

A review of regulatory agencies

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Criminal Justice Inspection
Northern Ireland
A better justice system for all





REGULATORY AGENCIES

Foreword

The Justice (Northern Ireland) Act 2002 (as amended) requires the Chief Inspector of Criminal Justice to inspect 20 agencies or departments. In addition to what might be commonly called the core criminal justice agencies (police, prosecution, courts, prisons, probation and youth justice) the Chief Inspector has also been given the authority to inspect a range of other agencies, the activities of which fall at least to some extent within the criminal justice system. These include bodies like the Police Ombudsman and Forensic Science Northern Ireland, but also a significant number of what might be termed regulatory agencies which do not generally have any substantial interaction with the criminal justice system but which nevertheless occasionally exercise a role in the investigative or prosecutorial process.

These agencies are:

- Health & Social Services Boards and Trusts
- Northern Ireland Child Support Agency
- Northern Ireland Tourist Board
- Royal Mail Group plc.
- Health and Safety Executive
- Trading Standards Service
- Insolvency Service
- Companies Registry
- Planning Service
- Environment and Heritage Service
- Driver & Vehicle Testing Agency Northern Ireland
- Driver & Vehicle Licensing Northern Ireland

In order to decide whether any of the above agencies are suitable for inspection, Criminal Justice Inspection Northern Ireland (CJINI) decided to undertake a scoping exercise to determine the extent of the work of the agencies which actually falls within the parameters of the criminal justice system.

The aim of the scoping exercise

The aim of the scoping exercise was to:

- 1) Obtain background information about the agencies and to identify the extent to which they engage with the criminal justice system, in particular the number of cases they investigate/prosecute per year, resources used in connection with investigation/enforcement, legislation and powers used, interaction with other criminal justice agencies, and the core business of the agency.
- 2) Identify any relevant issues that impact on the agencies and their enforcement/prosecution duties.
- 3) Produce a short briefing note on each agency detailing the above information and any other relevant material received.
- 4) Assess the suitability for an inspection by CJINI taking into account all the above factors and public interest/safety.

Agency Summaries

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Health & Social Services Boards and Trusts

Section 46 of the Justice (Northern Ireland) Act 2002, which relates to the remit of Criminal Justice Inspection Northern Ireland, provides that 'An inspection carried out by the Chief Inspector of a Health and Social Services Board or a Health and Social Services trust may cover only activities relating to the keeping of children in secure accommodation under custody care orders.' Given that there is no provision currently for custody care orders within Northern Ireland, CJINI's inspection remit is therefore somewhat limited.

During an initial meeting with the Eastern Health and Social Services Board CJINI were informed of the development of the Health and Personal Social Services Regulation and Improvement Authority (HPSSRIA) which has an inspection remit. HPSSRIA is to roll out across Northern Ireland and until the conclusion of that process CJINI has decided not to meet with the other Health and Social Service Boards and Trusts. CJINI looks forward to engaging with HPSSRIA in the future.

CJINI CONCLUSION

Given the above, CJINI has concluded that there is currently no scope for an inspection of the Health and Social Services Boards and Trusts.

Child Support Agency NI (CSA)

The CSA is an Executive Agency of the Department of Social Development (DSD). CSA currently employs three full time Investigators in Northern Ireland. The Investigators are supported by seventeen operational Child Support Inspectors (located across Northern Ireland) who under the Child Support (Northern Ireland) Order 1991 gather information that is required to make an assessment in relation to a child support claim.

In the context of the work of the CSA, there are three instances that can lead to an offence being committed;

- Failure to provide information
- Providing false information
- Failure to provide information when requested by an inspector.

Potential sanctions for the commission of the above offences include a £1000 maximum fine, withdrawal of driving license or imprisonment.

At present the main criminal justice agency that the CSA interfaces with is the Department of Public Prosecutions (DPP)¹ which prosecutes cases on their behalf. However, there have been very few prosecutions arising from the work of the CSA in Northern Ireland. For instance in 2004/05, only three cases were sent to the DPP. Prosecution was only undertaken in one of those cases. The experience of the CSA has been that once those refusing to co-operate realise that they are facing the possibility of prosecution, they comply with the requests for information. This, they believe, accounts for the small number of cases sent to the DPP.

The CSA also informed us that internal priorities have perhaps limited the extent of enforcement work and that the training required for this area of work has only just been completed. Staff are reminded to identify non compliance cases. However, as indicated above, contact with the criminal justice system has been limited, and the CSA recognise that their staff face a significant learning curve in this area of work.

