¹³ 'Domestic Violence and Abuse', CJI, December 2010. www.cjini.org

¹⁴ 'Facing Justice. Tackling Defendants' Non-attendance at Court', Comptroller and Auditor General, November 2004.

¹⁵ 'Crown Prosecution Service - Effective use of Magistrates' Courts Hearings', National Audit Office, 2006.

¹⁶ 'Report of a Joint Thematic Review of Victim and Witness Experiences in the Criminal Justice System', Criminal Justice Joint Inspection: HMCPSI, HMIC, HMICA, May 2009.



the scheduled day due to witness issues had reduced overall;

- a Witness and Victim Experience Survey showed improvement in satisfaction levels; and

- Inspectors found that 85.7% (72 of 84) of the witnesses interviewed as part of the review would be prepared to give evidence again should they be a witness of crime in the future, but 14.3% would not.

1.25 Despite the focus given to victims and witnesses in recent years, the review also found that there is considerable scope for improvement in a number of respects, in particular:

- the understanding on the part of front line police officers of the special measures available to support vulnerable and intimidated victims and witnesses;
- weaknesses in the arrangements for timely identification of the need for special measures and applications to the court by the prosecution;
- the thought given to the effect on witnesses when scheduling trials, particularly those involving vulnerable witnesses;
- waiting times at court continue to be too long for a large proportion of witnesses;
- some witnesses have concerns about their safety. This is particularly when entering the courthouse and while in public parts of the building, where they can inadvertently come into contact with the defendant, his/her family and supporters; and
- there is some way to go for all WCUs to meet all the minimum

requirements set out for them and to do so on a consistent basis. Many are still struggling to ensure that a full needs assessment is carried out for all witnesses - a key requirement.

1.26 Many of the above issues are examined in the forthcoming CJI thematic inspection on the care and treatment of victims and witnesses.

1.27 In 2007-08 in England and Wales, a total of 228,545 trials were listed in the Crown Court and Magistrates' Courts. In 2007 alone it was estimated that nearly 300,000 witnesses (excluding police, expert and professional witnesses) were called to give evidence. Of those, it is estimated that just 50% actually gave evidence, 39% attended but did not give evidence and an estimated 11% of witnesses did not attend.

1.28 In practice, less than half of all trials (44% in 2007-08) go ahead on the scheduled day and proceed to a result. This may be for good reason, such as when a guilty plea is entered on the day of trial, but can also be because a trial is ineffective and is adjourned to another date¹⁷.

1.29 The 2010 HMIC report¹⁸ commented on effectiveness and efficiency in the criminal justice system in England and Wales. One area concerned the majority of defendants who pleaded guilty (67%). However 41% of these did so at a late stage when large quantities of paperwork had been prepared and duplicated by agencies, the hearing had been scheduled and victims, witnesses and police witnesses had arrived in court to give evidence. A conservative

¹⁷ *Joint Thematic Review of Victim and Witness Experiences in the Criminal Justice System*, Criminal Justice Joint Inspection, May 2009.

¹⁸ *Stop the Drift - a focus on 21st Century Criminal Justice*, HMIC 2010.

estimate of the cost of this nugatory work was put in the region of £150 million for England and Wales.

In addition to the financial costs, victims and witnesses, including police officers, will have attended court unnecessarily, causing in some instances distress and inconvenience, and depriving the public of police officers on the street. The Commissioner for Victims and Witnesses makes similar points in her report of November 2010.¹⁹

Witness Care Units in England and Wales

1.30 The establishment of Witness Care Units (WCUs) arose out of the No Witness, No Justice joint Crown Prosecution Service (CPS)/police initiative which aimed to improve the experiences of prosecution victims and witnesses and ensure they are better informed, better prepared and better supported when attending court.

1.31 There are approximately 165 WCUs in England and Wales jointly staffed by the CPS and the police.

1.32 The WCUs manage the care of victims and witnesses from the charging of the defendant(s) through to the conclusion of a case. The service to victims and witnesses includes:

- a single point of contact for victims and witnesses;
- a full needs assessment for all victims and witnesses in cases where defendants have pleaded not guilty, to identify specific support requirements, such as child care,

transport, language difficulties and medical issues, and to highlight areas of concern, including intimidation;

- dedicated Witness Care Officers to guide and support individuals through the criminal justice process and to co-ordinate support and services;
- continuous review of victim and witness needs throughout the case; and
- greater communication and contact with witnesses about cases including informing them of the case outcome or trial result, thanking them for their contribution to the case and offering post case support from the relevant support agency.

1.33 Under the Code of Practice for Victims of Crime, which came into force on 3 April 2006, the WCU has a legal obligation to:

- tell you if you will be required to give evidence;
- tell you the dates of the court hearings;
- give you a copy of the 'Witness in court' leaflet or other relevant leaflets, if you are required to give evidence; and
- tell you about court results and explain any sentence given within one day of receiving the outcome from the court.

1.34 The joint CPS/police WCUs have been a key factor contributing to the significant improvement in the general level of service provided to prosecution witnesses in England and Wales.²⁰

¹⁹ 'Ending the Justice Waiting Game: A Plea for Common Sense', Louise Casey, Commissioner for Victims and Witnesses, November 2010.

²⁰ 'Report of a Joint Thematic Review of Victim and Witness Experiences in the Criminal Justice System', Criminal Justice Joint Inspection: HMCPSI, HMIC, HMICA, May 2009.



Available data from Northern Ireland

1.35 The Northern Ireland Courts and Tribunals Service (NICTS) maintain various statistics relating to the court process, and following the Avoidable Delay inspection, these include Regional Contest Monitoring Information for Magistrates' Courts. The figures do not specifically record attendance rates for victims or witnesses but some inferences can be drawn from the data regarding this issue.

1.36 The attendance of defendants at court is either by way of being charged to appear by police, summonsed to appear by the PPS in report cases, or produced at the court from prison for those defendants who are either remanded in custody or have been convicted of an offence and are already serving a sentence. The statistics for October 2010 to December 2010 show non-appearance of the defendant causing the case to be adjourned occurred in 6.6% of all adult cases. The figure for youth cases was 2.3% however caution should be exercised due to the small number of youth cases involved.

1.37 These data do not allow identification of cases where the victim or witness did not appear, but 43% of adult adjournments were due to prosecution difficulties. This category covers a number of reasons but includes the absence of the victim, witness or police officer. Statistics provided by the PPS estimate the percentage of contested cases adjourned by the prosecution due to witness difficulties as 8%²¹.

