



AN INSPECTION OF
**FILE QUALITY,
DISCLOSURE AND CASE
PROGRESSION AND
TRIAL RECOVERY FROM
THE COVID-19 PANDEMIC**

JUNE 2023



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LIST OF ABBREVIATIONS

ABE	Achieving Best Evidence
AG	Attorney General
CCTV	Closed circuit television
CJB	Criminal Justice Board
CJI	Criminal Justice Inspection Northern Ireland
CJIG	Criminal Justice Improvement Group
CPIA	Criminal Procedure and Investigations Act 1996
CPS	Crown Prosecution Service
DIR	Decision Information Request
DoJ	Department of Justice
GAP	Guilty Anticipated Plea
HMCPSI	His Majesty's Crown Prosecution Service Inspectorate
ICP	Indictable Cases Process
IQA	Individual Quality Assessment
NGAP	Not Guilty Anticipated Plea
NICTS	Northern Ireland Courts and Tribunals Service
NISRA	Northern Ireland Statistics and Research Agency
OCMT	Occurrence and Case Management Team (within Police Service)
OEL	Occurrence Enquiry Log (within Police Service)
PDIR	Pre-Decision Information Request
PIF	Prosecutors Information Form
PP	Public Prosecutor
PPS	Public Prosecution Service for Northern Ireland
Police Service	Police Service of Northern Ireland
SCU	Serious Crime Unit
SOC	Structured Outline of Case
VWCU	Victim and Witness Care Unit

CHIEF INSPECTOR'S FOREWORD

The foundations of a fair and effective criminal justice system are quality police investigations, robust prosecutorial decisions and effective disclosure. Getting this right can reduce delay and ensure more efficient use of resources throughout the criminal justice system to deliver better outcomes for victims and witnesses. The swifter conclusion of cases can mean convicted defendants feel the consequences of their offending behaviour sooner and help prevent further offending.

The criminal justice system organisations' response to and business continuity during the COVID-19 pandemic demonstrated how agile they can be when it is needed. Police Officers, Prosecutors, Court staff, Probation Officers and the Judiciary, along with defence lawyers and voluntary and community sector services, worked together to keep the criminal justice system operating through a time of crisis.

That strength of collaboration and delivery focus now needs to be applied to build in quality at each stage, from the moment a crime is reported and a Police Service of Northern Ireland investigation begins, through to when a case file is submitted to the Public Prosecution Service for Northern Ireland enabling it to make a swift decision and both organisations to effectively deal with disclosure. Failing to do this well will continue to add time, cost and work to everyone involved in case progression.

This is even more critical in a reduced funding environment against a backdrop of increased reported crime, case complexities, including those with large volumes of digital evidence and unacceptable backlogs in our Crown Courts.

It was a problem before the COVID-19 pandemic and it is much worse now.

During this inspection I heard from defence representatives who frankly shared their views. Endemic delay had become the norm in an adversarial system where the likelihood of the police and prosecution not being ready to proceed, meant there was no real sense of urgency for them. Conversely, in the Indictable Cases Process, the purpose of which was to reduce delay, defence practitioners were not engaging with Prosecutors until late in the process.

We need to disrupt that thinking to reduce unacceptable delay. That means the Police Service of Northern Ireland and the Public Prosecution Service for Northern Ireland need to ensure what they can control works, fix the issues in their own organisations and improve the collaboration between both organisations to deliver the step change needed.

While some progress had been made since the 2015 inspection, it is clear there is much more to be done and that is why I have repeated the recommendations made then and made a further key

strategic recommendation to the criminal justice system's most senior leaders, to demonstrate their commitment to really tackle delay through a new shared strategy. While they are all independent of each other, they are interdependent in the delivery of a better criminal justice system.

Each organisation, in getting the basics right at each stage of case progression, understanding their respective needs and delivering against them, shows a real commitment to partnership working and a team approach. It could also help support bids for additional resources if they are needed.

It may be obvious but it is true, what gets measured gets done and what gets done is generally what appears in Corporate, Business and Policing Plans. Now is not a time for ambiguity or tacit links. Clear performance standards that filter to individual performance agreements can help focus mindsets and change behaviours.

I am assured that the Chief Constable and Director of Public Prosecutions are committed to delivering improvements by optimising the resources available to them while managing competing priorities and reduced budgets. But a fundamental reset is needed - with clear objectives to tackle delay and follow through in governance and accountability mechanisms - at every level.



Jacqui Durkin
Chief Inspector of Criminal Justice
in Northern Ireland

June 2023

The recommendations in the report are aimed to support the work of the Criminal Justice Board in driving forward improvements that are much needed throughout the criminal justice system.

I am grateful to the Police Service of Northern Ireland, the Public Prosecution Service for Northern Ireland, the Northern Ireland Courts and Tribunals Service, the Judiciary, Bar Council, Law Society of Northern Ireland, Victim Support Northern Ireland and all other stakeholders who supported this inspection and gave their time generously.

An important aspect of this inspection was the file reviews carried out in the Police Service of Northern Ireland and the Public Prosecution Service for Northern Ireland. We worked in partnership with Police Officers and Prosecutors joining the Inspection Team for this part of the inspection and I am very grateful for their contribution and the professional expertise they brought to the Team as well as the learning they took back to their own organisations.

My thanks also to David MacAnulty, Lead Inspector, Muireann Bohill, Inspector, CJI and Jeetinder Sarmotta and Sarah Lloyd, Inspectors from His Majesty's Crown Prosecution Inspectorate.



EXECUTIVE SUMMARY

Avoidable Delay, the quality of files and how disclosure is dealt with have been reported on by Criminal Justice Inspection Northern Ireland (CJI) since 2006 as being significant problems within the criminal justice system in Northern Ireland. This inspection focused on developments in these areas since CJI's last inspection in 2015. It also reviewed the trial backlogs accumulated since the COVID-19 pandemic and steps being taken across the criminal justice system in response.

The Prosecution Team - Working Together

The *Working Together* project had been developed as a key initiative by the Prosecution Team of the Police Service of Northern Ireland and the Public Prosecution Service for Northern Ireland. There had been continuing changes in the Police Service of Northern Ireland senior team and a reduction in strategic importance of reporting on the *Working Together* project. The Public Prosecution Service for Northern Ireland had retained *Working Together* as a key business objective. Nonetheless, file build standards had been established successfully along with agreed timeframes for preparing and sending these files for a prosecution decision.

A Disclosure Unit had been established within the Police Service of Northern Ireland in 2021 after an unsuccessful attempt at a joint unit with the Public Prosecution Service for Northern Ireland following CJI's 2015 inspection.

A Disclosure Forum had provided a sound basis for mapping out a strategic direction

on how to deal with disclosure better across the Police Service of Northern Ireland and Public Prosecution Service for Northern Ireland jointly, but it had not provided any improvement since the 2015 inspection around how well disclosure was handled.

CJI file review

When a crime is reported, a file is prepared by the police and if sufficient evidence of a crime being committed is collected, this file is then sent to prosecution who consider this file and create their own in order to make a prosecution decision. Following the ethos of *Working Together*, an Inspection Team was formed to review 100 police and 100 prosecution files. The team included two Public Prosecution Service for Northern Ireland Prosecutors, three Police Service of Northern Ireland Police Officers working alongside Inspectors from CJI and His Majesty's Crown Prosecution Service Inspectorate. This provided a platform for an inclusive assessment of how well the police and prosecution were performing and early lessons to take back to their respective organisations.

Key indicators showed that the quality of building files to the agreed standard was poor. In the police file review 54% of files did not meet or only partially met the standard for Crown Court cases. This dropped to 44% in the Magistrates' Court files examined.

When looking at building files to the agreed standard within the prosecution files, 41% of the Magistrates' Court cases and 54% of Crown Court cases did not meet or only partially met the file build standard. The positive strategic development of *Working Together* had not yet borne positive results in improving file quality.

Police Files

Following Lines of Enquiry was a fundamental part of investigations. The Inspection Team found that police needed to improve this area in the Magistrate's Court files reviewed. In the Crown Court files the police were better at following lines of enquiry.

Progressing files in a timely manner was important in tackling avoidable delay. This area was not well dealt with in 2015 and there were similar findings in this inspection. In the Magistrates' and Crown Court files examined, more than three out of ten were not being progressed in a timely way. This was an indicator that files were taking too long to prepare and did not always meet the expectations set by the *Working Together* team. The police also needed to engage better at early stages of cases with one third of all cases not having sufficient early engagement with the Public Prosecution Service for Northern Ireland.

Supervision was a significant area of concern in 2015 and remains so. Only 56% of Magistrates' Court cases reviewed had appropriate recorded levels of supervision to progress a case. This improved in Crown Court cases with 71% of files making the standard. Police Supervisors and Officers in interviews indicated that there were significant competing demands outside of file preparation which meant they did not always have enough time to do everything that was expected with so many competing pressures.

While there were some examples of excellent supervision, overall, this was an area that required improvement.

Disclosure standards in police files were poor in 2015. There was no improvement in this inspection. Around half of the files reviewed (48% of Magistrates' Court and 54% of Crown Court) did not reach required expectations. When compared with the prosecution files that the Inspection Team looked at, similar poor results were found. Police Officers were frank in their acceptance that disclosure was a problem area that was not well understood, which echoed similar sentiments from the 2015 inspection.

Prosecution Files

The prosecution files contained all the evidence supplied by the police as well as all the work that the Public Prosecution Service for Northern Ireland had done. Ninety-six per cent of prosecution files met the Code for Prosecution standard. This was a positive finding which compared favourably against the same standards in England and Wales (94.7%).

The timing of decision-making was also relatively good with only one Magistrates' Court and four Crown Court cases not having a timely review. Overall, the Inspection Team found that specialist teams such as the Serious Crime Unit or Fraud sections dealt with cases better than those cases outside of specialised areas. This was partly due to the dedicated resources in these areas.

Proportionate recording of decisions and rationale on files as well as keeping a clear audit trail has been highlighted as an area for improvement in this report and in previous inspections.

There had been some progress with a new internal Public Prosecution Service for Northern Ireland directive outlining how to keep better notes on files but overall, this area required improvement.

Progressing cases at court remained an area of significant concern raised by CJI and others in external reports on avoidable delay. Seventy-four per cent of the relevant Magistrates' Court cases were meeting the standard whereas only one in three of Crown Court cases were progressed at court appropriately.

File quality continued to be a central part of the service that the Public Prosecution Service for Northern Ireland provided. However, with the lack of progress overall on file quality and disclosure since 2015, the *Working Together* programme and strategy had not delivered the required improvements.

Impact on victims

Outcomes for victims remained poor. Cases were taking too long on an end-to-end basis with the overall time taken increasing from 2017 to 2022.

The number of days by which 90% of all cases were completed was 511 days in 2017. This had grown to 746 days by 2022.

Before a systemic approach to dealing with the delay, file quality and disclosure issues can be addressed, the Prosecution Team had significant areas for improvement to consider. They need to get the basics right more often and quality built in at every stage for each Police Officer and Prosecutor involved in a case.

The COVID-19 pandemic and ancillary 'lockdown' arrangements had posed significant problems for the Prosecution Team. With the focus on returning to 'pre-covid' levels of performance, this lacked ambition, there needed to be clearer target setting for the criminal justice system, robust monitoring and consequences for poor quality.

Communication with victims and witnesses had been highlighted as an area of concern. Interviews with staff working with victims expressed a concern that there were gaps in the information that was available, with different parts of the Public Prosecution Service for Northern Ireland and Police Service of Northern Ireland having differing levels of knowledge about individual cases. Evidence from Victim Support Northern Ireland also added support for the lack of a clear transparent system for victims.

The recommendations made in this report repeat those from 2015 along with a renewed requirement for a long term joint strategy to tackle delay, file quality and disclosure with a greater emphasis on a joint responsibility for quality assurance.

RECOMMENDATIONS

STRATEGIC RECOMMENDATION

STRATEGIC RECOMMENDATION 1

Within six months of the publication of this report, the Criminal Justice Board, while respecting each member's independence, should jointly agree a new criminal justice system vision and strategy to improve quality and reduce delay at each stage of file preparation and disclosure.

The Police Service of Northern Ireland and the Public Prosecution Service for Northern Ireland must have an effective partnership to deliver the performance improvement and accountability needed at every stage. The Criminal Justice Board, effectively supported by relevant leaders from each member organisation and the Judiciary, should robustly monitor outcomes.

The member organisations should underpin this vision and strategy delivery by introducing clear targets, reflected in each organisation's Corporate and Business Plan priorities, that address the issues evidenced in this report and previous report recommendations not yet implemented.

The member organisations should adopt a Case Progression Commitment Document for Northern Ireland to set quality standards, meaningfully monitor system performance and agree improvements to support case progression.

(Paragraph 2.25)

OPERATIONAL RECOMMENDATION

OPERATIONAL RECOMMENDATION 1

Within six months of report publication the Police Service of Northern Ireland should provide a programme for enhanced training and ongoing support for supervision as part of new quality assurance measures to tackle quality and delay within the Police Service of Northern Ireland.

(Paragraph 3.18)

With the lack of progress from the 2015 inspection, CJI repeat the recommendations from that report.

OPERATIONAL RECOMMENDATION 2

Within three months of the publication of this report, the Police Service of Northern Ireland and the Public Prosecution Service should complete a full joint review of previous recommendations and provide a joint action plan for the completion of all recommendations. The 2015 recommendations were:

- The Police Service of Northern Ireland and the Public Prosecution Service should immediately establish a 'Prosecution Team' which will work collaboratively to deliver a Joint Transformation Programme to deal with investigative standards, bail management and forensic strategy, case management and disclosure. Governance and accountability should rest with an Assistant Chief Constable together with a Senior Public Prosecution Service Director (paragraph 2.21, 2015 report).
- The Prosecution Team should scope and deliver new protocols on:
 - early prosecutorial advice (Police Service of Northern Ireland requests/Public Prosecution Service responses);
 - Police Service of Northern Ireland decision-making and Public Prosecution Service pre-charge advice; and
 - proportionate case-file building based on agreed evidential, technical and presentational standards (paragraph 3.34, 2015 report).
- The Police Service of Northern Ireland, under the governance of the Prosecution Team, should develop and deliver organisational investigative standards, investigative bail management rules and an effective forensic strategy (paragraph 3.34, 2015 report).
- The Prosecution Team will scope and deliver an Information Communications Technology action plan for both organisations that will focus on the preparation, presentation and timely submission of proportionate and quality Police Service of Northern Ireland case files (paragraph 3.38, 2015 report).
- The Public Prosecution Service will provide the Police Service of Northern Ireland with guidance on Disclosure. The Police Service of Northern Ireland will scope and deliver a new central Disclosure Unit and enhance the skills of operational Police Officers on the subject of disclosure (paragraph 3.52, 2015 report).
- The Prosecution Team, at an early stage of project management, should develop a Joint Performance Framework to govern and measure the effectiveness of new protocols and procedures. This should include the setting of performance indicators and outcomes on file quality and disclosure (paragraph 3.61, 2015 report).

CHAPTER 1: INTRODUCTION

THE IMPORTANCE OF FILE QUALITY AND DISCLOSURE

- 1.1 Preparing (or building) a quality case file for prosecution and court is a fundamental foundation of the criminal justice system. It is critical that the collection, recording and presentation of evidence in criminal cases is effective and fair and completed to agreed quality standards. Quality case files significantly contribute to an efficient and fair criminal justice system for victims, witnesses and defendants. Public confidence in the criminal justice system is supported by robust investigations and prosecutions that lead to sound convictions in a timely way. Poor quality case files can have significant consequences including additional costs and resources and have a negative impact on victims of crime. Delays are associated with poor file quality and case management which negatively impacts public confidence in the criminal justice system. A good disclosure system, based on rules and laws, provides the defence with copies or access to all relevant material that ensures access to a fair criminal justice system.
- 1.2 Criminal Justice Inspection Northern Ireland (CJI) reported the need to improve the quality and timeliness of files in three reports since 2006¹. In November 2015, CJI published a report on the quality and timeliness of police files². That inspection had six strategic recommendations addressed to the Police Service of Northern Ireland (Police Service) and the Public Prosecution Service for Northern Ireland (PPS). They were:
- *The Police Service and the PPS should immediately establish a 'Prosecution Team' which will work collaboratively to deliver a Joint Transformation Programme to deal with investigative standards, bail management and forensic strategy, case management and disclosure.*
 - *The Prosecution Team should scope and deliver new protocols on prosecutorial advice, Police Service decision-making and PPS pre-charge advice and proportionate case-file building.*

1 A. CJI, *Avoidable delay: A thematic inspection of delay in the processing of criminal cases in Northern Ireland, May 2006* available at <https://www.cjini.org/getattachment/ed9d97d7-a15f-4fa5-90d1-3e3867124c21/Avoidable-Delay-May-2006.aspx>.

B. CJI, *Avoidable Delay, June 2010* available at <https://www.cjini.org/getattachment/c0243f51-1e73-47e8-a6fa-344d5f0063c5/Avoidable-Delay.aspx>.

C. CJI, *Avoidable Delay – A Progress Report, January 2012* available at <https://www.cjini.org/TheInspections/Action-Plan-Reviews-Inspection-Follow-Up-Revie/2012/Avoidable-Delay>.

2 CJI, *An Inspection of the Quality and Timeliness of Police Files (Incorporating Disclosure) Submitted to the Public Prosecution Service for Northern Ireland, November 2015* available at <https://www.cjini.org/TheInspections/Inspection-Reports/2015/October---December/File-Quality-and-Disclosure>.

- The Police Service should develop and deliver organisational investigative standards, investigative bail management rules and an effective forensic strategy.
- The Prosecution Team will scope and deliver an Information Communications Technology action plan for the presentation and timely submission of proportionate and quality Police Service case files.
- The PPS will provide the Police Service with guidance on Disclosure. The Police Service will scope and deliver a new central Disclosure Unit and enhance the skills of operational Police Officers on the subject of disclosure.
- The Prosecution Team should develop a Joint Performance Framework to govern and measure the effectiveness of new protocols and procedures. This should include the setting of performance indicators and outcomes on file quality and disclosure.

- 1.3 The focus of the recommendations was on developing a closer working relationship between the Police Service and the PPS primarily through the establishment of a 'Prosecution Team' (known later as 'Working Together'). The overall aim was to improve the quality of files, reduce delay and address concerns around the lack of adherence to disclosure rules and guidance. A PPS and Police Service joint project team was established that reported to the *Working Together* Project Board, jointly chaired by the Assistant Chief Constable for Innovation and Standards and a Senior Assistant Director in the PPS.
- 1.4 CJI's 2015 report was published at the same time as the *Transforming Summary Justice*³ and *Better Case Management*⁴ initiatives were adopted in England and Wales from June 2015 and January 2016. The aim of both initiatives was to reform the way that criminal cases were handled in both the Magistrates' and Crown Courts, and to create a swifter system with fewer hearings. However, both the police and Crown Prosecution Service (CPS) recognised that operationally there was still room to advance case progression by driving improvement in file quality, timely provision of charging advice, holding fewer hearings per case and increasing the number of trials that go ahead the first time that they were listed. The *Transforming Summary Justice* and Disclosure reform was notable in that it had direct strategic leadership from the Judiciary.
- 1.5 The 2017 His (formerly Her) Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) police efficiency, effectiveness and legitimacy (PEEL) inspection of the Police Service also found issues with the quality of files and the standard of volume crime investigations (for example theft, public order offences and criminal damage) and issues around police supervision⁵.

3 HMCPSI, *Transforming Summary Justice: An Early perspective of the CPS contribution, February 2016 and Better Case Management*, available at https://www.justiceinspectors.gov.uk/hmcpsi/wp-content/uploads/sites/3/2016/02/TSJ_thm_Feb16_rpt.pdf.

4 HMCPSI, *Better Case Management Handbook, January 2023* available at <https://www.judiciary.uk/guidance-and-resources/better-case-management-revival-handbook-january-2023/>.

5 HMICFRS, *PEEL: Police effectiveness 2017: An inspection of the Police Service of Northern Ireland, March 2018* available at <https://www.justiceinspectors.gov.uk/hmicfrs/publications/peel-police-effectiveness-2017-police-service-of-northern-ireland/>.

The subsequent 2018 inspection⁶ found that the Police Service had made improvements and introduced a two-day training programme covering investigation quality and file standards for operational Sergeants. The recommendations from both Inspections gave a pathway to improve file quality.

1.6 The 2018 Northern Ireland Audit Office report on delay⁷ restated the CJI finding that a primary source of delay was at the police investigation stage of cases.

1.7 The *Gillen Review* published in May 2019⁸ focused on serious sexual offences in Northern Ireland, however two specific recommendations highlighted shortcomings in disclosure and file quality. These areas were being considered by the Department of Justice (DoJ)⁹ separately from this report with a specific implementation plan. Key findings from the review overlapped with CJI findings and included:

- *Recommendation 7: Radical steps to combat excessive delay in the criminal justice system. A wholly new mind-set is required, which will involve front-loading the legal system with an early-time-limited and case managed system that has at its core early joint engagement by both prosecution and defence representatives; and*
- *Recommendation 8: A restructuring of the disclosure process with greater and earlier trained PSNI [Police Service] specialists, prosecutorial guidance from the PPS from the outset, early defence engagement, firm time-limited and early judicial management, and resource-led development of relevant digital technology.*

Other recommendations included:

- *Recommendation 106: Very experienced police officers should be deployed to oversee file quality in every case involving serious sexual offences before it is submitted to the PPS. Specific training should be given to these appointed officers;*
- *Recommendation 131: A recognition that disclosure is a specialism by the PSNI. Minimum standards and accreditation are necessary in the appointment process of Designated Disclosure Officers in the PSNI;*
- *Recommendation 132: The PSNI should scope and deliver a new Central Disclosure Unit as a matter of urgency;*
- *Recommendation 141: The PPS should introduce forthwith a Disclosure Management Document;*
- *Recommendation 142: The PPS should reintroduce Disclosure Champions throughout the system; and*

6 HMICFRS, PEEL, PEEL *Police efficiency and effectiveness 2018: An inspection of the Police Service of Northern Ireland, June 2019* available at <https://www.justiceinspectors.gov.uk/hmicfrs/publications/peel-police-efficiency-and-effectiveness-2018-psni/>.