CJINI CONCLUSION

Given the very limited interaction which the Child Support Agency has within the criminal justice system, CJINI do not believe inspection would be warranted. However, we believe the situation should be reviewed in the future to allow for the new procedures which focus on criminal cases to take effect.

¹ Since 13th June 2005, the Public Prosecution Service (PPS).

Northern Ireland Tourist Board (NITB)

The Northern Ireland Tourist Board is an agency within the Department of Enterprise Trade and Investment (DETI). NITB has a statutory responsibility, under the Tourism (NI) Order 1992, to inspect all establishments offering tourist accommodation. At present three inspectors work four days per week inspecting all registered accommodation.

NITB investigate offences relating to the certification, classification or grading of tourist establishments and prosecute under the Tourism Order 1992. The Order provides penalties in the event of non-compliance with the statutory provisions and regulates the advertising of establishment gradings. If prosecutions proceed under Order the penalty can be a maximum of 6 months imprisonment or up to £5,000 fine (level 4 on the standard scale).

There are currently 2,500 accommodation sites registered with NITB. Sites that are not registered and therefore operating illegally are also liable for prosecution. However, CJINI have been informed that there have to date been no prosecutions either for non compliance with the operating standards nor against those sites operating illegally.

NITB does not interface with any CJS agencies currently. The Board has legal representatives who act on its behalf if necessary.

Advice received by DETI indicates that the penalties within the Tourism Order are a sufficient deterrent to illegal operators; however in practice NITB's legal representatives have advised NITB not to proceed with legal proceedings based upon their opinion that cases would prove unsuccessful.

DETI does not intend to amend the penalties provided in the Tourism Order as part of its current review. It is DETI's opinion that this legislation should provide incentive for best practice rather than a punitive system.

CJINI CONCLUSION

Given the very limited interaction which the Tourist Board has with the criminal justice system, CJINI do not believe inspection would be currently warranted.

Royal Mail Group plc.

Royal Mail Corporate Security (RMCS) is responsible for investigating and prosecuting internal wrongdoing within the Royal Mail group such as theft from the post, Postal Services Act offences, accounting fraud etc. There are five investigators working with Royal Mail Corporate Security in Northern Ireland. The team carries out investigations for Royal Mail but also on behalf of the Post Office Ltd, and Parcel Force World Wide, which are wholly owned subsidiaries of Royal Mail.

RMCS investigators operate to PACE standards and interview accordingly. They administer simple cautions via the PSNI. RMCS will decide in individual cases whether police involvement is necessary.

The PPS prosecute on behalf of Royal Mail Corporate Security in Northern Ireland. In England and Wales cases are prosecuted by Royal Mail itself. In Scotland the Procurator Fiscal prosecute on behalf of Royal Mail Corporate Security.

In Northern Ireland during 2004/05, RMCS investigated 151 cases on behalf of Royal Mail including Parcel Force World Wide and 43 on behalf of the Post Office Limited. In the same period 14 Royal Mail and 4 Post Office Limited cases were prosecuted.

CJINI CONCLUSION

The Royal Mail Group plc has a substantial investigative operation across the United Kingdom with considerable quality controls. It has built working relations with other criminal justice agencies to ensure the efficiency and effectiveness of its investigations. We do not therefore consider Royal Mail appropriate for early inspection by CJINI.

Health and Safety Executive for Northern Ireland (HSENI)

The Health and Safety Executive for Northern Ireland (HSENI) is the regional health and safety authority for Northern Ireland. It is an executive Non Departmental Public Body (NDPB) with Crown status and is sponsored by the Department of Enterprise, Trade and Investment (DETINI).

HSENI can mount prosecutions under the 1978 Health & Safety at Work (Northern Ireland) Order and its associated regulations.

HSENI employs approximately 100 staff including around thirty inspectors and three compliance officers. HSENI operates largely on a regional and sectoral basis covering work areas such as transport, health and education. However the high risk work sectors of agriculture, construction, quarrying and manufacturing are dealt with by three multidisciplinary geographically based compliance teams covering the west, north-east and south-east.

The inspectors and compliance officers carry out announced and unannounced inspections. They carry warrants cards which permit them to enter any premises and can carry out surveillance as part of the evidence gathering process although this is not done regularly.

Employers are statutorily required to notify certain categories of accidents, diseases and dangerous occurrences to HSENI. Approximately 4,000 notifications per annum are received, which are then assessed on the basis of seriousness of injury and potential breach of law, before a decision is taken as to whether to investigate or not.