1.38 The percentage of adult adjournments due to defence difficulties was 26.9%. Like the figures for prosecution difficulties, this category covers a variety of reasons, which would include issues with the appearance of defence witnesses, but it is not possible to identify the number or percentage of defence witnesses who do not appear at court. Statistics provided by the PPS estimate the percentage of cases adjourned by the defence due to witness difficulties as 8%.²²

1.39 Some other general data are available in respect of Londonderry and Belfast Magistrates' Courts, and these are outlined below, but again, the categories recorded do not allow for the accurate identification of the numbers of defendants, victims or witnesses who failed to attend court.

Londonderry Adjournment Reason (Pilot) Analysis

1.40 These data record whether the reason for adjournment was due to either the non-attendance of the victim or prosecution witness, or due to the non-appearance of the defendant or defence witness(es). Provisional data of adjournment reasons for February to December 2010, in Magistrates' Courts say 59% of contests listed did not proceed due to absence of defendant/victim/witness. Of these, the prosecution accounted for 45% of all adjournments on the day of contest – the primary reason being absence of victim(s) or witness(es); the defence accounted for 36%.

21 Figure does not include Londonderry Magistrates' Court.

22 Figure does not include Londonderry Magistrates' Court.



Belfast Contest Monitoring Information

- 1.41 In May, June and July 2010 10% of adjournments were due to 'defence difficulties' and 15% - 18% were due to 'prosecution difficulties'. No further breakdowns were available but a proportion of the difficulties relate to the absence of defendant/victim/witness.
- 1.42 It is recommended that **the NICTS should consider enhancing the statistics gathered during the Adjourment Reasons pilot, to provide specific details of attendance rates at court by the various parties to a case, so that the scale of non-attendance can be accurately assessed across the various courts, and remedial action taken if trends indicate there is a problem in a particular court area or with a particular group.**



CHAPTER 2:

Strategy - responsibility for victims and witnesses



The Department of Justice

- 2.0 The Department of Justice (DoJ) has responsibility for the overall co-ordination of the victims and witnesses policy within the criminal justice system in Northern Ireland, and provides funding for the statutory agencies with service delivery responsibilities in this area.
- 2.1 One of the Department's Public Service Agreement targets is *'Justice for All'*, which has a key performance indicator of increasing victim and witness satisfaction with the criminal justice system to 69.5% in 2011 from a 2008 baseline of 65.3%.
- 2.2 A key element in a victim or witnesses decision to attend court is related to the individual's confidence in the system.
- 2.3 In 2007 the Northern Ireland Office launched a five-year *'Bridging the Gap'*²³ strategy to improve services of the criminal justice system to, and increase the satisfaction with, victims and witnesses of crime.
- 2.4 The strategy aimed to develop services in a number of key areas including recognising and being responsive to victims and witnesses' individual needs

to ensure that the most appropriate level of support can be provided before, during and after court proceedings.

- 2.5 One of the objectives in the strategy was to review the PPS CLT processes to help ensure that the best possible level of service is being provided to those prosecution victims and witnesses with whom they deal. This review is currently being undertaken by the PPS Quality Assurance Team which commenced in October 2010 and was at the time of writing, due to report in March 2011. This is referred to again in Chapter 4.
- 2.6 A further objective was to implement measures to reduce court waiting times for victims and witnesses on the day of hearing. This is being taken forward by the NICTS with work at the time of writing due to commence in early 2011.

The Criminal Justice Board

- 2.7 The Criminal Justice Board (CJB) is chaired by a senior civil servant from the DoJ and comprises the heads of the main criminal justice agencies, and has the strategic co-ordinating role to manage issues of cross-cutting service delivery across the criminal justice system. The Board's remit and its role in respect of victims and witnesses, the

²³ Bridging the Gap, Northern Ireland Office, September 2007, www.cjsni.gov.uk.



Victims and Witnesses Task Force and governance and inter-agency working among the criminal justice agencies are examined in detail in the forthcoming CJI thematic victims and witnesses report.

Criminal justice agencies

2.8 Despite the DoJ responsibilities for the overall co-ordination of the victims and witnesses policy within the criminal justice system, and the CJB's role in respect of issues relating to cross-cutting service delivery, the overall responsibility for victims and witnesses during the prosecution process, including securing attendance at court, is not clear.

2.9 The Criminal Justice Review recommended that the prosecutor (i.e. the PPS) should assume full responsibility for the case between the point of charge (or summons) and trial. It further recommended that the lead role in ensuring the provision of information and explanation to victims and seeking their views be taken by police, until such time as the case is passed to the prosecutor. The lead role would subsequently be taken by the prosecutor until the case is finished in the courts.²⁴

2.10 The PPS Code for Prosecutors of June 2005 states that *'the Prosecution Service is committed to delivering a comprehensive set of services to victims and witnesses, from the point that the Prosecution Service assumes responsibility for a case until the case is disposed of'*. The Code goes on to describe a range of services to be provided for victims and witnesses and these include *'arranging and providing*

information in support of attendance on the victims and witnesses at court, for example ensuring witness availability'.

2.11 The PSNI policy for dealing with victims and witnesses, published in May 2006, states that *'from the date on which a charged person appears at court, or in respect of report cases when the file has been forwarded to the Public Prosecution Service, the responsibility for updating victims on the progress of the file will lie with the Public Prosecution Service'*.

2.12 Whilst the PPS and PSNI procedures are clear, and in accordance with the Criminal Justice Review recommendations, the current practice, particularly in respect of Crown Court cases, is different with the police assuming primary responsibility for issues relating to victims and prosecution witnesses.

2.13 The responsibility for victims and witnesses is split over a number of bodies. For Magistrates' Court cases the PPS CLTs take the lead, but with the assistance of the PSNI where the CLTs have difficulty contacting victims and witnesses. In the Crown Court, the relevant papers are prepared by the PPS but are then passed to the police Investigating Officer for the case. Overlaying this is the role of Victim Support Northern Ireland's Witness Service and the National Society for the Prevention of Cruelty to Children. The role of Victim Support Northern Ireland and the National Society for the Prevention of Cruelty to Children are covered in a partnership protocol with the NICTS.

²⁴ 'The Review of the Criminal Justice System in Northern Ireland', March 2000.



2.14 Victim Support Northern Ireland operates the Witness Service, which is free and confidential for victims and witnesses over 18 years of age and their families and friends. The service is provided by trained volunteers and staff, and aims to enable these clients to deal with the experience of attending court and giving evidence.²⁵

2.15 The National Society for the Prevention of Cruelty to Children operates the Young Witness Service which is free and confidential for children and young people who have to attend court as a witness. The service is provided by social work staff and trained volunteers, and aims to assist children and young people and their parents/carers before, during and after trial so they can give their best evidence to the court and prevent any further trauma caused by their experience.²⁶

2.16 The role of Victim Support Northern Ireland and the National Society for the Prevention of Cruelty to Children is covered in more detail in the forthcoming CJI thematic victims and witnesses report.