7 Northern Ireland Audit Office, *Speeding up Justice: avoidable delay in the criminal justice system, March 2018* available at <https://www.niauditoffice.gov.uk/publications/speeding-justice-avoidable-delay-criminal-justice-system>.

8 *Gillen Review Report into the law and procedures in serious sexual offences in Northern Ireland, May 2019* available at <https://www.justice-ni.gov.uk/publications/gillen-review-report-law-and-procedures-serious-sexual-offences-ni>.

9 DoJ, *The Gillen Review Implementation Plan, July 2020* available at <https://www.justice-ni.gov.uk/publications/gillen-review-implementation-plan>.

- *Recommendation 153: The Criminal Justice Board supported by the Criminal Justice Programme Delivery Group should become the forum through which improvements to disclosure and delay are overseen.*

- 1.8 A His (formerly Her) Majesty's Crown Prosecution Service Inspectorate (HMCPsi) 2020 Follow-up Review,¹⁰ provided some insight for common issues around file quality and disclosure. It found that the CPS showed a lack of disclosure improvements and that overall file quality issues, almost without exception, had been caused or exacerbated by the problem of too few legal staff being spread too thinly over a volume of work of ever-increasing complexity. The service the police provided to the CPS, particularly identifying what was and was not disclosable unused material, providing an adequate report on it to the prosecutor to make a decision at charge, and providing complete and accurate disclosure schedules post-charge was key to allowing the prosecutor to undertake an effective review and deal properly with disclosure. Similar issues were raised by CJI in 2015 and the results of the file review for this inspection contained in Chapter 3, provided the most up-to-date picture of the issues faced in this jurisdiction.
- 1.9 The COVID-19 pandemic (the pandemic) and its associated lockdowns and public health restrictions from March 2020 severely impacted on the ability of the courts and the wider criminal justice system to function and hold jury trials. Delay in case progression and disposal was an issue before the pandemic and was exacerbated by it. It was important that effective measures were swiftly taken to recover and deal with the growing backlog of Magistrates', Youth and Crown Court cases and inherent delay repeatedly reported on by CJI.
- 1.10 In March 2021 the College of Policing, the National Police Chiefs' Council and the CPS launched the *National Case Progression Commitment* document.¹¹ It was recognised that case progression relied on each part of the system working together to ensure the timely and effective management of cases from the outset of the investigation through to trial. The document set out their joint commitment to take action to drive improvement in case progression.
- 1.11 A whole system end-to-end approach was needed to tackle delay. File quality and disclosure are intrinsically linked to efficiency, effectiveness and fairness. This report focused on the developments since CJI's inspection in 2015,¹² examined what has been done to recover the system after the pandemic and whether there had been improvement on how the Prosecution Team were working together.

10 HMCPsi, *Disclosure of unused material in the Crown Court: A follow-up of the January 2020 review of the Crown Prosecution Service's handling of the disclosure of unused material in the Crown Court, December 2020*, available at <https://www.justiceinspectors.gov.uk/hmcpai/hmcpai-disclosure-of-unused-material-in-the-crown-court/>.

11 College of Policing, *National Police Chiefs' Council and Crown Prosecution Service, National Case Progression Commitment, March 2021* available at <https://www.cps.gov.uk/publication/national-case-progression-commitment-college-policing-national-police-chiefs-council>.

12 CJI, *An Inspection of the Quality and Timeliness of Police Files (Incorporating Disclosure) Submitted to the Public Prosecution Service for Northern Ireland, November 2015* available at <https://www.cjini.org/TheInspections/Inspection-Reports/2015/October---December/File-Quality-and-Disclosure>.

This CJI Inspection

1.12 The inspection objectives were to:

- examine the effectiveness of the Police Service, PPS and Northern Ireland Courts and Tribunals Service (NICTS) organisational strategies with regard to file quality, disclosure and case progression;
- review the processes for file quality, disclosure and case progression, how operational delivery is structured to meet the needs and expectations of stakeholders and victims, and to assess effectiveness and potential areas for improvement;
- examine and assess the outcomes of strategies and delivery mechanisms for file quality, disclosure and case progression against performance targets;
- examine management information in relation to the performance of the criminal justice organisations and delivery with regard to file quality, disclosure and case progression;
- examine how the above aspects of file quality, disclosure and case progression are benchmarked against good practice in neighbouring jurisdictions;
- examine the effectiveness of organisational strategies and delivery with regard to disclosure; and
- examine the effectiveness of criminal justice system planning assumptions, priorities, strategies and delivery with regard to trial recovery from the pandemic.

1.13 The inspected organisations each undertook a self-assessment in preparation for the inspection. The main body of evidence for progress was obtained through intensive file reviews by the Inspection Team, which examined 100 Police Service files and 100 PPS files. The inspection File Review Team included representatives from both the Police Service and the PPS working alongside CJI and HMCPSI Inspectors. This approach was not only beneficial for CJI but also for Police Service officers and PPS Prosecutors who could quickly transfer learning back into their organisations. The outcomes of the data provided by the organisations and the file reviews informed the interview fieldwork stage when staff across all levels in the inspected organisations were interviewed and provided context to the review findings.

1.14 This report is in three sections. Strategy and Governance examines the strategic approaches and progress that has been made since 2015. The Delivery section follows a criminal justice journey to reflect how a member of the public first makes a complaint to the police through to how a file is prepared, a decision is made and then the case is completed through to the court stages. The Inspection Team relied on evidence from interviews with those working in the inspected organisations, from criminal justice system partners and organisations, along with a comprehensive file review of police and prosecution cases. Outcomes provide an analysis of the statistics and monitoring of the criminal justice system and whether there has been observed improvements. It also looks at the impact that the pandemic had and the approaches that the organisations have taken after restrictions were ended. Outcomes considers the impact on victims and the community.

CHAPTER 2: **STRATEGY AND GOVERNANCE**

- 2.1 The Minister of Justice was responsible for all aspects of justice, however, this included and was dependant on an operationally independent Police Service accountable to the Northern Ireland Policing Board, an independent Director of Public Prosecutions and the PPS that was a non-ministerial department funded by the Department of Finance and an independent Judiciary. By 29 October 2022, as a result of the collapse of the Northern Ireland Assembly, the Minister of Justice was no longer in office. The focus of this inspection was on those organisations that had direct control over the quality of files, disclosure, and the overall impact of these areas on delay. This meant that the focus of this inspection inevitably lay with the Police Service and the PPS.
- 2.2 A Programme for Government had not been agreed by the Northern Ireland Executive on their return in January 2020. Therefore, since June 2018, the Northern Ireland Civil Service had been operating under the Outcomes Delivery Plan which set out the actions that Departments intended to take to give effect to the previous Executive's stated objectives.¹³ The Northern Ireland Executive had initiated a public consultation which closed in March 2021 on the Programme for Government draft Outcomes Framework 2021.¹⁴ One of the key priority justice areas was improving the effectiveness and accessibility of justice at all levels and speeding up justice. Overall confidence, justice outcomes, and efficiency are all measures of how the system performs, however the speed of the system was a vital measure and required consideration on an end-to-end basis.
- 2.3 The DoJ had responsibility for delivering Programme for Government commitments.¹⁵ There were also two over-arching governance mechanisms. The Criminal Justice Board (CJB) was chaired by the Minister of Justice¹⁶ and comprised the Lady Chief Justice, the Chief Constable, the Director of Public Prosecutions and the DoJ Permanent Secretary. The Criminal Justice Improvement Group (CJIG) was chaired by a senior DoJ official and included representation from the Police Service, the PPS, the Lady Chief Justice's Office and the NICTS. The CJIG focused on priority areas agreed by the CJB.

13 DoJ, *Research Agenda 2021-2024 July 2021* available at <https://www.justice-ni.gov.uk/publications/departmental-research-agenda-21-24>.

14 *Northern Ireland Executive, Consultation on the Programme for Government draft Outcomes Framework 2021, January 2021* available at <https://www.northernireland.gov.uk/consultations/consultation-programme-government-draft-outcomes-framework-2021>.

15 Further information around the DoJ is available at <https://www.justice-ni.gov.uk/about-department-justice>.

16 In the absence of a functioning Executive and the appointment of a Minister of Justice, at the time of writing the CJB was being chaired by the DoJ Permanent Secretary.

2.4 The DoJ delivery commitments were most directly associated with the outcome, 'We have a safe community where we respect the law, and each other.' This outcome had four key priority areas¹⁷ in which delay and file quality were included as part of Speeding Up Justice. The DoJ had a monitoring system or 'framework' with indicators that measured how the system was performing against outcomes, to provide a basis to monitor progress and take appropriate corrective action.¹⁸ One indicator of effectiveness devised by the DoJ (Indicator 38) was set to increase the effectiveness of the justice system. The key measurement was the proportion of criminal cases processed within guideline time limits. This indicator was important for the speedy resolution of criminal cases for victims and played a vital role for ensuring public confidence in the criminal justice system.

2.5 The DoJ Corporate Plan 2019-22 and the Business Plan 2021-22¹⁹ set the priorities, operating and budget context for the Department. The Corporate Plan contained five priorities. Priority four was most applicable to this inspection, to make the justice system faster and more effective and to serve the needs of those who engage with it. Case processing times for criminal cases were a key indicator of success. The Business Plan addressed priority four with actions that included:

- *working with partners to promote recovery of the justice system in response to the challenges of COVID-19; and*
- *modernising and streamlining the system for example Committal Reform.*

2.6 The DoJ also had a strategic long-term aim to reduce delay and previous attempts to introduce Statutory Time Limits for criminal cases were not advanced by the wider criminal justice system with a preference instead given to other initiatives such as Committal Reform (transferring cases to the Crown Court much quicker). CJI recommended time limits in 2010²⁰ as a realistic way to improve the end-to-end time taken for criminal cases. In the interim, guideline time limits were developed to enable more transparent reporting in the shorter term. End-to-end measurement had started monitoring the date on which a crime was reported to the police to the date the case was disposed of. A baseline for yearly comparison was established for 2015-16. These measures were available and are reviewed in Chapter Four of this report.

17 The four key priority areas were: access to justice; address harm and vulnerability; early intervention and rehabilitation; and tackling sectarianism, respect and identity. DoJ, *Research Agenda 2021-2024 July 2021* available at <https://www.justice-ni.gov.uk/publications/departmental-research-agenda-21-24>.

18 Northern Ireland Executive, *Draft Programme for Government Framework 2016-21, May 2016* available at <https://www.northernireland.gov.uk/sites/default/files/consultations/newnigov/draft-pfg-framework-2016-21.pdf>.

19 DoJ, *Corporate Plan 2019 to 2022 and Business Plan 2021 to 2022, April 2021* available at <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/doj-business-plan-april-21.pdf>.

20 CJI, *Avoidable Delay, June 2010* available at <https://www.cjini.org/getattachment/c0243f51-1e73-47e8-a6fa-344d5f0063c5/Avoidable-Delay.aspx>.

Organisational Planning

Police Service

- 2.7 The Northern Ireland Policing Plan 2020-25²¹ Outcome 1, 'We Have a Safe Community,' was the key strategy dealing with efficiency and effectiveness. Indicator 1.4 referred to the benchmarking of Police Service crime rates against previous Police Service levels and other most similar forces in England and Wales. Within this the Police Service expected to achieve an effective partnership with the PPS and the criminal justice agencies to deliver more positive outcomes for victims. This appeared to be a retrograde step from the 2019-20 Policing Plan which directly addressed (overarching theme 4) a more efficient and effective delivery of justice.
- 2.8 The Northern Ireland Policing Board no longer required the Police Service to prioritise and report on two key collaborative projects - the *Working Together* Project and the Indictable Case Process (ICP). The ICP was the criminal justice system response to improving Crown Court cases to ensure the production of higher quality investigation and prosecution files, reduce the number of adjourned hearings and trials at court, encourage earlier guilty pleas by defendants, and create a collaborative culture among key organisations in the criminal justice system.²²
- 2.9 The CJI 2015 report (paragraph 2.10) noted that:

'...there is an inevitable tension in respect of the structures of governance surrounding case file standards, with responsibility shared across a range of areas in the PSNI. In addition, Inspectors found there was no central co-ordination and accountability for management information and performance. There was also no single point of reference for performance in this area below the Deputy Chief Constable who is responsible more broadly for performance.'

CJI's *Working Together* recommendation had demonstrated that both organisations had committed to improving file quality, timeliness, and disclosure as fundamental to improving the overall justice system. It was disappointing that this area was no longer featured as a strategic priority linked to the Policing Plan. Senior police in interview²³ indicated that the Police Service was going to cut more than 300 officer posts by March 2023 with a further 115 fewer civilian staff. These cuts were in light of £23 million shortfall in the 2021-22 draft budget. The Chief Constable indicated that non-emergency calls may take longer to respond to and investigations could become reduced and slowed down. CJI had significant concerns regarding the longer-term ability for the Police Service to ensure the quality and timeliness of police files and how well disclosure would be handled.

21 Northern Ireland Policing Plan, 2020-2025 and Annual Performance Plan 2021-22, May 2021 available at <https://www.nipolicingboard.org.uk/publication/northern-ireland-policing-plan-2020-2025-and-annual-performance-plan-202122>.

22 Northern Ireland Policing Board, Annual Policing Plan for Northern Ireland 2019 -20, April 2019 available at <https://www.nipolicingboard.org.uk/publication/annual-policing-plan-2019-20>.

23 Police Professional, February 2021 available at <https://www.policeprofessional.com/news/psni-chief-constable-warns-300-officer-jobs-could-be-cut/>

PPS

- 2.10 The PPS annual Business Plan 2021-2022²⁴ had five strategic priorities which acted as a framework to drive how the organisation planned for outcomes and its approach to managing performance. The organisation focus was on continuously improving the way it works, with the outcome of the service operating efficiently and reducing the level of avoidable delay.
- 2.11 There were several initiatives addressing these strategic priorities including:
- achievement of Committal Reform Programme objectives for 2021-22;
 - ongoing development of the Police Service and PPS *Working Together* initiative, including scoping the potential extension of the key principles to additional file types;
 - ongoing development of ICP, including scoping the potential expansion of ICP offences in line with the Gillen Review and to support Committal Reform changes;
 - adoption of the National Disclosure Standards; and
 - implementation of the Criminal Justice System Northern Ireland Digital Strategy – phases two (sharing of digital material with the courts) and three (sharing of digital material with the defence).
- 2.12 The PPS planned to measure progress against objectives by:
- reviewing charges - percentage of 28-day charge cases where charge sheets are reviewed within at least three working days of first appearance;
 - timeliness of decisions issued (Regions/Serious Crime Unit) - percentage of decisions issued within agreed timescales by type of decision; and
 - decision information requests (DIRs) to Police - percentage of indictable/summary decisions where a DIR was required.
- 2.13 A key component of the PPS's legal quality assurance arrangements was the dip sampling of cases by Assistant Directors against their Prosecution Quality Standards (Standards), introduced in 2015. The Standards required several in-depth reviews to be carried out monthly. All cases for dip sampling were selected independently by statisticians from the Northern Ireland Statistics and Research Agency (NISRA). For example, during the year 2020-21, 309 cases were dip sampled. That review revealed that the quality of decision-making was high, with 97.7% of decisions assessed as being in accordance with the Code for Prosecutors (2019-20, 96.3%). The PPS had conducted several quality assurance reviews and reported yearly in their Annual Report and Accounts.²⁵

24 PPSNI, *Annual Business Plan 2021-2022, May 2021* available at <https://www.ppsni.gov.uk/files/ppsni/publications/PPS%20Annual%20Business%20Plan%202021-22.pdf>.

25 PPSNI, *Annual Report and Accounts 2020-2021, July 2021* available at <https://www.ppsni.gov.uk/files/ppsni/publications/PPS%20Annual%20Report%20and%20Accounts%202020-21.pdf>.

2.14 File quality, disclosure and delay were clear and defined strategic priorities within the PPS. The Inspection Team’s file review in Chapter 3 of this report, provides details of progress since 2015. The PPS appeared to have direct strategic aims linking to the improvement of file quality and disclosure.

Police Service and PPS shared governance

2.15 *Working Together* principles were fully adopted from 1 November 2019 and around 90% of summary files were *Working Together* files in 2022. The objectives were to:

- improve the quality of case files;
- improve the effectiveness of decision making; and
- reduce delay.²⁶

2.16 The organisations were monitoring performance with quarterly police decision maker/prosecutor meetings and joint quality assurance work. Both organisations were making ongoing changes to the level and standards of evidence to be contained in files (file build) as well as developing and improving a Service Level Agreement between both organisations. There were also other Memorandums of Understanding between specialist police and prosecution units regarding specific requirements for file builds and disclosure for example the Serious Crime Unit (PPS) and the Public Protection Unit (Police Service).

2.17 New innovations had been developed through joint working, including:

- new evidential standards for common summary offences were established;
- Police Decision Makers who provide disposal advice, review case file documents and assess the anticipated plea;
- jointly agreed file building based upon anticipated pleas;
- new processes for ‘no prosecution’ cases;
- a joint performance framework;
- early submission of 28-day charge files (target of 12 days which was a reduction of 33%); and
- early service of documents on defence solicitors to encourage more effective first court appearances and a reduction in the number of adjournments.

2.18 Some early key results included:

- a 50% reduction in files being returned from the PPS for further information;
- a 15% increase in files submitted within target;
- a 31% increase in charge files submitted within target; and
- a 35% reduction in the number of adjournments.

26 Northern Ireland Policing Board, minutes of a meeting of the Performance Committee Meeting held on 12 March 2020, March 2020 available at <https://www.nipolicingboard.org.uk/files/nipolicingboard/publications/performance-committee-minutes-12-march-2020pdf>.

Disclosure

2.19 Another significant part of *Working Together* was dealing with the disclosure issues highlighted in the 2015 inspection.²⁷ In December 2018 an internal Joint Police Service and PPS Disclosure Improvement Plan for Northern Ireland was agreed, which acknowledged that both organisations must work together, engaging with the wider criminal justice system, for any action to be effective. The foreword quoted the Mouncher Investigation Report²⁸ stating:

"Disclosure problems have blighted our criminal justice system for too long and although disclosure guidelines, manuals and policy documents are necessary, it is the mindset and experience of those who do disclosure work that is paramount."

2.20 The Disclosure Improvement Plan set out five themes: capacity, capability, leadership, governance, and partnership. These areas acknowledged the vast increase in the volume of digital material and the greater strain on the capacity for individual Police Officers and PPS lawyers to consider disclosure. Updated documentation, training, a Joint Disclosure Forum with leads from the police and prosecution and improving file quality and reducing avoidable delay with the creation of proportionate file build specifications, were all key developments. Performance in this area was also being monitored. This appeared to be a comprehensive strategic response to the disclosure issues identified in CJI's 2015 inspection. The file review in Chapter 3 specifically deals with disclosure issues and how well this area has progressed since 2015.

2.21 The Police Service advised that specific CJI recommendations relating to disclosure had been implemented by the Police Disclosure Working Group which had met regularly since November 2019. This included:

- revision to disclosure training provided to student officers and detectives;
- creation of a Central Disclosure Unit with experienced detectives overseeing file quality and disclosure in serious sexual offence cases;
- provision of bespoke disclosure and file quality training to PPS officers, from May 2021;
- a Disclosure Management Document pilot for complaints of rape submitted with a prosecution recommendation; and
- revision of consent forms and guidance in relation to digital and third-party material in collaboration with the PPS.

2.22 The PPS identified disclosure as a corporate risk²⁹ emphasising if disclosure was not dealt with correctly, the PPS were at risk of being unable to maintain the trust and confidence of criminal justice stakeholders and the wider public and their ability to deliver against strategic priorities.

27 CJI, *An Inspection of the Quality and Timeliness of Police Files (Incorporating Disclosure) Submitted to the Public Prosecution Service for Northern Ireland, November 2015*, available at <https://www.cjini.org/TheInspections/Inspection-Reports/2015/October---December/File-Quality-and-Disclosure>.

28 *Joint PSNI/PPSNI Disclosure Improvement Plan for Northern Ireland, December 2018*, internal document

29 *PPSNI, Annual Report and Accounts 2020-2021, July 2021* available at <https://www.ppsni.gov.uk/publications/annual-report-and-resource-accounts-2020-21>.

- 2.23 The CJB provided a strategic platform for joined-up planning on key criminal justice system issues. The PPS and Police Service, Minister of Justice, Lady Chief Justice and the DoJ Permanent Secretary met regularly and provided updates around their own internal developments and initiatives. However, this forum also provided the space for a joined-up strategic approach to deal with business continuity and the backlog of cases caused by the pandemic restrictions. A significant development was the expansion of live evidence to be given remotely through Live Link. For example, bail applications were heard remotely from police stations instead of physically bringing defendants to a courthouse. Stakeholders interviewed had indicated that this was a very positive step in reducing delay and the demands on all the criminal justice system agencies however, there was a concern raised that the absence of a working Northern Ireland Executive and the inability to create new legislation would stymie further progress in this area.
- 2.24 The Video Live Link project was a major step forward in reducing delay by removing unnecessary steps in the criminal process. Implementation of this approach was accelerated by the pandemic rather than through long-term strategic planning however it did demonstrate that, when the key criminal justice partners focused on a particular issue of mutual concern, significant improvements could be quickly achieved.
- 2.25 The many CJI and other report recommendations and key developments in other jurisdictions, as outlined earlier in this report, demonstrated a lack of strategic cohesiveness and ambition to drive improvement and tackle avoidable delay in Northern Ireland. The pandemic showed what could be achieved in a crisis.

STRATEGIC RECOMMENDATION

Within six months of the publication of this report, the Criminal Justice Board, while respecting each member's independence, should jointly agree a new criminal justice system vision and strategy to improve quality and reduce delay at each stage of file preparation and disclosure.

