

# Avoidable Delay

A THEMATIC INSPECTION OF DELAY  
IN THE PROCESSING OF CRIMINAL  
CASES IN NORTHERN IRELAND

May 2006

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





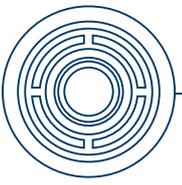
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## List of abbreviations

<b>BIS</b>	Benefit Investigation Services
<b>CJA</b>	Criminal Justice Agencies
<b>CJINI</b>	Criminal Justice Inspection Northern Ireland
<b>CJR</b>	Criminal Justice Review
<b>CJS</b>	Criminal Justice System (Northern Ireland)
<b>CJU</b>	Criminal Justice Unit (in PSNI)
<b>CMS</b>	Case Management System (in PPS)
<b>CPO</b>	Case Processing Office (in PSNI)
<b>DAG</b>	Delay Action Group
<b>DCU</b>	District Command Unit of PSNI
<b>DNA</b>	Deoxyribonucleic acid
<b>DPP</b>	Department of the Director of Public Prosecutions
<b>FSNI</b>	Forensic Science Northern Ireland
<b>HMCPSI</b>	Her Majesty's Crown Prosecution Service Inspectorate
<b>HMIC</b>	Her Majesty's Inspectorate of Constabulary
<b>HMICA</b>	Her Majesty's Inspectorate of Court Administration
<b>ICOS</b>	Integrated Court Operations System
<b>IT</b>	Information Technology
<b>LCJ</b>	Lord Chief Justice
<b>MIT</b>	Murder Investigation Team
<b>MOU</b>	Memorandum Of Understanding
<b>NI</b>	Northern Ireland



NICtS	Northern Ireland Court Service
NIO	Northern Ireland Office
PE	Preliminary Enquiry
PI	Preliminary Investigation
PPS	Public Prosecution Service for Northern Ireland
PSA	Public Service Agreement
PSNI	Police Service of Northern Ireland
PSR	Pre-Sentence Report
PYO	Persistent Young Offender
RFI	Request for Further Information
RUC	Royal Ulster Constabulary
SDG	Strategy and Delivery Group
SIO	Senior Investigating Officer (PSNI)
SLA	Service Level Agreement
SMART	Specific, Measurable, Achievable, Realistic and Time-bound
SPD	State Pathologist's Department
SSI	Social Services Inspectorate
SSR	Specific Sentence Report
TIS	Time Interval Survey
TSR	Trial Status Report
YJA	Youth Justice Agency





## Chief Inspector's Foreword

*“To no-one will we refuse or delay right or justice”  
(Magna Carta)*

1. The purpose of this inspection was to review the extent and causes of avoidable delay in the processing of criminal cases in Northern Ireland and to produce recommendations for improvement.
2. Despite the best efforts of many working in the criminal justice agencies, delays in the Northern Ireland criminal justice system have become excessive. The problem is most worrying in relation to offences committed by young people. The spirit of prompt, ‘summary’ justice for relatively minor offences by young people has been lost, to the detriment of the offender as well as the victim or witness. Throughout the system, avoidable delay is adding to costs and reducing the effectiveness of criminal justice.
3. The report makes some significant proposals for tackling the problem of avoidable delay. I hope it will assist the agencies to make a real and perceptible impact on the problem.
4. Like all inspections, this was a snapshot at a particular point in time. Significant initiatives have been taken both before and since the fieldwork was conducted for this inspection. Use of the Causeway information system, for example, has moved on significantly in the intervening months. I hope that a joint Action Plan will be developed in response to this report, which will reflect the progress that has been made as well as setting out the further response of the agencies to the recommendations.
5. The Inspection Team, led by James Corrigan of CJI, with the specialist help of inspectors from HMIC, HMICA, HMCPSI and SSI, appreciated the co-operation it received from all the criminal justice agencies and from the Northern Ireland Office. I particularly appreciated the contribution which members of the judiciary made to this inspection. CJI does not, of course, inspect the judiciary: any recommendations for improving the administration of court business are addressed to the Northern Ireland Court Service, not to the judiciary, whose independence CJI entirely respects.
6. I am also grateful to those who served on the Steering Committee for the review: Jacqui Durkin (Court Service), Chief Supt Tom Haylett (PSNI) and Raymond Kitson (PPS). They served in a personal and advisory capacity, and bear no responsibility for any deficiencies in the resulting report.



**Kit Chivers**  
Chief Inspector of Criminal Justice in Northern Ireland

Criminal Justice Inspection  
Northern Ireland  
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## At a glance – key areas for improvement

The problem of delay is worse in Northern Ireland than in England and Wales. Published case processing times for youth court cases, for example, are more than twice as long in Northern Ireland as in England and Wales.

What needs to happen:

- 1. Ministers and officials need to ensure that all the agencies are working together on the issues of delay, with a common strategy and shared targets.**
- 2. The PSNI needs to improve the quality and timeliness of the files it submits to the Public Prosecution Service.**
- 3. The Prosecution Service needs to improve its processes and the management of those processes.**
- 4. Cases need to be managed actively through joint, inter-agency co-operation.**
- 5. There needs to be a proper analysis of the reasons for court adjournments.**
- 6. There should be a specific target for reducing delay in youth cases.**

In addition:

7. The use of police bail needs to be more disciplined.
8. The PPS should help the Police by reducing requests for a full file, and by only asking for further information when it is really necessary.
9. More cases, especially youth cases, should be diverted away from the PPS and the courts by use of police informed warnings and cautions.
10. Defendants who are guilty should be further encouraged to plead guilty at the earliest opportunity.
11. The operation of legal aid should be adjusted to provide every reasonable incentive for the brisk disposal of cases.

The full list of recommendations is on page xv.





## Executive summary

1. The Belfast Agreement of 1998 and the subsequent Criminal Justice Review in 2000 have been the main drivers of change in the Northern Ireland Criminal Justice System (CJS). The rapid pace and intensity of change has inevitably put pressures on agencies as they have sought to restructure, reorganise and modernise how they conduct the business of justice. But it has also challenged agencies to reassess and evaluate the effectiveness and efficiency of how they deliver their services to the public. The cost of these services per head of population in Northern Ireland is nearly double that in England, Scotland or Wales.
2. The timeliness of case progression through the CJS is an important indicator of its effectiveness and efficiency. Inspectors found many views from within the CJS and among users that case processing times are unacceptably long, and this is confirmed by comparisons with England and Wales. Despite efforts by the Criminal Justice Board (CJB) and the Delay Action Group (DAG) to reduce delay, case processing times have become longer for indictable cases and it now takes on average about a year to process a defendant's case from first remand to disposal – this does not include the time from offence to first appearance in court. The average processing time for adult defendants, who appear in the magistrates' court, is 113 days from charge/issue of summons to disposal. Youth defendants are taking 134 days on average from charge/issue of summons to disposal. Published data for adult and youth magistrates' courts show that cases are taking much longer in Northern Ireland compared to England and Wales. The length of these processing times appears to be excessive and requires immediate and joint action by the Northern Ireland criminal justice system.
3. This report is divided into two sections: (i) criminal justice system-wide issues and; (ii) case process stage issues aimed at one or more agencies. Inspectors found consensus among all the agencies that case processing times should be shorter i.e. that avoidable delay is a feature of the criminal justice system. There is also broad agreement that delay has negative consequences for most agencies and users of the criminal justice system. In particular, the impact on young people, as victims, witnesses and particularly offenders, can be very detrimental. Time intervals and targets are often necessary in the interests of justice, to enable cases both for the prosecution and for the defence to be prepared properly. But some time is wasted, and some delays are unreasonable. It is the avoidable delay which is the subject of this inspection.
4. The criminal justice agencies and users accept that avoidable delay is a problem which needs to be addressed, though there is some reluctance to attribute responsibility to their own agencies, professions or groups. A number of strategies and targets have been developed, though none could be described as joined-up or taking an end to end approach to the problem. Instead, existing strategies and targets are agency specific with little input and participation from others within the CJS. The dilemma is that while many of the causes of avoidable delay may be agency focused, the solutions need to be delivered jointly through an end to end approach to case progression. There is a



need for a joint strategy on delay which is underpinned by specific delay targets. The Criminal Justice Strategy and Delivery Group should take overall leadership for the delay strategy and its development and implementation should be the responsibility of the CJB.

5. The main response of the CJS to the issue of avoidable delay has been in the context of the two specific recommendations of the Criminal Justice Review. The Justice Oversight Commissioner has stated that both recommendations have technically been achieved, but is critical of an approach which is not designed 'to address the causes of delay in the criminal justice process.' The approach, which was developed by the CJB and the DAG, is primarily centred on monitoring performance in relation to indictable (Crown Court) criminal cases. Actions and solutions are generally confined to existing initiatives with little scope to allocate tasks and achieve coordinated delivery. Inspectors are in agreement with the Justice Oversight Commissioner, who stated that 'the problems of delay will not be solved through the collection of data and prolonged discussion'. The CJB should take a more pro-active leadership role in relation to delay and the DAG should become more action-orientated. Successful delivery of the strategy will require joint co-operation and action at local level which should take the form of improved inter-agency co-operation (e.g. case progression groups).
6. CJI welcomes the engagement of the senior judiciary in trying to reduce case processing times through more effective case management in the Crown Court. It is appropriate that the judiciary should provide leadership in addressing a delay culture which pervades at every stage, and in all types of cases. On a broader level, strong and effective leadership from across the CJS is critical to the delivery of a delay strategy and to challenging the cultures and practices which contribute to this problem.
7. If, as we hope, significant reductions in case processing times can be achieved over the next few years, CJI recommends that statutory time limits should be introduced in Northern Ireland by 2009-10, and these should include sanctions for non-compliance on the lines of the regime in Scotland.
8. The second section of the report is focused on process stage issues of case progression and recommendations are targeted at specific criminal justice agencies. The inspection found that the causes of avoidable delay are varied in type but are consistently evident in all the criminal justice agencies. It is at the interfaces between these agencies that problems such as file preparation are most evident.
9. There are two major concerns on file preparation: too many files are slow (late in relation to time targets) in reaching the PPS; and too many are of poor quality (in relation to checks by the PPS) meaning that additional time is required to obtain missing information. The Police Service of Northern Ireland (PSNI), who prepare most investigation files, accept that improvement to the timeliness and quality of file preparation is necessary and this is the core theme of its 'reducing delays' strategy.

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10. This report recommends that the PSNI needs to further prioritise the importance of file preparation within the Service and address a culture which regards ownership of a case as ending at the point of charge. Appropriate training should be provided to officers and supervisors. Inspectors accept that delays associated with file preparation are not always within the direct control of the police. In particular, both forensic science and pathology reports have been a significant source of delay in recent years. Both Forensic Science Northern Ireland and the State Pathologist's Department have been inspected by CJI in 2005 and a number of recommendations have been made in relation to their contribution to reducing delays.
  11. The submission of poor quality files has put additional pressures on the Public Prosecution Service (PPS), which is currently experiencing significant challenges in the context of its roll out across Northern Ireland. It is therefore not surprising that bottlenecks have emerged at various points, and poor advance planning was evident in its roll out in Fermanagh and Tyrone. Inspectors are concerned that backlogs in cases, primarily from post registration to decision on prosecution, are likely to continue and therefore add avoidable delay to cases.
  12. Performance against internal timeliness targets is poor, especially as these targets are considered generous by some senior staff within the PPS. The solution is two fold: (i) the PPS should continue to improve its existing processes and practices while allocating/re-directing resources to tackle specific bottlenecks; (ii) the PPS in conjunction with other criminal justice agencies should reconsider some key principles behind the formation of the PPS in order to reduce its volume of cases and expedite the processing of youth cases in particular. In particular, there is a need to reassess whether it is necessary that all decisions on informed warnings and cautions for youths should continue to be taken by the PPS. There is also scope to further reduce overall caseload through delegation of 'absolute' offences to the PSNI and by the extension of fixed penalty offences.
  13. Effective case administration and management is critical to the expedition of criminal cases. Inspectors found some good examples of case progression – the Trial Status Reports and Pre-Trial Reviews developed and implemented by the senior judiciary in relation to Crown Court cases are examples of good practice. The use of case administration is still underdeveloped for the vast majority of cases in the magistrates' courts. It has been adopted by the DAG in the establishment of the inter-agency Case Tracking Group for indictable cases, though the group has made little impact to date.
  14. The report recommends that effective and targeted case management (prior to court) and case administration (in court) is required for magistrates' court cases. Case progression groups should be established by the criminal justice agencies, initially with a focus on youth cases. The Court Service should appoint case progression officers to take the lead in this exercise, though the onus is on all the agencies to take a proactive role in case progression. It is imperative that reliable data on live cases is available to these groups so that priorities and actions are based on the most up to date information.



15. Inspectors conducted an analysis of case files as part of this inspection. The purpose was to assess the quality of information contained in case files and then to use this information to form a better understanding of the reasons for adjournments. It was quickly apparent that the case files did not provide a full picture on adjournments and that any fuller analysis would require changes to how this valuable information is collected. Court observations also confirmed the existence of an adjournment culture and indicated there is limited challenge to adjournment requests in court. A recommendation is made that the Court Service should take the lead in seeking cross agency consensus on the definition and measurement of the reasons for magistrates' court adjournments. Existing databases should be modified to measure and monitor this data. This information will be invaluable for identifying the causes of delay in court and for reaching consensus on how these problems should be tackled.
16. The operation of legal aid was raised as a concern by a number of the agencies, particularly by some users of the CJS. While this inspection did not explore legal aid in detail, it did raise a number of issues which could impact on the length of cases. In particular, there is strong support for a set fee to be applied to all cases – as currently operates in the Crown Court. Linked to the operation of legal aid is the issue of guilty pleas. It is manifest to inspectors that a prime cause of avoidable delay is the rate and timing of guilty pleas. Evidence from meetings, file reviews and observations in court show that guilty pleas are common, but are often taken at the last moment (i.e. on the day of trial). By this stage, both the prosecution and the defence (each primarily funded by the public) will have spent considerable resources on preparing cases and informing witnesses and victims of court dates. Very often these witnesses and victims are then asked to return on another date. Securing earlier guilty pleas can only partly be achieved by changes to the operation of legal aid. It must also be linked to the choice that defendants have between gaining the benefits of an early guilty plea as opposed to the chances of an acquittal following a contest. A combination of tangible benefits for an early guilty plea linked to a lower chance of an acquittal (e.g. through improved prosecution of cases) should lead to earlier guilty pleas and to a significant reduction in overall case processing times.
17. Reducing the extent of avoidable delay in the processing of criminal cases in Northern Ireland can only be achieved by joint action by all the key criminal justice agencies. Greater accountability at an inter-agency and local level should ensure that problems and priorities can be agreed and issues channelled to respective senior management. CJI welcomes the commitment of all the agencies to tackling this problem. It makes these recommendations as means of achieving a more effective, efficient and joined-up criminal justice system which provides the public with greater confidence in the administration of justice.



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## Recommendations

### PART 1

- The Criminal Justice Strategy and Delivery Group should take overall responsibility for the development of a joint delay strategy, which encompasses all criminal cases. (Para 3.1)
- The Criminal Justice Board should be more proactive in coordinating a framework of shared targets (delay) and monitoring the contribution that agencies are making towards them. It needs to be given a clear mandate to this effect by the SDG, and it needs a joint secretariat properly resourced for this purpose. (Para 3.2)
- Each criminal justice agency should amend existing strategies and targets to align with the recommended joint CJS strategy on delay. (Para 3.9)
- Specific delay targets should be set as part of the overall joint strategy on delay. Reduction in delay should become a PSA target in Northern Ireland as soon as this is practicable and no later than 2008. Performance against the targets should be reported in the CJS Annual Report. (Para 3.16)
- A separate youth target should be included in the delay strategy. (Para 9.22)
- The Criminal Justice Board should give serious consideration, as part of its delay strategy, to identifying the numbers of persistent young offenders in Northern Ireland and then developing an appropriate strategy. (Para 9.11)
- The purpose, role, remit and membership of the Delay Action Group should be reviewed so that the group is more action-oriented and focused on all criminal cases from entry to the CJS to disposal in the courts. The work of the youth group should be subsumed by the DAG. (Para 4.4)
- Specific cross agency case progression groups should be set up and operate across Northern Ireland. The new structure should be piloted for youth court cases. Terms of reference for the operation of case progression meetings should be developed by the DAG. (Para 4.7)
- Statutory time limits should be introduced in Northern Ireland by 2009-2010. The time limits should include sanctions for non compliance along the lines of those that currently operate in Scotland. (Para 4.12)



## PART 2

- PSNI should select a sample of cases to more accurately identify offence to charge / summons times in Northern Ireland. (Para 5.4)
- Prosecutorial and pre-charge advice by the PPS to the police should be extended beyond normal working hours. (Para 5.11)
- The PSNI should urgently address its problems with file preparation and address the widespread issue of non-compliance on file quality and timeliness. Individual performance should be linked to individual assessment reviews and ultimately to overall remuneration (e.g. Competency Related Threshold Payments). (Para 6.12)
- An urgent review of training on file preparation should be undertaken and appropriate training should be implemented as soon as possible. The PPS should provide an input to the development of this training and also be involved in its delivery. (Para 6.14)
- It is critical that more robust quality control mechanisms and processes are put in place, and that supervisors who are the gatekeepers between the investigating officer and the PPS, are targeted for enhanced training provision. (Para 6.16)
- An accurate and agreed projection of future caseload should be undertaken by the PSNI and PPS as it will have implications for how resources are used to tackle avoidable delay. (Para 7.4)
- Better contingency arrangements are required for the future roll out of the PPS. PPS should re-consider the timetable for the future roll out of the service in areas where appropriate accommodation will not be available. (Para 7.8)
- The process of file allocation needs to be urgently reviewed by the PPS and a more efficient file management system needs to be implemented as this is not appropriate for the current or projected volume of cases. (Para 7.10)
- A standardised approach regarding 'direct contact' policy should be established between the PPS and the police. A more formal means of feedback from the PPS to the PSNI is required. (Para 7.13)
- Alternative arrangements for signing of summonses should be implemented. This should include the use of electronic signatures which are authorised by a PPS prosecutor. (Para 7.26)
- A short-term measure should include modifications to existing PPS processes (e.g. file allocation) with additional resources targeted at the reduction of current backlogs. The PPS, in conjunction with the other criminal justice agencies, should reconsider whether it needs to take all prosecution decisions. (Para 7.30)