2.17 The result of the above is that the responsibility for victims and witnesses during the prosecution process is spread across the various organisations. The policies of the PPS and PSNI are in accordance with the recommendations of the Criminal Justice Review, i.e. that the PPS assume full responsibility for the case between the point of charge (or summons) and the trial. In practice this is not the case and the police play the major role in cases for the Crown

Court, and a significant role in a number of cases in the Magistrates' Court, where, in addition to contacting victims and witnesses that the CLTs are unable to reach, police Investigating Officers were frequently called to the court by prosecutors, even when they were not required as a witness, to ensure that witnesses were present and looked after, and to answer any queries that might arise during the conduct of the case. The protocol between the PPS and the PSNI states that the PPS will request attendance of the police investigating, or other appointed officer, only where there is a specific need for them to attend. Inspectors were told that in many cases this was something officers did as a matter of good practice as it was not strictly part of their role. As police budgets come under pressure, this is an area of work which is likely to decrease over time and there is a need for victims and witness care issues during the prosecution process to be clarified and agreed between the PPS and the PSNI.

2.18 Inspectors were advised that the Witness Service frequently filled the vacuum in respect of the day-to-day care of victims and witnesses at court. On many occasions, prosecutors do not have the capacity on the day of a busy court to maintain the appropriate level of liaison with victims and witnesses about the progress of their case. In a number of cases this role may be performed by the police Investigating Officer however, if the officer does not, or cannot, liaise with the victims or witnesses, then it falls to the Witness Service as the 'default' option.

²⁵ Partnership Protocol VSNI, NSPCC and NICTS, undated.

²⁶ Partnership Protocol VSNI, NSPCC and NICTS, undated.



- 2.19 It is the view of Inspectors that this ambiguity needs to be addressed so that all the relevant organisations are clear as to their role. It is also important that victims and witnesses are clear about what to expect, and from whom, when they are involved in a criminal case and have to attend court.
- 2.20 This inconsistency and lack of clarity about which criminal justice agency is responsible for dealing with victims and witnesses at various stages of the criminal justice process is also examined in the forthcoming CJI thematic inspection report on the treatment of victims and Witnesses in the criminal justice system in Northern Ireland.

CHAPTER 3:

Delivery - procedures for victims and witnesses in the courts



3.0 Once the PPS take the decision to prosecute an individual for a criminal offence the case is prepared for hearing at the Magistrates' Court. The procedures vary in individual courts but generally the first time the case is before a District Judge, the defendant will be asked to enter a plea. If the plea is 'guilty' then the case will be heard without the necessity to call the police Investigating Officer or other witnesses to the offence.

3.1 If the plea is one of 'not guilty' the case will be adjourned, usually for two to four weeks to allow the prosecution and defence time to ascertain the availability of the relevant witnesses to attend and give evidence at the contested trial. At the subsequent hearing, the parties should be in a position to confirm witness availability and any other issues which would impact on the timing of the hearing of the contested case. The case is then listed for hearing, depending on the nature and complexity of the case, either at a future date in the court schedule, or on a special day set aside to hear a number of contested cases.

Procedures for victims and witnesses in Magistrates' Court - Public Prosecution Service Community Liaison Teams

3.2 The mechanism for arranging the attendance of prosecution victims and

witnesses at Magistrates' Courts is through the PPS CLTs. The PPS has established dedicated CLTs in each of its regions to provide a range of services to victims and witnesses for the prosecution who are involved in Magistrates' and Youth Courts. This includes being the contact point for victims and witnesses regarding the prosecution process and their specific case. The process is as follows:

- Victims/witnesses will be contacted by the CLT to check availability prior to a date being fixed for a contest.
- The CLT produce and issue notifications to attend court, including expenses forms, guidance notes and support service information leaflets.
- The CLT will arrange interpreters/ make travel arrangements etc.
- The CLT will contact victims/witnesses and advise any change regarding court dates/venue.

3.3 In practice the various regional CLTs operate in a similar manner with some individual differences that have been designed to meet local circumstances. There is a two-stage process to firstly ascertain witness availability and then, once a date for contest has been fixed, to require their attendance.

3.4 The CLTs first become involved in a case when the defendant pleads not



guilty at court, after which papers are forwarded to the CLT by the court prosecutor, which identify the witnesses required for the contest. In some regions the full prosecution file is forwarded to the CLT whilst in others it is a blank file with a pro-forma identifying the witnesses required for court. The CLT staff have access to information about the case on the PPS internal Case Management System.

- 3.5 Staff in the CLT then contact witnesses, including police officers to ascertain their availability, and provide these to the court prosecutor for the next court hearing at which a date will be fixed for the contest.
- 3.6 For police staff availability, the procedure was for the CLT to email the respective PSNI Operational Planning office with the officers' details. The office would then respond (most by facsimile, some used email), with details of each individual officer's duty rota for a four-month period. This usually commenced the month following that in which the request was made. There was no mechanism in the CLTs to record or access recently supplied information about an individual officer, and information about an officer's availability was sought from Operational Planning on every occasion that they were required for a contest. Inspectors were advised by CLT staff that police officers' duties frequently changed at short notice and if previously supplied information was used this quickly became out-of-date and could result in the prosecutor giving inaccurate information to the court.
- 3.7 The timing of the request to police for officer availability differed across the

CLTs. Some made the request to police as soon as they received the prosecutor query to seek witness availability. When the Operational Planning office responded it provided the officer's availability for the four months, but it was described as a 'snapshot' of the availability at the time the information was printed. Operational circumstances can mean that police officers' duties change frequently, sometimes at short notice, and an individual officer's duty may change before the prosecutor can agree a contest date in court. One CLT had a practice of seeking officer availability three days before the court date to lessen the 'snapshot' affect. This was possible because of the good working relationship between the CLT and the PSNI Operational Planning office, and the CLTs confidence that the PSNI would respond on time.

- 3.8 Inspectors were advised that police officer availability could be difficult to co-ordinate and the duty patterns of operational officers meant that, on occasions, their availability was limited to narrow periods within the shift pattern. This problem was exacerbated if there were a number of officers involved in a case with different duty patterns.
- 3.9 Inspectors found good working relationships at operational level between CLTs and PSNI Operational Planning offices. Both parties had the confidence to contact, and, if necessary, seek a meeting with the other if problems arose.
- 3.10 It was the intention to give PPS regional offices access to the relevant functions of the PSNI Options Duty System. The CJB's 'Speeding Up Justice' joint Action



Plan on CJI recommendations has a target for each regional PPS office to have direct access by April 2011. At the time of the inspection this had not been implemented and, although CLT managers were aware of the plan, they did not know when the installation would be complete, or when operational procedures or training would be available to CLT staff. Inspectors were advised that PSNI had signed-off on information assurance aspects and it was this that had delayed progress. It was the view of Inspectors that the PPS access to the PSNI operational detailing system would provide considerable efficiencies, and potential savings, for both the PPS and PSNI. In one police district it was estimated that this function required a member of Operational Planning staff for approximately two to three hours per day. There is a potential for similar efficiencies in CLT offices. Every effort therefore should be made to ensure that the CJB target of full roll-out by April 2011 is achieved.