There have been on average nine cases prosecuted per year over the last five years due to non compliance with health and safety legislation.

In the past HSENI Inspectors carried out their own prosecutions in court and were trained to do so. However, HSENI recently reached an agreement with the DPP to carry out prosecutions on their behalf.

HSENI have good working relations with PSNI and a protocol between PSNI and HSENI has been drawn up detailing how work-related death cases will be dealt with jointly.

CJINI CONCLUSION

Given the very limited interaction which the Health and Safety Executive Northern Ireland has with the criminal justice system due to other effective enforcement methods, CJINI do not believe inspection would be warranted.

Trading Standards Service (TSS)

The Trading Standards Service is an agency within the Department of Enterprise Trade and Investment (DETI). The enforcement of regulations falls within the Consumer Affairs Branch which has 30 staff involved with operations/investigations/enforcement.

There are a number of pieces of legislation under which the TSS can prosecute, the most relevant being the Trade Descriptions Act 1968, Trade Marks Act 1994 and the Consumer Protection (NI) Order 1987.

TSS aims primarily to work with business to ensure compliance, only prosecuting when absolutely necessary.

In 2004/05 seventeen cases were prosecuted. The number of prosecutions has reduced in recent years due to a change in enforcement philosophy on the part of the TSS with businesses in general being afforded an opportunity (other than most serious breaches) to comply before prosecutions are commenced.

CJINI CONCLUSION

Given the very limited interaction which the Trading Standards Service has with the criminal justice system, CJINI do not believe inspection would be warranted.

Insolvency Service

The Insolvency Service is a branch of the Department of Enterprise Trade and Investment (DETI). The Insolvency Service has a staff of 64.

The Service has a statutory duty to investigate the affairs of individuals who have been made bankrupt and the affairs of companies which have been wound up by the court. Where there is suspicion that an offence has been committed cases may be prepared and forwarded to the DPP.

The primary operating legislation for the agency is the Insolvency (NI) Order 1989. New legislation is expected in the course of 2005.

During 2003/04 only two cases were submitted to the DPP while to date in 2004/05 three cases have been submitted.

CJINI CONCLUSION

Given the very limited interaction which the Insolvency Service has with the criminal justice system, and the fact that this may reduce further as a result of legislative changes, CJINI do not believe inspection would be warranted.

Companies Registry

The Companies Registry is a statutory office within the Department of Enterprise Trade and Investment (DETI). The Registry monitors, and where appropriate refers for prosecution, company directors who fail to file accounts within statutory time limits.

The main operating legislation for the Companies Registry is the Companies (Northern Ireland) Order 1986, the Companies (Northern Ireland) Order 1990, the Industrial & Providence Societies Act 1969 and the Credit Union Order 1985

Very few cases proceed to prosecution although a significant minority of companies fail to comply with the statutory time limits. Usually once the Director receives a warning they submit their accounts. On average twenty cases per month are forwarded to the DPP. The Registry believes this number will decrease due to the more timely dissolution of dormant companies.

CJINI CONCLUSION

Given the very limited interaction which the Companies Registry has with the criminal justice system, CJINI do not believe inspection would be warranted.

Driver & Vehicle Licensing NI (DVLNI)

The DVLNI is an agency within the Department Of Environment (DOE), which undertakes its vehicle registration and licensing functions on behalf of the Driver and Vehicle Licensing Agency (DVLA), which is an Agency within the GB Department for Transport.

DVLNI prosecutes its own cases and have 4 prosecutors based in Local Vehicle Licensing Offices in Belfast, Omagh, Londonderry, Ballymena and is represented at Appeal cases by the Department for Public Prosecution.

DVLNI deals with two types of enforcement cases, vehicle excise evasion and the continuous registration offence of being the registered keeper of an unlicensed vehicle.

Reports of vehicle excise evasion are received from PSNI, Vinci Park Services, DVTA Enforcement team and DVLNI's Automatic Number Plate Readers (ANPR's).

In 2004/05 37,210 vehicles were detected unlicensed with out of court settlement penalties offered by DVLNI to avert prosecution. 6,775 summonses were issued which resulted in 2,033 prosecutions.

Trawling DVLNI's vehicle register identifies unlicensed vehicles, where the keeper has not complied with Continuous Registration legislation. In 2004/05 67,155 cases were identified with out of court settlement letters offered by DVLNI to avert prosecution. 1,316 summonses were issued which resulted in 59 successful prosecutions.