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- Regional variations in court performance should be explored in more detail to identify areas where best practice can be shared. (Para 8.10)
  - With the agreement of the Lord Chief Justice, the Court Service should conduct a consultation exercise, to identify how it can best handle different types of business and also meet the changing needs of its users. (Para 8.10)
  - NICtS should appoint case progression officers for magistrates' court cases. (Para 8.13)
  - Detailed and ongoing case file analysis, which inspectors consider to be essential, will require all the key agencies to agree how each type of adjournment is recorded in court. Data should be collected and disseminated by the courts, and IT systems should be modified for this purpose. (Para 8.20)
  - The PPS and the PSNI should ensure that ownership of witness attendance is agreed and that communication and liaison are enhanced. (Para 8.28)
  - PBNI should report separately on its performance in relation to PSRs and explanatory letters, and should work closely with sentencers in relation to the extended use of SSRs. (Para 8.41)
  - Greater flexibility with regard to decisions on informal warnings and cautions to young people is required so that (in the words of the Criminal Justice Review) 'cases are dealt with expeditiously'. The PSNI should therefore assume delegated responsibility for decisions on youth warnings and cautions. (Para 9.6)
  - Periods of remand (on bail and in custody) should be for the shortest time possible, particularly for young offenders. The criminal justice agencies should develop procedures on implementation to minimise time spent on remand. (Para 9.14)
  - More detailed plans are necessary for the PPS prioritisation of youth cases. They should be formulated in conjunction with other CJAs, and implemented as quickly as possible. (Para 9.17)
  - The practice of combining youth cases with longer-running adult or youth cases should be restricted to exceptional circumstances. (Para 9.18)



PART



# System wide issues



## CHAPTER 1:

# Change in the Northern Ireland Criminal Justice System



- 1.1 Much of the impetus for change in the Northern Ireland Criminal Justice System (CJS) has emanated from the Belfast Agreement of 1998 and the subsequent Criminal Justice Review which was published in 2000. A key objective of the Review was to improve public confidence through a more effective and efficient criminal justice system. A recurring theme in the Review was the issue of delay. It made two specific recommendations: (i) 'introduction of legislation that will enable statutory time-limits to be introduced in Northern Ireland, should that be judged to be necessary'; and (ii) when 'setting limits within which cases should be completed, attention should be paid to the average time taken to process cases at the relevant stages.' The Review acknowledged that many of its other recommendations would also impact on delay in the processing of criminal cases. For example, the recommendation to reform the practice of how serious cases are committed (i.e. sent) to the Crown Court was based on achieving a more efficient and effective system and thereby reducing delays.
- 1.2 One of the biggest changes proposed by the Criminal Justice Review was the establishment of a single independent prosecuting authority. A new Public Prosecution Service (PPS) has replaced the Department of the Director of Public Prosecutions (DPP) and is taking on responsibility for the prosecution of all criminal cases. Staff numbers have rapidly increased from 150 staff (DPP) to a current figure of 387 (December 2005), and it is projected that 550 staff will be employed when it is fully operational. The number of cases received has been increasing from around 10,000 per year to 20,000 in 2004/05, and it is projected by the PPS that this will increase to over 70,000 cases per year when fully operational. Inspectors acknowledge the level of change that is required within the PPS to achieve its full roll out. It is important that the issue of timeliness should remain a priority for managers and staff within the organisation.



- 1.3 A major process of internal reorganisation has been taking place in the police as a result of the Patten report on policing in Northern Ireland, which was published in 1999<sup>1</sup>. This led to the replacement of the Royal Ulster Constabulary (RUC) by the Police Service of Northern Ireland (PSNI). The PSNI is facing a number of key challenges, particularly in terms of training new officers and wider human resource development. One of the biggest operational changes to date has been the introduction of electronic case preparation as it requires a major cultural change within the organisation.
- 1.4 The Northern Ireland Court Service (NICtS) has not faced that same level of organisational change, though over 90 recommendations of the Criminal Justice Review had direct or indirect relevance for NICtS. Examples include the establishment of lay magistrates, coroners reform, inclusion of 17 year olds in the youth court and issuing of youth court guidelines. Some recent developments are impacting on how NICtS conducts its business. The proposed abolition of committal proceedings will mean that indictable cases are sent directly to the Crown Court instead of the current practice of having preliminary hearings at the magistrates' court. There have been some recent changes in the operation of legal aid (which is now operational in the Crown Court and will soon apply to the magistrates' courts).
- 1.5 There are significant changes taking place in Forensic Science Northern Ireland and in the State Pathologist's Department. These changes are partly designed to reduce the time taken to produce reports for the PSNI and the CJS in general. Recent inspections by Criminal Justice Inspection (CJI) found significant delays in the submission of reports by both organisations, and this was having a negative impact on overall case progression times. A set of recommendations has been developed for both organisations, and some notable improvements have been achieved in relation to the timeliness of DNA forensic science reports in particular. Progress will be reassessed by CJI later in 2006.
- 1.6 The Causeway Programme is a major technology initiative designed to join up existing criminal justice information technology (IT) systems. It will not replace individual agency IT systems but instead seek to provide greater compatibility and sharing of information between the criminal justice agencies. It does however mean that many agency IT systems will require upgrades or replacement in some cases. The key benefit of Causeway is that details on criminal cases can be shared across the CJS electronically. The first phase (DSM0 – case preparation) is now complete and operational for the PSNI, Forensic Science Northern Ireland and the PPS. The next major phase (DSM1 – courts process) has been delayed until May 2007 and will involve Court Service

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<sup>1</sup> *A New Beginning: Policing in Northern Ireland*, The Report of the Independent Commission on Policing for Northern Ireland



participation and greater case management functionality. One of the key outputs of Causeway is the use of electronic case preparation (launched in July 2005). It means that once the police create the file, it can then be sent electronically to the PPS (launched in July 2005). While Causeway was not devised specifically to address delay, one of its key benefits is expected to be a reduction in administrative delay, principally at the interfaces between the criminal justice agencies.

1.7 The Causeway team was tasked with preparing a paper on delay – *a short review of the causes of delay in bringing criminal cases to trial in Northern Ireland*. In late 2002, Ministers commissioned an ad hoc group of representatives of the criminal justice agencies to take forward the work arising from this report. The group reported to Ministers in 2003 that the introduction of particular measures would have a positive impact on delay in advance of the major benefits to be delivered by the Causeway programme. A key issue however is that Causeway is moving at the pace of the slowest partner and modifications of existing and new IT systems are taking longer than anticipated. A clear example was the delay in the roll out of electronic case preparation in Fermanagh and Tyrone which impacted very negatively on the PPS.

1.8 Inspectors acknowledge the concerns of senior staff in the PPS and PSNI in particular, that major change programmes can put additional pressures on core activities and therefore may result in delays. Conversely a period of change, particularly when it is supported by significant additional resources to the CJS, is an ideal opportunity to make the necessary improvements for a more effective and efficient CJS. Inspectors acknowledge that some of the recommendations of this report may require additional resources. Most should link with the current strategic plans of the criminal justice organisations and should therefore require no additional resources to deliver. In the longer term, less avoidable delay and quicker case processing times will provide efficiencies for the wider criminal justice system.





## The concept of delay

- 2.1 The use of the term ‘delay’ can be contentious in a criminal justice context. While delays in the health service for patients or in the transport service for passengers are generally criticised as unacceptable, delays in the processing of criminal cases are often referred to by those who work in the system as ‘necessary’, and ‘unavoidable’. A distinction is made between administrative delay (e.g. transferring of case files between offices or agencies) and legal delay (e.g. adequate time for the prosecution or defence to read the case files) though the boundaries are not easily evident. Everyone accepts that a reasonable period of time is required to conduct investigations, prepare prosecution and defence cases and to conduct a fair trial. There is little agreement, however, on how long is a ‘reasonable’ time, as criminal cases vary in their complexity, and comparisons or benchmarks with other criminal justice systems or jurisdictions are resisted on the basis of different laws, structures, IT systems and people.
- 2.2 This also reflects the response of the courts to cases brought under Article 6 of the European Convention on

Human Rights. The Convention on Human Rights, which is formally incorporated into UK law, states that ‘everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.’ This is a right which can be traced back 800 years to Magna Carta, which stated ‘to no one will we refuse or delay right or justice.’ No exact interpretation of a ‘reasonable time’ has been defined as the courts have determined each case on its particular circumstances, though many have accepted that individual cases have violated Article 6.

- 2.3 A number of studies and reports have attempted a definition of delay and sought to solve the problem of determining from when the length of delay can be measured. A Council of Europe study<sup>2</sup> examined delay in criminal cases in some detail and concluded that it is best to ‘use a more abstract definition of delay’ which provides greater scope for analysis of its causes and possible solutions. The paper suggested that delay should be defined as when a case ‘takes more time than

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<sup>2</sup> *Delays in the Criminal Justice System – Causes and Solutions*, Council of Europe, p.3



necessarily required by the penal system, considering all procedural, constitutional and other rights of defendant, victim and witness.'

- 2.4 The PPS, in its recent investigation into delay, defined it as 'all unnecessary time taken to progress cases within the prosecution service which can be reasonably considered to be avoidable.' The PSNI, in its reducing delay strategy also focused on 'unnecessary delay in case investigation, preparation and adjudication.' There is therefore some consensus that time which is 'unnecessary', 'avoidable' 'unreasonable' and 'unacceptable' can be defined as delay.
- 2.5 The perception and experience of those who work in, or engage with the criminal justice system is also critical to an understanding of what constitutes delay. Inspectors gathered the views and comments of a wide range of participants and users of the criminal justice system (i.e. judiciary, Resident Magistrates, police, prosecution, defence, court staff, probation and groups representing victims, witnesses and defendants), and most share the view that delay is a problem which needs to be addressed through concerted action. There is however, some reluctance to attribute responsibility for delay to their specific agencies, professions or groups.

## Measuring case processing times

- 2.6 Efforts to tackle the causes of delay in the Northern Ireland criminal justice system date back to the mid 1990s. An analysis of the reasons for

delay in indictable cases led to new arrangements for joint case management between the police, and the then Director of Public Prosecutions (DPP). The later Review of the Criminal Justice System (2000) stated that 'there remains scope for considerable further improvement' on reducing delays.

- 2.7 Progress in implementing the recommendations of the Review has been monitored and assessed by the Justice Oversight Commissioner, Lord Clyde, who has devoted a separate chapter of his bi-annual reports to the issue. He concluded that the scheme established by the criminal justice agencies 'can only be a measure of the efficiency of the system and is not designed....to address the causes of delay in the criminal justice process.' He further expanded in his third report that 'very serious consideration should be given to the introduction of statutory time limits to enforce the timely processing of cases and to ensure conformity with the reasonable time limit requirement of the European Convention on Human Rights.'
- 2.8 There is no overall monitoring and tracking of criminal cases or defendants in the Northern Ireland CJS, though it is anticipated that this will be possible when Causeway is fully operational. The most detailed monitoring of completed cases for defendants is currently undertaken by the Court Service. The average times to process defendants is summarised in Table 1 below. The times for defendants in the Crown Court were taking on average 360 days from first remand (first appearance in court) to



disposal in 2005, which represents a slippage in performance from previous years. Adult defendants in the magistrates' court took 113 days on average from point of charge/issue of summons to disposal in 2005 which is similar to 2004 but worse than 2003. The equivalent figure for youth defendants is 134 days, which represents an improvement on 2004.

2.9 The published figures do have some important limitations in terms of overall case processing times for defendants. It does not include the critical pre-court period for Crown Court defendants (i.e. from offence to first remand) and the period from offence to charge/issue of summons for defendants in the magistrates' court. It is estimated by the NIO and PSNI that offence to clearance (i.e. charge/summons for all notifiable offences) is taking on average 112 days<sup>3</sup>. Another limitation is that published data for defendants in the magistrates' court excludes certain categories of cases/processes (i.e. defendants on bench warrants, adjourned generally, deferred sentences and youth monitored cases). The inclusion of these categories with the 2004 figures added 28 days to the average processing time for both adult and youth defendants. It is therefore reasonable to assume that the average end to end processing time (i.e. offence to disposal) is around 253 days for adult defendants and 274 days for youth defendants in the magistrates' court. Provisional figures provided by the PPS for its rolled out areas point towards a similar time

period for the processing of youths from date of incident to disposal.

**Table 1: Average times to process defendants in Northern Ireland**

<b>Crown Court</b>	<b>Number of days (average)</b>
Remand to disposal – 2005	<b>360</b>
Remand to disposal – 2004	327
Remand to disposal – 2003	339
Remand to disposal – 2002	343
<b>Adult magistrates' court</b>	
Charge/summons to disposal – 2005 <sup>4</sup>	<b>113</b>
Charge/summons to disposal – 2004	111
Charge/summons to disposal – 2003	104
<b>Youth magistrates' court</b>	
Charge/summons to disposal – 2005	<b>134</b>
Charge/summons to disposal – 2004	145
Charge/summons to disposal – 2003	153
<b>All notifiable offences dealt by charge or summons</b>	
Offence to clearance (charge/summons) – 2004	112

2.10 Key questions for the CJS are whether an average of 134 days is a reasonable time period to process youth defendants from charge/summons to disposal? Is 274 days from date of offence to disposal reasonable? Is an average of 360 days a reasonable period to process defendants in indictable cases from date of first remand to disposal? It is the purpose of this inspection to address these questions in some detail and establish the level and causes of avoidable delay in case processing times.

3 CJPMS Annual Report 2004, p.11

4 Data for defendants in the magistrates' court for 2005 is currently provisional and will be published in July 2006



## England and Wales

2.11 It is more difficult to assess the level of avoidable delay in the absence of benchmarks with other criminal justice systems. NIO Ministers expressed concern in 2003 that cases were taking 'too long' and asked to see more comparisons in performance and approach with England and Wales. The England and Wales CJS most closely resembles Northern Ireland where the issue of delay has been the focus of attention for a number of years (e.g. Narey report, Persistent Young Offender target; Statutory Time Limit Pilot Schemes in the Youth Court), though it is accepted that much more needs to be done to tackle this problem.

2.12 There has been significant resistance in Northern Ireland to making comparisons with other criminal justice systems. A paper by the Delay Action Group (DAG) stated that 'such comparisons were potentially unfair and unhelpful' as other jurisdictions 'operate different processes and use different methodology to collect and present data.' The minutes of the DAG express the view that we 'do ourselves an injustice by comparing performance with England and Wales.' Inspectors feel however, that there is value in comparing published data from Northern Ireland and England and Wales and also drawing upon the approach that others apply to addressing the problem of avoidable delay.

2.13 An argument put to inspectors

against making comparisons with England and Wales, is that the investigation stage of cases (pre-charge/summons) is shorter in Northern Ireland compared to England and Wales. This would mean that the time from charge/summons to disposal could take longer in Northern Ireland as investigation and file preparation is completed. The evidence collected in this report would not support this view – incident to charge/summons times is actually longer in Northern Ireland (112 days on average<sup>5</sup>) compared to England and Wales (84 days from offence to charge or laying of information for all defendants which includes an average of 59 days<sup>6</sup> for defendants in indictable cases). However, there does appear to be a different approach to determining date of offence in England and Wales compared to Northern Ireland which could partly explain this discrepancy between the two jurisdictions.

2.14 Measuring cases from date of offence is valuable in a comparative perspective as it provides a common starting point. It is suggested however, that the starting point for any benchmarking should be the date of reporting of the offence to the police rather than date of offence. It is important for benchmarking purposes that the same rules apply to measuring the date of reporting.

2.15 In the interests of transparency, this report shows the published processing times for different types

<sup>5</sup> Data supplied by PSNI and published in DAG paper on delay

<sup>6</sup> *Statistical Bulletin: time intervals for criminal proceedings in magistrates' courts*, December 2005, Department for Constitutional Affairs (DCA) p.15

of criminal cases in Northern Ireland and England and Wales. The published figures show that Northern Ireland is taking significantly longer to process criminal cases compared to England and Wales. The biggest difference relates to youth defendants, though defendants in indictable cases are taking much longer to reach the Crown Court stage compared to England and Wales.

- 2.16 A number of important caveats however must be applied to the interpretation of these figures and therefore to any comparisons. The data in Northern Ireland is collected from a complete administrative dataset while England and Wales figures are compiled on the basis of a sample of completed defendant's cases in particular weeks during the year – Time Interval

Survey (TIS). However, the margin of error is low and therefore should not make the data unreliable. A more important factor for any comparison is the period of measurement for criminal cases. Due to the unavailability of offence date data in Northern Ireland, the period of measurement is taken from date of remand (first listing) for indictable cases and data of charge or date of summons issued for magistrates' court cases. Most data in England and Wales is measured from date of offence, which provides for a more complete analysis of case progression. It is therefore necessary from a comparative perspective, to compare case progression from date of charge or summons in both jurisdictions. The date of disposal is the end point of cases and there appears to be a more consistent approach to using this date in both jurisdictions.