3.11 It is recommended that **the CJB should take the necessary steps to achieve its target of 'improving Public Prosecution Service access to the PSNI detailing system with each regional office to have direct access by April 2011'.**

3.12 CLT staff also advised Inspectors that obtaining availability for 'specialist' police staff required a different approach to that of uniformed officers. Specialist police staff, for example Crime Scene Investigators, mapping staff, fingerprint officers, photographers and Detectives attached to regional or headquarters' teams etc., were not on the PSNI Options electronic detailing system and

CLT staff could not obtain information about their availability to attend court by contacting the District Operational Planning office. Instead, CLT staff had to contact the individual member of staff or his/her supervisor. Inspectors were advised that if these staff were on leave or sick absence, then the CLT often had to wait until they returned to work before they could be contacted to provide court availability. This was an inefficient procedure for the CLT staff and caused delay in obtaining the information on police availability required for the court. The PSNI acknowledge that some specialist police staff and Detectives were on various on-call and duty rotas to provide local and regional cover, and that there would be a benefit in having a single point of contact at either regional or district level for all police and support staff.

3.13 The potential benefits will be increased when the PPS CLTs can access the PSNI Options detailing system.

3.14 Inspectors would recommend **that the PSNI should consider implementing a system for PPS CLTs to access the duties of all police officers and police staff through Options. If this is not practical, there should be a single point of contact at either district or regional level to provide the PPS with police officer and police staff duty details and court availability.**

3.15 Staff in the CLTs advised Inspectors that seeking availability of civilian witnesses was problematic because, in a large proportion of cases, up-to-date contact details were not provided by the police. Some CLT staff estimated that contact



details were missing in approximately 50% of files, so this is a significant issue. This appears to be primarily, but not exclusively, caused by the PSNI/PPS Causeway interface.²⁷ Inspectors were advised that when CLT staff found a blank field which should contain witness contact details, they contacted the officer in charge of the case to find that, in many cases, the officer had input the details and could see them on the PSNI NICHE screen, but they had failed to transfer to the PPS. CLT staff had raised this issue with PPS management and their IT department. Inspectors were advised that the technical issues which caused this problem had been resolved in November 2010 and that the transfer of this information was now operational. Inspectors were told that the problem had been identified at operational level within the PPS and PSNI, but had taken some time for the technical issues to be resolved. The accurate and timely exchange of information between the various criminal justice agencies through Causeway is critical, and Inspectors suggest that this needs to be closely monitored by the PPS and the PSNI with early action taken to resolve IT or procedural difficulties. The forthcoming CJI inspection of the progress in Causeway will examine this issue in more depth.

3.16 The details provided by police were, in some cases, insufficient for the staff in the CLTs to contact the witness and this resulted in the Team having to contact the officer in charge of the case to seek additional information or, in some cases, to request the officer to make further contact with the witness to obtain contact information.²⁸ Examples given to Inspectors included foreign nationals

and door staff at licensed premises who, in many cases, provided police with details of their work address but had subsequently moved to work at another premises; similar difficulties were also experienced in respect of hospital locum staff. This is time consuming for CLT staff when working to a finite deadline for the court hearing to fix a date for contest. If the CLT staff are unable to contact the officer in charge they will direct the request to the PSNI Operational Planning office or the PSNI Occurrence Case Management Team; this is inefficient for both organisations. Some CLT offices attempted to obtain witness details by using other available methods, for example directory enquiries. Others did not and made contact with the officer in charge of the case, in the first instance, if details were missing.

3.17 CLT staff also advised Inspectors that on occasions police officer's email details were not attached to the file, and CLT staff could not email the officer direct, by using the generic suffix as frequently two officers had the same name. It was the police view that the proper procedure for this was through Causeway which would result in a NICHE task being generated for the relevant officer, which was the agreed auditable process. These are areas where closer working relationships and effective communication between the CLTs and the PSNI could resolve issues, and this will be referred to again later in this report.

3.18 Inspectors would recommend **that the PSNI should remind officers, through the internal communication process and in**

²⁷ Causeway is the inter-agency Criminal Justice IT system for Northern Ireland.

²⁸ This was identified in the 2007 CJI inspection of the Public Prosecution Service and is referred to earlier in Chapter 1.



training, of the need to ensure that they obtain and maintain sufficient information about victims and witnesses (including work, home and mobile telephone numbers, email addresses etc.) to allow the PPS to contact them about the case.

3.19 Often when staff from the CLT contact a witness about their availability it will be the first contact the witness will have had with the criminal justice system since they were interviewed by, and gave their statement to, the police. Some CLT staff described this as “cold calling”, and witnesses responded with a variety of reactions which the CLT staff had to deal with on the phone. Some witnesses were apathetic, others were more emotional and some made their reluctance to attend court clear to the CLT staff. It was evident to Inspectors that CLT staff had to handle some very difficult calls, and few had any training to support them with this function, although Inspectors were told there had been some pilot training on telephone techniques with a limited number of staff. Some of the CLT personnel spoken to by Inspectors said they were unclear about how much information they could divulge about the case to victims and witnesses, and that they were frequently asked questions about the court process and facilities of which they had limited knowledge.

3.20 It is recommended **that the PPS Community Liaison staff receive training in telephone techniques and dealing with people on the telephone, together with familiarisation training on the prosecution and court process and the lay-out and facilities available for victims and witnesses at court**

buildings in the relevant PPS region.

3.21 CLT staff in a number of the regional offices told Inspectors that witnesses regularly said that they had been told by police officers they would not be required to give evidence in court. The CLT staff then had to explain that they would be required, and this could result in difficult calls as referred to above. The PSNI confirmed that this was not in line with police training or procedures. However, as the issue was raised with Inspectors by a number of different CLT staff, it would suggest that this may be local practice by some police officers. Inspectors would suggest the PSNI take steps to highlight that this is taking place in some areas contrary to policy, and to reinforce the current procedures at initial and district training. This issue is also referred to in the forthcoming CJI victims and witnesses thematic inspection report.