The Police Service of Northern Ireland and the Public Prosecution Service for Northern Ireland must have an effective partnership to deliver the performance improvement and accountability needed at every stage. The Criminal Justice Board, effectively supported by relevant leaders from each member organisation and the Judiciary, should robustly monitor outcomes.

The member organisations should underpin this vision and strategy delivery by introducing clear targets, reflected in each organisation's Corporate and Business Plan priorities, that address the issues evidenced in this report and previous report recommendations not yet implemented.

The member organisations should adopt a Case Progression Commitment Document for Northern Ireland to set quality standards, meaningfully monitor system performance and agree improvements to support case progression.

CHAPTER 3: DELIVERY

THE JUSTICE JOURNEY

- 3.1 The Inspection Team reviewed 100 police files and 100 prosecution files. The question set was formulated in chronological order from the initial report of a crime to a case appearing at Court. The Inspection Team was made up of two CJI Inspectors, two HMCPSI Inspectors, two PPS Prosecutors and three police officer Gatekeepers. The team adopted an open discussion approach which allowed for an exchange of expertise and general team discussions when required. There were 45 questions in the police file review and 55 in the prosecution file review. The Inspection Team selected the data that best reflected the key findings and all team members contributed equally to these findings.
- 3.2 The 100 police files were randomly selected from a list of all cases from an 18-month period up to the file review date. One quarter of the cases selected were Crown Court cases and three quarters were Magistrates' Court cases to reflect that most cases dealt with by the police were volume crime cases which represented cases, through sheer volume, that had a significant impact on the community and the ability of the local police to tackle it. Volume crime often includes priority crimes such as street robbery, burglary and vehicle-related criminality, but can also apply to areas such as criminal damage, theft or assaults.

The Policing Stage

Initial responses and investigation

- 3.3 The cases were generally allocated to the correct teams within the Police Service with 99 cases out of 100 being dealt with by the appropriate police team. In cases that were marked for quick disposal (*fast-track* cases in both Crown and Magistrates' Court), in those that should be streamlined for early disposal, 10 did not have fast track action completed as it should be. For example:

Case Example

Police were called to an assault outside a bar where the injured party suffered a fractured hand. Police did not obtain the CCTV from outside the property that was available from the outset of the case however it was during the Christmas period and COVID-19 restrictions had been re-imposed. Although the case was ready for prosecution for a long time, the issues around the pandemic meant that the defendant was not charged with an offence until eight months after the original report. While COVID-19 played a part in the delay in this case, the Inspection Team considered that eight months was too long for such a straightforward case.

3.4 Inspectors found overall improvement in the use of the Occurrence Enquiry Log (OEL) from the 2015 inspection. These were records of key events in a case. They were easier to read when completed appropriately and helped provide a good understanding of a case. Inspectors found the best examples demonstrated a narrative about the crime committed, all police actions taken to that point and planning set out in a logical manner that was easy to read. There were 10 cases which did not best reflect the initial investigation. As the case progressed the OEL log should be updated. All Crown Court cases met or partially met that standard; 13% of the Magistrates' Court files did not meet this standard.

Case Examples

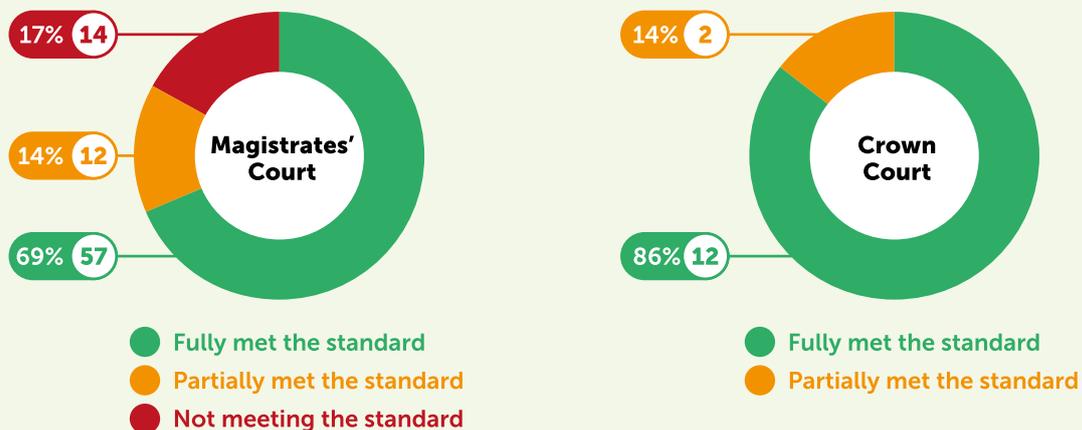
One good example showed easy-to-read notes being marked on a file from different Police Officers with good supervision which allowed this file to be sent in a complete manner to the PPS for an early decision to be taken. It was apparent that this approach provided a good platform for the Police Officers in the case to be confident in the actions they were taking; it made a clear and logical plan to deal with their case; and the Police Officers were supported by a more experienced senior colleague.

In an example of poor practice, the OEL showed a running dialogue between a Police Officer and their supervisor that was inappropriate for a document that may be disclosable. There was a clear breakdown in communication regarding the investigation and this led to a file that was poorly prepared for the PPS.

Investigation follow up - lines of enquiry

3.5 Following on from the initial response, pursuing all lines of enquiry was required by the police. This provided a basis for providing a fair trial and should be done in a logical way. A good plan set out at the outset of a case with good notes on the computer system was essential. Chart 1 shows the numbers of cases in which all reasonable lines of enquiry were followed.

Chart 1: All reasonable lines of enquiry were followed.



3.6 In the Crown Court, out of the 14 relevant cases, 12 (86%) were considered to have met this standard and the remainder partially met the standard which gave some reassurance that the more serious and complex cases were receiving the appropriate level of follow-up enquiries. Of the 83 relevant less complex/ Magistrates' Court cases, 14 (17%) of cases were found to have not followed all reasonable logical lines of enquiry at the time of review. This provided an indicator of poor investigation and/or a lack of recording and supervision.

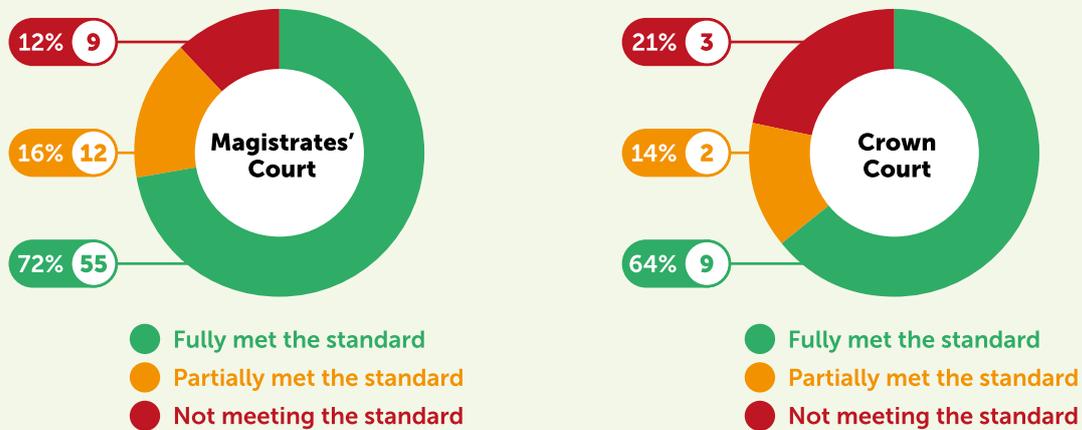
Case Example

An example of one of the files not meeting the standard was a case in which a neighbour saw an individual trying to get into her car while intoxicated but was disturbed by another neighbour. Police did not conduct a house-to-house enquiry and failed to speak to the eyewitness. There was no rationale recorded as to why this line of enquiry was not pursued by the police.

Timeliness of enquiries

3.7 Chart 2 shows the rates of timeliness for enquiries to be made.

Chart 2: The enquiries were carried out in a timely manner.



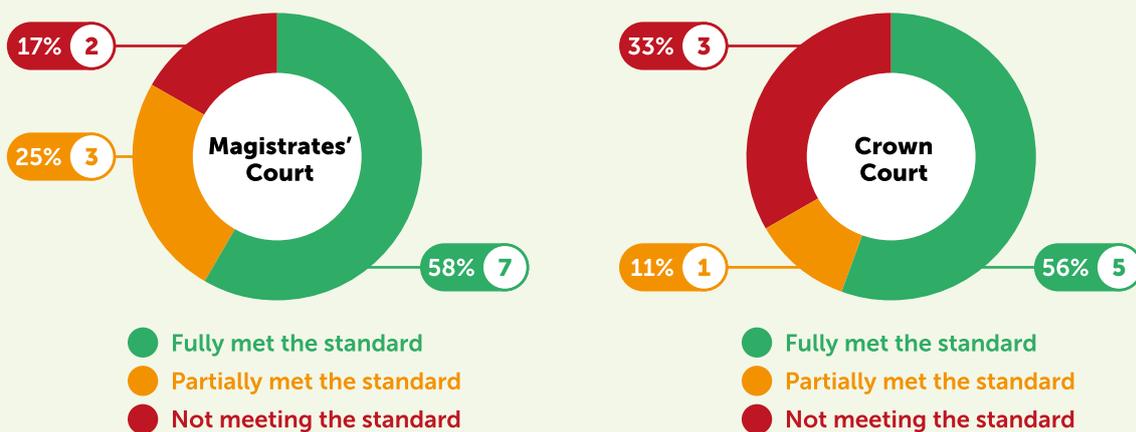
3.8 The Inspection Team found that in the Crown Court only 64% of case enquiries were being carried out in a timely way whereas this figure rose to 72% of cases in the Magistrates' Court case level. These provided an indicator of delays in both serious and less serious cases. Some Police Officers interviewed indicated that police resource pressures and the lack of time in which to focus on the quality of work, meant that they focused on getting 'numbers' done. Police Officers have been able to put this into some context by their often carrying out numerous roles in restricted times and mounting pressures with a lack of support.

3.9 When witness statements were provided, generally they were of appropriate quality. This accords with the overall views of the legal profession who the Inspection Team liaised with, that there were no major concerns being raised except for isolated examples of poor practice. Ninety-six per cent of Magistrates' Court level cases complied fully or partially with the Police Service guidance and 100% of the Crown Court statements met or partially met the standard. This showed that elements of quality had improved as part of the *Working Together* project.

Expert evidence

3.10 Expert evidence, where needed, is a critical part of a case. It includes forensic evidence and medical evidence both of which were cited by the legal professionals as key causes of delays in making decisions and progressing cases at court. Streamlined processes had been promoted by the police and prosecution for example, a shortened version of forensic drugs reports which in turn aided the defence lawyers to advise their clients. Other forms of forensic evidence particularly digital evidence were more problematic. As discussed in CJI's Cyber Crime report³⁰, there were significant delays in obtaining evidence from mobile telephones, and with the continued growth of social media, there were increasing pressures on the police causing delays in progressing cases. This was particularly relevant in sexual violence cases but also became more relevant in less complex cases including, for example, domestic abuse cases. In these types of cases, avoiding delay is critical. Chart 3 shows the results of this review.

Chart 3: Expert evidence was requested and chased in a timely manner.



3.11 Of the nine relevant cases in the Crown Court, three of the cases did not meet the required standard. Of the 12 relevant cases in the Magistrates' Court 10 had requested and chased expert evidence in a timely manner either fully or partially. No issues were found regarding the quality of any expert evidence. The legal profession when interviewed cited delays caused by basic evidential gaps that prevented cases being progressed at court. One suggestion from

30 CJI, *An Inspection of how the Criminal Justice System deals with Cyber Crime in Northern Ireland, 2017* available at <https://www.cjini.org/getdoc/72f540b8-abb6-4e47-813c-78c99aeb4f0e/Cyber-Crime>.

defence practitioners was greater involvement with the defence from the outset of cases, including at interview and investigation stages. Court data did not routinely record adjournment reasons and delay being attributable for specific reasons for example, forensics outstanding, referring to either the prosecution or defence requesting an adjournment.

Police interviews

- 3.12 Interviews played a significant role in gathering evidence and information and were an opportunity for both the police and the defence to put forward their cases. It also provided witnesses and victims with important information, for example, about court proceedings, protection of identity, special measures, disclosure, intermediaries, and witness protection³¹. This also helped focus lines of enquiry and, if the defence representatives spoken to by the Inspection Team were to be taken at their word, an opportunity to have their queries addressed long before a case went to court.
- 3.13 Overall, of the 81 relevant cases, there were eight instances where the interview was not completed in a timely manner for example suspects were released on street bail to be later interviewed voluntarily which was commonplace in this jurisdiction. Whereas, in England and Wales there was a greater degree of formal interviewing under arrest and when the evidence standard was sufficient, a higher rate of charging. This was an important distinction as it took longer for cases to be dealt with when a summons was issued compared to when a defendant was charged at the police station. Statistics³² showed:
- In 2021-22, Crown Court cases took on average 535 days to be dealt with when the defendant was charged. This was up from the previous years: 470 days in 2020-21; 410 days in 2019-20 and 416 days in 2018-19. The average time for Crown Court cases to be dealt with when a summons was issued was 1,029. That was a large increase from 939 days on average in 2020-21, 861 days in 2019 and 866 in 2018.
 - In the Magistrates' Court, in 2021-22, it took 108 days for a charge case to be dealt with. This was an improvement from the 122 days in 2020-21 but remained relatively high when compared to 72 average days in 2019 and 70 days in 2018. Summons cases took 288 days on average (up from 212 days in 2020-21, 178 days in 2019 and 201 average days in 2018).

The pandemic had a bearing on these figures, which is further discussed in Chapter 4 of this report, however, summons cases took more than two times longer than charge cases in the Crown Court and around two to three times longer in the Magistrates' Court. This was another key indicator of delay and also demonstrated the capability of the criminal justice system to move quicker when required.

31 The College of Policing have full guidance on interviews and the principles to be observed. Full details can be found online at <https://www.college.police.uk/app/investigation/investigative-interviewing/investigative-interviewing>.

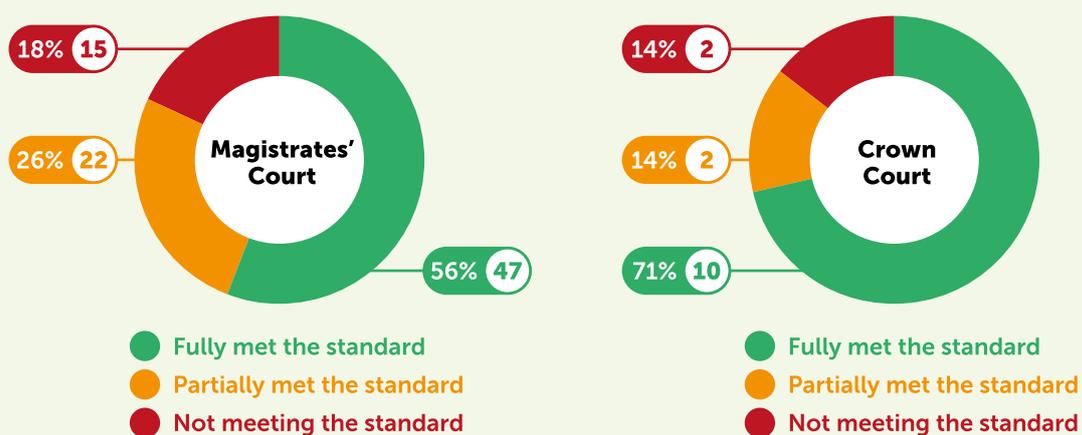
32 DoJ, *Case Processing Time for Criminal Cass dealt with at Court in Northern Ireland 2021-22* available at <https://www.justice-ni.gov.uk/topics/statistics-and-research/prosecution-and-conviction-statistics>.

3.14 There were generally no issues with interviews being conducted appropriately, with only four relevant cases in which some improvement on interview technique was required. Problems were identified often beyond the direct control of Police Officers, for example in one case there was a significant delay due to the mental health status of a defendant. COVID-19 also caused delay in some cases. In a domestic abuse case, the Police Officers had difficulty in obtaining a statement of complaint which delayed the interview significantly.

Supervision

3.15 The 2015 CJI inspection identified front-line supervision as a weakness and recommended support for supervisors. Good supervision is critical in terms of file quality and timeliness and was usually carried out at Sergeant level. The police Gatekeeper role supported the *Working Together* ethos by providing assistance for file quality. This had worked very well for key areas and departments such as the Serious Crime Unit team in the PPS, which had very close working relationships with police units dealing with similar areas. Both organisations noted an improvement of the quality of files and evidence being sent/received. In this regard, there was a perceived improvement in *Working Together* however, the Inspection Team were concerned that this gatekeeping role was being 'rolled back' to keep the focus on the serious cases only. This meant the onus fell to Sergeants to ensure quality control and timeliness in most criminal cases. Front line Sergeants expressed concerns that they needed more support and resources to dedicate the extra time they needed. Chart 4 provides some insight into how well supervision was conducted in the file review.

Chart 4: The supervisor provided appropriate feedback to progress the case.



3.16 Of the relevant cases, two out of 14 Crown Court cases did not have the appropriate level of feedback recorded. This was a relatively good result in comparison to the Magistrates' Court level cases. Overall, 44% of these cases did not demonstrate sufficient levels of feedback to progress the cases reviewed. This was a poor result and was a strong indicator that the steps taken to improve supervision had not been successful.

- 3.17 There were standard timelines for supervision which had to be carried out on files. Eight of the 100 cases examined did not have clear evidence of any supervision. The Inspection Team were of the firm view that getting early supervision ensured expedited cases, good plans to follow lines of enquiry and support for officers to become efficient and helped to reduce overall delay in the criminal justice system.

Case Examples

An example of poor practice involved a case of an elderly lady who reported to staff at a local shop that a relative had held her against her will at home under threat with a knife. Police took an initial account from the victim who later became too unwell to help the police with further enquiries. The OEL had an entry referring to another case of a hearsay statement which suggested that the victim may have dementia. There were references to texts that the victim sent which denied the offence took place however, these were never obtained. Staff members were not followed up to obtain statements. The poor initial response was compounded by poor supervision. The prosecutor's form which gives a prosecutor a full background to a case, was not signed off by the supervisor and overall, there was no evidence that the supervisor was addressing the shortcomings of the officer's initial investigations/response.

In a review of a separate, more serious file there was an allegation of rape, serious assaults and false imprisonment, there were several issues with a poor file build. Lines of enquiry were not completed properly requiring significant Decision Information Requests³³ (DIR), and there was a lack of appropriate supervision recorded on file. This by itself may have had a significant impact on the progression of the rape file with no overall strategy being agreed in how to deal with all the issues. The case took too long to submit and when it was sent, there were too many pieces of evidence that had not been considered. The initial rape case that followed after these initial responses had some good entries, but this highlighted the lack of appropriate supervision after the initial responses.

- 3.18 There were several examples of good supervision which ranged from keeping a Police Officer focused on the evidential requirements in a case to providing positive feedback on good work done by Police Officers. However, the concerns from 2015 remained and with the reducing role of Gatekeepers, Inspectors were concerned for the levels and quality of supervision being provided to the less experienced Police Officers that needed their support. Further to and in support of the recommendations made by CJI in the 2015 file quality inspection and HMICFRS's 2017 Peel inspection,³⁴ CJI considered this area needed immediate attention.

³³ A DIR is a request by the PPS for more information that is needed before a decision can be made.

³⁴ *Ibid.*, 2, 4.

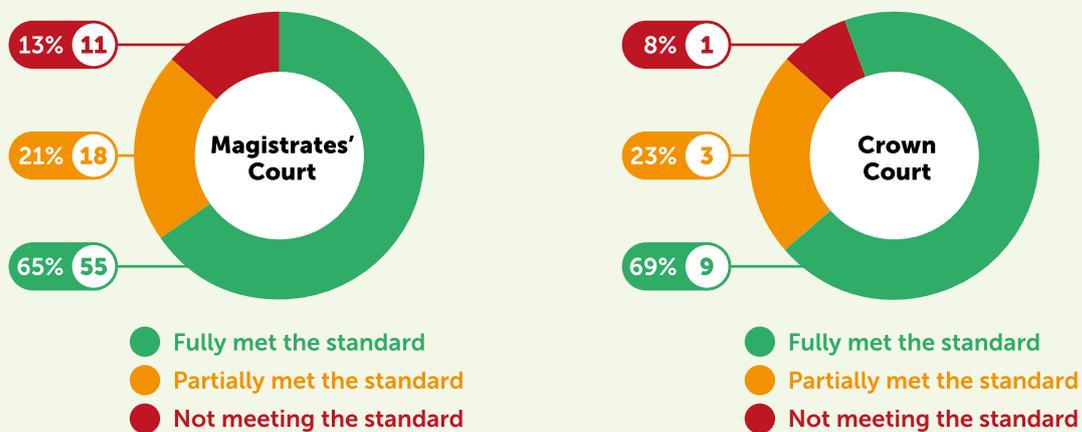
OPERATIONAL RECOMMENDATION 1

Within six months of report publication the Police Service of Northern Ireland should provide a programme for enhanced training and ongoing support for supervision as part of new quality assurance measures to tackle quality and delay within the Police Service of Northern Ireland.

Case progression

3.19 Progressing cases efficiently and effectively was considered by the Inspection Team as shown in Chart 5.

Chart 5: The case was progressed in a timely manner.



3.20 In 65% of Magistrates' Court files delay was not identified and they were dealt with appropriately; 18 (21%) partially met the standard. This meant that one in three of all cases did not progress sufficiently in a timely manner with issues causing delay not being expedited and escalated appropriately. This was a poor outcome and a strong indicator that more work was still needed to resolve getting files case/court ready, which should be addressed within the *Working Together* forum.