### Benchmarking performance (published data)

Type of case	N. Ireland	Eng & Wales <sup>7</sup>
<i>Crown Court defendants</i>		
Offence to disposal	no data	281 days
Remand to disposal	<b>360 days</b>	<b>214 days</b>
Remand to committal	170 days	52 days
Committal to start hearing	130 days	114 days
Hearing to disposal	60 days	48 days
<i>Adult magistrates' court defendants</i>		
Offence to completion	no data	149 days
Charge/summons to disposal	<b>113 days</b>	<b>61 days</b>
<i>Youth magistrates' court defendants</i>		
Offence to completion	no data	98 days
Charge/summons to disposal	<b>134 days</b>	<b>55 days</b>

<sup>7</sup> Data obtained from TIS survey conducted by DCA



2.17 The biggest issue that militates against benchmarking with England and Wales is the different approaches to what types or categories of defendants and cases are measured and most importantly what types or categories are excluded from the dataset. In Northern Ireland, data published by the Court Service shows that four categories of defendants/cases are excluded: bench warrants, adjourned generally, deferred sentences and youth monitored cases. The effect of these exclusions is that the charge/summons to disposal times for adult and youth defendants has been reduced by 28 days in the 2004 data. It is more difficult to ascertain what types and categories of cases are excluded from the published TIS data in England and Wales. Data provided by the Department of Constitutional Affairs to NICtS does provide some insight: later disposal dates for some charges are not counted (the earliest disposal date is collected in the survey); deferred sentences are not counted (same as Northern Ireland for magistrates' court defendants); adjourned *sine die* are counted (which can provide an earlier disposal date); and bench warrants are counted from date of execution as opposed to date of issue (though this should not impact on overall end-to-end case processing times). Different processes can also impact on case processing times such as the practice in England and Wales of sending more serious cases to the Crown Court for sentencing. This may reduce overall case processing times in the magistrates' courts (as these cases can be considered as a disposal when sent to the Crown Court) though

they will be picked up in the Crown Court data.

2.18 A direct comparison of published case processing times for defendants in Northern Ireland and England and Wales shows that Northern Ireland is taking significantly longer to process all types of criminal cases. However, comparison of these figures is problematic as different approaches to the collection and measurement of case processing times is used in both jurisdictions. Inspectors fully support the objective of the CJB that benchmarking with England and Wales should be undertaken, though this should happen immediately rather than by April 2007 as announced. Benchmarking on the basis of a more consistent and comparative dataset will provide a valuable input to the extent of avoidable delay in processing criminal cases in Northern Ireland.

## Scotland

2.19 How criminal cases are processed in the Scottish criminal justice system was mentioned by a number of interviewees during this inspection. The Scottish system was referred to by the Criminal Justice Review in 2000 and the key recommendations on time limits can be traced back to the Scottish system of time targets for the processing of different types of criminal cases. The Criminal Justice Review noted that cases in Scotland were generally processed speedily and efficiently without impairment of the quality of justice.

2.20 The Scottish system is very different to Northern Ireland, but its approach



to dealing with delay is worthy of consideration. Unlike most jurisdictions, time limits ‘for the prevention of delay in trials’ are incorporated into legislation (Criminal Procedure (Scotland) Act 1995 and Amendment 2004). Following arrest, a defendant must be brought before a court on the next working day. The Procurator Fiscal then has eight days to complete initial enquiries before commencing committal proceedings. The 1995 Act stated that the period from committal to start of jury trial in the High Court and Sheriff Court is subject to a 110-day rule, where the defendant is in custody. The indictment (when detailed charges are put to the defendant) must be issued within 80 days from the date of committal. If the accused is on bail, the trial must start 12 months from the first appearance on petition in respect of the offence. The consequence of breaching either the 110-day time limit or the 12 month time limit is that the accused will be free from the charges, irrespective of the seriousness of the crime.

2.21 The Scottish time limits, particularly the 110-day limit, ensures that persons accused of serious crimes are not kept in custody for long periods. It also benefits justice in that witnesses’ memories are still fresh and they are able to give their best evidence. There is also clear evidence that it avoids unnecessary delay and anguish for victims.

2.22 The practice of how the time limits have operated has been the subject of review in recent years. A review by Lord Bonomy<sup>8</sup> of High Court business found that applications for extensions to the time limits, which can be requested by the defence and/or prosecution have become much more regular. The report found that long extensions in complex cases were rare but short extensions to the 110 day time limit were frequent. Extensions were granted in 11% of cases in 1995 but in 23% of cases in 2001, despite the fact that 55% of cases had a guilty plea. The report found that the 80-day time limit for issuing the indictment is usually achieved by the prosecution, but there is a practice of working towards the limit rather than doing it as quickly as possible. This has the consequence that the defence can just have 29 days to prepare some cases for trial, meaning that trials are subject to adjournments.

2.23 Following up Lord Bonomy’s report, the Scottish Executive initiated a period of consultation which has led to an amendment to the 1995 Act. The 2004 Amendment includes new time limits for the processing of cases – a new 140-day limit for trials (110-day limit for a new preliminary hearing and 30 days further for start of trial). The intention is that few extensions of the 140-day limit should be required and a more proactive approach to judicial case management should ensure that all parties come to preliminary hearing

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<sup>8</sup> Lord Bonomy’s report *Improving Practice: 2002 Review of the practice and procedure of the High Court of Justiciary* was presented to the Scottish Executive in November 2002.



and trial fully prepared and unnecessary adjournments are avoided. The 80-day limit within which the Crown has to serve an indictment is unchanged and meets the requirement that accused persons are not held in custody for a lengthy period. The 12-month limit from first appearance on petition to trial for persons on bail remains unchanged.

- 2.24 A significant new element is that the sanction for non adherence to the time limits is changed from ‘liberated’ for the accused to ‘entitled to be admitted to bail.’ An accused will be entitled to bail if the 80, 110 or 140 day limits are breached but the Crown will still be entitled to prosecute providing that the trial starts within 12 months of the first appearance on petition before the Sheriff.
- 2.25 The experience of the Scottish time limits to date is that clear targets and associated sanctions can have a positive impact in terms of early case preparation by the prosecution and the defence. However, the over use of extensions (in half of all cases which go to trial) diluted the overall impact of the time limits. The decision to continue with time limits, though changed to reflect the changing nature of cases, is demonstration of their value in Scotland. The change in the sanctions applied to non adherence will take longer to assess but it is an approach which should be seriously considered by the NI CJS. The Justice Oversight Commissioner commented that ‘very serious consideration should be given to the introduction of statutory time limits

to enforce the timely processing of cases’ and the experience from Scotland would show that such limits and associated sanctions have provided greater focus to case progression and acted as a deterrent to avoidable delay.

## Republic of Ireland

- 2.26 Delay, particularly in dealing with young offenders, is recognised as a specific problem in the Republic of Ireland. The Minister of Justice has warned that the present pattern of delay fundamentally undermines the capacity of the system as a whole to respond effectively to crime and to deter it. However, there is limited available data on case processing times. The Irish Court Service in its Annual Report 2004 provide court statistics which show that cases in the Supreme Court had an average waiting time of 10 months from the arraignment to the hearing date. Cases in the Circuit Court are measured by average waiting times for a next sitting. More detailed data is provided on case processing times in the District Court which shows that it takes on average 6 months from date of charge/summons to first hearing date in Dublin and 4 months in Cork. It is stated that there is generally no delay in cases receiving hearing dates in the provincial District Courts. No data is provided on overall processing times within the courts and no separate analysis of youth cases is provided, though recent studies have referred to the negative consequences of delay for young people in particular.



2.27 The Director of Public Prosecutions in the Republic of Ireland provides details on the time taken between receipt of a completed prosecution file and the issuing of a direction on prosecution. Figures for 2004 show that 44% of directions were issued within 14 days of receipt of the file and 81% were issued within three months or less – an improvement on the previous two years. The Garda Síochána does not have any published targets on timeliness and no data is provided on file preparation times in its annual report.

2.28 The principal response of Government has been a mix of legislative changes and targeted additional resources (e.g. additional judiciary and increased capacity within the Probation and Welfare Service). There is a notable interest at Government and agency level in drawing upon approaches and practices in other similar criminal justice systems.

### Consequences of delay

2.29 Delay can have significant consequences for the wider criminal justice system. The old adage that ‘justice delayed is justice denied’<sup>9</sup> can easily be applied in Northern Ireland. To victims, delays can reduce the chances of a successful prosecution as events may become blurred to witnesses. For witnesses, lengthy investigations followed by numerous adjournments diminish recollections, increase fears and frustrations with the system and make co-operation

more unlikely in the future. To the agencies and the general public, delays add to the cost of the administration of justice and can diminish public confidence in the administration of justice. To defendants, delays can increase uncertainty and often result in lengthy periods in custody before a plea is taken or a verdict is reached. It also means that interventions to address offending behaviour are delayed with resulting consequences for rehabilitation and restoration to the victim.

2.30 Delay has been raised as a specific concern by organisations who work with victims and witnesses as well as offenders. It was also raised as a key issue at the most recent CJSNI Stakeholder conference in 2005. NIACRO did a survey of offenders which showed that delays affect meaningful participation in the criminal justice process for offenders, victims and witnesses. Results show that 89% of defendants perceived their case from arrest to disposal to be slow or extremely slow. It also found that poor case management processes does not encourage change in offender’s behaviour and lapses in communication mean that victims can turn up at court unnecessarily.

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<sup>9</sup> Often attributed to William Gladstone



# Leadership to reduce delay



## Ministerial involvement

3.1 The Ministers of the three Departments responsible, with their direct knowledge and experience of delay initiatives in England and Wales, are taking an increasing interest in case processing times, particularly for indictable cases. The Northern Ireland Criminal Justice Board (CJB), through its DAG, now reports directly on delay to ministers. A Criminal Justice Strategy and Delivery Group (SDG) is chaired by the Secretary of State for Northern Ireland, and is made up of other Ministers with responsibility for criminal justice matters i.e. the Attorney General; NIO Security and Criminal Justice Ministers and the Minister in the Department for Constitutional Affairs who is responsible for the NI Court Service and the judiciary. It first met in November 2004 and has included delay as a standing agenda item. Ministers were concerned that not enough action was taking place and wanted to see more direct comparisons with England and Wales. It has requested regular six month progress reports on delay. The SDG is the ideal forum to take overall leadership on the issue of reducing avoidable delay and it is

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

## The Criminal Justice Board

3.2 The CJB is responsible for oversight of work on an inter-agency basis to address strategic cross-cutting issues such as delay. At the end of 2005, the seven organisations on the CJB issued a statement undertaking to 'work collaboratively and cooperatively to establish a reliable baseline for case progress from charge to disposal by April 2006 and establish reliable figures to allow benchmarking with England and Wales by April 2007.' It is anticipated that this report will make a significant contribution to this exercise and should bring forward any benchmarking with England and Wales. It does however point towards the limited scope of the CJB to act on delay. It is limited by the nature of the criminal justice system and its constituent agencies and organisations. As one senior manager in a criminal justice agency noted, there is a 'need for some form of overall control but this is difficult



with separate agencies, with no one in overall control.’ This lack of overall control inhibits joint approaches and responses to an issue such as avoidable delay – though it did nominate a sponsor on delay which attends the DAG on behalf of the CJB. In line with the CJI recommendation on target setting and performance management, **the Criminal Justice Board should be more proactive in coordinating a framework of shared targets (delay) and monitoring the contribution that agencies are making towards them. It needs to be given a clear mandate to this effect by the SDG, and it needs a joint secretariat properly resourced for this purpose.**

- 3.3 Tackling the problem of avoidable delay can only be delivered by strong, decisive and co-ordinated action and the CJB is the ideal forum for this purpose. Research undertaken in the United States of America on its delay reduction programmes and ‘speedy trial acts’ identified leadership and active participation of those directly involved in administering justice as the key element in those areas which achieved success in reducing delays<sup>10</sup>.
- 3.4 Each of the agencies has developed and implemented internal strategies, initiatives and/or actions which either directly or indirectly target delay within their own organisations. One member of the Delay Action Group (DAG) stated that there needs to be a more ‘corporate’ ownership of delay and ‘sense of urgency’ as an

issue for all agencies rather than ensuring that their own particular part of the system or targets are operating effectively or being met. The minutes of the DAG refer to the reluctance to set timeliness targets, especially on an end to end process as they are awaiting the impact of the various ongoing initiatives (see chapter 1). Indictable cases are subject to specific inter-agency action, but there is no overall strategy or target for the processing of these cases. The NIO did count up individual agency targets to get an overall target of 339 days for indictable cases but this is a mixture of average and percentage times and there is no consensus that this should be a target or baseline – the key indicator of performance is an improvement on the previous times.

### Agency strategies

- 3.5 The PSNI developed a ‘reducing delay’ strategy in 2004 with the objective to ‘reduce bureaucracy, improve standards and the management of investigations and introduce a concept of ‘getting it right first time, on time’. The key focus of the strategy is the improvement of case preparation, ensuring that files are submitted to the prosecution on time and to the appropriate quality. The strategy is intended to be delivered operationally by District Commanders and Assistant Chief Constables with the full support and commitment of the Chief Constable. Interviews with a wide range of PSNI staff at all levels in the Service show limited awareness of the strategy,

<sup>10</sup> See World Bank notes on lessons from the United States



particularly in the District Command Units (DCUs), where the vast majority of case file preparation takes place. Many of its aims are taking place, or have been completed, as a result of other initiatives such as Causeway and the roll out of the PPS.

- 3.6 The PSNI strategy does recognise the importance of partnership with other agencies and organisations in the CJS and accepts that its performance will be affected by developments and performance in Forensic Science Northern Ireland (FSNI) and the State Pathologist's Department (SPD). Both organisations have recently been inspected by CJI and a number of recommendations have been made in relation to reducing delays in the submission of reports to the PSNI. There continues to be an onus on FSNI and SPD to provide more timely reports to the criminal justice system and the PSNI in particular.
- 3.7 The growing importance of avoidable delay for the Public Prosecution Service (PPS) was recognised by its decision to commission a specific investigation of the issue. The report is strategic in nature as it links delays to the past and current service level capacities within the organisation and accepts that backlogs in work need to be addressed through specific actions. The report, as its terms of reference stipulate, is a single agency response to an issue which is much broader than the PPS.
- 3.8 The Northern Ireland Court Service (NICtS) recognises that delay is a problem in the processing of cases but sees its role as primarily providing the infrastructure and

resources to ensure the effective and efficient processing of criminal cases. It has no specific delay strategy but instead is involved in designing and implementing initiatives such as the Trial Status Reports. It has set a number of internal timeliness targets and currently provides and publishes the most detailed statistics on case processing times for criminal cases.

- 3.9 It is clear to inspectors that the criminal justice agencies are taking a more pro-active approach to the issue of avoidable delay and internal strategies include actions which should improve performance. There is however little consultation with other agencies in terms of developing these strategies and they are by their very nature not focused on an end to end approach to case processing. It is therefore recommended that **each criminal justice agency should amend its existing strategies and targets to align with the recommended joint CJS strategy on delay.**

## The Judiciary

- 3.10 The active support and involvement of the judiciary is critical to the success of any strategy on delay. To date, the Lord Chief Justice and individual judges have developed and implemented a number of major initiatives which are designed to reduce avoidable delay in serious indictable cases and address any concerns that might arise in relation to Article 6 of the European Convention. The key principle behind these initiatives is pro-active case management i.e. that all parties involved in a case are properly



prepared when it comes to court and trial. Inspectors have noted the enthusiastic and high level of commitment shown by the judiciary to tackling the problem of avoidable delay in the Crown Court, and consider this level of support to be critical to any strategy and plan to reduce delay. It is appropriate that the judiciary are taking a leadership role in challenging a delay culture which pervades all cases in the Crown Court and the magistrates' courts. The Lord Chief Justice assumed responsibility for the magistrates' courts in April 2006 and will be considering additional means to reduce delay.

## Targets

- 3.11 A key component of any strategy is the setting of objectives which are then underpinned with specific performance targets. The key question for a delay strategy is whether its objectives require a specific timeliness target for the processing of cases. At present, there is no overall end to end target for the processing of any type of criminal case. Instead agencies have developed their own set of internal targets which are based upon agency objectives and priorities. While some of these targets have been set in co-operation with partner criminal justice agencies, most are agency specific and can sometimes compete with or impede another agency's objectives and targets. For example, the PSNI target for the submission of files has contributed to a practice of submitting incomplete files to the prosecution and thereby adding to delay at the next stage of a case.
- 3.12 The PSNI Policing Plan has 138 targets of which two relate to the processing of cases: to process 85% of bail cases within 110 days and 85% of custody cases within 90 days. Both targets were not achieved in 2004-2005 as 77% of bail cases and 74% of custody cases were processed within these timescales, though this is a significant improvement on 2003-2004 performance. The rural region is performing better than the urban region. The DCUs where the PPS is rolled out are doing very well in relation to bail times (5 of 6 achieved target in 2004-2005) and are *relatively* better in relation to custody times (3 of 6 achieved the target in 2004-2005). It is anticipated that as the PPS is rolled out to other areas performance will continue to improve in relation to these targets.
- 3.13 There is no reference in the Policing Plan to the processing of indictable cases as part of its involvement in the Criminal Justice Process Monitoring Scheme. The PSNI/PPS protocols document also contains a group of timeliness targets, principally around file submission but these are not official targets of the PSNI. As stated earlier, all of these targets would need to be re-assessed in light of an overall end to end delay strategy.
- 3.14 A strategic objective of the PPS is 'to deal with prosecution cases in a timely manner in partnership with other agencies' of which 'improving the timeliness of decisions' is a specific target. The two key published targets are: to issue prosecution decisions within agreed targets times; and to make committal papers available within agreed target times.