3.22 The method of contacting witnesses also varied across the CLTs, with staff in some offices reluctant to leave voicemail messages which identified them as the PPS or to leave the details of a court case for ‘confidentiality and security’ reasons. Others were content to do so. CLT phone extensions had the caller display withheld and staff suspected that many people were reluctant to answer such calls. In particular, victims and witnesses involved in domestic violence, harassment or non-molestation cases, would be very hesitant to answer the telephone to unidentified callers. All CLT staff worked office hours which could make it difficult contacting witnesses who were working similar hours. None of the CLTs had the facility to send text messages to victims or



witnesses about court availability, changes to court dates, or reminders about court dates or attendance confirmation returns.²⁹ CLTs had an out-of-hours answering service where callers could leave messages, although not all telephone extensions in the CLT offices had answering machine facilities or were re-directed to phones that had this facility.

- 3.23 Inspectors would recommend that **the PPS should review the working practices, accessibility and technology available to the CLTs to maximise their ability to contact victims and witnesses about availability and attendance at court and to issue reminders as the court date approaches.**
- 3.24 Once a date has been fixed by the court for the contest the CLTs notify the requirement to attend for police officers to the respective Operational Planning office who confirm that the officer has been detailed to attend court. PSNI Operational Planning officers advised Inspectors that, on occasions, there can be a delay in notifying them of court dates and, during the delay period, officers may have already been detailed for other duties.
- 3.25 Civilian witnesses are forwarded a letter entitled '*Witness Requirement to Attend Court*' giving details of the date and time of the court and various other information regarding attendance, together with an expenses claim form and a copy of their original statement. Attached to the papers is a '*Notification of Intention to Attend*' form and a pre-paid

envelope in which to return it to the PPS CLT. The PPS has established a project group to review its correspondence with victims and witnesses and this review is currently underway. The format and content of the Requirement to Attend letters, and other PPS correspondence with victims and witnesses are examined in more detail in the forthcoming CJI thematic inspection on the care and treatment of victims and witnesses in the criminal justice system.

- 3.26 Return rates of the Requirement to Attend letters varied but one CLT estimated that approximately 40% of witnesses did not return the forms. In all but one of the CLTs, there was action taken by the CLT staff to follow-up witnesses who had not responded 10-12 working days before the court date. In the CLT which did not follow-up non-responses, Inspectors were told that it did not have sufficient staff to undertake this function. It is the view of Inspectors that the CLTs should actively follow-up all non-responses, and make use of available technology, as referred to above, in an attempt to minimise non-attendance of victims and witnesses at court.³⁰ The PPS has subsequently advised Inspectors that all CLTs now take follow-up action in the case of non-responses to Requirement to Attend letters.
- 3.27 If the contest is adjourned at court, or for some other reason does not go ahead, the CLTs take steps to inform the victims and witnesses of the change and repeat the process in respect of establishing availability and attendance of

29 See also reference in Chapter 1 to the CJI recommendations for PPS to develop additional methods to confirm attendance of victims and witnesses at court. '*Domestic Violence and Abuse*' report, CJI, December 2010. www.cjini.org

30 Communication with victims and witnesses is referred to in more detail in the forthcoming CJI victims and witnesses thematic inspection report which will make relevant recommendations.

victims and witness, including police officers. Understandably witnesses can be unhappy after attending and waiting at court which is then adjourned, and may be reluctant to attend further hearings when contacted by the CLT. As referred to earlier, training for CLT staff in processes, telephone and communication would assist them to deal with anxious or dissatisfied callers.

3.28 Depending on the circumstances of the case, summonses may be issued to witnesses, and sometimes victims, if there is no response to the Requirement to Attend court letter or if the prosecutor has information, or suspects, that an individual will not attend court. This course of action is used sparingly and the PPS may issue a further Requirement to Attend letter before a summons is issued.

Administrative support to judicial listing at Magistrates' Courts

3.29 The NICTS and PPS have introduced administrative support to judicial listing in a number of Magistrates' Courts to enhance procedures and build on the case management protocol developed by District Judges. In the courts where this is in operation, following a 'not guilty' plea, the prosecution and defence are given a set time to ascertain the availability of their respective witnesses and to provide this information to the NICTS who administratively set a date for the contest to take place, and this is confirmed in court by the District Judge. This administrative support to judicial listing procedure should make the court more efficient as the prosecution and defence do not have to debate the suitability of future contest dates in open court, and the court staff do not

have to provide alternative available contest slots to enable the District Judge to fix a date for contest on the day of the court.

3.30 Administrative support to judicial listing should reduce the number of review hearings, streamline the court process and also has the potential to allow police to be informed earlier of when an officer will be required for a contest - thus lessening the 'snapshot' effect referred to before.

3.31 The NICTS has appointed Case Progression Officers (15 in total) to work with other case progression officials in the PPS, PSNI, YJA, the Probation Board for Northern Ireland (PBNI) and the judiciary to minimise delay in the criminal courts. 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.

3.32 The NICTS has reviewed the role of the Case Progression Officers to assess their effectiveness and the impact they have in progressing cases and tackling avoidable delay at administrative and procedural level. Statistical comparison of performance against targets, from April 2007 to March 2010, indicated:

- sustained improvement for adult Magistrates' business in four of the seven court divisions;
- reductions in the average waiting



times recorded in six of the seven court divisions;

- significant improvement for Youth business with corresponding reductions in average waiting times in six of the seven court divisions; and
- the Crown Court ‘*committal to arraignment*’ target consistently exceeded in six of the seven court divisions and a notable improvement in overall performance for ‘*committal to first hearing*’.³¹

3.33 The report acknowledges that listing and case management remains a judicial function and that the Case Progression Officer’s role was to support pro-active case management of the current caseload on an individual case-by-case basis for all Crown, Youth and Adult Magistrates’ contested cases, and that the NICTS Case Progression Officers should establish routine contact with defence representatives in relation to contest listing and to establish the status of cases.³²

3.34 The NICTS is also piloting an initiative to reduce waiting times for victims and witnesses. This was an action from the DoJ ‘*Victims and Witnesses Strategic Action Plan 2010-11*’. Work was at the time of writing due to commence between January and March 2011 and Inspectors were advised that one aspect of the work would be to trial a system whereby witnesses within 30 minutes of the court would receive a phone call to attend rather than having to wait at court for their case to be heard.

3.35 Inspectors would encourage the NICTS to take forward these issues, to ensure that administrative support to judicial listing arrangements are working as effectively as possible for all the parties, (i.e. the NICTS, the PPS and the PSNI), and that the work is taken forward in respect of the role of the Case Progression Officer, and work to reduce waiting times for victims, witnesses and the police takes account of the issues raised in this report.

The Crown Court

3.36 The procedures for securing the attendance of victims and witnesses at the Crown Court differ from those at the Magistrates Court. The PPS CLTs are not involved in the process and the police, specifically the Investigating Officer, has the responsibility for making and maintaining contact with victims and witnesses.

3.37 Once the relevant papers are prepared by the PPS, contact is made with the police Investigating Officer to have the papers served on the police and the victims and witnesses to the case.