There is regular interaction between PSNI, DVTA, Customs and Excise, Local Councils and the DVLNI with many joint operations ongoing. The establishment of "Operation Clean Up" (a scheme whereby unlicensed run-around vehicles are lifted and brought to a vehicle pound and prior to release must be licensed) has been as an example of this type of initiative.

CJINI CONCLUSION

DVLNI is responsible for a significant number of prosecutions every year. While inspection of DVLNI as a stand alone agency would probably not be appropriate, it would be a key part of any DOE wide inspection.

Driver & Vehicle Testing Agency (DVTA)

The DVTA is an agency within the Department Of Environment (DOE). DVTA has a £1.36 million budget for enforcement and 34 members of staff within dedicated operational enforcement teams

The main legislation relating to the DVTA's enforcement powers are the 1967 Transport Act, 1981 Road Traffic (Northern Ireland) Order and the 1995 Road Traffic (Northern Ireland) Order.

There are several enforcement methods available to the DVTA short of prosecution but there are a considerable number of prosecutions taken each year, averaging between 1200 and 1300.

DVTA has significant interaction with other agencies in the criminal justice field.

CJINI CONCLUSION

The DVTA has a considerable budget and staffing complement for enforcement compared to other regulatory agencies. It also prosecutes a large number of cases every year. In the context of a DOE wide inspection, the DVTA would be a key agency to examine.

Environment and Heritage Service (EHS)

The Environment and Heritage Service is an agency within the Department Of Environment (DOE). It aims to protect and conserve the natural and built environment. Within EHS the Environmental Protection Directorate has responsibility for regulation and enforcement relating to pollution control and waste management. The areas of particular interest for this study are water and waste management.

Water Management

There are currently 35 field officers carrying out investigative work on behalf of the Water Management Unit of EHS.

Approximately 2,500 pollution reports are received annually. All of these incident reports are investigated and, in recent years, an actual polluting impact on water was confirmed annually in 1,200-1,400 of these incident reports.

In 2002 96 cases were prosecuted, and 125 cases were prosecuted in 2003.

Waste Management

There are 22 investigative officers working in the enforcement section of the Waste Management and Contaminated Land Unit of EHS.

Due to the legislative changes in 2002/03 transferring prosecutorial power from the district councils to EHS there has been a gradual increase of cases to investigate and prosecute.

From December 2002 to date, 87 cases have been prosecuted and 123 are with the PPS, 90 of which have court dates. 209 are currently being investigated, the majority of which are likely to result in prosecution.

The PPS prosecute cases on behalf of EHS.

CJINI CONCLUSION

Prosecution rates in EHS cases are relatively high and there are considerable resources expended by EHS in its enforcement work. While early inspection is unlikely, it is possible that a DOE wide inspection could take place, which would include EHS within its remit.

Planning Service

The Planning Service is an agency within the Department of Environment (DOE). It regulates the development and use of land in the public interest. Its activities are governed by the Planning (Northern Ireland) Order 1991. Its system of enforcement relies primarily on the issue and use of enforcement notices. Failure to comply with such notices may however result in prosecution.

Prosecution is however relatively rare. In 2003/04, for example, 31 cases were submitted for prosecution. As a result, the Planning Service has limited interaction with the criminal justice system. The Service has some contact with the police who may assist them during their investigations. If prosecutions do ensue, the Planning Service instructs its own counsel rather than relying on the DPP/PPS.

CJINI CONCLUSION

CJINI believes that, given the limited interaction between the Planning Service and the criminal justice system, inspection of the Planning Service as a sole agency is not warranted. However, it is possible that the Planning Service could be included in a DOE wide inspection.

Conclusion

In light of the findings of the scoping study conducted by CJINI, it is unlikely that many of the agencies which have been the subject of the study will be inspected in the near future. This is primarily due to their limited interaction with the criminal justice system and the relatively small number of criminal investigations/prosecutions which they pursue in an average year. In the case of the Child Support Agency and the Tourist Board, this situation will be kept under active review and may be revisited in light of proposed changes in governing legislation or policy and procedure.

It is however possible that, given the number of agencies with criminal justice functions which have the DOE as their parent department (Planning Service, Environmental and Heritage Service, Driver and Vehicle Testing Agency, and Driver and Vehicle Licensing NI), the resources they expend on criminal justice work, and the number of cases they initiate that a DOE wide inspection would be appropriate. It is unlikely that this will take place before 2006/7.