The PPS targets suffer from a lack of baseline information (either historic trends or benchmarking) though they have proved to be challenging. The targets were achieved in the PPS pilot areas in 2004/05 but broadly not achieved in relation to DPP caseload. They are unlikely to be achieved for 2005/06 based on provisional information from the Belfast and Fermanagh & Tyrone PPS areas.

- 3.15 The Court Service has set specific case management targets which state that 80% of criminal business should be processed within target times. Two of these targets relate directly to the Criminal Justice Process Monitoring Scheme for indictable cases - committal to arraignment for Crown Court defendants within 6 weeks (92% within target for 2005) and arraignment to start of hearing for Crown Court defendants within 12 weeks (68% within target for 2005). A separate target is set for adult magistrates' court defendants to have a first hearing to disposal within 9 weeks, which was achieved for 77% of defendants in the period April to December 2005. A youth court target from first hearing to date of finding is set at 12 weeks which was just missed in the 2004-05 reporting year (76% of defendants within target) and has fallen back to 69% for 2005.
- 3.16 CJI has recently published a thematic inspection on target setting and performance management in the Northern Ireland Criminal Justice System. The report found that there is limited evidence of agencies getting together to target key aspects of the criminal justice system jointly, and

there is a widespread feeling that it would be right for the Criminal Justice Board to be more pro-active in managing the structure of targets. As there is no Public Service Agreement (PSA) target on delay in Northern Ireland (though some can make a link to improving public confidence in the criminal justice system), it is recommended that **specific delay targets should be set as part of the overall joint strategy on delay. Reduction in delay should become a PSA target in Northern Ireland as soon as this is practicable and no later than 2008. Performance against the targets should be reported in the CJS Annual Report.**

- 3.17 There is a need to set different targets for specific types of cases or defendants, such as youths. A high level joint target could include more specific end to end targets for specific types of cases. These targets should be jointly agreed and provide for ownership by all participating agencies. Efforts should be made to consult with and provide for the input of the Law Society and the Bar Council together with members of the judiciary and representatives of the voluntary and community sector.
- 3.18 The setting of targets for the processing of criminal cases will need to be a joint effort for all the criminal justice agencies and there will need to be agreement on how data are collected and measured. Two main methods of measurement are used (all on completed cases): average times and proportion of cases within a certain time period. The average

time to process cases, often broken down by types of cases/type of proceedings, provides a good overview of performance. An alternative approach is to measure the proportion of cases which are completed within a certain period e.g. 90% of cases completed within 50 days. This is best used when setting targets though it does not directly address the issue of the longest running cases (unless the target is set at or near 100% within a certain number of days). For example, NICTS timeliness targets for civil business and family business is set at a much higher threshold of 97% and 95% respectively, meaning that a greater proportion of cases are covered by these targets.

management of existing capacity. This is especially so in Northern Ireland where in 2004-05 £763 per head of population was spent on public order and safety compared to £394 in England, £389 in Scotland and £399 in Wales<sup>11</sup>. In the year 2004-05 the combined budget of the criminal justice agencies was more than £1bn.

3.20 All avoidable delay is a drain on the public purse and as cases takes longer to process, then that cost continues to escalate. The 'Troubles' can no longer be used as the only reason why expenditure on criminal justice remains so high compared to other jurisdictions / regions.

## Resources

3.19 Delivering a delay strategy with a consequent reduction in case processing times does raise the question as to whether additional resources will be required. There is no doubt that successful delivery will require a targeted input of resources, though much of this is about improving the efficiency of existing activities rather than undertaking new work. Where additional resources are required, it should provide improved value for money in the medium and longer term as processes are streamlined and avoidable and costly delay is reduced. CJI would accept that additional capacity is required in some key areas (e.g. case progression officers) but that important benefits can be gained from better use and

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<sup>11</sup> *Public Expenditure Statistical Analysis 2005*, HM Treasury



- 4.1 The primary inter-agency structure established by the CJB to focus on delay is the Delay Action Group (DAG) – previously known as the Case Progress Group. The DAG is chaired by the NIO and brings together senior representatives from each of the key criminal justice agencies. A key difference, other than the change in name, is the emphasis in its terms of reference, on practical solutions rather than monitoring progress. It seeks to gain ‘an overview of problem areas, matching these to the initiatives in hand and identifying gaps and possible solutions; determine what practical action can be taken to improve processing times.’ It also planned to provide an ‘improved analysis of comparisons between Northern Ireland case progress figures and those from England and Wales.’
- 4.2 A criticism from one member of the DAG, which is shared by inspectors, is that ‘it did not allocate tasks and expect coordinated action at divisional level to combat delay’, and the concluding paragraph of a recent paper on delay takes a ‘wait and see’ approach (waiting on results of existing initiatives with the assumption that these will deliver improvements in case processing times). Other members of the group accept that it has limited capacity to evaluate the impact of one agency’s change initiatives and actions on the other agencies. The Justice Oversight Commissioner stated that the scheme (to which DAG operates) does not address the causes of delay in the criminal justice process. He further stated that ‘the problems of delay will not be solved through the collection of data and prolonged discussion’.
- 4.3 A separate Delay Working Group for youth cases reports to the youth justice sub-group of the CJB. It is chaired by the NIO and has gathered information and data on the progress of youth cases and prepared a paper on delay<sup>12</sup>.
- 4.4 It is recommended that **the purpose, role, remit and membership of the Delay Action Group should be reviewed so that the group is more action-oriented and focused on all criminal cases from entry to the CJS to disposal in the courts. The work of the youth group should be subsumed by the DAG.**
- 
- 12 Delay in the youth court – scoping the problem, NIO Youth Justice Policy Unit



- 4.5 There is no specific group to look at the vast majority of criminal cases in the magistrates' courts. What does exist are local Court User Groups, but these are essentially discussion groups with a remit much wider than delay. Some bi-lateral meetings are taking place locally, especially between the PPS and the PSNI with an agenda that is primarily focused on the roll out of the PPS. None of these local meetings or groups report formally to the DAG.
- 4.6 An inter-agency Case Progress Tracking Group has been established by the DAG to identify potential problem cases in the Crown Courts at an earlier stage with a view to taking earlier remedial action to progress the file. The inter-agency approach to case progression is welcome but little practical progress is evident to date. This may be partly due to the infrequency of its meetings – the first meeting was in December 2004 with a commitment to meet approximately every three months. There is little value in holding infrequent meetings to discuss live cases as too much will have happened in the intervening months (unless comprehensive communication is established between meetings).
- 4.7 Concerted action on expediting live cases would require frequent meetings, preferably of operational staff within the key agencies. These case tracking, or more accurately case progression meetings need to be action orientated on live cases rather than a discussion forum. It is recommended that the principle of inter-agency case progression meetings should be further developed

and that **specific cross agency case progression groups should be set up and operate across Northern Ireland. The new structure should be piloted for youth court cases.** The DAG should take responsibility for the establishment and overall operation of the case progression groups. Tasks include determining which cases to target (e.g. through pilot), what grade of staff to allocate and which agency to provide live case data to other agencies. It is recommended that **terms of reference for the operation of case progression meetings should be developed by the DAG.** A guide to how case progression meetings should function is provided on the next page.

### Management Information Systems

- 4.8 Critical to performance improvement is the availability and use of accurate and timely information on case processing times. This does not exist at present as the criminal justice agencies await the full roll out of Causeway and the Court Service brings its new case management system on stream. Instead, the agencies are largely reliant on historic completed case information available from their own management information systems. While all of these systems collect valuable and comprehensive data on live and completed cases, none are specifically set up to provide the end to end data which is necessary to track and progress live cases.
- 4.9 The full roll out of Causeway has the potential to deliver this key benefit. In the crucial interim period, there is



## How should case progression meetings work?

### Background

- Established in England and Wales to deliver the PYO pledge
- Joint agency approach recognised by government and criminal justice agencies as key to successful delivery of the PYO pledge and approach now adopted by Scottish Executive to deliver reduction in time to process young offender cases

### Membership

- Operational staff (e.g. police inspector, prosecutor, court case progression officer) from key criminal justice agencies. It should include the police, prosecution and courts but may be expanded to include forensic science, probation etc depending on types of delays and range of cases.

### Structure of meetings

- Appoint chairman to ensure that minutes and agreed actions are recorded
- Agree frequency of meetings (fortnightly is recommended)
- Determine priority cases to progress (e.g. youths, longest running, approaching trial, on remand etc.). The list should not be too long to ensure that appropriate discussion and actions can be determined. A list of 20 to 30 cases is considered sufficient at the early development stage.
- Obtain appropriate live data and information on cases to be progressed. One agency should provide the official list of cases to other members of the group in advance of the meeting. This should include updated list of live cases showing time elapsed and approaching milestones (e.g. trial). All participants should therefore come prepared to the meeting.
- Ensure that actions on each case is recorded and attributed – progress to be checked at start of subsequent meeting
- Issues which can not be resolved at local level should be escalated to higher level (e.g. DAG; senior management of criminal justice agency).



a requirement to better utilise existing case management systems. The PSNI point towards the roll out of business information to DCUs which will show officer performance and the PPS Case Management System (CMS) now has increased functionality through the use of its business objects package to provide more detailed information on cases. Causeway will also be able to provide increasing information on live and completed data within specified areas.

4.10 As a senior manager in the Courts Service stated, 'management information needs to be seen and used as a proactive tool to effect action prior to targets being missed – it should not just be used for retrospectively analysing what went wrong.' The provision of reliable data is critical to the setting of targets and monitoring performance – unreliable data will conversely undermine efforts and create scepticism among staff and the general public. Inspectors are aware that agencies are working on improving their case management systems and support efforts to achieve a more accurate analysis of live and completed case processing times.

4.11 It is a concern that the PSNI do not have accurate details of their case processing times, though Causeway and their improved MIS (NICHE) will increasingly provide more of this essential data. The PPS CMS does contain comprehensive information, though problems have emerged in

relation to its accuracy. The Court Service management information system also collects substantial information on cases but is 'impossible to interrogate' in the words of some users. This is due primarily to the separate databases in the magistrates' and Crown Court which are not linked. Enhanced information will be available to the courts and the judiciary when the Integrated Court Operations System (ICOS) comes on line in 2006, though further delays in its roll-out are possible.

### Statutory time limits

4.12 CJI support the recommendation of the Criminal Justice Review that statutory time limits can have a positive impact on helping to reduce case processing times as well as sustaining any improvements in performance. However, to introduce time limits as in Scotland at this point would be counterproductive as they would need to be unacceptably long to be achievable. Assuming that good progress will be made in reducing case processing times, it is recommended that **statutory time limits should be introduced in Northern Ireland by 2009-2010. The time limits should include sanctions for non compliance along the lines of those that currently operate in Scotland.** Time limits are different from targets in that they relate to the processing of *all* cases within a reasonable time period.<sup>13</sup>

<sup>13</sup> See Home Office report 21/03 for a fuller analysis of the operation of statutory time limits in the pilot schemes of youth courts in England and Wales





**PART**



# **Case process stage issues**





- 5.1 In serious cases, it is the norm for the police to charge. A charge file is prepared and submitted to the PPS for a decision on prosecution. For the majority of less serious offences, the police prepare a file and then submit it to a specialist unit within PSNI, or now increasingly directly to the PPS. The plan, as detailed in a comprehensive document entitled PPS/PSNI protocols, is that suspects should normally be reported by Police to the PPS rather than being charged. The exceptions are where there is a requirement to detain a suspect in custody or where the police investigation is complete and there is a reasonable expectation of an early disposal at court.
- 5.2 The use of reporting does add more time to the early processing of cases (within PSNI) as it involves the completion of investigations and the collation of all necessary evidence. It should however reduce the time that the PPS spends on cases as higher quality and more comprehensive case files are received by the PPS. The reality at present does not support this – as large numbers of reported files require additional information to be sent to the PPS (see Chapter 6).
- 5.3 It is not within the remit of this inspection to look in detail at the investigation stage of cases, though it is accepted that the length of time from offence to arrest/charge/reporting can have a significant impact on victims and witnesses in particular. The length of time spent at the investigation stage of a case will also directly impact on how a case progresses after a suspect is charged or reported – the argument is that a longer and more comprehensive investigation stage should produce a stronger case which is less likely to be subject to delays such as awaiting additional evidence and specialist reports.
- 5.4 A strongly held view expressed by the PSNI and some other criminal justice agencies is that the PSNI conduct investigations more quickly compared to England and Wales meaning that more time is then required at the post charge/report stage of cases. This was also one argument against making comparisons with England and Wales. However, the data does not support this view (see Chapter 2) and there has been no further analysis of these times by the PSNI. CJI supports the suggestion of the DAG that the **PSNI should**



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

## **Bail and custody times**

- 5.5 An issue that was raised by a number of interviewees was the use of police bail. The current situation in Northern Ireland is that the police cannot bail a suspect with conditions (unlike England and Wales). What tends to happen is that a suspect is bailed for 28 days allowing the police to collect additional evidence before charging or reporting the individual. Defence solicitors contend that when suspects answer bail after 28 days, they are often re-bailed for another 28 days. It is claimed that this is due to lack of progress in terms of preparing the case file and can sometimes relate to the fact that the police officer handling the case is not on duty at this time. Defence solicitors claim that the use of police bail is too open-ended and that 28 days has now become the minimum period of bail in most cases. Inspectors are of the view that a more detailed assessment of police bail is required. It is therefore proposed that a separate inspection of police bail should be conducted by CJI later this year.
- 5.6 In cases of charge and bail, the Initial Remand File must be with the PPS no later than 7 days before the charged person's first scheduled court appearance (i.e. 21 days to prepare the file). Data provided by the PPS shows that the police are not adhering to the protocols as with one day remaining the PPS will only

have received 79% of the bail papers. When bail papers are only received on the day of court, the prosecutor will often need to request an adjournment. For charge and custody cases, there is no specified time limit for appearance in court, just a statement that a person should be brought before the court at the earliest opportunity. The Initial Remand File must be with the prosecution service by 9.30am on the first court appearance.

- 5.7 The PSNI has set timeliness targets (within the Policing Plan) in relation to dealing with cases when a defendant is in custody or on police bail – 'to process 85% of custody cases within 90 days and 85% of bail cases within 110 days.' The period that is measured is from date of remand to file submitted to the PPS. The Annual Report of the Northern Ireland Policing Board states that these targets were not achieved in 2004-05 (see chapter 3). These targets do not relate to other timeliness targets within the CJS such as the Criminal Justice Process Monitoring Scheme (indictable cases) and there are no specific targets in the Policing Plan for non bail and non custody cases (i.e. reported cases).
- 5.8 The use of charging followed by remand into custody or bail does ensure an earlier first court appearance for the defendant and PSNI/PPS performance on charge cases is more timely than reported cases (see Chapter 7). The challenge for the CJS, which has now adopted the reporting method, is to deliver a more expeditious service.

## Prosecutorial and pre-charge advice

5.9 Prosecutorial advice is guidance provided by the PPS to investigations, primarily the police in Northern Ireland. The Justice (Northern Ireland) Act 2002 means that an investigator may request advice on any prosecutorial issue at any stage of an investigation. The key benefit of such advice from a timeliness perspective is that the quality of evidence for the prosecution should be stronger and therefore less delay should occur when cases are received by the PPS and are brought to court. The most notable type of prosecutorial advice is known as pre-charge, when the police seek guidance on the type of charges that should be instigated against someone suspected of committing a criminal offence.

5.10 There is strong support for more prosecutorial advice from staff within the PPS and the PSNI. Both see benefits in terms of better quality files (evidence) and better use of charging and there is an anticipation that it should help to reduce avoidable delays. One senior police officer noted that 'pre-charge advice is viewed positively by uniform officers', while another stated that they 'would like to see greater prosecutor involvement at an early stage.' Data from the PPS areas shows that the number of pre-charge advice requests has been low – just 6 in Belfast and 33 in Fermanagh and Tyrone in the period April 2004 to September 2005. There are slightly more cases with

prosecutorial advice with 109 in Belfast and 183 in Fermanagh and Tyrone during the same period.