3.38 Difficulties have been experienced with service of the papers by inexperienced officers and the PSNI responded by producing an *aide memoir* for officers in charge of cases at the Crown Court.

3.39 Inspectors were advised that this is an onerous role for the police officer in charge of the case. The officer has to seek the availability of the injured party and all other Crown witnesses, including other police officers and police staff

31 NICTS report ‘*Case Progression Officer Role Review*’, January 2011.

32 NICTS report ‘*Case Progression Officer Role Review*’, January 2011.



involved in the case, for a period of six months from the date of arraignment. In addition, there is the requirement to deliver all witness invites in person and within seven days of the arraignment (this can be by recorded delivery if the person resides outside Northern Ireland but in these cases, the Investigating Officer must also contact the witness by phone to ensure they are aware of the trial date). The Investigating Officer has also to make regular contact with the injured parties and civilian witnesses to keep them informed of developments and notify the relevant Operational Planning office of the details of the police officers required for the court. This has to be done immediately after the date for trial is set to ensure officers duties can be changed without financial penalty or disruption to the operational effectiveness of the officers' unit. During the trial the Investigating Officer is required to be in attendance from the first day, to provide any documents and exhibits, to ensure witnesses are in attendance and relay this to the prosecution, and while the trial is running to keep witnesses regularly informed of the progress of the trial and how long they are likely to be required.

3.40 These responsibilities can increase for major trials or for those trials with large numbers of police and civilian witnesses, and can cause difficulties for Investigating Officers on 24/7 shift systems, and for inexperienced officers. This, and the practicalities of physically contacting and serving papers on large numbers of witnesses who may be geographically spread, often at short notice, result in costs and officer downtime for the PSNI. In the current climate of reducing costs this is likely to come into sharper focus.

3.41 If trials are on a stand-by basis or adjourned, Investigating Officers will also have to contact or cancel witness attendance where necessary and advise of re-scheduled dates.



CHAPTER 4:

Outcomes for the criminal justice agencies



- 4.0 As a result of the practices outlined there are implications for the various organisations involved which impose costs and impact on effectiveness and efficiency. The business objectives of the three main organisations involved are not aligned and can have consequences for each other. This is explored in greater detail in the forthcoming CJI victims and witnesses inspection report.
- 4.1 This potential conflict in organisational objectives was also identified in the CJI Avoidable Delay inspection of 2010³³ which outlined the difficulties of separate performance targets demonstrated across the PSNI/PPS interface, where a police emphasis on internal file timeliness had negatively impacted on the quality of files, and also affected the broader timeliness of cases. The report recommended a holistic review of internal criminal justice performance standards with an emphasis on joined-up rather than separate targets.
- Public Prosecution Service**
- 4.2 The listing arrangements of the courts impact on the PPS. Inspectors were told that when a case is listed prosecutors have to prepare for court, the various court papers have to be prepared and the PPS have to make arrangements for witnesses to attend. If the case is subsequently adjourned or does not proceed, this work is nugatory and further effort is required cancelling and re-arranging victims and witnesses for a later date.
- 4.3 The listing of stand-by trials in the Crown Court aims to increase the utilisation of courts. However, this should be balanced against the possibility of nugatory work for the PPS if the cases are not heard and the impact on victims and witnesses. There can be further impact on the police Investigating Officer who will have to arrange attendance of the victim, and police and other witnesses.
- 4.4 Inspectors were told during the fieldwork process that this was a frequent occurrence, which had financial and opportunity cost implications for the organisation, but Inspectors were surprised to learn that the PPS do not have any management information which would allow for the extent of this issue to be assessed or to identify the financial and opportunity costs to the Service. The PPS advised Inspectors that an accurate assessment of costs and impact is difficult to calculate, due to a number

³³ 'Avoidable Delay - Incorporating and inspection of the interface between the PSNI and the PPS in Northern Ireland', CJI, June 2010. www.cjini.org



of variables, which include:

- the nature and complexity of the case and whether it is for Crown or Magistrates' Court; and
- the number and type of witnesses and the variance in back office costs.

Inspectors would suggest that this information should be retained and available in the future.

- 4.5 The PPS has undertaken an internal review of their CLTs. Inspectors understand that the review will examine areas including renaming the teams as Victims and Witness Liaison Teams (VWLTs), the structure of the teams and the level and grading of staffing, together with the introduction of procedures to contact victims and witnesses prior to court if they have not responded to the Requirement to Attend letter. This issue was referred to earlier in Chapter 3 and impacts on court attendance and the efficiency of the court process. Inspectors would anticipate that this change in procedure should improve attendance rates for victims and witnesses, and will allow the PPS to identify potential non-attendees and take action as appropriate. Inspectors would encourage the PPS to expedite the review and ensure that it takes account of the recommendations of the Her Majesty's Crown Prosecution Service Inspectorate (HMCPIS)/CJI baseline inspection report but also the issues raised as a result of this inspection.

Police Service of Northern Ireland

- 4.6 In addition to being called to give evidence in court, Inspectors were told that prosecutors, on occasions, require

police Investigating Officers to attend to look after witnesses and answer any queries the court or prosecution may have about the case, even if they are not required to give evidence as a witness. This is an expensive resource and has cost implications for the PSNI. This is also referred to in the forthcoming CJI victims and witnesses inspection report.

- 4.7 The costs to the PSNI of police officer and police staff attendance at court are significant. These costs are:
- for attendance at court where officers and staff are required to give evidence;
 - costs where police officers and staff are required to attend court but do not have to give evidence (usually because their evidence is agreed at the last minute once they have appeared in the court);
 - costs of attendance where the case is adjourned or does not proceed (for example stand-by trials); and
 - the backfill costs for those officers and staff appearing at court.
- 4.8 PSNI Options figures show that from November 2009 to November 2010 police officers were detailed for court for a total of 5,846 days. The daily cost of a Constable is £263³⁴ so the cost to the organisation is in the region of £1.537m. It should be noted that Options records the duty of mainly uniformed operational officers in districts so this figure does not include Detectives or specialised police staff, for example, Crime Scene Investigators, photographers, mapping staff, fingerprint experts etc. Furthermore this figure does not include backfill for those officers and police staff attending court. So the actual cost to PSNI is likely to be much higher.

³⁴ PSNI Ready Reckoner 2009-10.



4.9 'C' District carried out research to quantify the issue and found that from 1 January 2010 to 30 April 2010 the cost to the district was £54,090. The research showed that officers were required to give evidence in 24% of cases where police officers attended (£12,911), and in 76% officers were not required to give evidence (£41,178). To extrapolate this to the overall costs outlined in the previous paragraph, gives a figure of approximately £1.2m for police officers attending court and not being required to give evidence, (not including Detectives, specialist police staff and backfill).