Case Examples

A statement outlining how a Police Officer took an exhibit to the forensic laboratory was not requested in a timely manner. This required a DIR by the directing prosecutor after a not-guilty plea was entered. Four weeks later the defence indicated they would no longer be contesting any of the evidence, so the continuity was not required.

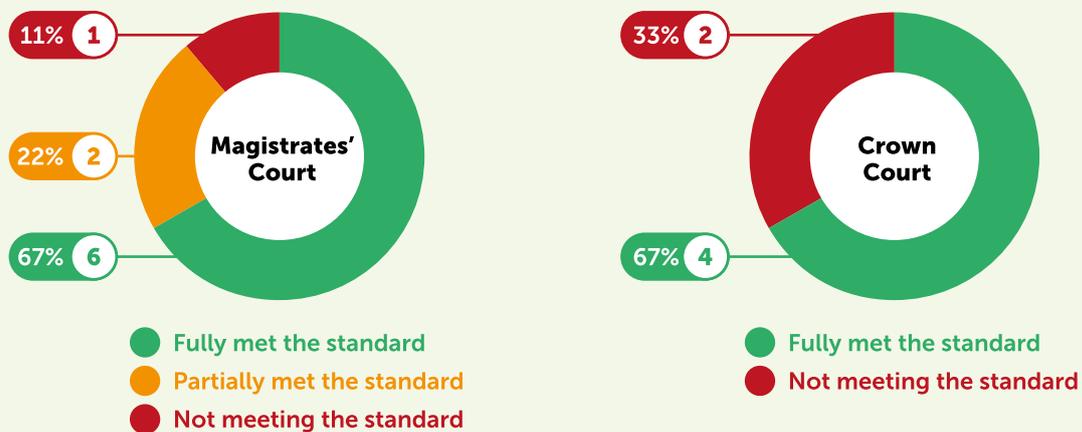
One good example showed a supervisor making good OEL entries reminding the Officer in a case about their duty to pursue lines of enquiry in an efficient manner and to chase up outstanding enquiries. However, in another case it took too long for a Police Officer to get details of a phone in which there was potential photographic evidence when there were other photographs and statements available on which a decision could have been taken without any delay.

3.21 In only one Crown Court case the standard was not met, three partially met and nine fully met the standard, suggesting that cases had a greater degree of attention and focus on this level but still more work was required to improve on delay.

Early engagement with PPS

3.22 Another key element of the *Working Together* recommendation in the 2015 inspection report, early engagement, required close co-operation to build files to jointly agreed (police/prosecution) standard. The concerns from 2015 included a reluctance or reticence from the Police Service and the PPS to communicate with the other. The Inspection Team heard similar feedback in 2022. Chart 6 shows the outcome of 2022 file review.

Chart 6: There was early engagement with the PPS where appropriate.



3.23 There were nine relevant cases at the Magistrates' Court level of which eight met, or partially met, the standard for early engagement. Six of the Crown Court cases were relevant to this question of which four met the standard and two did not. Despite the low number of relevant cases, this was a poor indicator given that more serious cases required very close working relationships within the Prosecution Team.

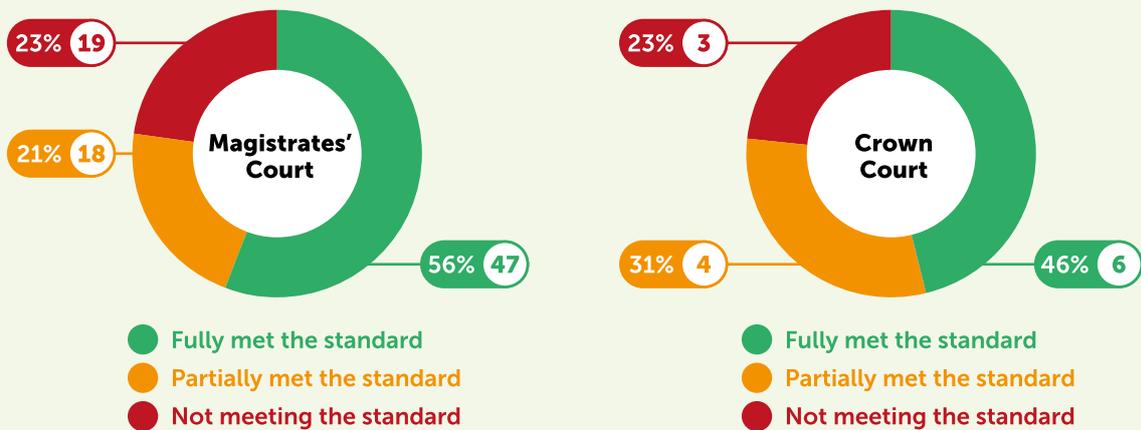
3.24 This was at odds with positive feedback received from both organisations that there was open and helpful communication between Prosecutors and Police Officers in complex cases and sex offence cases. In less complex cases front-line officers told the Inspection Team that they often struggled to identify individual Prosecutors in their case and would welcome greater open communication with those making decisions. This element of communication should be a focus for the *Working Together* team.

3.25 The engagement (with the PPS) should be appropriately recorded to provide good evidence of information flow. Three of the five cases at Crown Court met this standard and four of seven at Magistrates' Court level met the standard fully. Recording continued to be an area of concern for the Inspection Team. This was a common feature of CJI's file reviews and the need for appropriate recording was a significant issue for the Prosecution Team.

File Build

- 3.26 Once a file was submitted to the PPS, there was an expectation that the files met the agreed *Working Together* file-build standards or in the case of indictable cases, that there was sufficient evidence in the full file for a prosecutor to make a decision. It was important as it removed an element of doubt as to what should be included on a file as standard and with greater certainty came more efficiency. A Service Level Agreement adopted between the PPS and the Police Service showed what should be included in every file depending on if it was considered a Guilty Anticipated Plea – at court (GAP) file or NGAP file.
- 3.27 The Inspection Team examined all aspects of file building including gathering of evidence to enable the PPS to make a decision, completing appropriate entries on the OEL, recommending the correct charges and type of case and all aspects of a case that required case building. Chart 7 shows how well the police complied to the agreed file standards in the file review.

Chart 7: Agreed file build standards were met. Where there was no file build standards there was sufficient evidence on file to enable the PPS to take a decision.



- 3.28 Only 46% (six of 13 cases reviewed) of the Crown Court cases met the agreed file build standards. This meant that 54% of complex cases reviewed did not have the required level of evidence for a prosecutor to make a decision. The Magistrates' Court level cases were less complex and should be more straight forward however, 44% of those cases reviewed did not meet the standard or only partially met the standard. This was a poor outcome and reflected poorly on the progress of the *Working Together* initiative.
- 3.29 Police were marking files to identify whether a case was going to be a guilty or not guilty plea. All Crown Court cases were marked correctly. One out of every four were not marked correctly at the Magistrates' Court level. This reflected some of the commentary from Prosecutors suggesting that many files were not marked correctly, which meant they had to request more information which caused delay and wasted time as decisions could often not be made without all the evidence which should have been sent.

Case Example

In one example police were called to a children's home regarding the behaviour of a child in the home. At no point were the offences admitted but a GAP file was submitted. This meant that reduced levels of statements and evidence were required to be submitted which significantly reduced the burden on a Police Officer. However, this required the Prosecutor to request a full file and the Police Officer had to gather the evidence in any event causing more delay to both victims and the young person in this case.

3.30 Poorly prepared files often resulted in Prosecutors requesting more information before a decision can be made through a Decision Information Request (DIR) or a Post-Decision Information Request (PDIR³⁵). This added to delay. Prosecutors had concerns that files were being marked GAP out of convenience as they were streamlined requiring less work for a Police Officer to compile. From Police Officers' viewpoints, the Inspection Team were made aware of requests from Prosecutors for more evidence that was immaterial to the furtherance of a case and that decisions could be taken regardless of such requests. This was disappointing as it echoes the same feedback received in 2015 and demonstrated that pathways to communication were still not well enough developed.

3.31 The outline of a case should be of a good standard, giving salient facts in a logical manner. The legal professionals interviewed indicated that the new Structured Outline of Case (SOC) was a significant improvement and was a good aid to getting to grips with the case which in turn helped to progress cases quicker. Similarly, the Prosecutors Information Form (PIF) was developed to give a greater insight into a case for the Prosecution Team. It was important that this was completed correctly so that Prosecutors could be assured that all matters in a case had been fully considered when making a decision. It was disappointing that the Inspection Team found that when looking at whether the SOC-PIF was completed appropriately, only 54% of all the cases reviewed fully met the standard; 13% did not meet the required standard at all and 33% partially met the standard.

Bail

3.32 Bail is considered in depth in a separate CJI inspection published in January 2023³⁶, however the Inspection Team found gaps in the recording of rationale around bail. In 81% of Magistrates' Court cases appropriate consideration had been given with rationale recorded fully or partially. In the Crown Court, 79% met the standard or partially met the standard. In interviews, PPS staff and Prosecutors referred to bail being a primary concern for the police whereas, Police Officers felt that bail was the responsibility of the PPS. In the PPS file review there was a complete absence

35 A Decision Information Request (DIR) is issued by PPS to police where the evidence and information contained in an investigation file is incomplete and a further written report or action is required before a prosecutorial decision can be taken. A 'PDIR' is a Post Decision Information Request. PDIRs are designed to allow the PPS to ask the PSNI to gather additional evidential material or provide other information required at some further stage in the prosecution process (e.g., for trial).

36 CJI, *The Operation of Bail and Remand in Northern Ireland, 11 January 2023* available at <https://www.cjini.org/TheInspections/Inspection-Reports/2023>.

of notes regarding Crown Court bail and Inspectors were concerned that decisions around Crown Court bail were being conducted between an Officer in the case, the defence and prosecution counsel without a Senior Directing Prosecutor ever becoming involved. The CJI report on the operation of Bail and Remand in Northern Ireland should go some way to clarify the responsibilities around bail and improve the recording of bail issues found in this inspection.

Sending the case to the PPS

- 3.33 There was an agreed time frame to send files to police administrators in the Occurrence and Case Management Team (OCMT) to process the file digitally and send it to the PPS system. All the Crown Court cases were submitted on time and 82% of Magistrates' Court cases met the time limits. This did not account for the time the investigation had taken. That area is considered in Chapter 4 of this report.
- 3.34 There were no concerns found regarding how OCMT were processing these files to be sent to the PPS, but OCMT staff were concerned that staff shortages had meant that files were being processed without quality control. OCMT staff indicated that they had previously provided some quality feedback as to inadequate file builds and embarked on specific projects of sending inadequate files back to Police Officers and their supervising Sergeants to remedy. This helped to drive up standards through the supervising Sergeants, but the lack of resources at the time of inspection meant that these types of projects were no longer possible.

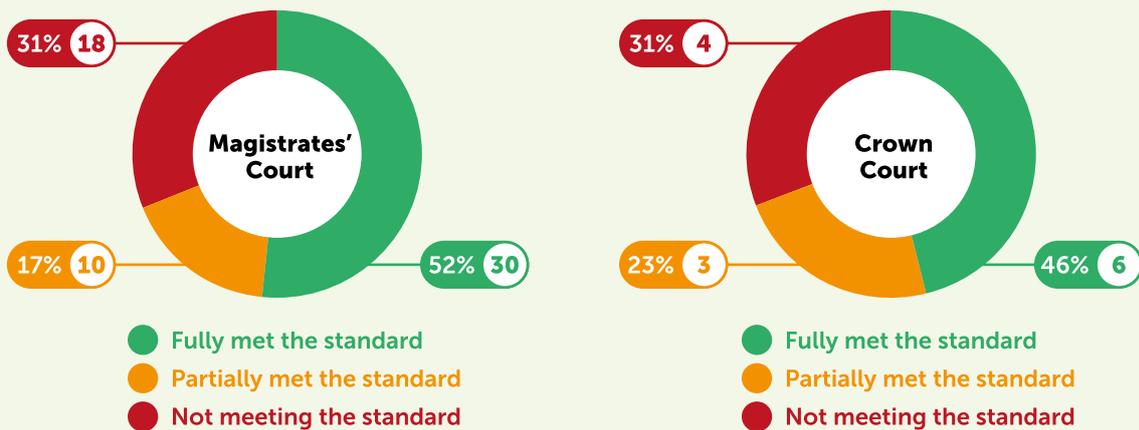
Disclosure – the policing perspective

- 3.35 The importance of disclosure was highlighted in a 1988 murder investigation case managed by South Wales Police which resulted in an extensive investigation into police corruption. The trial collapsed due to failings in the disclosure of sensitive material. This resulted in several reviews of what had failed in the case, in particular one by the Independent Police Complaints Commission and one by HMCPIS. Several recommendations from these reports were adopted within the criminal justice system in England and Wales by the police and the CPS. Following the conclusion of the Civil Court case into the collapsed trial, the then Home Secretary commissioned Richard Horwell QC to investigate the overall response to these two reports and the recommendations contained within them. The report³⁷ identified the need for a change in culture when approaching disclosure, making it a fundamental and continuing part of all investigations. Recommendations identified several themes which included: training and accreditation, closer liaison and better information sharing between the CPS and the police, greater accountability, the handling of third-party material and the adoption and use of a better digital case management system.

37 Richard Horwell QC, *Mouncher Investigation Report*, July 2017 available at <https://www.gov.uk/government/publications/mouncher-investigation-report>.

- 3.36 Disclosure was an issue of concern in CJI's 2015 inspection and resulted in a specific recommendation to establish a Disclosure Unit. This aimed to address the lack of application of disclosure rules and highlighted the need to improve the awareness and consideration of disclosure generally, particularly among those Police Officers who believed that they rarely needed to consider it.
- 3.37 Front-line Police Officers openly expressed their frustration around not having enough awareness and learning around disclosure. They explained that they would not know where to go to request help other than their own colleagues or supervisor. Supervisors expressed similar sentiments. The PPS indicated that they were open to greater co-operation in this regard, but it was clear that the recommendation from 2015 to have a Prosecution Team approach to disclosure through the establishment of a Disclosure Unit had failed to be sufficiently developed at the time of inspection. An agreement was unable to be reached on how the unit was to be resourced. In a determined effort to address this area, a Disclosure Unit *had* been created in 2021 with numerous positive initiatives created to drive disclosure standards across the Police Service, but the Police Service Senior Management Team had not given an indication that this unit would be provided funding going forward. The PPS and the Police Service management teams had made significant investment in time and senior resources, however it was clear that this had not materially changed the results of this inspection file review.
- 3.38 Chart 8 shows how well the entire area of disclosure was dealt with generally.

Chart 8: Overall was disclosure dealt with appropriately?



- 3.39 Only 46% of Crown Court cases were dealt with appropriately and this only rose to 52% at the Magistrates' Court. This was a poor result.

Case Examples

One example seen by the Inspection Team was a case where a security guard reported he was assaulted by a male carrying a whisky bottle. CCTV was available but not sought or requested before the file was sent for a decision. This was missed by supervision also. A prosecution was recommended. The CCTV did not support the injured party's version of events and undermined the prosecution case. A Disclosure Officers' report was not completed, and Sensitive/Non-Sensitive Schedules were supplied, but not signed. The Police Officer's report should have highlighted the relevance of the footage as a weakness in the prosecution case. In cases such as these, Inspectors were concerned that offences were being put to defendants without full appreciation of all the available evidence.

In a more serious case, disclosure was not completed at the initial submission of a charge file. The Disclosure Officer's report was blank and there was no reference to the intelligence that led to the search on the sensitive disclosure schedule. Disclosure should have been supplied at the submission of the file and updated on receipt of new evidence. The Investigating Officer did not submit any disclosure documents until nine months after the initial charge.

- 3.40 On a more technical level, of the 13 relevant Crown Court cases, 38.5% of the cases did not have an appropriate Disclosure Officer's report and schedule. Half of all Magistrates' Court cases did not have appropriate reports or schedules. Examples followed similar trends with no schedules attached. This was poor practice and caused delays in the criminal justice system on an end-to-end basis. When new pieces of evidence became available, the schedules needed to be updated. There was evidence that this was done in three out of five Crown Court cases reviewed and 13 out of 20 relevant Magistrates' Court cases.
- 3.41 Files marked incorrectly, disclosure schedules not being provided and/or updated formed part of a wider problem in the criminal justice system as identified in the 2015 inspection. Throughout the fieldwork stages of this inspection, Inspectors were told that disclosure issues were being resolved at court between the prosecution, defence and Judiciary. This, it was explained to the Inspection Team, may be partly why there were so few examples of cases being 'thrown out' because of disclosure failings. There were notable exceptions of cases reported in the media which failed through a lack of disclosure.
- 3.42 In 2016 the Criminal Cases Review Commission, the organisation set up to investigate suspected miscarriages of justice, stated that the most frequent cause of miscarriages of justice was "failure to disclose to the defence information which could have assisted the accused".³⁸ In this jurisdiction fixing the lack of application of Disclosure Rules at courts, does not provide Inspectors with sufficient confidence that potential serious failings or miscarriages of justice will be prevented in the future. A Police Service Central Disclosure Unit training report

38 *Criminal Cases Review Commission, Commons Select Committee, 2016* available at <https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/859/85905.htm>.

identified the key issues as raised by CJI in 2015. The roll out of training had begun across a range of police departments from the end of 2021 and into early 2022 with e-learning being made available from Spring 2022. However, as discussed in Chapter 2 of this report, there was uncertainty around the long-term commitment to this Disclosure Unit. The findings of this report and file review demonstrated that more work was required.

- 3.43 The Prosecution Team have failed to implement the 2015 recommendation. Initial attempts to establish a Disclosure Unit had failed. The Police Service and PPS were unable to agree on an appropriate structure and resourcing for this unit. We repeat this recommendation and furthermore recommend that it is given higher strategic priority to ensure long-term compliance with disclosure obligations. The Prosecution Team need to sufficiently deal with their own challenges before they will be able to meaningfully improve the procedures and issues they face at Court.

Decision Information requests (DIRs) and Pre-Decision Information Requests (PDIRs)

- 3.44 When a file was submitted by the police correctly to the PPS, within the agreed file build standards, and all appropriate lines of enquiry have been taken, a decision can be made without delay. There were several reasons why a file was submitted without the required information for example, in a charge case where further statements could not have been taken within a short time frame or more regularly, when medical, forensic, or digital (phone/computer) evidence was stuck in a long queue of requests of a similar nature. When there were shortcomings in the quality of the files and there was not enough information on which to make a decision, a Prosecutor will request a DIR to the officer in charge. If there was enough evidence to make a decision but more information was needed, then a PDIR was sent.
- 3.45 The number of requests had previously been considered by the Prosecution Team as a measure of file quality, but the Inspection Team believed this to be only one indicator of quality. Police Officers admitted to Inspectors that sometimes files were sent to the PPS 'to see' what more was needed on a file. This was a poor reflection on supervision within the police. Prosecutors described this as using the PPS as an 'MOT' service – or in other words replacing the role of police supervisors on file submission. Police Officers explained they felt some requests were not required or not relevant without providing specific examples. Prosecutors similarly pointed out that if everything was on the file that they needed, then a decision could be taken without delay. This was at the core of the 2015 recommendation for *Working Together*, whereby any Police Officer would have direct access to prosecution thinking and vice-versa to remove any doubt and uncertainty. This was less of an issue in England and Wales where Prosecutors were available within police stations for advice and guidance on file build and file quality. In Northern Ireland, this role was to be fulfilled by supervisors and Gatekeepers, but as discussed above, supervision was still not operating as it should and the Gatekeepers' process was being rolled back to focus on key policing areas.

- 3.46 It is imperative that the entire system works together. Defence representatives indicated to the Inspection Team that they need to be involved at the earliest stages of cases to properly advise clients and ultimately reduce the amount of delay in the system by agreeing relevant evidence at the earliest stages of cases. Inspectors agreed with the defence legal professionals that they should be routinely involved in areas of file build, for example where a medical statement may not be required in every case which would reduce the pressures on National Health Service staff and delay in courts. This was an area that required longer-term resolution at a strategic level.
- 3.47 Only 53% of the DIRs/PDIRs were appropriate in the Crown Court files; 31% were not. The remainder partially met the test applied. At the Magistrates' Court 77% (41 cases) of requests were appropriate, 13% (seven) were not. This meant that requests were often being made of the police that were not appropriate, and that cases were being delayed unnecessarily. Reasons provided included defence applications, prosecution applications, lack of clarity/recording on files, all issues which need to be resolved better by all parties if the issue of delay is going to be meaningfully addressed.
- 3.48 DIRs and PDIRs all had associated time limits for responses as agreed between the prosecution and police. Police were struggling to comply with the time limits to get responses back to the PPS. Police Officers indicated that they felt that requests could be avoided with a phone call (both ways) to resolve most issues. Inspectors agreed and the statistics above and in 2015 bore this out. Police Officers further indicated that their time was so pressurised that revisiting old cases, when they were continuing to get large amounts of new cases, was difficult to manage. Only 46% of Crown Court case requests were responded to on time, there was a 64% compliance rate with Magistrates' Court cases. This needed to be improved by the Prosecution Team.
- 3.49 When responses were made, they were largely appropriate and accurate with 98% of responses meeting the standard or partially meeting the standard at the Magistrates' Courts and 92% compliance at the Crown Court although the figures were lower with only one case deemed to have an inappropriate response. This suggested that overall and when considered with further insight from a Prosecutor or supervisor, the information was obtained and appropriately dealt with. Inspectors view was that the greater involvement of supervision and the PPS was a readily available solution ensuring better quality and less delay.
- Indictable Case Process (ICP) – dealing with delay in the most serious of cases***
- 3.50 The Indictable Case Process, co-ordinated by the DoJ, aimed to speed up the criminal justice process as an inter-(justice) agency initiative. CJJ were requested by the then Lord Chief Justice to identify the reasons for delay and reported that while there were issues at each stage in criminal proceedings, most of the delay occurred during the investigation and case preparation stages.