5.11 At present, prosecutorial and pre-charge advice is limited to the PPS rolled out areas and to specific types of serious cases. It is just available from 9am – 5pm Monday to Friday and any requests outside of these hours are restricted to exceptional circumstances. It is anticipated that the PPS and PSNI would conduct a business plan in support of the extension of this service which should include the demand for an out of hour's service, potential benefits, means of delivery and cost. The PPS and PSNI are currently jointly designing a data collection exercise to capture the demand for this extended service. In view of the projected benefits for both organisations, including a reduction in avoidable delays, the further extension of prosecutorial and pre-charge advice is supported by inspectors. Assuming that such advice will become available to all areas as the PPS is rolled out (it is in the PPS implementation plan) and subject to a business plan, **prosecutorial and pre-charge advice by the PPS to the police should be extended beyond normal working hours.**



## CHAPTER 6:

# File preparation



- 6.1 Once a defendant is charged or reported to the PPS, it is the responsibility of the investigating organisation, usually the police, to prepare the prosecution file. File preparation is a critical function as its quality and timeliness will have a direct bearing on the future progress of a case. Concerns about the quality and timeliness of case files are common to many police forces and numerous initiatives are targeted at improving the quality of files. The PSNI is therefore not unique in facing the challenge of improving the timeliness and quality of its case files.
- 6.2 There are big differences between the processes of file preparation between and within police forces. In Northern Ireland, a decision was taken in the late 1990s to establish specialist file preparation units – Case Processing Officers (CPOs) within Criminal Justice Units (CJUs), where specialist police officers would receive initial files from investigating officers and then prepare the file for submission to prosecutors. There is consensus in the PSNI and other agencies that this did lead to improved file quality and timeliness though it also led to a situation where most police officers had no experience of file preparation and a skills deficit was emerging across the Service. The latter argument persuaded senior management in PSNI that individual officers should regain responsibility for file preparation and that file preparation units should be phased out.
- 6.3 The quality assurance of file preparation has now been placed with DCUs, where investigating officers prepare their own files and first line supervisors have responsibility for quality assurance checks of files before submission to prosecutors. This process of change is well advanced in the PSNI, though some DCUs such as Dungannon have retained a file building capacity within their Criminal Justice Unit (CJU) until the new processes are embedded.
- 6.4 Inspectors recognise that the rationale for placing the responsibility for file preparation with individual officers is sound but are not assured that the present arrangements are producing files of the necessary quality within a reasonable time period. This view is formed on the basis on extensive meetings with a range of police officers as well as the users of police files, principally within the PPS, courts and the defence. There is strong evidence that poor



file quality and timeliness is a principal cause of avoidable delay in many cases.

## Performance

- 6.5 The key evidence of poor file timeliness and quality is provided by the views and experiences of PSNI officers, the users of police case files and by statistics produced by the PPS in relation to targets agreed by the PSNI and PPS. Comments from police officers included an acknowledgement that indictable files, which used to be better prepared, are now submitted with missing evidence in order to meet internal timeliness targets. As one Murder Investigation Team (MIT) officer noted, 'staff are sending files (to prosecution) that are known to be incomplete.' Evidence provided by staff within PSNI CPOs where the PPS is not rolled out as yet, show that one quarter to one third of files are returned from the CPO to DCUs for additional information and that 25% of these returned files are due to basic file structure mistakes (i.e. not evidential issues).
- 6.6 The PPS/PSNI protocols provide agreed standards for the quality/content and timeliness of files in the PPS areas. The general rule in the protocols is that 'police should only submit case files to the PPS when sufficient pivotal evidence (including forensic and medical evidence) is available to allow a prosecution decision to be taken'. Files where supporting or peripheral information which will not impact on the prosecutor's decision can be submitted. The PSNI reducing delays strategy states that these protocols are being introduced across the Service for all files and that it includes timescales for submission of files as well as responding to PPS requests for additional information. The protocols state that these timescales become operational from 1st September 2005.
- 6.7 The PSNI/PPS protocols include a range of timeliness targets for the submission of manual hardcopy paper files and electronic files which are sent via Causeway. For summary cases, a full electronic file must be received by the PPS not later than 49 days after the date of reporting (when offender was informed that the matter was being reported to the prosecutor) – the target is 63 days for paper files which are sent by police courier to the PPS. For indictable cases, a full electronic file must be received by the PPS not later than 91 days from date of reporting – the target for paper files is 110 days. For youth cases, 35 days from date of reporting to file received by the PPS for electronic files and 42 days for hardcopy paper files. A separate category of fast stream cases has also been identified with separate targets. These case files have a target of 35 days from date of charge to file received by the PPS for electronic files and 42 days for hardcopy paper files. Fast stream cases are essentially those where a trial is required by law and where the file is sufficiently ready to proceed to trial. A separate timeliness target is set for committal proceedings (see Chapter 8).
- 6.8 PPS data from the Fermanagh and Tyrone pilot areas provide some

preliminary findings on performance against these timeliness targets. Table 2 shows that the target of 110 days on average for indictable paper files is being met for reported files and charge files – charge files are getting to PPS much quicker. The use of averages does disguise the fact that a large proportion of cases are not meeting the agreed timescales – 41% of indictable reported files are taking longer than 110 days. The introduction of electronic files via Causeway in Fermanagh and Tyrone means that the new target of 91 days for indictable cases now applies. Performance on summary reported files, which constitute 92% of all cases, is poor. A target of 63 days for paper files is far from being achieved – 87 days in the period April 2004 to September 2005 and 60% of case files outside agreed time limit. The new electronic file target of 49 days will require considerable effort to achieve in Fermanagh and Tyrone. The evaluation report on the Fermanagh and Tyrone pilot states that the timeliness of submission is a significant contributing factor to cases which have become statute barred (81 in the area).

- 6.9 The reasons for Request for Further Information (RFI) requests provide a useful indicator of file quality. A RFI is a procedure which enables the prosecutor to ask the police for additional evidence / supporting information. Figures produced by the evaluation of the PPS pilots show that 41% of RFI requests in Belfast are due to the need to see a full file. Other reasons in order of frequency are missing statements (17%), need for further enquiries and investigation (11%) and missing interview transcripts (9%). There is a slightly different order in Fermanagh and Tyrone where the largest proportion is due to the need for further enquiries and investigation (33%) followed by missing statements (18%) and a full file request (18%).
- 6.10 The response process to RFIs is coordinated by police liaison officers. A time limit of 21 days has been agreed by the PSNI and PPS for the return of information but response times by the police have been slow (see Chapter 7 for more details). It was mentioned by MIT officers that once charging is complete, little resource is allocated towards dealing

**Table 2: Timeliness of files from PSNI to PPS**

Type of File	% within target	Average days
Summary reported files	40% in 63 days	87
Indictable reported files	59% in 110 days	105
Indictable charge (bail) files	75% in 110 days	71
All charged custody files	78% in 90 days	80

Source: PPS Fermanagh and Tyrone Pilot Project, Evaluation Report



with RFIs, leading to delays in response times. There are also concerns that e-mails are not read by police officers. The PPS did report difficulties in locating the relevant investigating officer meaning that more time is then required to issue an RFI, often for relatively minor pieces of information. Officers in Dungannon DCU stated that if an RFI is marked urgent, then it is turned around in 4 days.

### Reasons for poor timeliness and quality

- 6.11 The issue of file quality is acknowledged by senior PSNI management as one of the key challenges for the organisation and is the central plank of the reducing delays strategy. The strategy accepts that a 'new culture' is necessary which is geared towards 'getting the file right first time on time' and focusing on 'unnecessary delay in case investigation, preparation and adjudication.' There is clearly a need to address a culture, particularly within the DCUs, which sees charging as crime clearance.
- 6.12 The PSNI/PPS protocols refer to sanctions for poor quality and late files – the DCU, via the police liaison team, is asked to nominate a person to explain the delay to the PPS and may be called at the next court hearing to explain any delay to the Resident Magistrate. In practice, the volume of poor quality and late cases means that this sanction is little used and therefore ineffectual. With the roll out of enhanced business information to DCUs (e.g. officer performance), there is considerable

scope to address this problem. It is recommended that **the PSNI should urgently address its problems with file preparation and address the wide-spread issue of non-compliance on file quality and timeliness. Individual performance should be linked to individual assessment reviews and ultimately to overall remuneration (e.g. Competency Related Threshold Payments).**

- 6.13 The loss of experienced officers, mainly through the severance package associated with the Patten reforms, is a factor mentioned by a number of police officers. There is no doubt that certain sections of the PSNI were adversely affected by the loss of experienced officers, though the impact on file preparation should not have been too negative. The key issue is the level of training provided to new and existing officers. Inspectors found that file preparation was an important component of training and that investigative interviewing in particular was well advanced.
- 6.14 However, the overall quality of police training in case building and file preparation was criticised as poor by a number of key officers in the PSNI. One officer stated that 'staff had no specific training on file preparation and none on electronic file preparation.' It is recommended that **an urgent review of training on file preparation should be undertaken and appropriate training should be implemented as soon as possible. The PPS should provide an input to the development of this training and**



**also be involved in its delivery.**<sup>14</sup>

An example of good practice was evident in Dungannon DCU where more experienced staff train new staff in file preparation in return for specialist assistance in areas such as IT.

- 6.15 A number of PSNI and PPS staff stated that existing timeliness targets for file preparation were having an adverse affect on file quality. Case files are submitted to the PPS to meet timeliness targets but these cases are known to be incomplete. The problem is not that the target is wrong, though it should be more closely aligned with a quality dimension – the issue is that incomplete files are allowed to be submitted to the PPS and to CPOs.
- 6.16 As a result of the internal re-organisation of file preparation, all police files must be authorised by a Supervising Officer (SO) prior to their submission to the PPS. The SO must be of a rank senior to the Investigating Officer or a member of appropriate rank within the CJU and must perform a quality assurance role. This is clearly not working effectively in most DCUs, particularly for volume crime such as theft and burglary - CID or other crime departments will continue to have files reviewed and recommended by Detective Inspectors or above.  
**It is critical that more robust quality control mechanisms and processes are put in place, and that supervisors who are the**

**gatekeepers between the investigating officer and the PPS, are targeted for enhanced training provision.**

- 6.17 Inspectors accept that PSNI is reliant on the performance of some external organisations. The provision of forensic science and pathology reports have been subject to considerable delay in recent years and this has meant that case files are either submitted incomplete or late to the prosecution. PPS data for the period April 2004 to September 2005 show that 97 RFIs in Belfast and 33 RFIs in Fermanagh and Tyrone were due to the absence of a forensic report. This refers to about 3% of RFI requests in each region. This does not provide the full picture as the police have stated that many files are delayed in their submission to PPS for this reason.
- 6.18 In light of the recent CJI inspections of Forensic Science Northern Ireland and the State Pathologist's Department, both organisations should continue with efforts to implement their action plans and to reduce the time to produce reports to the police. The PSNI and the Northern Ireland Office should continue to monitor performance in this regard and take remedial action where required.
- 6.19 The late provision of medical reports was mentioned as a particular problem by PSNI officers and a range of other interviewees in other

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<sup>14</sup> Since this fieldwork was undertaken, the PPS and PSNI have participated in a joint workshop on improving file quality. A senior PPS prosecutor is now providing a key segment of training for PSNI supervisors, initially aimed at operational staff in Belfast.

agencies. It was stated that 'casualty reports are impossible to obtain'. Data on RFIs gathered by the PPS show that there were 105 RFI requests due to a missing medical report in Belfast and 33 in Fermanagh and Belfast. This represents about 3% of RFI requests in Belfast and 5% in Fermanagh and Tyrone. The NIO, as chair of the DAG, sought to improve links with health boards and trusts in order to get a better service on medical reports but there has been limited success to date. The key issue is that criminal justice medical reports are not a priority for a health service, which is facing pressures in so many other areas. The CJS will therefore need to change position on what is absolutely necessary. For example, could the provision of medical notes be sufficient?

processing of cases. The PPS accept that they ask for full files in more cases than is required and state that more comprehensive guidelines will be included in a new draft of the protocols document. Inspectors agree that these guidelines are urgent and necessary. Greater efficiencies and a reduction in avoidable delays should be possible in circumstances where guilty pleas are taken at an earlier stage (see Chapter 8 for more details).

6.20 There is a broader argument around the issue of file preparation. It is apparent to inspectors and mentioned by a number of interviewees that much of the effort spent on file preparation is wasted and that greater efficiencies in the use of police resources are achievable. A number of police officers mentioned that the PPS require a full file even when a plea of guilty is taken or strongly anticipated. The current practice is that a full file is asked upon receipt of guilty plea or after second remand with no plea. The request for a full file in these circumstances is leading to growing frustration within the police and has certainly added to delay in the

## CHAPTER 7:

# Prosecution of criminal cases



### Context

- 7.1 The Office of the Director of Public Prosecutions (DPP) was created in 1972 and took on responsibility for prosecutions in all courts, other than summary cases such as motoring offences. Consideration was given to the DPP prosecuting all cases but this was rejected on the grounds that 'trifling' cases could be processed through the courts more expeditiously by the police. Police continued to prosecute up to 80% of criminal cases.
- 7.2 The Review of the Criminal Justice System in 2000 considered the prosecution process in detail and recommended that 'responsibility for determining whether to prosecute and for undertaking prosecutions should be vested in a single independent prosecuting authority.' The Review did consider whether responsibility for prosecuting 'trivial' cases could remain with the police, principally on the grounds of delay, but felt that this would dilute the principle of independence for little practical gain.

- 7.3 On a broader level, the Review considered 'that effective joint management of the interface between investigation and prosecution is of critical importance to the efficiency and effectiveness of the criminal justice system as a whole' and any problems would add to delay. A recent report by the National Audit Office found that the 'lack of co-ordination' between the police and the prosecution in England and Wales was contributing to court adjournments and additional delay and it commented that the agencies 'do not seem to be working together'.

### Roll out of the PPS

- 7.4 The roll out of the new structures of the PPS, now fully operational in the Belfast region and Fermanagh and Tyrone, means that the number of cases received by the PPS is rapidly increasing. From April 2004 to September 2005, Belfast region received 10,393 files and Fermanagh and Tyrone received 9,442 files, though Belfast is now approaching twice as many files per month as Fermanagh and Tyrone. The PPS anticipate that they will process over 70,000 cases per year<sup>15</sup> after roll out though the police and the Causeway

<sup>15</sup> The new PPS for NI, project update, summer 2005



Programme<sup>16</sup> are anticipating a reduction in case numbers to around 55,000 per year. Such a reduction would have significant implications on the work of all criminal justice agencies and would free up resources in some key areas, which should also lead to a reduction in delays. It is therefore recommended that **an accurate and agreed projection of future caseload should be undertaken by the PSNI and PPS as it will have implications for how resources are used to tackle avoidable delay.**

- 7.5 Inspectors have been provided with a copy of the report on the investigation of delay within the PPS. Research and findings of this report are used in this chapter, though the timing of its work means that it relates primarily to the service in DPP areas. The inspection also draws upon other more recent documentation and data, either provided directly by the PPS or included in the draft report of the evaluation of the pilot PPS areas. A large amount of evidence was also collected through a range of interviews with PPS staff and other stakeholders who have a direct working relationship with the prosecution service. The focus of this inspection has been primarily on the PPS service in the rolled out areas.

## Registration of files

- 7.6 All case files received by the PPS are registered on the computer system.

The most recent figures provided by the PPS for Fermanagh and Tyrone show that it takes on average 5 days from receipt of file to registration. This is still a relatively long period to register a file, though it is a big improvement on the situation which prevailed earlier in 2005. One of the most serious issues from a delay perspective was the creation of a backlog of cases for registration – by June of 2005 around 700 files were in a queue waiting to be registered. Delays in registration contributed to more Form 1s<sup>17</sup> to prevent cases becoming statute barred. The problems with registration led to a situation where police were hand-delivering files to the PPS to ensure that date of receipt was confirmed.

- 7.7 There is little doubt that this problem added considerable avoidable delay to the processing of cases in the PPS and this was clearly evident to inspectors in the review of case files for this region. While the issue is now mainly resolved, and much of its impact was due to a delay in the provision of electronic files by Causeway, the PPS should take fuller account of such risks for the future roll out of the service paying particular attention to the impact on case processing times.
- 7.8 Another aspect of the roll-out of the PPS has been the decision to operate a front office and a back office for the processing of cases. Inspectors acknowledge that the split office option for Fermanagh and Tyrone

<sup>16</sup> Presentation by the Causeway Programme, 2005

<sup>17</sup> A Form 1 can be requested by the police or PPS and allows for an indefinite extension of the statutory time limit so that an offence will not become statute barred

became necessary due to problems in securing appropriate accommodation in Omagh. But the operation of these structures has contributed to additional avoidable delay, particularly in areas such as the movement of people and files between offices. PPS staff mentioned that 1-2 weeks could be added for the transfer of files between district offices and headquarters and some of these delays even applied to file transfers between Belfast offices. It is recommended that **better contingency arrangements are required for the future roll out of the PPS. PPS should re-consider the timetable for the future roll out of the service in areas where appropriate accommodation will not be available.**

## Allocation of files and decision making

7.9 After registration, files are allocated to prosecutors for a decision on prosecution. Indictable case files are allocated manually by regional directors. All other files are placed in 'the unallocated summary case queue' and are either selected by prosecutors or referred to prosecutors due to the urgent nature of the file. Due to the extent of the backlogs, files are often left unallocated in this queue for months. This is effectively 'dead' time for case progression. A significant finding from the Deloitte investigation into delay was that files spent 97% of their time in a state of waiting (i.e. there is only active consideration of each file in under 3% of the time that they are being processed by the PPS). A

report by the Causeway Programme on delay across the CJS found that just 5% of the elapsed time in a case is spent on professional work.

7.10 When the prosecutor reads the file, he/she may have a query about the facts, or evidence contained in the investigation file and will therefore not be able to make a decision on prosecution or not. In this case, an interim direction in DPP areas, or a RFI in PPS areas, will be issued to the police seeking a further written report with regard to the queries. MIT officers in PSNI stated that RFIs requests in a straightforward case can take 3 months to be received from the PPS and it can be up to 18 months for complex cases. It is recommended that **the process of file allocation needs to be urgently reviewed by the PPS and a more efficient file management system needs to be implemented as this is not appropriate for the current or projected volume of cases.**

7.11 When a case is allocated to, or selected by a prosecutor, he/she will conduct a review of the file to ensure that all of the necessary information is available to make a decision on prosecution. This is a critical period in case progression as a quick decision will enable the timely expedition of the case. However, the view of a number of police officers is that the 'length of time taken by PPS to give a direction is too long.'