4.10 Internal research by a PSNI Detective found the practice of requiring police officers and police staff to attend Crown Court trials and then not being required to give evidence caused the unnecessary extraction of police resources from the workplace, additional unnecessary expenditure by having to provide cover for staff attending court and a huge loss of productivity. The provision of cover for expert police staff witnesses, for example mapping personnel, photographers and Crime Scene Investigators was problematic, and on occasions, led to the service being unavailable for operational call-outs. The research did not provide any estimate of the overall costs for police.

4.11 The above figures do not give an indication of the cost of backfilling the duties of officers detailed to attend court. Most police shifts operated on minimum strengths which did not allow officers to attend court without replacement. Inspectors were advised that districts generally only backfilled officers who were in response, custody or communications. Other officers, for

example neighbourhood police, were not replaced if detailed for court and this resulted in a loss of productivity and visibility. Districts found it particularly difficult to replace officers who were detailed for court on night duty, and whilst there was an agreement with the PPS that officers could not be released for court if they were on night duty, there were occasions when this was unavoidable.

4.12 Like for the PPS, it was a surprise to Inspectors that the PSNI were unable to supply accurate costs for police officer attendance at court or the associated backfill or opportunity costs. Inspectors would suggest that this information should be gathered and analysed as it would put the organisation in a more informed position to objectively articulate the scale of the police commitment, and in conjunction with the PPS and the NICTS, look at ways in which this could be more effectively managed and reduced.

4.13 Specialist officers were regularly detailed to attend court but were not required to give evidence when they arrived. This was particularly prevalent in respect of Custody Sergeants, Property Officers and Belfast Regional Control Communications staff. This was because the defence refused to agree the statements and required to officers to be in court. Once the officer or member of police staff appeared at court they would then be agreed by the defence, and Inspectors were told that the defence used this as a tactic to see if the witness would appear at court. If they did not, then there was a potential to challenge the prosecution case. One Custody Sergeant spoken to by Inspectors estimated that he had been required to



attend court on approximately 30 occasions but had never been called to give evidence.

4.14 Inspectors were told that there was a culture among some defence lawyers in Northern Ireland to call all police officers and police staff, no matter how non-contentious their evidence was. There were no cost implications to the defence by doing this. From a defence viewpoint having all the prosecution witnesses at court put additional pressure on prosecution counsel. In addition, Inspectors were told that some defence practitioners found it easier not to agree witnesses at the early stages in the hope that there would be room for negotiation with the prosecution nearer the date of trial. There was no incentive for defence practitioners, or disincentives, to consider the efficiency of the prosecution or court process, to speed up the court process or to consider issues relating to prosecution victims and witnesses.

4.15 Inspectors fully acknowledge that it is the right of the defence to test every aspect of the prosecution case; one defence practitioner described it to Inspectors as the defence's right "to see the whites of their eyes".

4.16 The Commissioner for Victims and Witnesses in England and Wales described a similar situation as a '*publicly funded waiting game*', where defendants hold off pleading guilty until the day of the trial in the hope that victims and witnesses will not show up and the case will collapse, and that defence solicitors find it is in their interest as they are being funded by legal aid for case preparation.³⁵

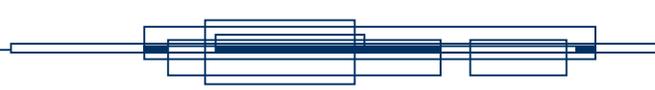
4.17 The defence are not acting outside the law or procedures by refusing to agree potentially non-controversial prosecution witnesses, although the practice appeared to differ across court areas. Some members of the judiciary spoken with said that they were powerless to challenge this practice; although one Senior Judge advised Inspectors that he would question the defence if they refused to agree prosecution witnesses and then did not call them to give evidence at the subsequent trial.

4.18 The police and the PPS were taking steps to try and mitigate the impact of court attendance and Inspectors were told that the police in Belfast were examining the possibility of, for example, officers from Belfast Regional Control giving evidence of emergency 999 calls by way of video-link to the court in an attempt to reduce abstraction time.

4.19 In many courts police officers were required to attend at 10.00am but in reality, contested cases were rarely heard before lunch time, and as a result, the police officer or member of police staff had a number of unproductive hours down-time waiting in the court for the contest to commence, and in many cases, then being told that they were not required to give evidence as their evidence had been agreed by the defence on the day.

4.20 The PSNI and PPS are involved in a pilot scheme to monitor and reduce police staff attendance and down-time at Belfast Crown Court, scheduled to run for three months before evaluation in early 2011. The scheme was focused on police expert witnesses, for example mapping and photography staff, who are

35 '*Ending the Justice Waiting Game: A Plea for Common Sense*', Louise Casey, Commissioner for Victims and Witnesses, November 2010.



customarily scheduled to give their evidence on the opening day of the trial. If the defendant then pleads guilty on the day of the trial, or if the case does not proceed, then their attendance at court is unproductive. During the scheme the police staff will be able to remain at work but be on stand-by to attend the court when phoned or texted, and will not attend the court until the time they are actually required to give evidence, for example after lunch. Depending on the results the PPS would envisage extending the scheme to other police officers and police staff. It was not clear if this pilot would have potential to extend to rural areas, because of the distances involved but this should be considered during the evaluation. Inspectors would encourage initiatives of this nature which have the potential to provide efficiencies for the organisations involved and will be interested to see how this can be progressed and extended.

Considerations for the future

- 4.21 Inspectors believe that there are a number of areas where effectiveness and efficiency could be improved by addressing the areas identified in this inspection report.
- 4.22 On occasions the CLTs may be simply acting more as an appointment notification service than as a true 'liaison' service for victims and witnesses. There is much more could be done both in respect of victims and witnesses attendance (for example follow-ups to Requirement to Attend letters, texts to victims and witnesses as reminders of the court date), and in support and encouragement making the victims and witnesses feel more at ease and confident to attend court and give

evidence (for example providing information about the court and the court process, discussing any issues, ascertaining if there are problems, mobility issues, etc.). This would be more of a specialised function and would require to be supported by suitable staff selection and training to provide those chosen with the appropriate skills and support.