The ICP pilot which operated during 2015 demonstrated a significant improvement in those cases focused on, with a 30% reduction in time from report of crime to the court disposal. The cases that were suitable for this process at the time of inspection were murder, section 18 and section 20 assaults (serious assaults) and indictable drugs cases. The five key principles underpinning the ICP were:

- early engagement between the PPS and the Police Service;
- early engagement between the PPS and the defence;
- proportionate evidence required to meet the Test for Prosecution;
- supporting effective judicial case management; and
- supporting the delivery of effective sentencing.

3.51 The benefits expected included: more proportionate case preparation; focused investigations; earlier provision of targeted and proportionate forensic evidence; greater number of earlier admissions of guilt/earlier guilty pleas; fewer remand hearings; fewer withdrawals/reduction in the rate of 'cracked'³⁹ trials; and shorter proceedings overall. Inspectors were told by the police, prosecution and defence representatives, that the process was not operating as it should. ICP files were taking too long, files were still missing key evidence and defence representatives were not engaging until late in the process. Data was available to show how well these cases were being progressed on an end-to-end basis and discussed further at Chapter 4. The file review found examples of poor practice.

Case Example

In one case a poor initial investigation by a Police Officer was compounded by the overall lack of supervision in a Crown Court case. The case involved the supply of drugs in an intelligence-led operation when police entered a property and found a range of drugs with dealing paraphernalia. A suspect destroyed a phone upon police entry. In interview he admitted possession but denied supply. It took over eight months to establish that the phone was destroyed and non-evidential. Drugs analysis took two and a half months. The PPS were phoned as this was a potential ICP file. The only entry on the system was that the PPS indicated that this was an indictable case. There were no other references to what material was outstanding and no directions from the PPS recorded at this point. A full file was sent to the PPS after the phone was identified as being broken beyond repair. This was eight months after the offence was detected. Body Worn Video was only considered after a decision was taken. No other significant evidence was requested. There was no material difference to the evidence that was available at the outset of this case and significant delay should have been avoided by better communication between the prosecutor and officers in the case. The actual decision was received by police a year after the offence was detected. There were significant failings of ICP goals.

The Inspection Team were concerned that even with the focus on a limited number of cases and under the agreement of all criminal justice partners, there were shortcomings in the overall quality of files and timeliness.

39 A cracked case is one that on the day of trial, does not proceed because the Defendant offers acceptable pleas or, the Prosecution offers no evidence.

Victims and witnesses

- 3.52 Victim and witness issues were considered in depth in a CJI report in 2020,⁴⁰ that examined the experience of the victim or witness from when a crime occurs, the contact they had with the organisations within the criminal justice system and the support they received on their journey. The Inspection Team examined specific areas of police engagement with victims and witnesses in this inspection.
- 3.53 Applications to support cases such as hearsay, bad character, destruction orders or any order that required to be considered should be reviewed at the earliest stages of the case, either on recommendation by the police and/or by a Prosecutor. Planning around this area avoided delay and built a stronger case from the outset with reduced delay. In the Crown Court 70% (7 of 10) of cases had appropriate consideration of relevant applications, two (20%) did not meet the standard. At the Magistrates' Court level only 52% (15 of the 29 relevant cases) met the appropriate standard; one in five did not. Eight cases partially met the standard for files submitted to the PPS. This was a poor outcome particularly as most cases are heard at this level.
- 3.54 Keeping victims up to date was a Victim Charter and Witness Charter requirement as well as a key function of the Victim and Witness Care Unit (VWCU) in the PPS. However, the VWCU did not become involved substantially until a prosecution decision had been taken. Even after that, the police continued to play a vital role providing victims with case updates. Of the 10 relevant cases in Crown Court files, six had evidence of good updates. This figure was 69% (33 of 48) in the Magistrates' Court cases. This left a significant number (almost a third) of victims not getting appropriate updates regarding the progress of their cases.

Case Examples

In one case there was a lack of information regarding special measures and victims' vulnerabilities. There was no entry on the OEL that the victim was informed that the suspect had been charged and what the bail conditions were.

In another case a Chief Inspector and supervisor had to instruct the Police Officer in charge to update the victim in a case.

Another case had good initial police contact with the victim following interview, but this was followed by a complete lack of entries keeping the victim up to date.

In an example of good practice there was excellent communication with the victim and throughout the entire case, recorded on the OEL. It was clear that despite the various pressures on Police Officers, in this case the police maintained good contact with victims and witnesses.

⁴⁰ CJI, *Victims and Witnesses: The Care and Treatment of Victims and Witnesses by the Criminal Justice System in Northern Ireland, 2020* available online <https://www.cjini.org/getattachment/5193b4b4-6351-4987-bdfb-03bace145c7e/report.aspx>.

3.55 Overall, Crown Court cases were being dealt with better than Magistrates' Court cases. They had more resources and focused strategic policing objectives, for example serious sexual offences, fraud offences and those sections with specialised units and dedicated teams.

3.56 The *Working Together* project had signalled an intent by both organisations to tackle long-standing concerns around file quality and delay, but the outcome of this file review found insufficient progress. The outcome measurements in Chapter 4 provides a definitive picture of how the system was performing overall, however the Police Service had significant issues around file quality and disclosure to address before the Prosecution Team could then approach the wider criminal justice system for improvement.

PPS – a review of prosecution files

The file review parameters

3.57 The Police Service and PPS were established in statute as separate operationally independent organisations. However, their independence at a macro and individual case level should not preclude efficient and effective partnership working to benefit the criminal justice system and the use of public funds. Inspectors found that the PPS and Police Service were operating as two distinct entities. Having had seven years to refine and improve *Working Together*, the Inspection Team were hopeful of finding significant progress for the Prosecution Team approach. The team examined 100 random files from a selection of cases that had been in the PPS system for around the year before the file review or longer where required for the more serious cases. The sample contained 75 Magistrates' Court cases and 25 Crown Court cases. The findings were accompanied by interviews with Prosecutors, support and administration staff and management in the PPS along with insight received from other interested groups for example, Victim Support Northern Ireland, the Police Service and the Law Society.

3.58 Similar to the police file review, the review findings were made on the consensus of the Inspection Team which included two CJI legal Inspectors, two HMCPSI legal Inspectors, two PPS Prosecutors and three Police Service Gatekeepers. This provided a solid basis for the overall findings and the Inspection Team received positive feedback from the PPS regarding this methodology which placed an emphasis on working together. The areas examined were broken down into sequential stages as follows.

Pre-charge advice

3.59 These were advices given to the police early in a case usually before charging. Police need the insight of the PPS lawyers particularly when it comes to considering the strengths and weaknesses of cases that would appear before a court. Pre-charge advice was not a common feature with only five cases recorded as requiring advices, that is, where there was evidence of discussions pre-charge.

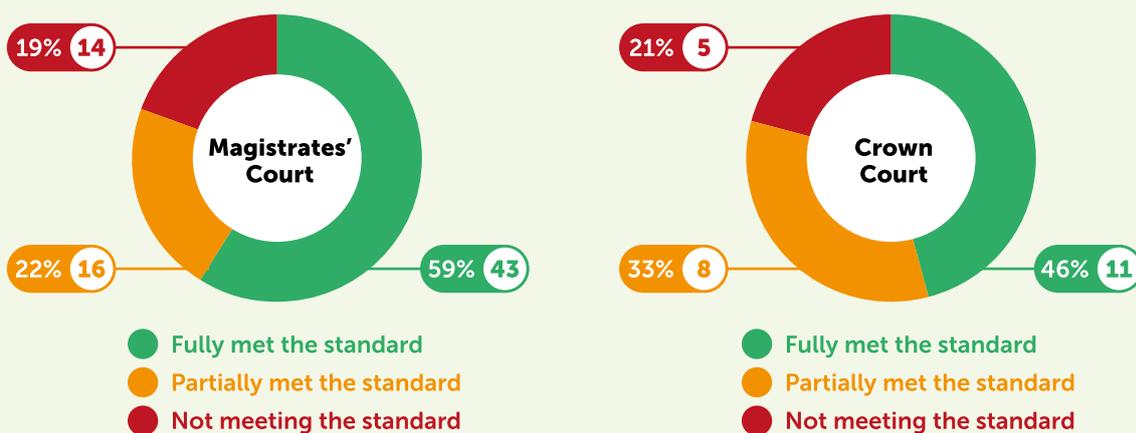
3.60 All Prosecutors indicated to the Inspection Team during interviews that they were open to giving advices at this early stage which Inspectors noted, was a significant cultural improvement from the 2015 inspection. This was more apparent in the specialist teams where there were well-established long-term relationships in place such as the SCU and Fraud sections. Police Officers, as discussed in the police file review, stated that some Prosecutors were still more approachable than others and they knew which ones to go to. Overall, Police Officers and Prosecutors were more positive about the idea of early engagement with each other. Unfortunately, there were insufficient numbers of relevant cases in the file sample to support these views but this was nonetheless a welcome improvement.

Files were of the correct standard as agreed (file build)

3.61 File build refers to the agreed set of evidence that police are expected to provide as agreed with the PPS in a Service Level Agreement and as part of the *Working Together* initiative. This depended on whether police expected a GAP or NGAP. Less evidence was expected for guilty plea cases for example where there was a level of acceptance of the facts by the defendant from the outset of a case. These standards were to be seen as a base and the Inspection Team considered other logical enquiries/evidence that should have been considered in each individual case.

3.62 Chart 9 shows how well files were meeting the agreed standards as agreed by the Prosecution Team.

Chart 9: The police file submission complied with agreed file build standards for the type of case.



3.63 In 14 (more than one in five) Magistrates' Court cases, the file submitted by the police did not meet the agreed file build standards. A further 16 had some issues and did not meet the standard which meant that 59% of the relevant files fully met the standard agreed. These were within a similar range of not meeting the standards as seen in the police file review samples. This confirmed that police file preparation was poor.

Case examples

In an example with two defendants the Police Officer made no attempt to separate out the defendants and evidence in the case which required a lengthy direction to the police to fix. This took up time and should have been done before the file was sent.

In another case involving a young person, the Police Officer in charge of the case did not provide statements to the PPS and was later disciplined. There was another Police Officer available in the case and the Supervisor did not ensure that the case was sent correctly nor reassigned when it was clear there were issues with the original Police Officer in charge of the case. This negatively impacted the timelines for submission and the quality of the case overall which resulted in a no-prosecution decision.

3.64 There were agreed time targets for submission of files to the PPS. Of 25 Crown Court files reviewed around half (13) were submitted within agreed time limits (52%). This improved for Magistrates' Court cases with 65% (49 of 75 cases). Overall, this was still a relatively poor outcome with around half of Crown Court cases and a third of Magistrates' Court level cases, not being submitted in time to the PPS.

Reviews and making decisions

3.65 After file submission from the Police Service to the PPS, the Inspection Team examined the review process. This included recording the rationale for making a decision as it was important to have evidence of the decision-making process recorded on the PPS computer system. This allowed for quality assurance, transparency of the decision-making process and provided an opportunity for the prosecution to plan the prosecution case. An accurate record of the entire process also assisted the PPS, if for example, a member of the public requested a review of a decision or if the case was to be reviewed by the Courts.

3.66 Making the correct decision was at the forefront of PPS goals. The Code for Prosecutors⁴¹ set out guidelines on the general principles to be applied in determining in any case whether criminal proceedings should be brought, what charges should be preferred and how prosecutions should be conducted. It also set out the standards of conduct expected from Prosecutors, including external counsel instructed on behalf of the Director of Public Prosecutions.

3.67 In all files examined, three Magistrates' Court Cases and only one of the Crown Court cases did not have evidence of meeting the standard. This gave a compliance rate of 96%. This was a positive outcome suggesting that the PPS were getting decisions right. The last major inspection in England and Wales⁴² was conducted between 2016-19 and the overall result there was 94.7% compliance across all decision types. The importance of maintaining this high level is highlighted when standards are not met.

41 PPSNI Code for Prosecutors, July 2016, available at <https://www.ppsni.gov.uk/files/ppsni/publications/PPS%20Code%20for%20Prosecutors.pdf>

42 HMCPSI: Area Assurance Programme Composite Report, October 2019, available at <https://www.justiceinspectrates.gov.uk/hmcpsi/hmcpsi-area-assurance-programme-composite-report-oct-19/>

Case Example

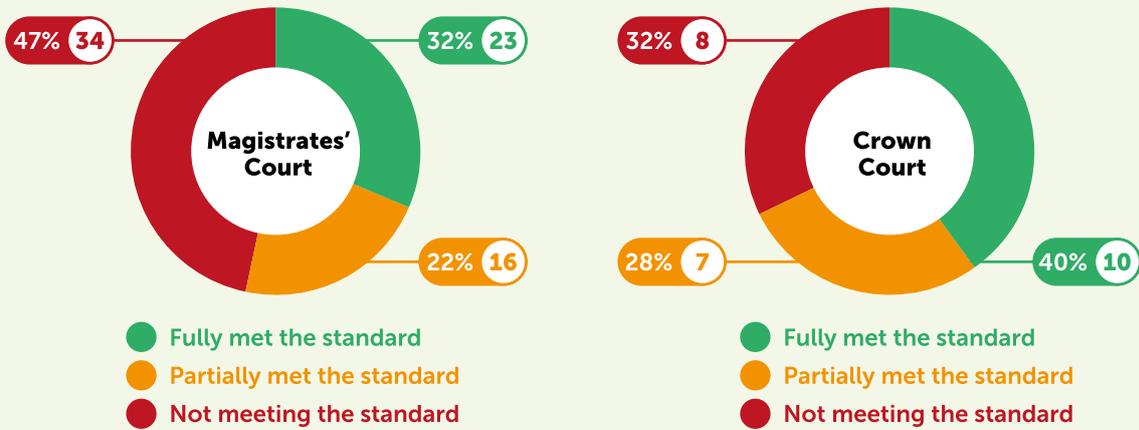
A 17-year-old female reported that a suspect (30 years of age) became sexually suggestive and then sexually assaulted her. She had tried to contact her friends who she had been with earlier that night. The suspect then exposed himself and further sexually assaulted her and held a bottle of vodka to her mouth and asked her to drink. The incident was not reported to the police until almost a year later explaining that a relative told her not to report it due to the damage it would have caused to the family. The victim later reported it as she didn't want the suspect to get away with it and do it to other people. The suspect had children. The suspect denied the offence and claimed the victim was a habitual liar and none of the family believe the allegations. He stated his partner would provide a statement to confirm she was with him all night. The police submitted this case as a streamlined no prosecution. On file there was a victim statement of less than two pages and a summary of the suspect's interview. No other evidence was obtained or submitted. The Inspection Team considered the prosecutor made the wrong decision of 'no prosecution'. There were several lines of enquiry and investigations that should have been followed including other witnesses that could have supported the case. The police should also have spoken with other witnesses. The Body Worn Video of the victim's initial account was on the police system despite stating it was unavailable. The Inspection Team watched the Body Worn Video and the victim can be seen checking her phone to give the police the details of the friends she called and explains she spoke to them. None of the evidence to assist with her account was followed up. The Prosecutor who reviewed this case agreed with the police assessment as there were no witnesses and it took the victim a year to report it and the partner would provide a statement. This was poor practice from the entire Prosecution Team. A reviewing lawyer in the PPS agreed with the Inspection Team and a review of the decision was being considered.

Recording and analysis on files

- 3.68 The Inspection Team examined whether there was proportionate analysis and recording on the files. As cases became more complex, there was a greater emphasis on the degree of analysis and recording. The PPS had developed an internal PPS staff instruction⁴³ for proportionate note taking which was a significant improvement since 2015. There were examples found of excellent file notes on straight forward cases and poor notes on very complex cases. Chart 10 shows the results of the files examined.

43 PPS Staff Instruction number 6 of 2019 which had been updated and re-issued to Prosecutors – most recently in November 2021 to expand the criteria for recording reasons to include cases involving offences committed by children and young persons.

Chart 10 Cases reviewed with an appropriate case analysis.



In the Magistrates' Court cases, 32% received a proportionate case analysis and 22% partially met the standard. In the Crown Court cases 68% fully or partially met the standard. It was clear that the Senior Management Team had some way to go to continue to improve the culture of recording of rationale on files. In interviews, the Inspection Team found Prosecutors were more open to this area with some excellent examples of good practice highlighting the strengths and weaknesses of cases.

Case Examples

An example of poor recording of rationale highlighted a reasonable decision to prosecute a defendant who assaulted an ex-partner and their friend. Ongoing disclosure was required as the Police Officer in charge provided different pieces of evidence to the Prosecutor at different stages (as and when received). This was handled well but there was no case analysis by the Prosecutor which may have dealt with, for example, the ongoing fear the injured party felt which could have required special measures and an order preventing contact from the defendant. Without this being written down in any analysis, the Inspection Team have to assume that it wasn't considered.

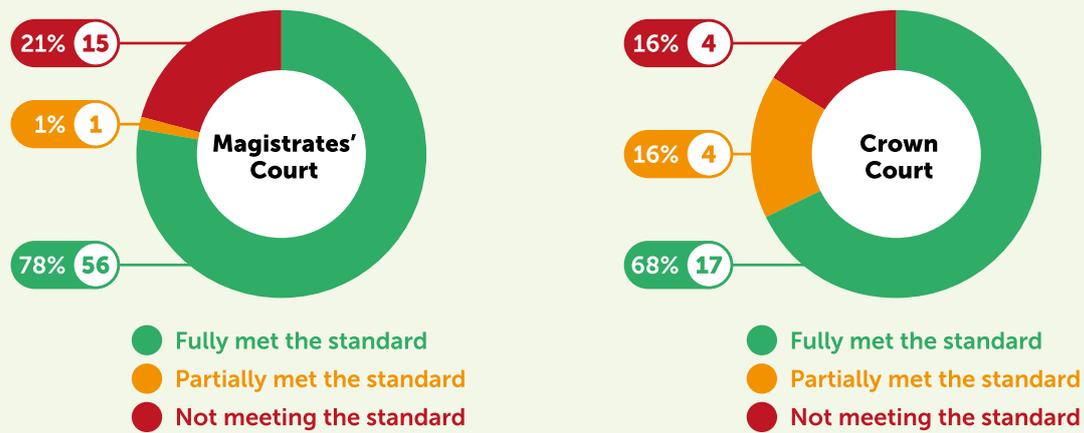
In a domestic abuse case, there was no note of the Prosecutor's consideration of material that should be routinely considered in a domestic abuse case; for example, the 999 calls, hearsay, previous bad character, and Body Worn Video. These areas are normally considered by a Prosecutor however, there was a concern that there was no way of knowing definitively in the absence of a note.

Timely reviews

3.69 Completing a timely review of material to make a decision is crucial as part of the overall area of delay. Prosecutors at every level expressed grave concerns that their performance (how well they were doing their jobs) was measured on numbers of decisions rather than the quality of making decisions on files. The Senior Management Team reflected that cases had become increasingly more complex and difficult, for example, most cases contained Body Worn Video evidence as

well as ever increasing online social media evidence. There was a concern that the increasing demands being placed on staff by ever more complex and lengthy files could not be met without new resources and funding, which at the time of inspection was limited. The Inspection Team saw staff under significant levels of strain particularly as they emerged from the COVID-19 pandemic with the pressures of dealing with backlogs of cases. Chart 11 shows the timeliness of review findings.

Chart 11: The review was carried out in a timely manner.



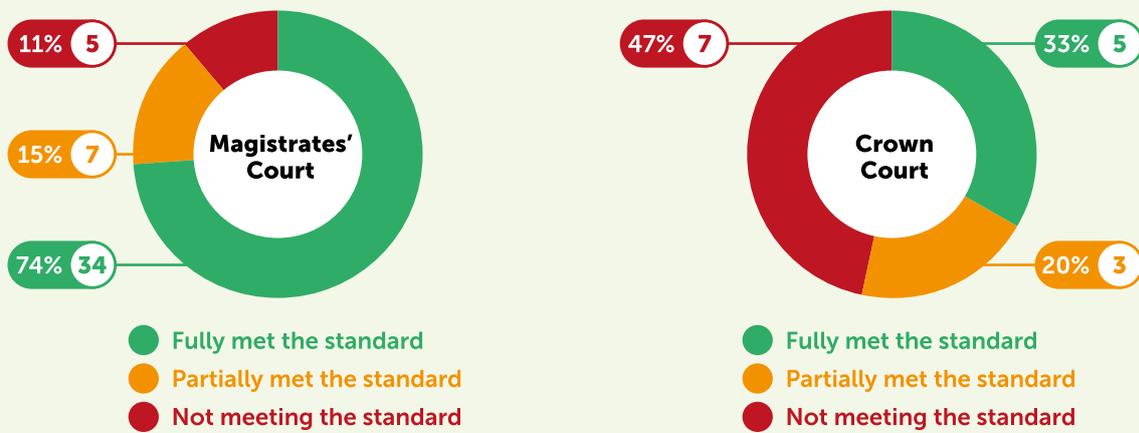
3.70 In the Magistrates' Court cases 78% met the standard of conducting a review in a timely manner. The Crown Court rate was 68%. Both sets of figures were reasonable results but also supported the fears amongst those Prosecutors interviewed, that despite their continued best efforts, they may not be able to continue to carry out their core functions around timeliness on decision-making without further support from the Senior Management Team.

3.71 Dealing with significant developments in a case, for example new evidence submitted by the police, was required to be reviewed appropriately. This was only relevant in 23 cases, 15 of which full or partially met the standard. It was further noted that this was only in cases where there was evidence found on the PPS system, where it *should* be placed.

The Post decision stage – progressing cases at Court

3.72 Tackling delay at Court stages was a long-standing concern. Despite many projects, pilots and programmes, there had not been a significant reduction in delay since the devolution of justice in 2010. Average times taken and other data is available in Chapter 4 of this report. This file review revealed several areas for concern. Chart 12 shows how well cases were progressed at Court.

Chart 12: There was evidence the case was progressed at Court appropriately.



3.73 There were 46 relevant Magistrates' Court cases and 34 of these (74%) were fully progressed as expected. This meant that over one in four cases did not meet or partially met the standard. The results for the Crown Court cases were worse. Two in every three of the 15 relevant cases were not being progressed appropriately or only partially met this standard. Overall, this was a poor and disappointing result for how the criminal justice system is dealing with case progression. The following example provided some context.