7.12 Meetings with PPS prosecutors show that delays are due to a number of factors, principally the need to seek additional information from the



police before a decision can be taken. There is also acknowledgment that the increasing volume of cases has put considerable pressures on staff and backlogs have therefore developed. A PPS initiative to identify the reasons for long running cases within the PPS (currently cases over 120 days) found that many of these cases were delayed due to waiting on additional information. The exercise also revealed that the PPS Case Management System (CMS) had data validation problems which needed to be resolved to ensure staff confidence in timeliness targets.

### Requests for Further Information

7.13 A Request for Further Information (RFI) is issued by the PPS where the evidence and information in a case file is incomplete. The PSNI / PPS protocols outline the circumstances where an RFI should be issued and clearly states that the PPS can not delay its decision or the completion of committal papers on foot of a RFI which is not essential. However, a definition of what is not essential is not readily apparent and some police officers are frustrated at what they perceive as inappropriate use of RFIs by PPS prosecutors. There was a view within the PSNI that some inexperienced prosecutors are asking for unnecessary additional information and full files in many cases. They would argue that more straight forward or simple matters arising on a police file could be clarified by telephone. It is recommended that **a standardised approach regarding 'direct contact' policy should be**

**established between the PPS and the police. A more formal means of feedback from the PPS to the PSNI is required.**

- 7.14 PPS data provided to inspectors shows that between April 2004 and September 2005, 980 RFIs were issued in Fermanagh & Tyrone of which 177 are full file requests. In Belfast 3,362 RFIs were issued of which 1,386 were full file requests. It is estimated by the PPS that about 30% of new cases require an RFI in Belfast compared to about 10% in Fermanagh and Tyrone. A number of factors may explain the big regional variation such as better quality files in Fermanagh and Tyrone, different recording of data on CMS, prosecutors contacting police directly rather than the formal RFI process and different approaches by prosecutors in each region.
- 7.15 Data on Crown Court cases in an NIO paper on delay show that for those persons returned to trial in 2003, interim directions were issued in respect of 316 out of 905 charged by police and remanded, either on bail or in custody, and 215 out of 467 reported to police to the DPP. It is clearly evident that the extensive need for, and use of interim direction and RFIs, is adding considerable time to the processing of cases and it is the judgement of inspectors that much of this delay is avoidable.
- 7.16 The PSNI/PPS protocols state clearly that it is the responsibility of the supervising officer to ensure that the RFI is acted upon by the police and within the time scales agreed. Analysis in 2001 showed an average



of 84 days to return information to the PPS. This led to a 21 day interim direction timescale. If police are unable to comply with 21 days, a written report should be submitted to the PPS setting out the reasons and when matters will be resolved. Monitoring is undertaken by PSNI liaison officers, who act as a control mechanism for the police. The fact that just over 30% of full replies are made within the target is 21 days (excluding full files) is clear evidence that the processes are not working as envisaged in the protocols. The PSNI does not collect detailed information on the reasons for RFI requests (e.g. those outside their direct control), though provisional data is now provided by the PPS to the relevant Police Liaison team.<sup>18</sup>

7.17 The need to use RFI requests or interim directions is not confined to the PSNI. Files received from organisations such as the Office of the Police Ombudsman and the Benefit Investigation Services (BIS) are also subject to additional information requests. In the period 1st May 2005 to 30th of September 2005, a total of 41 interim directions were issued on BIS files which represents just over 17% of files received in this period (this information was only recorded from May 2005 and it could include more than one interim direction per file)<sup>19</sup>

18 A new system for PPS RFI requests was introduced at the end of 2005, which means that all RFIs are now issued via Police Liaison who have the authority to challenge the prosecutor issuing the request in terms of both the clarity of the request and the legitimacy of the request.

19 Data provided to CJI as part of the ongoing inspection of BIS.

## Use of Form 1

7.18 Where a case is likely to exceed the time limit for summary proceedings (typically 6 months from the date of incident to the issue of summons), the investigator or the PPS can request the issue of a Form 1. A Form 1 allows for an indefinite extension of the statutory time limit and means that the offence will not become statute barred (the case would be withdrawn in most circumstances where an offence is statute barred). The request for a Form 1 should be exceptional and it should contain an explanation for the delay.

7.19 The PSNI/PPS protocols envisage that most requests for Form 1s will be by the PSNI. However, the experience from the Fermanagh and Tyrone pilot is that most of these requests were by the PPS which is clear evidence of backlog and delay in the processing of cases. Between April 2004 and September 2005, 637 Form 1s were issued in Fermanagh and Tyrone. In Belfast, a total of 196 Form 1s were issued. During the same period 81 cases became statute barred (i.e. passed the statutory time limit of 6 months without issue of summons or Form 1) – 70 of these cases led to no prosecution.

7.20 The PPS has collected data on the timescales from when a case is received to when a decision is issued. Table 4 shows that it took on average 57 days for summary reported cases in Fermanagh and Tyrone and South Belfast compared to 29 days for summary charge cases. The timescales for indictable cases is 142



days for reported cases and 115 days for charge cases. An additional 62 days in reported cases and 44 days in charge cases are taken for the period from decision issued to committal for indictable cases. A separate target to issue committal papers within 40 days of receipt of investigation file has been set by the PPS. In 2003/04 this was only achieved in 10% of cases but this had improved to over 50% in 2004/05.

7.21 The data in Tables 3 and 4 relates PPS performance in Fermanagh and Tyrone and Belfast to the published timeliness targets set by the organisation. The targets for 2005/06 are more challenging than those set for 2004/05 (see Chapter 3). The key point is that the organisation is struggling to meet its timeliness targets in these PPS areas, where the majority of cases are now being

received. None of the targets are currently being achieved in these areas and performance is particularly poor in the Western region (Fermanagh and Tyrone) for summary decisions – only 26% of summary decisions are within 25 days compared to a target of 50% and 33% of summary decisions are taking longer than 80 days. It is also a concern that 19% of indictable decisions in Belfast and Fermanagh and Tyrone are taking longer than 180 days and 26% of summary decisions are taking longer than 80 days – the target is just 5%. The period from when a decision is taken to when it is issued can be lengthy depending on various factors. Table 3 shows that summary cases (both charge and reported) are timely but that indictable cases are taking around 50 days on average.

**Table 3: PPS timescales to take decisions (Fermanagh&Tyrone and South Belfast)**

Type of case (adults)	File received to decision date (days)	Decision to decision issued (days)	Decision issued to committal (days)
Summary reported cases	45	12	n/a
Indictable reported cases	90	52	62
Summary charge cases	22	7	n/a
Indictable charge cases	71	44	44

Source: PPS (includes RFI time)

**Table 4: PPS Timeliness Targets for summary decisions**

Region	Target	
	50% in 25 days	95% in 80 days
Belfast	45%	83%
Western (F&T)	26%	67%
Overall	35%	74%

Source: PPS (includes RFI time)



**Table 5: PPS Timeliness Targets for indictable decisions**

Region	Target		
	50% in 80 days	75% in 115 days	95% in 180 days
Belfast	31%	56%	80%
Western (F&T)	34%	59%	83%
Overall	32%	57%	81%

Source: PPS (includes RFI time)

7.22 It is evident to inspectors that the PPS are taking the issue of avoidable delay seriously and that the timeliness targets for 2005/06 are more challenging than those for the previous year. However, data available on Belfast and Fermanagh and Tyrone, where the majority of cases are now received, clearly show that achievement of these targets is unlikely. Indeed, there are areas where performance has significantly deteriorated over the past year. It is concerning that the further roll out of the PPS and the increasing volume of cases will further exacerbate this situation. While this level of delay (compared to targets) is significant, it is also avoidable through concerted action by the PPS and in co-operation with the PSNI in particular.

the summons process, which is going through a period of transition, is too open-ended and suffers from a lack of ownership. As an example, the PPS are reluctant to include the time that it takes to deal with summonses in its performance figures, though it does recognise that responsibility for most of the process lies with the prosecution service.

7.24 There is an important timeliness target for the issue of summonses: a case will become statute barred if a summons is not issued within 6 months of the date of offence, though exceptions are possible and a Form 1 can put a hold on proceedings. A consequence of the 6 months target is that there is a tendency in the PSNI and PPS to delay action on a case until it is approaching the 6 month limit. This was also seen to be a consequence of some time limits in Scotland.

## Summons

7.23 The PPS is responsible for the production and issue of summonses which includes drawing up summonses, deciding on court date, signature and arranging for them to be served directly by post or in person by the police. The main finding from this inspection is that

7.25 The PPS has set a target of 6 weeks (42 days) for postal summonses and 8 weeks (56 days) in personal service from issue of summons to first appearance in court. The most recent data provided by NICtS<sup>20</sup> (which

20 *The Northern Ireland Court Service Magistrates' Court Bulletin*, July-September 2005



groups summons and charge cases) show that it is taking 61 days from summons to first hearing in adult magistrates' courts – this would be longer if charge cases were excluded. It is taking 86 days in Belfast. The time from issue of summons to first hearing is better in the youth magistrates' court where it is now taking an average of 39 days, which is a significant improvement on 2004 (49 days). A number of interviewees (mainly outside the PPS) stated that this was essentially 'dead time' from a case processing perspective, especially when compared with charge cases. The PPS accepts that a balance needs to be struck between timeliness of the initial court hearing and the likelihood of persons attending.

7.26 A problem which added some avoidable delay concerned the signing of summonses. It was mentioned specifically in relation to Fermanagh and Tyrone where the operation of split offices required a lay magistrate from Fermanagh & Tyrone to attend Belfast to sign summonses. It was also reported as a problem in other areas, particularly when magistrates are on holiday. It is recommended that this issue should be reviewed and that **alternative arrangements for signing of summonses should be implemented. This should include the use of electronic signatures which are authorised by a PPS prosecutor.**

7.27 The use of postal summonses offers an alternative to the present serving of summonses by the police (not the best use of police resources). The evaluation of the PPS pilots shows that 2,635 postal summonses were

issued by PPS in the pilot areas over the 18 month period up to end of September 2005. This represents 46% of all summonses issued in the pilot areas. There is a need to check the evidence of success of postal summonses as it appears to work well in Belfast but there are mixed views from Fermanagh and Tyrone. Many postal summonses had to be reissued and personally served in Fermanagh and Tyrone and this added delay to these cases.

7.28 The PPS are keen to increase the scope of offences for which postal summonses can be used though this needs to be carefully monitored in light of the experience from Fermanagh and Tyrone. It is proposed that any changes to legislation on summonses, which is required to allow a much broader range of offences to be deemed suitable for postal service, should take full consideration of the findings from Fermanagh and Tyrone.

7.29 The length of time to take a decision and then to issue this decision is excessive in many cases in the PPS. This is primarily due to the organisation struggling to deal with the increased volume of cases leading to backlogs at various points – most clearly evident in terms of registration in Fermanagh and Tyrone and currently evident in terms of time to take a decision on cases and complete the paperwork after the decision has been taken. In the words of one Resident Magistrate, the PPS has 'bit off more than they can chew.' The solution is two fold: improve current processes through improved systems, better productivity



and/or more resources; and reduce the workload (i.e. volume of cases which are dealt with by the PPS).

7.30 Inspectors recommend that **a short-term measure should include modifications to existing PPS processes (e.g. file allocation) with additional resources targeted at the reduction of current backlogs.**<sup>21</sup> In the medium term, **the PPS, in conjunction with the other criminal justice agencies, should re-consider whether it needs to take all prosecution decisions.**

7.31 One option to consider is whether the delegation of 'absolute' offences to the police would lead to a significant reduction of PPS caseload and to a more efficient and timely processing of these cases. It is accepted by senior management in the PPS that the decision to take all prosecution decisions was a 'step further than the Criminal Justice Review had envisaged' (see also 9.6 on specific decisions which may not require the current level of PPS involvement). A second option is to reduce the number of cases / offences which require the police to prepare a file and the prosecution to take a decision on prosecution. CJI support current discussions on the expansion of the use of fixed penalty offences and recommend that the issue receives the urgent attention of the NIO and all criminal justice agencies.

7.32 The Deloitte investigation into delay found that delay is a problem within the prosecution service, though primarily a strategic issue rather than an operational one. It made 10 recommendations principally around increased productivity, which are being implemented by a newly formed Performance Management Group within the PPS. This report does not duplicate any of these recommendations but fully supports their implementation.

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<sup>21</sup> The PPS has recently established a dedicated team of staff working on reducing the administrative backlog in Belfast.



## CHAPTER 8:

# The courts (case management)



8.1 The Northern Ireland Court Service (NICtS) is responsible for the administration of the courts in Northern Ireland. The Crown Court hears all serious criminal cases while the magistrates' courts (adult and youth) conduct preliminary hearings in serious cases and hear and determine less serious criminal cases. The criminal jurisdiction of county courts is limited to hearing appeals from magistrates' courts against conviction and sentence. The largest proportion of NICtS gross operating costs for 2004/05 (42%) is committed to the strategic objective 'to increase the efficiency of case management'.

### The Role of the Judiciary<sup>22</sup>

8.2 The judiciary has a key role in contributing to the objective of increasing the efficiency of case management. The previous Lord Chief Justice (Lord Carswell) issued in 1998 a Practice Direction which introduced target times for Crown Court cases, which were then adopted as administrative targets by the Court Service. Following up on

this, the present Lord Chief Justice has set up regular meetings of the Crown Court Judges, established a Crown Court Judicial Committee to monitor workload patterns and performance against target times, improved systems for the deployment of Supreme Court Judges and provided better co-ordination of their work and designated the Recorder of Belfast as 'provisional' Presiding County Court Judge with responsibility for co-ordinating the work of County Court Judges.

8.3 A Trial Status Report (TSR) has been developed, after detailed consultation with the prosecution and the defence, which is intended to identify risks and obstacles at an earlier stage and therefore prevent unnecessary adjournments. Pre-Trial Reviews have been introduced which have the benefit of concentrating minds on case progression and the judiciary has led an initiative in respect of third party disclosure. Both the prosecution and the defence are now using TSRs and participating in the Pre-Trial Reviews. A more recent

<sup>22</sup> It should be noted that the judiciary are not subject to inspection by CJI. Inspectors are conscious of the importance of preserving the independence of the judiciary, and would therefore as a matter of principle make no recommendations directed at them. Inspectors gratefully acknowledge the assistance they received from members of the judiciary in the course of this study.



initiative is the practice of attaching a summary sheet on each file which clearly identifies the outstanding issues on a particular case.

- 8.4 Figures provided to inspectors on behalf of the Lord Chief Justice show that the prosecution and the defence have requested late adjournments despite confirming that their cases were ready to proceed. The Lord Chief Justice has noted that 'avoidable difficulties were still caused by late applications by both prosecution and defence' meaning that trials had to be delayed or taken out of the list, which can delay the case for three months or more. He acknowledges that a new culture of case management will take time to develop in the Crown Court. Both the Bar Council and Law Society remain to be convinced of the benefits of case management.

### Case processing times in the Crown Court

- 8.5 The time to process defendants in the Crown Court is published by the NICtS. It is these times which are the subject of the Criminal Justice Process Monitoring Scheme (CJPMS) and the work of the Delay Action Group. As noted above, the target times introduced in 1998 for the key process stages of Crown Court cases (namely that 80% of cases should not exceed 6 weeks from committal to arraignment and 80% of cases should not exceed 12 weeks from arraignment to start of trial) were adopted as core administrative targets by the Court Service and have remained the same since then. The committal to arraignment target is being achieved (92%), but not the arraignment to hearing target (68%). An additional 6 week target on sentencing is likely to be added by the judiciary and it is likely that a direction will be issued for magistrates' courts as the Lord Chief Justice assumes responsibility for them.
- 8.6 However the use of percentage based targets, especially those set below 90%, can disguise the impact of long running cases. For example, the committal to arraignment target of 42 days has been achieved for 92% of defendants, yet the average time from committal to arraignment is 47 days in 2004 and 52 days in 2005. On the other hand, the arraignment to start of hearing target of 84 days is only achieved for 68% of defendants (2005), yet the average arraignment to hearing time is 59 days in 2004 and 78 days in 2005. It is average times which form the basis of performance analysis by the CJMPS and DAG.
- 8.7 On a broader level, following a period of steady improvement from 2003, the average time from remand to disposal in 2005 is 360 days. An increase in time is evident at all the process stages from point of committal (Table 6). It should be noted however that the overall number of Crown Court cases has increased significantly in recent years, though 2005 is the first reduction since 2001. This 'spike' in the number of cases is a likely contributing factor to delay. The Judiciary also point out that the length of trials has increased as cases have become more complex and this is certainly reflected in the start of hearing to disposal times for 2005 which show a rise of 8 days from the 2004 figures.



**Table 6: Average processing times for defendants in the Crown Court**

Process stage	2005 (days)	2004 (days)	2003 (days)
First remand to committal	170	171	188
Committal to arraignment	52	48	42
Arraignment to start of hearing	78	59	61
Start of hearing to disposal	60	52	51
First remand to disposal	<b>360</b>	<b>327</b>	<b>339</b>

Source: Criminal Justice Process Monitoring Scheme (Northern Ireland Court Service Crown Court Bulletins)

8.8 The proposed change to committal proceedings is seen as having benefits for reducing processing times for Crown Court cases. However, inspectors heard mixed views from interviewees about the abolition of Preliminary Enquiry (PE) and Preliminary Investigation (PI) and the direct transfer of cases from the magistrates' court to the Crown Court. The fear is that existing problems which are manifest in the magistrates' courts will be transferred to the Crown Court and additional delay could be added to cases. Tight case management will be required to address potential problems.

### Case processing times in the adult magistrates' courts

8.9 NICtS has set two specific timeliness targets for the processing of defendants in the magistrates' court. An adult magistrates' court target to process defendants from first hearing to disposal in 9 weeks, which was met in 78% of defendants in 2004 and 77% in April to December 2005 (the target is 80%). While performance is close to the 80% target, it still means that over 20% of adult defendants are taking longer than 9 weeks (63 days).