- 4.23 This issue is addressed in more detail in the forthcoming thematic CJI report on the *'Provision of Care and Treatment of Victims and Witnesses in the Criminal Justice System in Northern Ireland'*, and as a result, Inspectors have not pre-empted the outcome of that report by making recommendations in this area.
- 4.24 However, it is the Inspectors' preliminary view that the extension of the CLTs remit to deal with victims and witnesses in the Crown Court and the broadening of their responsibilities to perform more of a care and liaison role, like the WCUs in England and Wales, would have a number of advantages and would address a number of issues identified in this report. It could also be argued that it would be advantageous if the CLTs were jointly made up of personnel from both the PPS and the PSNI, primarily made up of PPS staff but with a small number of PSNI staff permanently attached to them.
- 4.25 The extension of the CLT role to cover Crown Court cases would also clarify the responsibility for victims and witnesses and accord with the ethos of the Criminal Justice Review. In addition it would release police officers from administrative duties associated with securing the attendance of victims and witnesses at trials back to operational policing. It is acknowledged that this



would have resource implications for the PPS, but as the CLTs already exist for Magistrates Courts, which deal with the vast majority of cases, the extension to cover Crown Court Cases would not be on the same scale. (In 2009 there were 1,329 cases received in the Crown Court; the Magistrates Courts received 53,815 adult defendants and 3,067 in the Youth Court³⁶). There is also the likelihood of increased demand for the new units arising from the greater seriousness and potential sensitivity of the cases tried in the Crown Court, the higher number of witnesses necessary for some cases and the fact that contested trials in the Crown Court take longer than those in the Magistrates' Court. It was identified earlier that the extension of Options to the PPS has the potential to create efficiency savings for both the prosecution service and the PSNI, so some redistribution of resource may be possible to off-set part of this additional requirement.

4.26 A joint PPS/PSNI CLT would also have the benefit of improving communication and information exchange between the two organisations, which would address some of the issues identified earlier in this report. In addition the presence of a member of the PSNI would address any security concerns about PPS access to the Options system, and would allow the potential to be explored for police officers to be detailed for court by the police member of the CLT as soon as the date for the case has been fixed. This is a further potential efficiency for police Operational Planning offices as well as lessening the 'snapshot' effect referred to earlier in this report.

4.27 There are already a number of police Liaison Officers attached to the PPS regional offices and there may be scope to review their role in the light of the revised CLT function.

4.28 Inspectors understand that there have already been discussions within PPS management about extending the CLT role to include Crown Court cases.

4.29 The forthcoming CJI thematic inspection on victims and witnesses will examine in detail the WCU model of service provision in England and Wales and its potential applicability to Northern Ireland, and again Inspectors do not wish to pre-empt the report's findings but would put forward the preliminary view that there are potential advantages in extending the CLTs to function in a similar manner to the WCUs in England and Wales, i.e. to manage the care of victims and witnesses from the charging of the defendant(s) through to the conclusion of a case. The service to victims and witnesses would include:

- a single point of contact for victims and witnesses;
- a full needs assessment for all victims and witnesses in cases where defendants have pleaded 'not guilty', to identify specific support requirements, such as child care, transport, language difficulties and medical issues and to highlight areas of concern, including intimidation;
- dedicated witness care officers to guide and support individuals through the criminal justice process and to co-ordinate support and services;

36 NICTS, Judicial Statistics 2009.

- 
- continuous review of victim and witness needs throughout the case; and
 - greater communication and contact with witnesses about cases including informing them of the case outcome or trial result, thanking them for their contribution to the case and offering post-case support from the relevant support agency.

4.30 This would move the CLTs from being primarily an appointment notification service to having a witness care and liaison function. It would undoubtedly mean resource, selection and training implications for the PPS (and for the PSNI staff attached to the units), but would provide a caring service for victims and witnesses from the point of charge to the conclusion of the case.

4.31 The needs assessment would allow the service to be targeted to meet the needs of individual victims and witnesses who most required it, and Inspectors would also envisage the CLTs working closely with the Victim Support Northern Ireland Witness Service and the National Society for the Prevention of Cruelty to Children to enable a seamless service to be provided to victims and witnesses prior to, and during, their attendance at court.



Section



Appendix



Appendix 1: Terms of Reference

An Inspection of Securing Attendance at Court

Terms of Reference

Introduction

Criminal Justice Inspection Northern Ireland (CJI) proposes to undertake an inspection of Securing Attendance at Court.

The attendance of injured parties, witnesses and defendants for criminal cases is central to the efficient and effective operation of the courts.

The Northern Ireland Courts and Tribunals Service (NICTS), the Public Prosecution Service (PPS) and the Police Service of Northern Ireland (PSNI) all have a role to play to ensure those required, attend to allow cases to be heard at court.

Context

Cases in the criminal courts cannot progress without the attendance of all relevant parties. The absence of witnesses and injured parties can cause adjournments and delay and create inefficiency and increased costs.

The recent CJI inspection of Avoidable Delay found that in some areas the vast majority of adjournments were due to witness difficulties, civilian witnesses not invited and police not being available due to operational and other issues. The report made a recommendation that the PPS and the PSNI should ensure that prosecution witness attendance at Court is improved.

Aims of the inspection

The broad aims of the inspection are to:

- assess the effectiveness of the current arrangements within the NICTS for securing the attendance of witnesses, victims and injured parties at court;
- examine the procedures within the PSNI and PPS to secure attendance at court;
- surface issues raised by stakeholders and make recommendations for improvement as appropriate; and
- examination of patterns of attendance in court areas across Northern Ireland to identify good practice or problem areas.



Methodology

The following methodology is proposed.

- Desktop reading and review of NICTS, PSNI and PPS policies, procedures and guidance regarding court attendance, relevant research or other reports relating to this inspection.
- Consultation regarding inspection criteria, development of inspection documentation and planning of fieldwork.
- Structured interviews and focus groups with relevant personnel in the three main agencies.
- Drafting and refining of report.

Fieldwork will take place in October and November 2010 with agencies, dependent on the availability of key staff. Statistical and other information relevant to the inspection to be made available to CJI by NICTS, PPS and PSNI.

Design and Planning

Preliminary meetings have been held with the main agencies. A meeting has also taken place with members of the judiciary. The major stakeholders identified for this inspection are NICTS, PPS and PSNI.

Reporting and Action Plan

A draft inspection report will be produced by the end of December 2010 and shared with the participating agencies for factual accuracy checking in line with existing protocols.

Publication and Closure

Following factual accuracy checking by relevant agencies and internal CJI Quality Assurance processes the final draft inspection report will be sent to the Minister of Justice seeking approval to publish. Once permission to publish has been received from the Minister, a date of publication will be identified by CJI and communicated to the main agencies involved in the inspection and to the Department of Justice (DoJ). A report and covering letter will be sent by CJI to other agencies and stakeholders identified as needing sight of the report prior to publication. A press release will be prepared by CJI and will be shared with the agencies involved and with the DoJ.

Schedule

An outline schedule of the inspection indicating the timescales is set out below along with the resources to be allocated. The schedule will form the basis for the inspection plan.

Securing Attendance at Court	Sept	Oct	Nov	Dec	Jan	Feb	Mar
Design and Planning							
Delivery							
Publication and Closure							











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