Case Example

In one example, a female had pulled up in her car on her way to work. She saw four males walk past her car and thought they looked suspicious. One of the males (the defendant) came back to her car and opened her door telling her, "Get out of the car, I am taking your car". She told him no and he then demanded her bag. She again said no. The defendant kept making these demands and she got out of her car with her bag. The defendant then got in the car and drove away. The vehicle was recovered a short while later. It was not damaged; the key was not with the car, but the defendant's fingerprint was found on the inside of the window. On CCTV covering the area, police were able to identify the defendant from it given his distinctive tattoos. In interview the defendant could not recall the day as he was 'on drugs', but stated it was not him in the footage and denied his fingerprint was in the car. He made no comment when further questioned but maintained that he couldn't remember. There was a good decision with good notes on this file and good rationale for the Court Prosecutor despite it being a very straightforward case. However, there were 14 hearings in total which did not appear to materially progress the case at any of the adjournments. A review took place when a full file was received but this was two months later, with the defendant still in custody. A request for further evidence to make a decision was made and required statements on the fingerprint, identification and CCTV on discs with passwords for the defence. With this defendant in custody this process took too long. A month later police provided the evidence requested and papers were prepared for the Crown Court. After the prosecution prepared the Crown Court papers there were a further six hearings over two months.

Taking an alternative plea

*A decision is reached after a scrupulous assessment of the evidence and a rigorous examination of the demands of justice including the proper interest of victims.*⁴⁴

3.74 The recording of rationale when alternative pleas were accepted by the PPS at Court required a specific note recording the reasons why. This was a significant process to get right as the decisions that the prosecution take was based on all the evidence available including changes that may occur at Court. Changing decisions at this late stage can significantly impact the realistic expectations of victims and witnesses and wider society. An explanatory note on file can instil confidence in the decisions and processes of the PPS.

3.75 There were limited numbers of relevant cases, 12 in all Courts. Of the four Crown Court cases, none met the required standard, three partially met and one did not meet the standard. In the Magistrates' Court cases reviewed, three (38%) of the cases fully met the standard, three partially met and two did not meet the standard required. This meant that, overall, in all the relevant cases, three out of every four did not record the consideration of alternative pleas and rationale appropriately. Given the level of importance that the PPS placed on this area, this was a poor outcome and supported previous findings in this report that recording generally required improvement.

Sharing hard media evidence

3.76 Defence practitioners indicated that the sharing of evidence at the appropriate stages early in a case can quickly resolve a lot of delays. This is particularly relevant for example with the increase of police Body Worn Video. These types of evidence were seen as particularly strong and when made available allowed practitioners to advise and take instructions to progress cases. The DoJ digital strategy meant that this type of evidence was now being shared between the police, prosecution and Courts. The final stage was to get the defence access to this material online as opposed to the current system of requesting the evidence, reviewing it and then sharing it in hard copy along with a password. Of the 27 relevant Magistrates' Court files, around half 52% had shared the digital media which was appropriate and relevant. Over two thirds (69%) of cases reviewed met the standard in Crown Court cases (9 out of 13 cases).

Clear instructions to Court Prosecutors

3.77 PPS Court Prosecutors and instructed barristers (counsel) are employed by and represented the PPS at court. They rely on the instructions from the directing Prosecutors and a clear note of instruction is vital. The Magistrates' Court files revealed a poorer level of instruction to court advocates. Only 42% (17) of the files had clear and appropriate instructions to the advocate, 26% (15) partially met the standard but 22% (9) did not meet the required standard.

44 PPSNI, *Accepting Pleas of Guilty to Lesser Offences 7 May 2009* available online at <https://www.ppsni.gov.uk/news/accepting-pleas-guilty-lesser-offences>

Making appropriate applications at court

3.78 Building a case was a key part of prosecution. For example, in many cases of domestic abuse, there is a significant and high level of victim withdrawal. This makes the building of a case at the outset of a prosecution, including the investigation stage, critical. Bad character and hearsay applications are common ways of strengthening cases. In 11 Magistrates' Court cases six (55%) of the cases did not have evidence that these types of applications were being used effectively to strengthen the prosecution case. Only two met the standard with the remaining three partially meeting the standard. This was a poor outcome. Crown Court cases were better with nine of 13 cases (69%) having fully met the case building/appropriate applications standard. Only two did not meet the standard. The PPS had updated training and guidance on the use of applications and evidence-led prosecutions to cover changes in domestic abuse law⁴⁵ which was due to be completed by April 2023.

Keeping witnesses up to date

3.79 Timely notification of witnesses that they were required to attend Court was part of good communication and was carried out by the VWCU predominantly. This was being done effectively in the Magistrates' Court cases examined – all cases (14) met or partially met the timely notice of witnesses to attend court. However, two out of the 10 relevant Crown Court cases did not meet this standard.

Dealing with new evidence from the police

3.80 When new material was received by the police, it was generally being reviewed appropriately with timely and effective actions taken. One of 17 Magistrates' Court cases did not meet the standard with two of 15 Crown Court cases not meeting the standard.

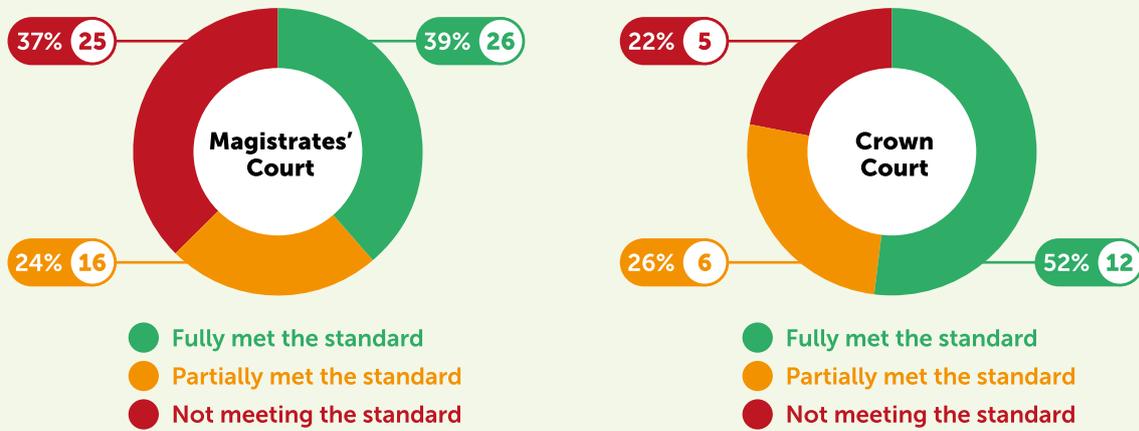
3.81 When Prosecutors made requests to the police for further information or to edit material there was evidence on file that they were being complied with or partially complied with the standard in 82% of relevant Magistrates' Court cases, four (18%) did not meet the required level. The picture in the Crown Court was more complicated with only two of 18 cases not making the standard, five partially met the standard and 11 (61%) met the required level. Prosecutors explained to the Inspection Team that often some of the requested material came in at different times in 'piecemeal', particularly in Crown Court cases. The file review provided some evidence to support this.

Overall audit trail on PPS files

3.82 As discussed above at the initial decision stages, a clear audit trail on files was required. This provided assurance for Prosecutors that key events, decisions and actions with the appropriate use of notes was being made openly available in a transparent way in all cases. Chart 13 shows the overall findings from the file review.

45 Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 available at <https://www.legislation.gov.uk/nia/2021/2>.

Chart 13: There was a clear audit trail on the PPS Case Management System of key events, decisions and actions, with correct labelling of documents and appropriate use of notes.



3.83 In the Crown Court cases, the Inspection Team found that in the 23 relevant cases only 52% fully met the standard and had clear audit trails and overall appropriate use of notes. This was a poor result for Crown Court cases, however, Magistrates' Cases were worse. Only 39% (26 of 67) files fully met the standard of having a clear audit trail with appropriate notes; 37% or 25 cases did not meet the required level – almost as many files that *did* meet the required standard. This supported the earlier recording points in this report and was a clear indicator that the PPS needed to improve in this area.

Disclosure - the prosecution perspective

3.84 Disclosure placed a duty on the prosecution to provide unused material (evidence which they have but have not used in a prosecution) to the defence. The material to be given is any which may reasonably be capable of undermining the prosecution case or assisting the defence. This must be done in a timely way to allow the defendant and the defence team to prepare for a trial. However, the defence must identify the issues in dispute, thereby helping the prosecution to make informed decisions. This required a close working relationship between all the parties – from the police revealing all the relevant material to the prosecution and defence narrowing the issues early in a case. This formed the basis for the Judge-led initiative that followed in the *Transforming Summary Justice*⁴⁶ recommendation around streamlined disclosure in England and Wales.

3.85 As stated previously in this report, CJI recommended the establishment of a Disclosure Unit in 2015. This had been attempted by the Police Service for a number of years, but the project was not developed. In 2021, following the announcement of this inspection, a new attempt was made to establish a

46 *Courts and Tribunals Judiciary, Transforming Summary Justice: A Criminal Justice System-wide initiative to improve how cases are dealt with in the Magistrates' Courts, 10 September 2015* available at <https://www.judiciary.uk/guidance-and-resources/better-case-management/>.

- Disclosure Unit within police, a centralised hub that could deal with disclosure issues across the Police Service. This was separate from the Disclosure Officers within specialist departments such as the Murder Investigation Team and other serious crimes which had been dealing with significant disclosure issues in the Crown Court for many years. The Strategic Disclosure Team between the Police Service and PPS had been meeting with an Assistant Chief Constable and the Deputy Director of the PPS heading the police and prosecution inputs. However, it was noted by the PPS that there were frequent police changes in representation which made it difficult to establish continuity and develop plans.
- 3.86 The police Disclosure Unit provided some assurances to the Inspection Team that efforts were being made to centralise disclosure queries with online portals, emails, and updates being made available to police officers. There were no Prosecutors contained within this unit. Disclosure was dealt with by individual lawyers with in-house instructions available for those who needed it along with the support of experienced Prosecutors who indicated their ongoing support for colleagues when needed. This was far from the model envisaged, of a joint team responsible for the area of disclosure across both organisations. Inspectors were concerned that this would continue to leave significant gaps in the operation of disclosure throughout the criminal justice system. As discussed at paragraphs 3.35 to 3.43 outlining how the police dealt with disclosure, the Police Service and PPS had not been able to agree a way forward to resource and develop a Disclosure Unit.
- 3.87 Police Officers interviewed were open in declaring a lack of knowledge in how to deal with disclosure, with Officers indicating that they put a file together with limited supervision and sent it to the PPS. PPS lawyers indicated that they did not think that their Prosecution Team police colleagues were dealing with disclosure well enough in the high-volume cases. The more serious cases received better feedback from both organisations. The statistics from the files reviewed were poor.
- 3.88 In the Magistrates' Court files, of the 37 relevant cases, in just under half of cases, 41%, the police were not or only partially complying with disclosure obligations. One in four were not meeting the standard at all. There were 19 crown cases that dealt with disclosure issues. In 68% of these cases the police were not, or only partially, complying with disclosure obligations. Police complied with disclosure obligations in only six cases – the same number that didn't meet the standard at all. The rest only partially met the standard. This confirmed to the Inspection Team that the Prosecution Team were still struggling to deal with their obligations. There had been minimal progress in this area since 2015.
- 3.89 It was important to note that initial problems with disclosure on the police files were often carried through to the directing Prosecutors. The Inspection Team considered whether the PPS challenged the police where there were disclosure failings. In 12 relevant Magistrates' Court cases, there was no evidence of such challenge in seven cases (58%). Only two cases met the standard.

In the 10 applicable Crown Court cases, eight (80%) had no evidence that the PPS were feeding back failings to the police service regarding disclosure. A mature process would allow for meaningful feedback exchange between both organisations, there was a lack of evidence that this was happening. This was part of an overall view from both organisations that files were sent into the PPS with disclosure and evidential gaps yet there was no opportunity to learn from each other. The Prosecution Team needed to develop a critical review, or a refusal to accept files process as part of quality assurance in order to drive improvement.

Specific disclosure issues

- 3.90 Where initial disclosure was required by a Prosecutor, including the endorsement of schedules, the Inspection Team found that more cases were not meeting or only partially met the standard required. The Directing Prosecutor did not comply with the duty of initial disclosure, including the correct endorsement of schedules in six of the 13 cases, the same number of cases that did meet the standard. The other relevant case partially met the standard.
- 3.91 Other examples of failures included items of unused material not being scheduled. There were examples of 'courtesy' disclosure where documents were provided when a defence statement would normally be required. This was a commonly held approach also found in the 2015 inspection and was supported by Prosecutors who were often directed to either give over disclosure or consider disclosure that they weren't normally obliged to do. This casual approach to disclosure operated outside of the Criminal Procedure and Investigations Act 1996 which sets out the disclosure legislation and Attorney General guidelines which were in place to ensure justice for all parties. Inspectors were informed that disclosure problems in cases were usually resolved at Court explaining that delay in getting cases to trial provided lots of time to resolve problems and that cases collapsing due to disclosure failures were very rare.
- 3.92 There were no timeliness issues with Prosecutors complying with initial disclosure obligations. When new evidence and disclosure items were received (continuing disclosure obligations) by Prosecutors, in the seven applicable Crown Court cases four complied with disclosure duties and three did not. Four cases met the standard around continuing disclosure in the Magistrates' Court files, one did not and one was partially met. An example of not meeting the standard was a domestic abuse case where key issues around previous domestic abuse incidents were not disclosed.
- 3.93 Challenging defence statements was of critical importance. These were key documents which outlined a defence and potentially revealed other avenues (lines of enquiry) for the Prosecution Team to consider. In none of the three relevant Crown Court cases were the defence case statements challenged appropriately, one relevant Magistrates' Court file partially met the standard.

Third party material

3.94 Third party material was causing significant and increasing problems for the Prosecution Team. For example, since 2015, the Prosecution Team had adopted an approach of getting all medical records for victims in certain cases on the basis that this material was requested by the defence at the outset of all these cases. This placed the prosecution in an unenviable position. There was a concern that the material was not being considered appropriately at the investigation stages and courts were placing them under pressure to review the material. This led to huge bundles of years of medical evidence for example, arriving to be considered by a Directing Officer, regardless of whether it was relevant to an investigation. Added to the overwhelming use of social media as a source of potential evidential material, it was clear that Prosecutors were being overwhelmed and this was reflected in the desperation voiced by most of those Prosecutors that the Inspection Team spoke to.

3.95 The PPS management were aware of the issues around disclosure in the volume crime cases and agreed that disclosure was handled better in the more serious cases. A PPS internal review also revealed similar outcomes to the CJI file review wherein third-party disclosure was dealt with appropriately in only two out of the five applicable Crown Court cases considered.

3.96 While there had been some advancements in the PPS and Police Service *Working Together*, there had been little progress in developing the Prosecution Team approach to disclosure. As discussed, getting disclosure right at the police stage ensures a more efficient, transparent, and fair process however, this had to be supported by the wider criminal justice system.

Victims and Witnesses

3.97 CJI's 2020 report on victims and witnesses⁴⁷ noted that Victim Charter and Witness Charter obligations including services to assist victims and witnesses were still not being consistently delivered to a quality standard across Northern Ireland. There was often too much focus on statistics, meeting targets, concerns about sharing information and organisational independence and insufficient emphasis on victim and witness care and personal experiences which often had a lifelong impact on the victim, their families and friends. The Victim and Witness Care Unit (VWCU) was established to provide information and assistance to victims and witnesses throughout the criminal justice process and is operated by staff from the PPS and Police Service supported by Victim Support NI. Engaging and communicating well with victims and witnesses was key to preserving their valuable evidence in a system that was taking too long to get cases resolved.

47 CJI, *The Care and Treatment of Victims and Witnesses by the Criminal Justice System in NI, July 2020* available at <http://www.cjini.org/TheInspections/Inspection-Reports/2020/July-September/Victims-Witness>

Meeting victims needs

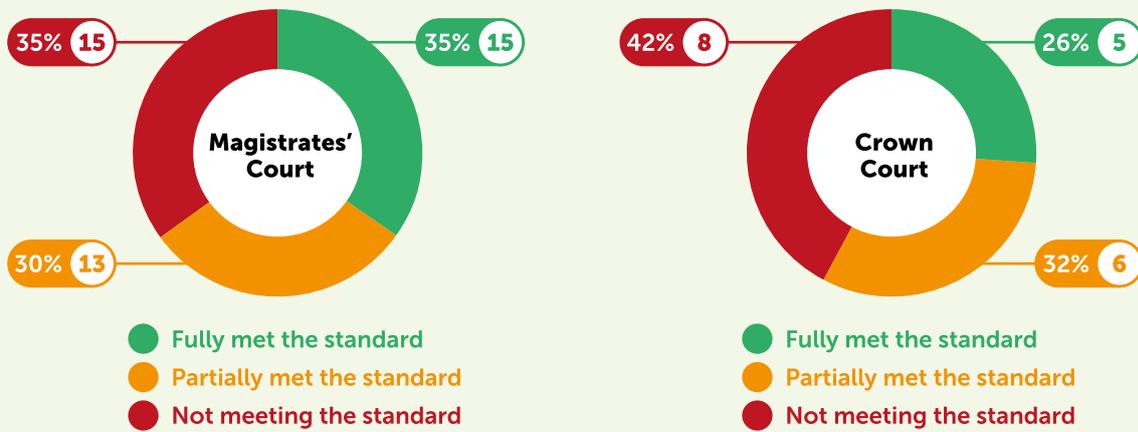
- 3.98 Consultation was a crucial part of the PPS's communication with victims as it was one of few times that they would get a face-to-face discussion with a prosecution lawyer. There were only four relevant Crown Court cases. In two of these, the Inspection Team found that the Prosecutor had not consulted victims and witnesses appropriately. In 14 Magistrates' Court cases, five (more than a third) did not meet the expected standard. Prosecutors explained that often the only opportunity they had to consult with victims and witnesses, was on the day of contest/trial at the Magistrates' Court with little or no time being allowed throughout the day for consultation to take place. This resulted in victims and witnesses waiting at court for half a day before a PPS representative was able to meet with them.
- 3.99 The communication with victims and witnesses was usually through the VWCU either by phone or more likely in update letters to victims and witnesses which were mostly standardised and printed off. Senior lawyers within the PPS agreed with the Inspection Team that these letters were often confusing or made no sense for those who would receive them.
- *In one serious assault case, Inspectors could not find any record that the victim had been spoken to after a plea to a lesser charge of Actual Bodily Harm was accepted. There was no record of the PPS asking the police to obtain a Victim Personal Statement and before the sentence hearing the victim wrote a letter explaining his injuries. There was no evidence on file that this was acted on/ appropriately considered. The result of the sentencing was sent out in a letter which was standard pro-forma. It stated that the sentence received was custody/probation without any explanation and there was an attached print-out with 'Nolle Prosequi'.⁴⁸ The sentence in the letter was wrong regardless as it stated one year probation where the result was two years. There was no notification whether a restraint order was applied for or received and there was no response to the victim's letter that he had taken the time to send in. This communication was very poor. Using Latin legal phrasing and giving print outs which are difficult to interpret (and wrong in this case) were symptoms of wider concerns that the Inspection Team had around communication with victims and witnesses.*
- 3.100 Listening to victims and hearing their needs is vital if they are to be meaningfully engaged in the criminal justice system. In the 10 Crown Court cases four (or 40%) did not have evidence that the victims' wishes in the Victim Personal Statement were complied with. Only four Magistrates' Court cases covered this area with two meeting the standard and two that did not. Without evidence on file to the contrary, the Inspection Team considered that the victims' wishes were not being appropriately considered.

48 A form of withdrawal of proceedings. An accessible meaning of this phrase was found at the CPS (England and Wales) website available at <https://www.cps.gov.uk/legal-guidance/termination-proceedings-including-discontinuance>.

- 3.101 The PPS were better at seeking orders to protect the victims, witnesses and the wider public with all eight Crown Court cases meeting (seven) or partially meeting (one) the standard. In the Magistrates' Court cases, eight out of 12 had evidence that appropriate orders were sought. Four did not, suggesting that either there was better recording in the Crown Court cases or that this area was not being considered as well as it should in the Magistrates' Court cases.
- 3.102 Communication should be completed in good time, for example, when an adjournment was made, the witnesses and victims should be notified as a priority. There were 48 Magistrates' Court cases that covered this area; 34 (75%) fully met expectations, seven did not. The remainder partially met the expectations. This suggested that around one in four cases did not give timely communication when required and this needed to be improved. The Crown Court cases had worse results; 62% (13 of 21 cases) met the timely communications standard when required; five did not with the remaining two partially meeting the standard. Overall, communication of adjournments needed to improve.
- 3.103 When meeting with Victim Support NI, the Inspection Team were told of cases which were adjourned only days before a Crown Court trial was due to start. Victims were not consulted for their views beforehand and in one case cited, it was only the presence and intervention of a Sexual Offences Legal Advisor⁴⁹ in a serious sex case that meant that the victim had any idea that her case was not going ahead. This was after months of mental preparation for the trial and over a year from the original report of the crime against her. In meetings with the PPS Crown Court support teams and the VWCU, there were different pieces of information available to one part of the organisation that the other did not have. This meant that for example, a Court Clerk may have a note of an adjournment application on a separate court folder file that the VWCU would not know about. This was poor practice as a victim may phone to enquire about the status of a case and the VWCU would not have the information to give them.
- 3.104 Inspectors considered communications overall and whether they were of a high standard. Chart 14 shows the results.

49 Qualified lawyers who can offer legal advice and support to adult victims of a serious sexual offence. More information available at <https://www.victimsupportni.com/help-for-victims/solas/>.

Chart 14: Communication was of a high standard.