**Table 7: Average processing times for defendants in adult magistrates' court**

Process stage	2005	2004	2003
Charge/summons to first hearing	63	65	59
First hearing to finding	41	39	41
Finding to disposal	8	7	4
Charge/summons to disposal	<b>113</b>	<b>111</b>	<b>104</b>



8.10 Average processing times for defendants and cases can hide a number of important issues. One of these issues is the regional dimension in Northern Ireland. Data published by NICtS does provide a breakdown of performance by court area. This shows significant variations between court areas in terms of case processing times. For example, charge / summons to disposal times were 124 days in Belfast, 108 days in L'Derry and 87 days in the Division of Fermanagh in the period October to December 2005. Court performance can be assessed on the basis of first hearing to disposal times which shows that it took on average 50 days in Belfast, 39 days in L'Derry and 45 days in the Division of Fermanagh in the final quarter of 2005. It is recommended that these **regional variations in court performance should be explored in more detail to identify areas where best practice can be shared.** For example, a number of courts have earlier start times (i.e. 10am) which may be having a positive impact on reducing case processing times. There are also potential benefits from the use of split lists. It is recommended that **with the agreement of the Lord Chief Justice the Court Service should conduct a consultation exercise, to identify how it can best handle different types of business and also meet the changing needs of its users.**

## Case Management

8.11 In October 2005, the Lord Chief Justice established a group comprising representatives of the Resident Magistrates, PSNI, PPS and the Court Service to consider a number of issues that could reduce delay in the magistrates' courts. There is no comprehensive information available on the causes of delay and the reasons for court adjournments. Some interviewees believe that it is not possible to have case management for volume work – 'it's too difficult because of volume.' CJI does not accept this approach as effective case management arrangements operate in England and Wales for magistrates' court cases and also in Scotland in relation to young offenders. The issue of volume is not important – the key issue is to determine what type of cases should be subject to more effective case management. The appointment of a Presiding Magistrate to provide leadership and momentum for effective case management linked to effective support from court administration is essential in this regard.

8.12 A number of studies in England and Wales, Scotland and the United States of America found that different patterns of delay and adjournments were closely associated with different 'court cultures'<sup>23</sup>. They found that the culture of a court can be strongly shaped by the personality of the

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



judge or magistrate, accounting for significant variations in the number and length of adjournments.

- 8.13 In view of the need for effective case management, it is recommended that **NICtS should appoint case progression officers for magistrates' court cases.** It is suggested that case progression officers should take a leading role in the proposed inter-agency case management groups and work in close liaison with PPS and PSNI in particular.

### Analysis of adjournments

- 8.14 The reasons why court adjournments are requested can provide a key insight into the types of delays (avoidable and necessary) which impact on case progression and therefore indicate what actions may be required on an agency or cross agency basis. In essence, poor case preparation and readiness by parties to a case is often exposed in court through the need for adjournments. It is therefore surprising that no systematic analysis of court adjournments has been undertaken for magistrates' court cases in Northern Ireland. Various *ad hoc* initiatives have been undertaken by various courts, prosecutors and magistrates but primarily for Crown Court cases. Part of the problem is that the courts do not have the appropriate case management IT system in place to undertake this type of analysis, though there has been little demand for this information from the criminal justice agencies.

- 8.15 In the absence of any comprehensive analysis of case files, inspectors decided to examine a sample of files to determine what type of information is recorded and whether an assessment of the reasons for adjournments is possible. It was decided that it was the PPS and not the courts which had the most detailed case files. A total of 175 case files were randomly selected by inspectors of which 94 related to contested cases. The average number of adjournments in these contested cases was 4 and the average length of adjournment was 26 days. Recent figures for magistrates' courts in England and Wales show that the average length of adjournment was 28 days.

- 8.16 The reasons for adjournments are varied from the files reviewed and larger proportions requested by one agency does not indicate a less effective or efficient approach to case progression. For example, many of the court requested adjournments relate to the necessary and standard practice of requesting the completion of pre-sentence reports. These are necessary adjournments based on 'standard court procedures'<sup>24</sup>, though their need and length should be examined as part of an overall strategy on delay.

- 8.17 A second category of adjournments are less clear in their need - defence requests to take instructions from their clients were a frequent cause of adjournments. This may be partly due to late disclosure by the prosecution

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<sup>24</sup> Term used by the National Audit Office in its examination of adjournments in England and Wales



and / or late appearance by the defendant which are outside the control of the solicitor. But it can also relate to poor initial preparation by the defence (perhaps caused by taking on too many cases) and by a hope that an adjournment will be granted.

8.18 A third category of adjournments were clearly avoidable through better preparation and planning. These included repeat adjournments in cases due to the defendant or other witnesses not turning up at court, the defence or prosecution not ready to proceed despite earlier assurances and late applications such as for disclosure.

8.19 The examination of PPS case files demonstrated that more detailed analysis of adjournments is possible though a number of issues would need to be resolved before it is applied on a wider basis. It was quickly apparent that there is little consistency in recording the reasons for adjournments on files – some are very detailed while others provide little or no information. There was also some evidence of ambiguity in the recording of reasons for adjournments e.g. a defence request for an adjournment to take instructions could relate to delays on the prosecution side. Such factors were not easily apparent from many of the files reviewed.

8.20 Inspectors were left with the impression that while the file analysis was a valuable exercise and provided additional information on court adjournments, the files were only providing part of the overall picture

of case progression. A more **detailed and ongoing case file analysis, which inspectors consider to be essential, will require all the key agencies to agree how each type of adjournment is recorded in court.** It is recommended that this **data should be collected and disseminated by the courts, and IT systems should be modified for this purpose** – inspectors were told that Laganside courts have an IT system with a drop down menu to indicate reasons for adjournment but that it was not used at the time of the inspection.

8.21 The views of interviewees confirm the findings of this file analysis. Some commented on the fact that the non-availability of comprehensive data on court adjournments contributed to confusion and to a blame culture. For example, there is a widely held perception that many adjournments are due to defence applications, particularly in relation to disclosure. The argument is further strengthened by a view that it is in the financial interests of the defence to prolong cases. A recent analysis of court adjournments in England and Wales by the National Audit Office found that 61% were defence related. Both the Bar Council and the Law Society deny that this is the case and would argue that most adjournments are due to the prosecution and not the defence.

8.22 What is without doubt is that there is an adjournment culture, which is putting increased pressure on the workings of the courts. A number of interviewees commented that the size



of court lists, which is partly caused by adjournments, is then putting pressure on all parties to further adjourn cases.

8.23 Court observations by inspectors confirmed the rapid ‘churning’ of cases i.e. where numerous cases are listed, short but inconclusive proceedings take place and the case is then adjourned to a new date. A visit to an adult remand court in Laganside showed that over a morning, 82 cases were listed, other overnight cases were added and only 2 cases had a disposal. A number of interviewees commented that the continuation of this practice means that ‘court lists are becoming unmanageable’.

8.24 The operation of disclosure was mentioned as a particular issue on delay, particularly as it is becoming an increasing feature of the magistrates’ courts. It has prompted one Resident Magistrate to comment that ‘everything becomes a state trial’ meaning that defence solicitors are requesting full disclosure on a wide range of what were traditionally straight forward cases. A number of staff in the PPS, Court Service and PSNI commented that disclosure was creating difficulties for case progression.

8.25 The DAG considered the impact of disclosure and noted that ‘late disclosure applications can be made by both the defence and prosecution’ which adds to delay. An important development has been the preparation, by the Crown Court Judicial Committee under the Chairmanship of Mr Justice Hart, of a

protocol on third party disclosure. This is nearing completion. As the issue of disclosure takes on greater importance, CJI is planning to undertake a review of practice regarding the disclosure of evidence to the defence later in 2006.

8.26 Witness availability has been a significant cause of court adjournments and was raised as a concern by a number of interviewees. It seems that part of the problem is due to poor communication between the police and the PPS. At the first stage, it is clear that the police are not recording all the necessary information about witnesses on the files. At a later stage, internal PPS procedures were criticised as being too slow in issuing invitations to police and civilian witnesses to attend court resulting in increased non attendance. One Resident Magistrate commented that late notification of prosecution witnesses led to the cancellation of 4 out of 5 contests on one particular day.

8.27 Defence solicitors felt that the change of responsibility for witness attendance to the PPS from PSNI meant that they had less direct control over the attendance of police officers – a view shared by at least one Resident Magistrate. The police did mention instances of the PPS failing to summons an officer to attend court, who is then criticised by the court for not attending. The evaluation report on the PPS pilot areas made some recommendations on improving internal PPS procedures and these are strongly supported by CJI.



8.28 Witness availability does not appear to be a priority in the setting of trial dates as there is limited information on availability and no consultation in relation to suitability. It is recommended that **the PPS and the PSNI should ensure that ownership of witness attendance is agreed and that communication and liaison are enhanced.** There is also an opportunity to draw upon the experiences of the 'No Witness, No Justice' project in the Crown Prosecution Service in England and Wales.

8.29 There is a broader issue of how the 'adjournment culture' that has been identified can be tackled. Observations by inspectors in courts showed that many questionable proposals for adjournment were not challenged in court by any of the agencies. There are also no meaningful sanctions to address some of the key problems such as repeated failure to attend or failure to progress cases within a reasonable time. The cost of adjournments together with trials that do not go ahead as planned (both ineffective and cracked) is significant. The recent analysis in England and Wales by the National Audit Office found that trials and hearings in magistrates' courts that did not go ahead as planned was costing £173 million per year.

### Legal Aid arrangements

8.30 The operation of legal aid arrangements can have a significant impact on the processing of criminal cases. New financial arrangements

are now being put in place in Northern Ireland. A fixed fee has been introduced in Crown Courts but no assessment of impact is available to date. It is intended to extend the new arrangement to the magistrates' courts in the near future. The experience from England and Wales is that a set fee has helped to progress cases and its extension to magistrates' court cases is supported in this report.

8.31 There was considerable anecdotal evidence from police, PPS and court staff that the current legal aid arrangements encourage court adjournments with little incentive to resolve cases at an earlier stage. Police (DCUs) state that defence solicitors and counsel 'exploit' the system and there was mention that 'a type of war of attrition on victims or witnesses' is often pursued by defence solicitors. This needs to be carefully managed as it would be rough justice if defence are encouraged to expedite cases, but the prosecution are causing delays through poor preparation.

8.32 Some adjournments can be directly linked to the current legal aid arrangements. Examples were provided of cases delayed due to the need to await confirmation of expert fees before counsel are happy to proceed. A Legal Services Commission suggestion that a panel of experts at a fixed fee rate might remedy the current problem and has received tentative support from the legal profession.

8.33 The issue of the rate and timing of guilty pleas was raised by a number



of interviewees as part of this inspection. Figures provided by NICtS<sup>25</sup> show that 61% of defendants pleaded guilty on all charges in the Crown Court in 2004 (65% in England and Wales), but that figure is just 36% in the adult magistrates' courts. Considerable regional variations are evident as 31% of defendants pleaded guilty in Belfast compared to 40% in L'Derry. A total of 53% of defendants pleaded guilty in the youth court which includes 39% in Belfast, 68% in L'Derry, 69% in Ballymena and 73% in North Down and Craigavon. There is no data made available on when these pleas are taken, though it is widely stated to inspectors that many are taken at the latter stages of a case, often on the date of trial. There is also evidence to show that few guilty pleas are taken at the arraignment stage for indictable cases.

8.34 The review of case files also showed that many guilty pleas were made just before a trial was about to commence, often after a number of court adjournments. A PPS prosecutor commented that 'sometimes there are four adjournments before a plea is entered.' One of the consequences of late pleas is that considerable effort, time and cost has been accrued by both prosecution and defence.

8.35 The rate and timing of guilty pleas is influenced by a number of factors.

The legal aid system in Northern Ireland does not encourage the early resolution of cases, even in the magistrates' court where many cases are straightforward. The operation of a 'one stop fee' approach in England and Wales does appear to have encouraged earlier guilty pleas.

8.36 Another factor is the level of importance that defendants and their solicitors place between pleading guilty and obtaining incentives for an early guilty plea as opposed to the chances of an acquittal following a contest. The motivation of a defendant (who is guilty) to make a plea of guilty at an early stage can be influenced by a number of factors. This includes the actual incentives for an early guilty plea – Article 33 of the Criminal Justice (NI) Order 1996 requires the court to take into account the stage in the proceedings at which the defendant indicated their intention to plead guilty (and the circumstances in which this indication was given) and for it to impose a less severe punishment on the defendant that it would have otherwise have imposed to reflect the stage at which the plea was entered. A number of guideline cases refer to the maximum discount being reserved for those who plead guilty at the earliest opportunity. Since the fieldwork for this inspection was completed, the Court of Appeal has handed down an important judgement on this issue.<sup>26</sup> In view of these guideline cases, there is an opportunity to further publicise

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25 Northern Ireland Court Service Judicial Statistics, 2004

26 A judgement of the Court of Appeal handed down on 24 February 2006 stated that if a defendant wishes to avail of the maximum discount in respect of an offence on account of a guilty plea, he should be in a position to demonstrate that he pleaded guilty in respect of that offence at the earliest opportunity. The greatest discount will be reserved for those cases where a defendant admits his guilt at the outset.



the benefits of an early guilty plea (e.g. in prominent locations in prisons, police stations and courts).

- 8.37 Another factor which influences the rate and timing of a guilty plea is the likelihood of an acquittal. This relates to the quality of the prosecution (e.g. files, witnesses, reputation and experience of the prosecution) as well as reputation of the defence, defendant's experience of the criminal justice system and advice from the defendant's solicitor / barrister etc.<sup>27</sup>). Statistics showing that just 35% of defendants who pleaded not guilty in the Crown Court in England and Wales were convicted in 2004 can be very convincing. It is probable that the rate and timing of guilty pleas can be affected by improvements to file preparation, case management (prior to court) and the administration of cases in court. Inspectors believe that implementation of the other recommendations of this report will impact on the rate and timing of guilty pleas for all criminal cases in Northern Ireland.

### Finding to sentence

- 8.38 The operation of sentencing was not found to be adding undue avoidable delay to cases though there are significant variations between adult and youth defendants. The finding to disposal times for adults during 2005 is 8 days compared to 34 days for youth defendants and there are also significant variations between courts. There is a need for the criminal justice system as a whole and the

Probation Board in particular to consider the reasons why youth defendants are taking an average of 34 days from finding to disposal. While the need for Pre-Sentence Reports (PSRs) is commonly mentioned as a major contributing factor, there are also issues concerning the involvement of social services and education bodies. CJI plans to undertake a number of inspections on the treatment of children in the CJS and these issues will then be examined in more detail.

- 8.39 Timescales have been agreed between NICtS, the NIO and the Probation Board (PBNi) for the preparation and production of reports. In 2002 the Probation Board agreed revised standards for PSRs in conjunction with sentencers and the NIO. Standard 11 states that 'all PSRs shall be completed within 20 working days of a court request (15 days if the defendant is remanded in custody) or alternatively no later than another date determined by the court.' But this does not correspond with the internal Probation Board target which includes PSRs and 'explanatory letters delivered to the courts.' Explanatory letters usually detail why PSRs can not be delivered within the agreed timescale and include factors such as non attendance of offenders at pre-arranged meetings. The inclusion of explanatory letters essentially means that the Probation Board can continue to achieve 99% within the target timescales. This is a confusion target and does not reflect actual performance in relation to the

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<sup>27</sup> See Tague in *Criminal Law Review* for the argument on why barristers should recommend trials (i.e. not guilty pleas) to defendants as they are not as risky, and guilty pleas not as advantageous, as often thought.



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delivery of PSRs. It is also of little benefit in gaining an understanding of the timescales for the preparation and production of reports. Inspectors therefore support the recent commitment of the Probation Board to seek to produce all PSRs within 20 working days of a court request.<sup>28</sup>

8.40 The delay in preparing pre-sentence youth reports could be addressed through the greater use of Specific Sentence Reports (SSRs), which can either be done on the day of the finding or within days of the court hearing. The use of SSRs has become more popular across England and Wales and has made a significant contribution to the reduction in delay for PYO cases in particular. As there are few requested in Northern Ireland (about 100), there is scope to increase their use while protecting the interests of both the judiciary and the defence. Indeed, Resident Magistrates have told inspectors of their willingness to consider the use of SSRs in more circumstances and the Probation Board has set a target to undertake more SSRs.

8.41 Following the recent agreement on the timing and production of PSRs and the commitment to use more SSRs, it is recommended that **PBNI should report separately on its performance in relation to PSRs and explanatory letters, and should work closely with sentencers in relation to the extended use of SSRs.**

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<sup>28</sup> A protocol has recently been agreed between the Crown Court Judicial Committee and the Probation Board which will introduce a 6 week target time from the date of plea or finding to the date of sentencing.



## CHAPTER 9:

# Youth cases



- 9.1 Much research has been undertaken which shows that delays in the processing of cases can have a much more negative impact on young people, either as defendants or as victims and witnesses. As a result, many countries have implemented specific delay reduction initiatives aimed at youth cases – the most notable are the Persistent Young Offender pledge in England and Wales (half the time from arrest to sentence) and the introduction of national standards for youth justice by the Scottish Executive (e.g. reduce the number of persistent young offenders by 10% and introduction of time standards to reach and implement a decision on a young offender).
- 9.2 In addition to Article 6 of the European Convention, the United Nations Convention on the Rights of the Child guarantees the right 'to have the matter determined without delay'. There is also specific Northern Ireland legislation under Section 53 of the Justice (NI) Act 2002 which places a statutory imperative on all criminal justice agencies to have regard for the impact of delay on the welfare of a child. The Review of Criminal Justice in Northern Ireland also expressed

concerns about the length of time it takes for cases to be disposed of and recommended that 'efforts to deal with delays in cases being brought before the youth court should continue.'