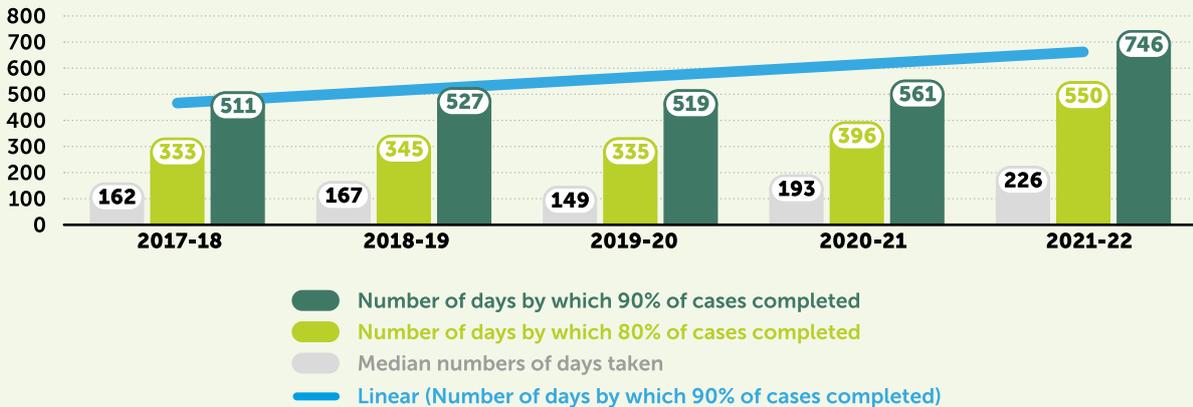
- 3.105 Of 43 Magistrates' Court cases reviewed only 15 were considered of a high standard. In the Crown Court Cases only 26% of the cases met this standard; 32% partially met the standard which meant that, in more than four of ten cases, this standard was not met. This was a significant indicator that substantial work was required by the PPS in this area. The victim journey is considered further in Chapter 4, Outcomes.
- 3.106 This file review revealed a number of ongoing issues with file quality, disclosure and delay, similar to those found in 2015. There were some areas which showed some signs of improvement particularly around a more open communication within the Prosecution Team and an improvement of recording since 2015. However, as discussed above, there were more indicators that the strategic initiatives had not delivered as much progress as had been expected. Chapter 4 focuses on the impact that these issues had particularly on victims of crime.

CHAPTER 4: **OUTCOMES**

MEASURING SUCCESS - CASE PROGRESSION AND COVID-19 PANDEMIC RECOVERY

- 4.1 As outlined earlier in this report, the DoJ monitored performance of the justice system on an end-to-end basis. The Police Service and PPS had also been monitoring their own performance within the system. The Inspection Team examined some of the key data that was provided.
- 4.2 Figure 1 shows the case processing times for criminal cases during the period between 2017 to 2022, which included the pandemic period.⁵⁰

Figure 1: Case processing time for criminal cases 2017-2022.



These times did not reflect that some cases, including the more serious cases, can take a significantly longer time to be completed. The data demonstrated that, over an eight-year period since the CJI 2015 inspection on delay and file quality, the length of time taken had been increasing until the latest yearly results in 2022. This data was an indicator that the strategic approaches to tackle delay had not resulted in a material improvement in time taken, and that the pandemic had a further negative impact on how long it was taking cases to be dealt with on an end-to-end basis. The median time taken for a case to be disposed at court from the date the incident was reported across all courts was 226 days. The baseline set in 2014 was 143 days.

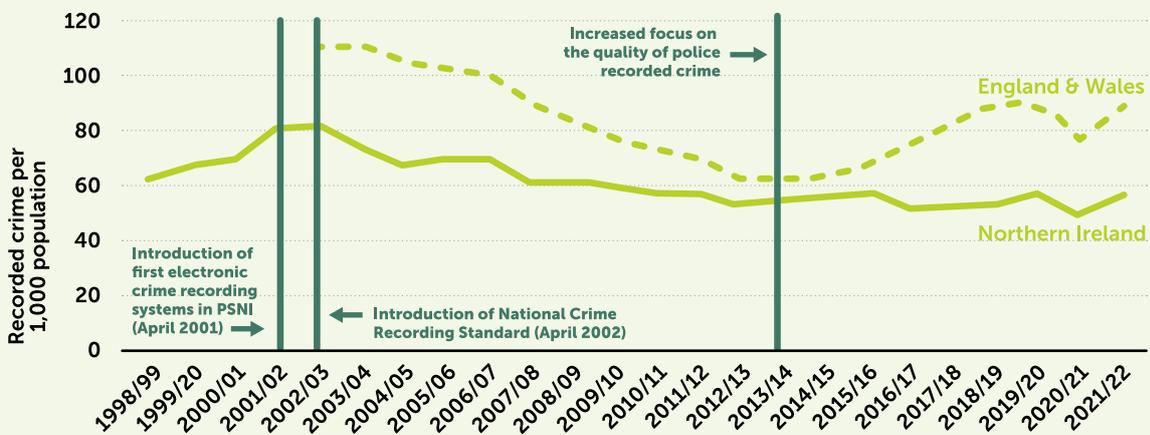
⁵⁰ DoJ, *Case processing time for criminal cases dealt with at courts in Northern Ireland, 2021-22* available at <https://www.justice-ni.gov.uk/topics/statistics-and-research/prosecution-and-conviction-statistics>.

- 4.3 Comparing these figures to other jurisdictions was difficult because the processes on how cases were progressed through the criminal justice system were different. For example, in England and Wales, the police made a significant number of decisions on volume crime cases with the support of Prosecutors who were often available onsite. Other cases were referred onto the CPS as the prosecuting authority, which was how all cases were dealt with in Northern Ireland. The Ministry of Justice had begun experimental measurement of the end-to-end process in England and Wales.⁵¹ A snapshot of this data showed that the median time taken from the commission of an offence to completion in the Magistrates' Court was 89 days in the second quarter of 2022. At the Crown Court, the median time for completion of all cases was 378 in the same timeframe. Although, a crude comparison, the criminal justice system in England and Wales appeared to have significantly less delay than in this jurisdiction.
- 4.4 The Inspection Team considered these end-to-end rates alongside the overall recorded crime rates, prosecution decision times and court times.

Overall crime rates

- 4.5 Figure 2 shows trends in police recorded crime.⁵²

Figure 2: Trends in police recorded crime.



Crime rates had been on a downward trend between 2002-03 and 2016-17, falling by nearly 30% after which there was a three-year increase to 2019-20. The latest figures at the time of publication showed an overall increasing trend in recorded crime rates from 2015 but also supported the earlier findings in this report that the pandemic and lockdown measures introduced in March 2020 had resulted in lower levels of police recorded crime. At the time of steady or increasing recorded crime, cases were taking longer to be dealt with. The Inspection Team examined various reported rates of timeliness including the impact that the pandemic had and how well the criminal justice system had recovered from it.

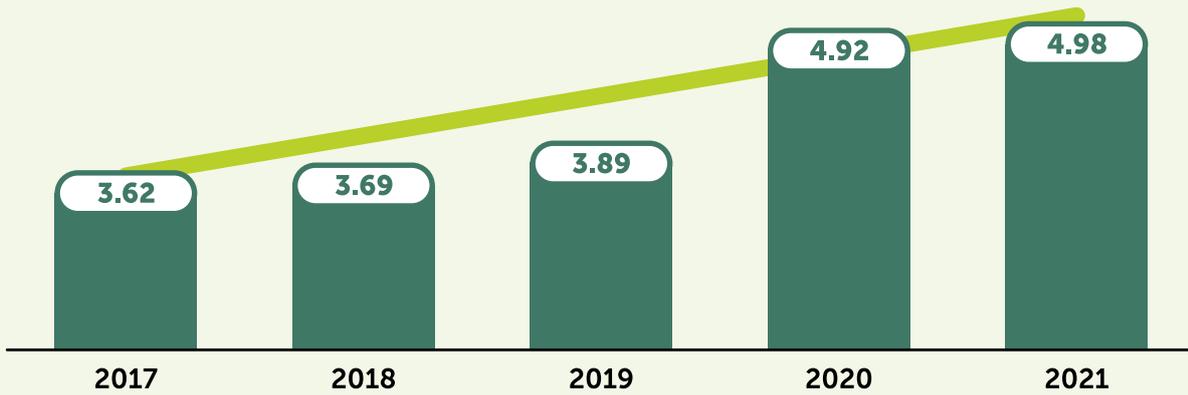
51 Ministry of Justice, *Criminal Court Statistics Quarterly: April to June 2022, September 2022* available at <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-april-to-june-2022/criminal-court-statistics-quarterly-april-to-june-2022--2#timeliness>

52 PSNI, *Trends in Police Recorded Crime in Northern Ireland, November 2021* available at <https://www.psnipolice.uk/sites/default/files/2022-12/Police%20Recorded%20Crime%20in%20Northern%20Ireland%201998-99%20to%202021-22.pdf>

Court rates

4.6 The NICTS released monthly updates on the recovery progress for Magistrates' Courts criminal business. This specifically focused on how well the recovery efforts by justice organisations were proceeding. Figure 3⁵³ charts the average numbers of hearings per case since CJJ's 2015 inspection.

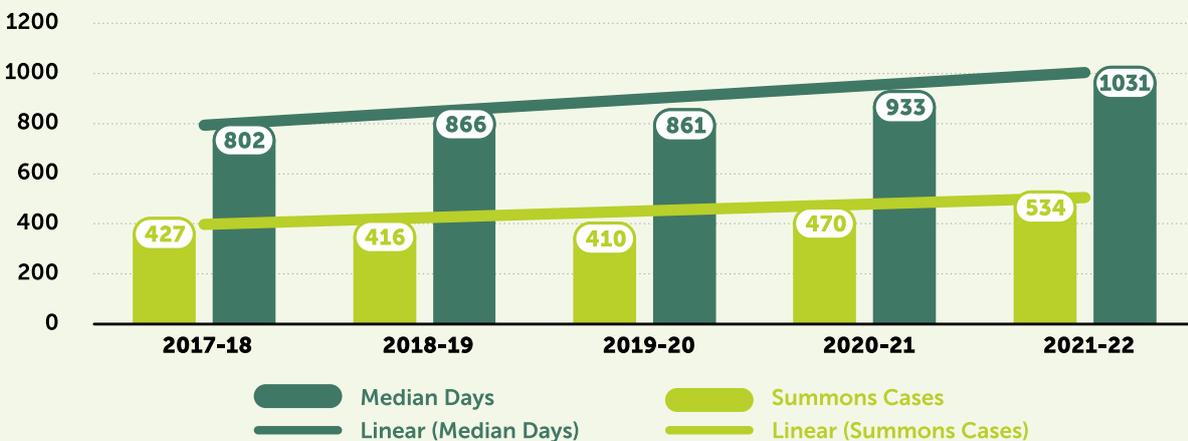
Figure 3: Average number of hearings in adult Magistrates' Courts.



This figure indicates an increase in the number of hearings that took place before a case was being resolved. This data supported some of the views of those interviewed in the Police Service and the PPS, that cases were perceived to be adjourned without good reason due to a Defence application or because the prosecution case was not ready (file quality/prosecution team issues).

4.7 The DoJ provided the Inspection Team with data on the average time taken in Crown Court cases at court from 2017-22 in Figure 4.

Figure 4: Average days taken to conclude Crown Court cases.



Source: DoJ

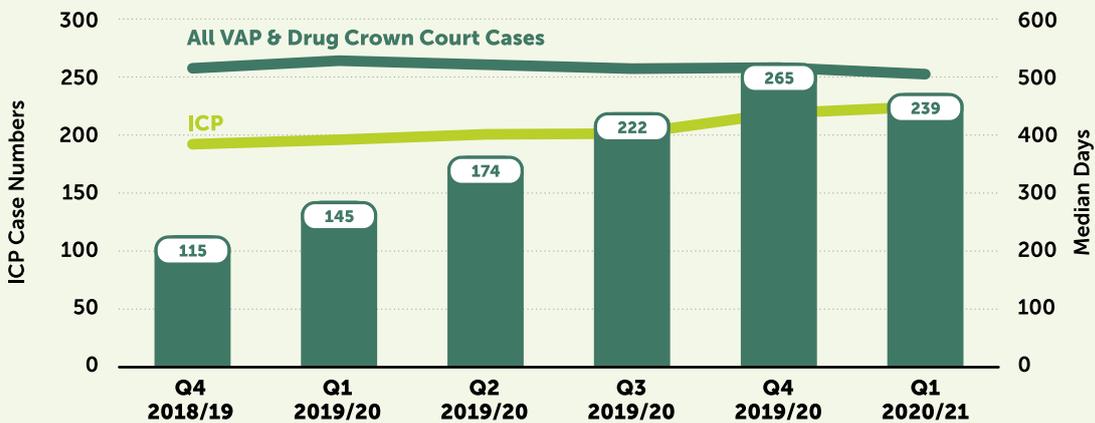
53 Data provided by NICTS November 2022.

Figure 4 demonstrated that there had been little progress in times taken up until the pandemic, at which point delays had increased significantly. The DoJ advised the Inspection Team that they reviewed the number of cases that were being processed through the court system every eight weeks based on a rolling average. At the time of writing, it was estimated that the Magistrates' Court cases could be 'recovered' by 2023 with 115% throughput of cases, but this required further funding. Crown Court recovery would take two years, up to early 2024 with 115% throughput of cases, 2027-28 at 105% and beyond without further investment. This was to place the system back to the pre-pandemic levels. A review at the time of publication of this report revised this date upwards for all courts to be recovered to 'pre-pandemic' levels by early 2026. The Inspection Team were concerned that dealing with the backlog of cases over a prolonged period risked witness attrition and negatively impacted on victims and witnesses and defendants. The DoJ accepted that timeliness and delay needed more improvement after the 'pandemic' caseload issues had been resolved and had ambition to tackle this area on a strategic level.

- 4.8 The data charts did not account for the most complex of cases which were taking longer. Special initiatives such as ICP and dealing with sexual cases where the victim was a child were examples of programmes aimed to improve poor rates of delay in this jurisdiction. For example, ICP results⁵⁴ are shown in Figure 5.

Figure 5: Case numbers and time taken for ICP cases from 2018 to 2021.

(Comparison against Violence Against the Person (VAP) and Drug cases at the Crown Court).

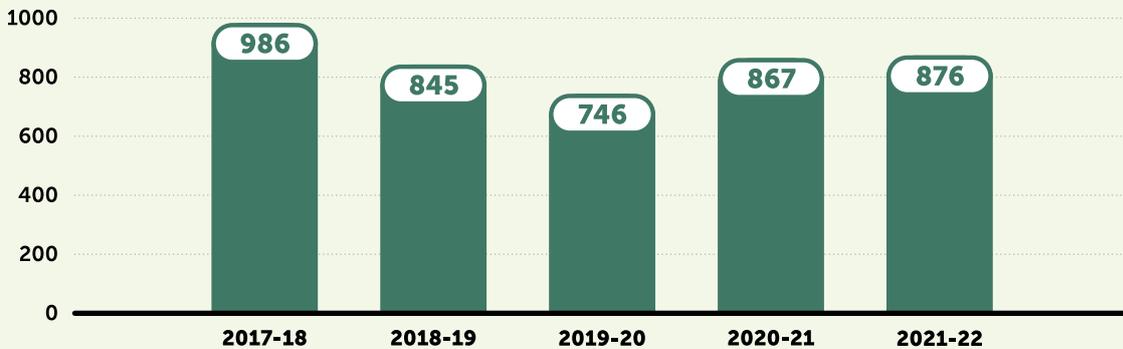


The time taken for ICP cases were steadily taking longer to the extent that it was beginning to approach the same rate as other Crown Court cases such as violence against the person and drug cases. The results provided further evidence that the pandemic had added to the length of time cases were taking. Police Officers and PPS Prosecutors agreed that the ICP initiative was a good model that improved file quality and the communication within the Prosecution Team and with other criminal justice system partners, but it had stagnated and required reinvigoration. It was not working as well as it was hoped.

54 Data supplied by the DoJ.

4.9 Another specific programme dealt with sexual offence cases with a child victim⁵⁵ as shown in Figure 6.

Figure 6: Average time taken in Crown Court sexual offence cases with a child victim



This figure showed significant improvement from 2017 to 2020. However, by 2022 this rate had increased to 876 days taken to get a resolution to these cases. Even with the obvious issues that the pandemic has caused, two to three years was too long without a conclusion and impacted on a significant part of a victim's childhood.

4.10 The Inspection Team considered the specific outcomes of the main organisations and the wider impact of the pandemic.

Organisational outcomes

4.11 A programme of work was initiated in April 2020 to oversee the recovery of the justice system from the pandemic. This was overseen by the CJIG who reported to the CJB. In April 2021 additional funding was granted for the Police Service, the PPS and the NICTS to facilitate an uplift in the through-put of cases through the criminal court system. The DoJ provided the Inspection Team with a summary of the cross-justice recovery bid (request for additional funds to help organisations through the pandemic) as set out in Table 1.

55 Responses to AQW 11981/17-22 from Ms Cara Hunter MLA answered on 22 December 2020 and AQW 1184/22-27 from Ms Cara Hunter MLA answered on 15 June 2022 available at <https://aims.niassembly.gov.uk/questions/searchresults.aspx?&qf=0&asb=0&tbm=0&anb=0&abp=0&sp=0&qfv=1&asbv=0&tmbv=1&anbv=0&abpv=0&spv=0&ss=j4nsEOfW00c=&per=1&fd=01/01/2019&td=31/12/2022&pm=0&asbt=All%20Members&anbt=All%20Ministers&abpt=All%20Parties&spt=Tabled%20Between>

Table 1: Summary of cross justice recovery bid⁵⁶

	2021-22 £k	2022-23 £k	2023-24 £k
DoJ	43	65	0
Police Service	61	95	98
NICTS	1,055	3,703	1,037
PPS	1,211	2,089	700
Victim Support NI	58	68	0
NSPCC Young Witness Service	39	52	13
Total (excl. Legal Aid)	2,467	6,072	1,848
Legal Services Agency	617	629	120
Legal Aid (all)	7,787	9,815	5,642
Total Resource	10,254	15,887	7,490

4.12 The PPS, Lady Chief Justice's Office and the NICTS received funding to increase the physical capacity of the court estate, temporarily increase judicial levels and to increase staff levels to enable an increased level of business throughput. The Police Service was funded for one post to oversee initiatives designed to assist recovery. The NSPCC Young Witness Service and Victim Support NI funding was to increase capacity to support victims and witnesses. This was one year funding with no guarantee over future funding.

NICTS outcomes

4.13 As a result of the public health restrictions associated with the COVID-19 pandemic by March 2020, the NICTS was only operating in five of its Criminal Court venues which reduced the capability of the system to administer justice. This meant that courts and tribunals business moved to predominantly virtual hearings. The NICTS Digital Modernisation team used this time to proceed with the digital advancement of courts. As discussed in Chapter 2 of this report, Live-links under the leadership of the CJB was a significant positive development for the NICTS. Twenty one new remote evidence centres were also introduced on 31 May 2021 which meant that (at the time of writing) 118 police witnesses provided evidence in summary contested hearings from a remote setting without having to go to court. The police equated this to a saving of approximately 472 hours police time, or approximately £18,880.

4.14 The NICTS used funding to support the introduction of additional staff across all courts, costs associated with Deputy District Judges, enhanced cleaning and security across the estate, Information and Communication Technology enhancements as well as meeting capital costs such as providing Nightingale court facilities. Judicial costs were also incurred for the additional Crown Courts by engaging Deputy County Court Judges to backfill for salaried County Court Judges who

⁵⁶ The bid amount may differ from the amount received or 'drawn down'.

were diverted to manage Crown business, and for the Magistrates' Courts by engaging Deputy District Judges. Operational Crown Court jury trial courtrooms were increased from 13-15, enhanced multi-defendant facilities across all Crown Court venues were introduced, there was extensive use of remote hearing facilities/ technology and an increase in sitting times across Magistrates' and Crown Courts. The NICTS business case had been based on assigning 15 Judges to the Crown Court from the period 1 April 2021 to 31 March 2022 and the delay in opening the two additional courtrooms had an impact on spend.

- 4.15 There had been significant delay in recruiting Court Clerks, with 24 unfilled vacancies for more than 18 months. The inability to recruit staff in a timely manner placed pressure on the NICTS and as a result the staffing situation had become increasingly fragile. There was no imminent solution at the time of writing due to a lack of clarity for recruitment lead in times, anticipated supply and the training required thereafter.

Police Service outcomes

- 4.16 The Police Service had indicated that funding was used to provide a bespoke innovations post in Criminal Justice Branch. The police innovation Inspector was tasked to progress recovery initiatives, specifically remote evidence centres, digital notebooks, digital statement expansion and remote voluntary interviews. The PSNI were monitoring the outcomes of the various initiatives to tackle delay. Table 2 shows the most current Police Service timeliness performance.⁵⁷

Table 2: Police Service timeliness performance October 2022.