### Diversion

- 9.3 The purpose of diversion initiatives is that youth cases in particular, when they are minor and first offences, do not enter the courts system, or when they do enter the system, they can be re-routed towards alternative disposals. The effective use of the both options has the potential to significantly reduce avoidable delay for young offenders. A number of different diversion options are available: youth conference, informed warning or caution.
- 9.4 The recent introduction of court referred youth conferencing has introduced a new restorative justice approach to dealing with young offenders. When a youth admits an offence or agrees to a youth conference following a finding of guilty, the magistrate can ask for a Youth Conferencing plan. Diversionary conferences only take place if the PPS considers it appropriate. The evaluation of the



youth conference service found that 69% of referrals were received from the courts and 31% from the PPS. If the Youth Conference plan is not accepted by the court a PSR may be requested to address all previous convictions or enhance the probation information element in the plan. There was some evidence from the case file analysis and interviews that PSRs were requested after a Youth Conference plan were rejected.<sup>29</sup>

9.5 The use of diversion is increasingly available to criminal justice agencies in dealing with young offenders. Previously the decision to proceed by way of diversion was taken and implemented by the police, often in a matter of hours. The PPS / PSNI protocols state that informed warnings, cautions, youth conferences or prosecutions 'must be submitted to the PPS for decision'. This sits uncomfortably with a general rule which states that these protocols 'do not seek to restrict police officers discretion to deal informally with the most minor offences' – those that presumably could be dealt by informed warning or caution.

9.6 PPS analysis of prosecutorial decisions taken on cases against youths from January to August 2005 in the Belfast region shows that informed warnings constitute 25% of decisions and cautions account for 17% of decisions.<sup>30</sup> These diversionary options are then administered by the PSNI. This was not envisaged by the Criminal Justice

Review when it stated that juvenile liaison bureaux within the police should continue to divert young offenders away from the court process by warning or caution. The report noted that if all such cases were to be processed through the PPS for decision it would 'add significantly to costs and delay' and recommended that 'cases are dealt with expeditiously.' An informed warning and a restorative caution is not a conviction though a criminal record is held for 12 months and 30 months respectively (unless subsequent offending takes place). It is recommended that **greater flexibility with regard to decisions on informal warnings and cautions to young people is required so that (in the words of the Criminal Justice Review) 'cases are dealt with expeditiously'.** The PSNI should therefore assume delegated responsibility for decisions on youth warnings and cautions. This will require additional training for PSNI officers and consistency in decision making. Implementing this recommendation will not result in police officers appearing in court for the prosecution of cases.

### Youth case processing times

9.7 Details of the case processing times for youth defendants are contained in Table 8. It shows that the average charge / summons to disposal time in 2005 was 134 days. As was stated in Chapter 2, an additional period of up

<sup>29</sup> An evaluation of the Northern Ireland Youth Conference Service found that one third of plans were rejected by the court.

<sup>30</sup> Data provided by PPS to CJJ in September 2005

to 112 days can be added for the offence to charge / summons stage of youth defendants and up to 28 days can be added when exclusions are counted. A comparison of figures for the past three years show that overall performance is improving – an average charge / summons time of 134 for 2005 is better than 2004 (145) and 2003 (153). Most of this improvement is at the first hearing to finding stage of youth cases (i.e. in the youth court) where an average time of 78 days in 2003 has decreased to 56 days in 2005.

It is clearly in the interests of all agencies to identify the good practices in certain court locations so that they can be applied in areas where performance is more problematic.

9.9 It is acknowledged that case processing times for youth defendants has recently improved. However, it still takes longer to process a youth defendant than an adult defendant and much longer compared to England and Wales. Much improvement is therefore possible.

**Table 8: Average processing times for youth defendants in magistrates' court**

Process stage	2005	2004	2003
Charge/summons to first hearing	44	48	48
First hearing to finding	56	61	78
Finding to disposal	34	36	27
Charge/summons to disposal	<b>134</b>	<b>145</b>	<b>153</b>

Source: NICtS published data

9.8 NICtS published data on processing times includes a breakdown of times by court location. For youth defendants completed in 2004<sup>31</sup>, it shows that average times from charge/summons to disposal varies from 120 days in Belfast to 156 days in L'Derry and 192 days in Armagh. Most recent figures for October to December 2005 confirm that youth cases are taking longer to process in Ards, Antrim, Craigavon and Armagh court Divisions. Reasons for such variation include different approaches to the issue and serving of summonses, frequency of youth court sittings and different 'court cultures'.

9.10 The big reduction in processing times for young offenders in England and Wales can be largely attributed to the government pledge to half the time it takes to process cases of persistent young offenders. This pledge was made by Labour as part of its manifesto for the 1997 general election and followed rising public concern around the numbers of crimes committed by a relatively small number of persistent young offenders. Back in 1997 it took on average 142 days to process a case from arrest to sentence – by 2001 the target of 71 days was achieved and has since been sustained. There is also evidence to suggest that elements of best practice in dealing

31 Figures for 2005 are not available as yet



with PYO cases has been extended to the broader youth caseload in England and Wales (e.g. joint agency approaches to case management; effective tracking and monitoring of live cases; tackling of the adjournment culture in courts).

- 9.11 The success of the delivery of the PYO pledge in England and Wales has many important lessons for Northern Ireland in terms of approaching the issue of delay (e.g. setting up case progression meetings) but also in terms of addressing public confidence in the criminal justice system. The known fact that a small number of offenders commit a large proportion of crime should be the subject of greater attention by the CJS in Northern Ireland. Reducing the processing time for these defendants is a good starting point as it will ensure that appropriate sentences are more quickly implemented and opportunities to re-offend whilst on bail are reduced. It is recommended that **the Criminal Justice Board should give serious consideration, as part of its delay strategy, to identifying the numbers of persistent young offenders in Northern Ireland and then developing an appropriate strategy.**

## Bail and custody

- 9.12 A particular concern raised by a number of respondents was the practice of having young offenders remanded on bail or in custody for long periods. Long periods on bail often mean that additional offences are committed and actions to address the re-offending behaviour are

delayed – there is a limit on what programmes can be undertaken with an offender who has not received a sentence. Long periods in custody are more detrimental, as young offenders have often served the equivalent time of a sentence by the time the actual sentence is known. The opportunity to address offending behaviour (e.g. through specific types of sentences) is lost in these circumstances.

- 9.13 Defence solicitors pointed out that young offenders held on remand are likely to plead guilty when the period on remand equals the possible sentence – a not guilty plea (regardless of guilt or not) would ensure that a continued period on remand would be likely.
- 9.14 Data provided by the Prison Service<sup>32</sup> shows that 36% of the prison population are on remand which compares very unfavourably with 17% in England and Wales and 14% in Scotland. The proportion of those on remand rises to 56% in Hydebank Wood (male), where all males are under 21 years old. The high proportion of the prison population who are on remand is a symptom of a number of factors, of which delays in the processing of criminal proceedings is very significant. While a reduction in case processing times is likely to reduce the proportion and numbers of defendants who are on remand in the prisons, there is also a need to directly target the issue, particularly for young offenders. It is recommended that **periods of remand (on bail and in custody)**

<sup>32</sup> 32 Monthly Prison Population Report, 10 April 2006, NIO

**should be for the shortest time possible, particularly for young offenders. The criminal justice agencies should develop procedures on implementation to minimise time spent on remand.**

decisions and such delay is not acceptable to many participants and users of the CJS. One PSNI Youth Diversion Officer felt delays with cautions is having a detrimental effect on young offenders as well as victims. This was the view shared by a range of other interviewees.

## Prosecution

9.15 The times to take prosecution decisions in Fermanagh and Tyrone and South Belfast (where PPS is rolled out) are included in the Table 9. It shows that the time to take a decision and to issue a decision is quicker for summary charge cases than summary reported cases. The big difference however is between indictable reported cases and indictable charge cases – reported cases are taking significantly longer for making a decision and for the issue of that decision.

9.17 The time to take and issue a decision on youth conferences (average of 55 days) is also excessive according to a number of interviewees, particularly as this time must be combined with time spent on file preparation. A recent evaluation of the Youth Conference Service found that the average length of time from the offence to the day of the conference was 120 working days. It further noted that some victims expressed a concern at the lapse in time since the original offence. Inspectors were told that the PPS do intend to prioritise youth cases in the future. It is

**Table 9: PPS timescales to take decisions on youth cases (F & T and S Belfast)**

Type of case (youths)	File received to decision date (days)	Decision to decision issued (days)	Decision issued to committal (days)
Summary reported cases	38	6	n/a
Indictable reported cases	62	64	100
Summary charge cases	32	4	n/a
Indictable charge cases	28	43	61

Source: PPS (includes RFI time)

9.16 More detailed analysis of PPS decision times for reported youth cases is provided in Table 10. It is a concern that it is taking on average 45 days from the date a file is received to issue of decision for youth cautions and 32 days for informed warnings. These should be straight forward

therefore recommended that **more detailed plans are necessary for the PPS prioritisation of youth cases. They should be formulated in conjunction with other CJAs, and implemented as quickly as possible.**



**Table 10: PPS timescales to take decisions on reported cases (Fermanagh & Tyrone and South Belfast)**

Type of case (youths)	File received to decision date (days)	Decision to decision issued (days)	Decision issued to committal (days)
No prosecution	39	8	47
Caution	40	5	45
Youth conference	47	8	55
Informed warning	27	5	32

Source: PPS (includes RFI time)

## Youth Court

9.18 A concern raised by the courts in particular is the practice of youth cases being ‘rolled-up’ together and summonses being joined together. When this happens, it is the norm that the youth or adult case will follow the longest running case meaning that avoidable delay is added. It is recommended that **the practice of combining youth cases with longer-running adult or youth cases should be restricted to exceptional circumstances.**

9.19 A number of recent developments in the youth courts will have implications for how cases are processed. An examination of youth court sittings was completed in October 2002 which identified a range of issues which contribute to delay including youth court sittings and formal engagement between the Court Service and other relevant parties.

9.20 Infrequent sittings in rural areas meant that youth cases were often adjourned for one month and there appeared little scope to transfer

cases to neighbouring youth courts. The youth courts now try summary and indictable offences where the defendant is aged from 10 to 17 inclusive – 17-year-olds have recently been added to the youth courts. While this will increase the volume of cases and workload for the youth courts, it is anticipated that it will have the benefit of more youth court sittings. This will have the greatest impact outside Belfast where some youth courts will now have more than one sitting per month meaning that the length of adjournments will be shorter.

9.21 The NICtS has a corporate target of 9 weeks (63 days) from first hearing to finding, which was met in 76% of defendants in 2004-05 (average of 61 days). This does not include the exclusions referred to in Chapter 2. It is also of note that the target is not first hearing to disposal, which is the time period used for adult case targets. The time period from finding to disposal is particularly long for youth cases. This is a good example of the need for all criminal justice agencies to apply a more consistent approach to the setting of targets.



9.22 While recent initiatives are beginning to show some improvement in processing times for youth cases, inspectors are not assured that this will deliver the major improvements that are necessary. It is therefore recommended that in addition to the above actions, youth cases should receive greater priority in the CJS. This means that **a separate youth target should be included in the delay strategy**. It should also include a broader and more flexible approach to diversion decisions. It is suggested that the recommendation to establish case progression groups could be piloted for youth cases, before its wider roll-out.





# Appendices





## Appendix 1 Methodology

The inspection commenced from May 2005 onwards and consisted of the following main elements:

1. Research and data collection
2. Steering Group
3. Consultation - stakeholder interviews and verbal submissions
4. Fieldwork
5. Feedback and refinement

### 1. Research and data collection

Documentation included:

#### **NICtS**

1. Northern Ireland Court Service Annual Report 2004-05
2. Northern Ireland Court Service Corporate Plan 2003-06 and Business Plan 2003-04
3. Northern Ireland Court Service Corporate Plan 2005-2008 and Business Plan 2005-06
4. Northern Ireland Court Service Judicial Statistics, 2004
5. Northern Ireland Court Service Crown Court Bulletins 2004-2005
6. Northern Ireland Court Service Magistrates' Court Bulletins 2004-2005

#### **PPS**

7. Annual Business Plan 2005-06, Public Prosecution Service
8. Design and implementation of the new PPS for Northern Ireland, Fermanagh & Tyrone pilot project, evaluation report – phase 1, Draft February 2006
9. Capacity Model of the PPS
10. Investigation into delay within the Department of the Director of Public Prosecutions, Deloitte, 2005
11. Performance Review 2004-05: building a service for the future, Public Prosecution Service

#### **PSNI**

12. A New Beginning: Policing in Northern Ireland, The Report of the Independent Commission on Policing for Northern Ireland, September 1999
13. The Northern Ireland Policing Board and the Police Service of Northern Ireland Policing Plan 2006-2009
14. The Northern Ireland Policing Board and the Police Service of Northern Ireland Policing Plan 2005-2008



15. The Northern Ireland Policing Board and the Police Service of Northern Ireland Policing Plan 2004-2007

16. The Northern Ireland Policing Board and the Police Service of Northern Ireland Policing Plan 2003-2006

### **Probation Board of Northern Ireland**

17. Probation Board for Northern Ireland, Corporate Plan 2005-2008, Business Plan 2005-06

### **Other**

18. Crown Prosecution Service: Effective use of magistrates' courts hearings, National Audit Office, February 2006

19. Delay: A short review of the causes of delay in bringing criminal cases to trial in Northern Ireland, The Causeway Programme, 2003

20. Delays in the Criminal Justice System – Causes and Solutions, Council of Europe, Criminological Research, Vol. XXVIII, Strasbourg 1992, S.47-84

21. Delay in the Youth Court – Scoping the Problem, NIO Youth Justice Policy Unit

22. Evaluation of the Northern Ireland Youth Conferencing Service, NIO Research and Statistical Series: Report No. 12, October 2005

23. Evaluation of Statutory Time Limit Pilot Schemes in the Youth Court, Home Office Report 21/03.

24. Home Office Statistical Bulletin, Criminal Statistics 2004 England and Wales, Office of Criminal Justice Reform, November 2005

25. Jackson, J. and Johnstone, J., The Reasonable Time Requirement: an Independent and Meaningful Right?, *Crim.L.R.* January 2005

26. Justice (NI) Acts (2002 & 2004)

27. Leverick and Duff, Adjournments of summary criminal cases in the Sheriff Courts, Scottish Executive Central Research Unit, 2001

28. Narey, M, Review of delay in the Criminal Justice System: A Report, Home Office, 1997

29. National Audit Office, Criminal Justice: Working Together, HC 29 Session 1999 – 2000, HMSO, 1999

30. Raine and Wilson, Organisational culture and the scheduling of court appearances, *Journal of Law and Society*, 20(2), 1993

31. Reducing court delays: five lessons from the United States, The World Bank, Prem notes (34), December 1999.

32. Review of the Criminal Justice System in Northern Ireland, Criminal Justice Review Group, March 2000

33. Tague, P, Tactical Reasons for Recommending Trials Rather than Guilty Pleas in Crown Court, *Criminal Law Review*, 2006

34. The Criminal Justice System's Response to Delay, Paper by the Secretariat, Triateral (04) 06

35. Youth Justice Agency, Corporate Plan 2005-2008, Business Plan 2005-2006



## 2. Steering Group

The inspection was guided by a Steering Group consisting of:

Kit Chivers (CJI)  
Brendan McGuigan (CJI)  
James Corrigan (CJI)  
Jacqui Durkin (NICtS)  
Raymond Kitson (PPS)  
Tom Haylett (PSNI)

## 3. Consultation - stakeholder interviews and written submissions

Prior to the fieldwork, CJI inspectors undertook a number of fact finding meetings with representatives of the key criminal justice agencies. Written submissions were requested from a wide range of organisations, particularly in the voluntary and community sector. When requested, follow-up meetings were conducted with a number of organisations / individuals.

## 4. Fieldwork

Fieldwork was carried out during October and November of 2005. This involved meetings and focus groups with staff of all grades within the core criminal justice agencies as well as other organisations with an involvement with the criminal justice system. Following the fieldwork, a review of case files was undertaken within the PPS. Research was also conducted to carry out comparative analysis with other jurisdictions.

Details of meetings / focus groups:

### **Police Service of Northern Ireland**

19 meetings of which 3 were focus groups  
4 all day visits to DCUs

### **Public Prosecution Service**

13 meetings of which 6 were focus groups

### **Northern Ireland Court Service**

10 meetings of which 4 were focus groups  
Observations in 3 separate courts

### **Probation Board of Northern Ireland**

5 meetings

**Youth Justice Agency**

7 meetings of which 4 were focus groups

**Northern Ireland Office**

5 meetings

**Community and voluntary sector**

7 meetings of which 1 was a focus groups

**Judiciary**

3 meetings with Judges, 5 meetings with Resident Magistrates of which 1 was a focus group

**Legal Services Commission**

2 meetings

**Police Ombudsman**

1 meeting

**The Law Society**

1 focus group

**The Bar Council**

1 focus group

## 4. Feedback and refinement

A draft outline of the proposed recommendations was sent to the Steering Group in February 2006. A second draft went to the Steering Group in mid March. Following feedback from the members of the Steering Group, a third draft of the report was sent to the Criminal Justice Agencies in late March for a factual accuracy check.







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