		Submission within Target	% within Target	% Target	Previous Financial Year	No. of files submitted	Target timeframe (days)
Charge Cases	Charge Case Overnight	3,664	96%	87%	95%	3,812	2
	Charge Case Indictable	217	77%	87%	80%	282	18
	Charge Case Summary (both Adult/Youth)	4,496	68%	87%	69%	6,578	14
Reported Cases	Indictable Reported Case	348	58%	87%	65%	598	60
	Adult Summary Reported	12,314	71%	87%	72%	17,282	35
	Youth Summary Reported	370	64%	87%	63%	579	35
	Non Court Disposal	2,117	76%	87%	77%	2,791	35
	No Pros report	5,883	67%	87%	70%	8,786	35
Totals		29,409	72%	87%	73%	40,708	

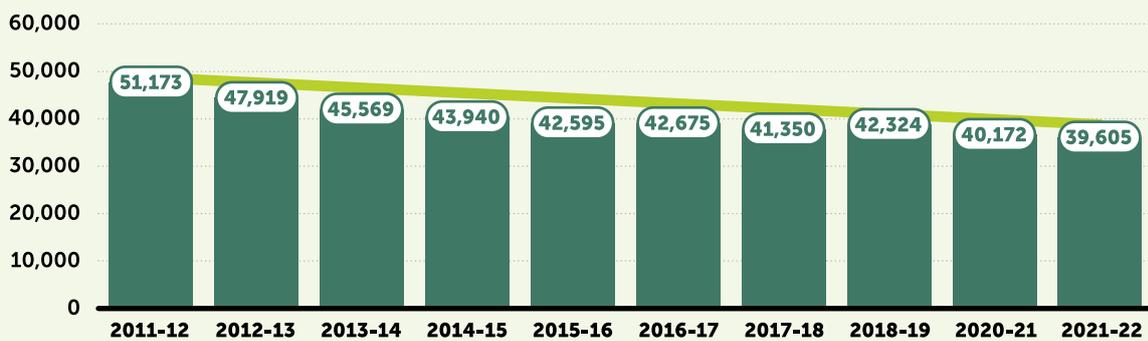
⁵⁷ PSNI, Chief Constables Accountability Report, October 2022 available at <https://www.psnipolice.uk/sites/default/files/2022-10/Chief%20Constable%27s%20Accountability%20Report%20to%20Northern%20Ireland%20Policing%20Board%20-%2006%20October%202022.pdf>.

Overnight charge files were being submitted without delay. These files were completed at pace to allow Custody Sergeants to deal with bail concerns which in turn provided a PPS Prosecutor with the ability to make a decision in a case much quicker than a summons case. Overall, the Police Service were not meeting their targets. The report on performance gave reasons for delay including: the impact of COVID-19 absences; increasing resource and demand pressures; and corrective actions taken by file quality 'Gatekeepers' from the Police Services' Criminal Justice and Public Protection Branches, who reviewed file and quality control prior to submission to the PPS.

PPS outcomes

4.17 The PPS had used the extra funding to tackle the impact of the pandemic by identifying the need for 30 extra staff (24 administrative and six legal practitioners) to ensure full recovery by 31 March 2023. The initial timescales indicated that all administrative staff (except for Crown Clerks) would be in post on 2 August 2021 and the legal staff would be in post by September/October 2021. The aim of recovery funding was to allow the PPS (in conjunction with partner agencies) to reduce the backlog of cases at court and to meet the agreed objective of a 15% increase in caseloads. To place this into context, the Inspection Team looked at PPS statistics⁵⁸ outlining the numbers of cases and rate of decision-making pre and post pandemic. Figure 7 sets out the decreasing numbers of cases sent to the PPS for a decision.

Figure 7: Case files received by the PPS from the Police Service.



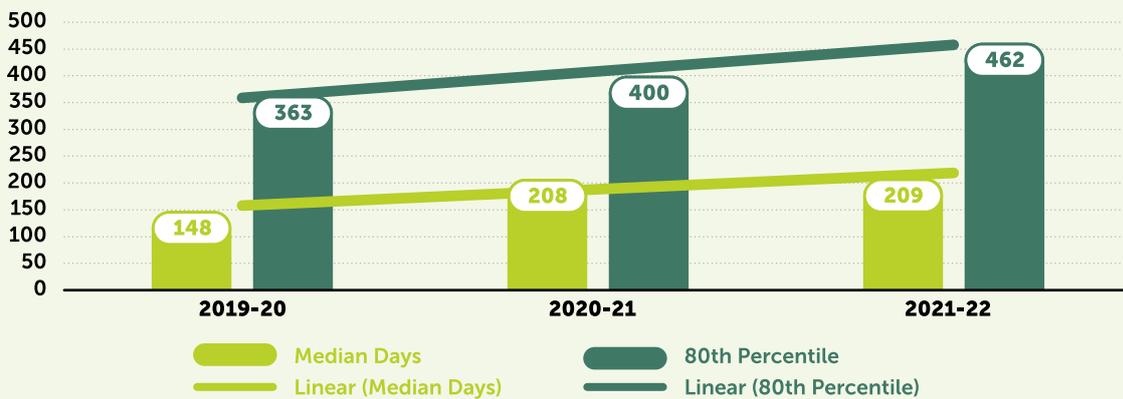
The PPS explained that the lower rates of volume crime cases received had reduced the overall headline figures. By comparison, 4,132 serious cases (Crown Court/Indicatable) were received in 2011-12. Over the last three financial years, the equivalent figures were:

- 2019-20 - 4,813 cases;
- 2020-21 - 4,409; and
- 2021-22 - 4,555.

58 PPSNI, *Statistical Bulletin 2021-22, June 2022* available at <https://www.ppsni.gov.uk/publications/pps-statistical-bulletin-2021-22>.

At the time of writing the PPS indicated that 3,719 serious files received from April to December 2022 represented an increase of more than 10% which placed more pressures on those making decisions on serious cases and the associated support staff. With the overall numbers of crimes and cases decreasing, the Inspection Team examined how long it was taking to make these decisions, as illustrated in Figure 8. The 80th percentile was used by the PPS to demonstrate the number of decisions made in 80% of cases.

Figure 8: Time Taken to Issue Indictable (Crown Court) Prosecution Decisions.



The time taken to make summary prosecutions over the same period had remained the same median number of four days. The Inspection Team were aware that PPS staff were struggling to cope with the impact of the COVID-19 pandemic and making indictable decisions. The time taken included waiting on responses to DIRs and the preparation of cases which was hindered by court scheduling issues caused by the pandemic. Many of those interviewed expressed concerns over their long-term ability to continue to work under such strain. Staff reported concerns of the efforts by the criminal justice system to clear the backlog of cases caused by the pandemic was not being backed up with increased numbers of Prosecutors and working from home left some feeling isolated.

4.18 The outcomes in this chapter, in conjunction with the issues found in the file review in Chapter 3, revealed that crime rates and case numbers were reducing, but the time taken to resolve criminal cases had not been improving since 2015. Similarly, file quality remained a concern and disclosure had not been addressed appropriately. The pandemic had exacerbated the issues raised by CJI and other reports. The criminal justice system response to the pandemic aimed to place the criminal justice system back to 2019 levels but this did not address long term concerns for file timeliness, file quality and disclosure.

Victims of delay

- 4.19 Statistics, data and reporting numbers did not give a true picture of the victim impact that poor quality files, delay, poor disclosure and problems caused by the pandemic had. The criminal justice system had a duty to meet the needs of victims and witnesses.⁵⁹ Case examples in Chapter 3 of this report highlighted some of the problems but the Inspection Team looked further and examined what this means to individual people who are victims of crime. The Inspection Team worked closely with Victim Support NI to get permission to publish real stories for some of these individuals.
- 4.20 Victim Support NI conducted a court observation study following the journey of 27 trials across Northern Ireland.⁶⁰ Focusing on sexual violence cases, delay was a predominant issue with 16 out of 27 cases adjourned at least once of which six cases were adjourned to a significantly later date with the jury being dismissed. In one example a disclosure failure and counsel being unavailable the following week resulted in a case being delayed for four more months.
- 4.21 Testimony of victim outcomes was provided by Victim Support NI.⁶¹

"There could be a lot more done for victims, it all could be speeded up for starters. My life has just been on hold for the last year."

"[I want victims to have] the power to hold the police and courts to account for delays in the process."

"It took a lot of hard work, persistence and chasing up to get information about the case which took extremely long to come to court. (4 years & 9 months from reporting until court)."

"The time period from first reporting to getting to court is too long. If the process was quicker victims could move on quicker."

59 CJI, *Victims and Witnesses. The Care and Treatment of Victims and Witnesses by the Criminal Justice System in Northern Ireland, July 2020* available at <http://www.cjini.org/getattachment/5193b4b4-6351-4987-bdfb-03bace145c7e/report.aspx>.

60 Victim Support NI, *Bearing Witness: Report of the Northern Ireland court Observer Panel 2018-19*, February 2021 available at https://www.victimsupportni.com/site/wp-content/uploads/2021/02/VSNI-Report_BearingWitness_Final.pdf.

61 Victim Support NI, *Victim Testimony from focus groups during Victim & Witness Strategy consultation, May – July 2021*.

Case Study⁶²

'Molly', a 24-year old woman, was a first year at university in Northern Ireland in 2018. She was raped by a friend's father as she slept on the sofa in his house. Immediately after the assault, Molly panicked and returned to her flat, where she stayed in her room for four days. Eventually her housemates convinced Molly to call the police.

The police arranged to take her to the Sexual Assault Referral Centres and scheduled an Achieving Best Evidence interview for the following week. She cancelled all her summer plans and moved home. She returned to university to find that her friends no longer spoke to her as they didn't believe her allegations. She struggled through the year without her friends and was afraid to socialise especially with men. Months passed without any updates on her case.

Molly received a letter from the PPS that her case was proceeding in April 2019. This was on the same morning she had a graded presentation in front of her class of 120 peers and triggered a panic attack. By the end of her second year in university, Molly was struggling. Molly became reclusive and depressed.

Molly was informed that a Preliminary Enquiry (PE) Hearing was scheduled for November 2019, halfway through her third and final year. She did not know what a PE was. By this stage, however, she had spoken to her tutor and explained what was going on and was getting virtual support from the university. She had prepared mentally for the hearing but was informed that it had to be rescheduled to January 2020 for reasons she didn't understand. Eventually the PE went ahead and a trial date was set for later in that year.

In March 2020, Molly's university announced that all in-person classes were cancelled due to the pandemic. Molly moved home permanently to help care for her mother who had been diagnosed with cancer and finish her studies. The pandemic, her mother's illness and the spectre of an upcoming trial hit Molly hard, and her parents were at a loss as to how to help her. The trial did not happen with the reason given as 'the pandemic' and other circumstances that weren't explained.

The trial didn't take place until June 2021, three years after the rape. By this stage, Molly was allowed only one other person present with her due to social distancing rules. The trial date was the week after Molly's final exams. On the day of her cross-examination, Molly was ill with nerves and stress and felt like she didn't know what was going to happen. During cross-examination, Molly felt that she was alternately being blamed for what happened and being told she made it all up. The barrister focused on what she wore, how much she'd had to drink, and her previous history of briefly dating a man who was seven years older than her. Even though Molly was able to give evidence from a different room via video link, she felt exposed and that her character was being obliterated. When her cross-examination finally finished, Molly and her dad drove home to care for her mother. Molly was exhausted but driving home she felt pride at having told the truth in public and that her part in the trial was done.

62 This case study is based on the actual experiences of real-life victims of crime in Northern Ireland who are supported by Victim Support NI. The case study has been created using a composite of several contemporary cases in order to ensure victim anonymity and avoid jigsaw identification.

Molly received a call the next day from her Investigating Officer, telling her that the case had collapsed because some information had not been disclosed and there was new evidence to consider. The trial would have to start over again.

Molly's family were so concerned about her, they convinced her to see her GP, who prescribed her Diazepam to sedate her.

In early 2022, the trial was listed again for June. By this stage Molly had graduated from university and was trying to find work. Her life was on hold, her mother was still unwell and she had taken a temporary job at a local newsagent. When June arrived, the trial got downgraded to mention, and was adjourned again another two times.

The defendant had contracted COVID-19 on one occasion and on the other, the defence counsel was double booked. Without defence counsel present, a new date couldn't be agreed.

November 2022 and Molly was still waiting for the trial to be re-run.

Molly feels she has had years of her young life stolen from her; because of the rape; because of the delay in the system; and the system not operating as it should. She feels she cannot get on with her life until her trial is over.

4.22 Setting targets for a system that already had in-built delay, missed the point that the system needed to reflect and represent the needs of the public and more specifically those impacted by crime. The pandemic impact had worsened an existing chronic issue of system delay. The outcomes and results discussed above demonstrated that the strategies and initiatives to tackle delay were not working. File quality was being addressed by the Prosecution Team but only marginal gains in some areas had been made since CJI's 2015 inspection. Disclosure remained poor with no overall changes since 2015. Laying the blame solely with the Prosecution Team was inappropriate when a justice-wide tackling of delay, file quality and recovery from the pandemic was required. The CJB had demonstrated the ability to tackle specific areas to make rapid changes during difficult times and this needed to be expanded as a model of good practice.

APPENDIX 1: METHODOLOGY

Desktop research and development of inspection Terms of Reference and question areas

Research literature and guidance documentation was reviewed in relation to court custody. A Terms of Reference was developed, based on that used for the previous inspections. The question set for the file review and expectations were agreed by the Inspection Team in consultation with the Police Service, the PPS and HMCPSI. Other relevant documents included inspection reports from other jurisdictions.

Self-assessment and document review

The organisations were asked to provide documents and data showing progress from the CJI's 2015 inspection on file quality. A review was undertaken of the documentation provided to cross-reference information against the question set for the file review. This was used also to inform interview questions during the fieldwork phase.

Fieldwork

Interviews and file reviews were conducted between March and August 2022. One-to-one and focus groups interviews were conducted with a range of personnel within the relevant agencies. Interviews were also conducted with stakeholders from across the voluntary and community sector.

Stakeholder consultation

CJI Inspectors met with representatives from the following organisations:

DoJ

- Justice Performance Team.

Police Service

- Assistant Chief Constable Justice Department;
- Detective Chief Superintendents, Public Protection Branch; Disclosure Unit; District Policing;
- Police Service Gatekeepers focus group;
- OCMT file processors and managers;
- CID focus groups;
- Local Policing Team focus groups;
- Neighbourhood Policing Team focus groups;
- Roads Policing focus group;
- Rape Crime Unit focus group;
- Public Protection Branch focus group;

- Crime Operations focus group;
- Terrorism Investigation Unit focus group;
- Murder Investigation Team focus group;
- Repeat Offender Unit focus group; and
- Domestic Abuse focus group.

PPS

- Director of Public Prosecutions;
- Deputy Director of Public Prosecutions;
- Assistant Directors - Regions, Fraud, High Court and International, Serious Crime Unit, Policy;
- Public Prosecutors focus groups;
- Senior Public Prosecutors focus groups;
- Working Together team focus group;
- Policy Team focus group;
- Case Preparation (Crown Court) focus group;
- Court Support (Magistrates' Court) focus group; and
- Victim and Witness Care Unit staff.

NICTS

- Operational Policy Branch.

FSNI

- Senior management team.

Victim Support Northern Ireland (VSNI)

- Chief Executive Officer;
- Policy and Communications Manager; and
- VSNI provided real life experiences of victims.

Judiciary

- Recorder of Belfast;
- Presiding District Judge (Magistrates' Courts); and
- Representatives from the Lady Chief Justice's Office.

Law Society

- Legal representatives for criminal lawyers.

Bar library

- Representative for Criminal Bar.

NSPCC

- Young Witness Service.

APPENDIX 2: TERMS OF REFERENCE

AN INSPECTION OF FILE QUALITY, DISCLOSURE AND CASE PROGRESSION AND TRIAL RECOVERY FROM THE CORONAVIRUS PANDEMIC

TERMS OF REFERENCE

Introduction

Criminal Justice Inspection Northern Ireland proposes to undertake a thematic inspection of file quality, disclosure and case progression and trial recovery from the coronavirus COVID-19 pandemic (the pandemic).

The quality and timeliness of Police Service of Northern Ireland (Police Service) investigation case files submitted to the Public Prosecution Service for Northern Ireland (PPS), including dealing with disclosure, and the way in which the case files are subsequently progressed to the courts are essential elements for the delivery of an effective and efficient justice system, and one which should meet the needs of victims and witnesses.⁶³ The pandemic severely impacted on the ability of the courts and the wider justice system to fully function and it is important that effective measures are taken to recover and deal with the backlog of cases and inherent delay.

This inspection will primarily consider the approach of the following criminal justice organisations to file quality, disclosure and case progression and trial recovery from the pandemic: the Police Service, the PPS, the Northern Ireland Courts and Tribunals Service (NICTS) and their interfaces with the Department of Justice (DoJ) on trial recovery strategy.

Context

Inspection reports dating back to 2006⁶⁴ identified the need for the Police Service to improve the quality and timeliness of the files it submitted to the PPS, and that the PPS also needed to improve the way it processed case files. As the relationship between the two organisations developed, systems were put in place to improve how cases were progressed.

63 A recent report looked in more detail at the victims and witnesses in the criminal justice system. *Criminal Justice Inspection Northern Ireland. Victims and Witnesses. The Care and Treatment of Victims and Witnesses by the Criminal Justice System in Northern Ireland*. Available at [Victims and Witnesses – The care and treatment of victims and witnesses by the criminal justice system in Northern Ireland \(cjini.org\)](https://www.cjini.org/victims-and-witnesses-the-care-and-treatment-of-victims-and-witnesses-by-the-criminal-justice-system-in-northern-ireland)

64 *Criminal Justice Inspection Northern Ireland. Avoidable delay. A thematic inspection of delay in the processing of criminal cases in Northern Ireland. May 2006*. Available at [Avoidable-Delay-May-2006.aspx \(cjini.org\)](https://www.cjini.org/avoidable-delay-may-2006.aspx)

A subsequent inspection in 2015,⁶⁵ looking specifically at file quality and disclosure, found that in too many case files were not submitted either in a timely way or to acceptable standards, and that the Police Service needed to give these issues a much higher priority. It also found that the PPS should make clear its expectations about file quality and ensure that they are applied consistently by all Prosecutors. Other thematic inspection work identified the need for the Police Service and the PPS to further develop the prosecution team approach in cases involving sexual offences and the need to adopt a case-building approach by working together from the outset.⁶⁶

The NICTS has developed court business continuity arrangements⁶⁷ in response to the pandemic, and is developing plans to move towards full business recovery.

More widely within the DoJ there is a Justice Performance Team responsible for delivering Departmental priorities, which include Recovering the Justice System and Speeding Up Justice, both of which are of relevance to this inspection.

Aims of the Inspection

The aim of the inspection is to examine and assess the effectiveness of file quality, disclosure and case progression and trial recovery from the pandemic with a view to securing improvement.

The objectives of the inspection are to:

- examine the effectiveness of Police Service, PPS and NICTS organisational strategies with regard to file quality, disclosure and case progression;
- review the processes for file quality, disclosure and case progression, how operational delivery is structured to meet the needs and expectations of stakeholders and victims, and to assess effectiveness and potential areas for improvement;
- examine and assess the outcomes of strategies and delivery mechanisms for file quality, disclosure and case progression against performance targets;
- examine management information in relation to the performance of the criminal justice organisations and delivery with regard to file quality, disclosure and case progression;
- examine how the above aspects of file quality, disclosure and case progression are benchmarked against good practice in neighbouring jurisdictions;
- examine the effectiveness of organisational strategies and delivery with regard to disclosure; and
- examine the effectiveness of criminal justice system planning assumptions, priorities, strategies and delivery with regard to trial recovery from the pandemic.

65 *Criminal Justice inspection Northern Ireland. An inspection of the quality and timeliness of police files (incorporating disclosure) submitted to the public prosecution service for Northern Ireland. November 2015.* Available at [An inspection of the quality and timeliness of police files incorporating disclosure submitted to the Public Prosecution Service for Northern Ireland. \(cjini.org\)](https://www.cjini.org)

66 *Criminal Justice inspection Northern Ireland. Without Witness, Public Protection inspection I: A thematic inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland, November 2018.* Available at [Without witness. Public Protection Inspection 1: A thematic inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland. \(cjini.org\)](https://www.cjini.org)

67 Northern Ireland Courts and Tribunals Service website [CORONAVIRUS \(COVID-19\) PANDEMIC - Court Business Continuity Arrangements | Department of Justice \(justice-ni.gov.uk\)](https://www.justice-ni.gov.uk)

Other matters of significance as they arise during the inspection may also be considered.

Methodology

The inspection will be based on the Inspection Framework, the three main elements of which are:

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

Constants in each of the three framework elements and throughout each inspection are equality and fairness, together with standards and best practice. The inspection methodology can be found at www.cjini.org.

The inspection will give due consideration to the relevant human rights laws.

Research and review

Collection and review of relevant documentation such as previous inspection and other reports, the inspected criminal justice organisation policies and procedures, management and performance information, case files, data, minutes of meetings and related DoJ documentation.

The inspected agencies will be requested to undertake a self-assessment in preparation for the inspection.

Delivery

- Terms of reference will be prepared and shared with the Police Service, the PPS, the NICTS and the DoJ prior to the commencement of the inspection. Liaison officers for each organisation should be nominated for the purposes of the inspection.
- The inspected agencies will be given the opportunity to complete a self-assessment of their approach to file quality, disclosure and case progression and trial recovery from the pandemic, as applicable, and to provide an outline of current progress and any management information deemed relevant.
- Management information, data and other relevant documentation held by the criminal justice organisations and the DoJ will be examined.
- Interviews and focus groups will be conducted with inspected agency staff and management, and with relevant stakeholders, to give an insight into the issues being examined. Police Service and PPS case files will be reviewed.
- Progress in the development of performance and management information will be examined.
- Evidence of planning and decision-making leading to performance improvement and recognition of future development will be assessed.
- Where appropriate benchmarking and identification of best practice within and outside Northern Ireland.

- Fieldwork requiring face-to-face contact will be planned and risk-assessed in consultation with relevant organisations or individuals, and public health advice such as social distancing will be followed. All timescales are indicative and dependent on developments with the pandemic.

Feedback and writing

Following completion of the fieldwork, which is planned to take place from August to November 2021, and analysis of data, a draft report will be shared with the Police Service, the PPS, the NICTS and the DoJ for factual accuracy check. The Chief Inspector will invite the organisations to complete an action plan to address any recommendations.

If the plan has been agreed and is available it will be published alongside the final inspection report. The inspection report will be shared, under embargo, in advance of the publication date with the inspected organisations.

Inspection publication and closure

- The final report is scheduled to be completed by January 2022.
- The report will be sent to the Minister of Justice for permission to publish.
- When permission is received the report will be finalised for publication.
- The Chief Inspector's press release will be shared with the Police Service, the PPS, the NICTS and the DoJ prior to publication and release.
- A suitable publication date will be agreed and the report issued.



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