

Section 75

**The impact of Section 75 of the
Northern Ireland Act 1998 on the criminal
justice system in Northern Ireland**

May 2009

Criminal Justice Inspection
Northern Ireland
a better justice system for all





Section 75

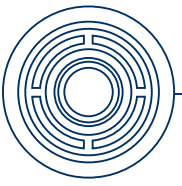
The impact of Section 75 of the Northern Ireland Act 1998 on the criminal justice system in Northern Ireland

May 2009

Presented to the Houses of Parliament by the
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Act 2002.

**Criminal Justice Inspection
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List of abbreviations

CAJ	Committee on the Administration of Justice
CJB	Criminal Justice Board
CJI	Criminal Justice Inspection Northern Ireland
CJS	Criminal Justice System
DCU	District Command Unit (in police)
EQIA	Equality Impact Assessment
Equality Commission	Equality Commission for Northern Ireland
HMCPSI	Her Majesty's Crown Prosecution Service Inspectorate
NICEM	Northern Ireland Council for Ethnic Minorities
NiCHE RMS	Records Management System (in police)
NICtS	Northern Ireland Court Service
NIO	Northern Ireland Office
NIPB	Northern Ireland Policing Board
NIPS	Northern Ireland Prison Service
NISRA	Northern Ireland Statistics and Research Agency
OPONI	The Office of the Police Ombudsman for Northern Ireland
PBNI	Probation Board for Northern Ireland
PREPS	Progressive Regimes and Earned Privileges Schemes (in prison)
PRISM	Prison Record and Inmate System Management
PPS	Public Prosecution Service for Northern Ireland
PSNI	Police Service of Northern Ireland
s75	Section 75 (of the Northern Ireland Act 1998)
YCS	Youth Conference Service (within Youth Justice Agency)
YJA	Youth Justice Agency



Chief Inspector's Foreword

Implementing section 75 of the Northern Ireland Act 1998 has been difficult for the public sector in Northern Ireland and so it is not surprising that the criminal justice system has found the monitoring of outcomes equally challenging.

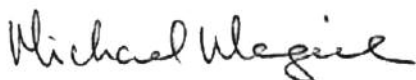
There is always the danger that ineffective or incomplete monitoring can distort the reality of outcomes and great care needs to be taken in trying to analyse data which has not been validated. If there is evidence of inequality there is an obligation on organisations to understand the reasons that have contributed to this situation. There may well be valid reasons why particular groups are disproportionately involved in criminal offending, hence the need for careful analysis of accurate data so that social policy can be informed and play its part in tackling the causes of crime. If outcomes continue to be unsatisfactory, there must be an onus on the relevant criminal justice organisation to determine why that should be the case, and where possible identify remedial action, should this be appropriate.

I appreciate the effort that has been made to implement effective monitoring across the criminal justice system. Moving forward it is important that organisations take a strategic view of their information needs and develop effective monitoring arrangements accordingly. It is essential that where there are disproportionate outcomes, that every effort is made to establish why that should be the case. The Northern Ireland Prison Service is the only area where consistent monitoring is taking place and I welcome the internal review initiated by the prison service on the issues raised by this report.

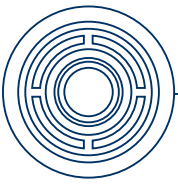
The overall picture in respect of section 75 obligations on consultation and employment is more encouraging, though the Northern Ireland Prison Service continues to operate with a workforce that is unrepresentative of the community in Northern Ireland.

I recognise that there are no easy answers or quick fixes to the issues raised in this report and it will require continued diligence and commitment by organisations within the justice system to deliver their statutory responsibilities.

The inspection was led for CJI by Paul Mageean. I would like to thank all of those across the criminal justice system who co-operated with us during the inspection process.



Dr. Michael Maguire
Chief Inspector of Criminal Justice
in Northern Ireland
May 2009



Executive Summary

It is fundamental to the proper functioning of any criminal justice system that it is fair to all who come into contact with it. This is particularly important in Northern Ireland, given the history of the conflict here. The Inspectorate, in all its inspections, seeks to determine whether the inspected agency/ies are promoting equality and complying with human rights standards. This report has taken the focus on equality a step further. It examines whether the criminal justice agencies are meeting their obligations under section 75 of the Northern Ireland Act 1998 to promote equality of opportunity amongst different categories of persons.

Section 75 is a demanding obligation. As the Equality Commission for Northern Ireland notes section 75 was introduced to “*effect positive change in people’s lives; to transform the practices of government, to reduce and ultimately remove inequalities and to promote equality of opportunity and good relations.*” Section 75 places additional obligations on public bodies above what is already expected of them in terms of anti-discrimination legislation. It does not simply oblige public bodies not to discriminate. It requires them to have due regard to the need to promote equality of opportunity in the carrying out of their functions, and to mainstream equality considerations into their activities.

A major review of section 75 undertaken by the Equality Commission published in May 2007 concluded that it had a considerable cultural impact across the Northern Ireland public sector by placing equality considerations in the mainstream of policy development. It also noted the tendency within the public sector to concentrate on process rather than outcomes. Many of the problems identified in the Equality Commission Review are also found within the criminal justice system. While the pace of implementation is not necessarily slower, it is important that the criminal justice system is able to demonstrate fairness.

Monitoring is central to these efforts and to date, we identified a weakness in relation to this within each criminal justice agency, but most acutely across the system as a whole. This will require a concerted system-wide effort to effect change.

Our research shows that there is very little equality data that tells us anything about how the criminal justice system treats defendants, victims, prisoners or witnesses. What information is available provides a limited picture of what is happening across the system. This inspection report highlights the need to collect robust, timely and relevant equality information in order to ensure that the impact of activities is understood in equality terms, and that corrective action can be taken as appropriate.



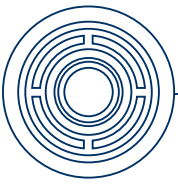
In relation to employment, there is an obligation on all public sector employers to have due regard for the need to promote equality of opportunity in relation to employment practices. As part of the inspection process we examined section 75 information on the workforces of various criminal justice agencies. The figures supplied by the different agencies show a diverse picture in terms of the extent to which employment in the organisations represents the communities they serve, and the extent to which each agency monitors its staff according to the nine categories in section 75. They are:

- gender;
- community background;
- marital status;
- ethnic origin;
- disability;
- age;
- sexual orientation;
- dependants; and
- political belief.

Another key aspect of discharging duty under section 75 is proper consultation with those likely to be affected by any policies under consideration. CJI's research within the sector showed there was wide experience of consultation under section 75. Public bodies are not just required to consult on the likely impact of the policies but are legally obliged to take the views expressed in those consultations into account. The picture painted by consultees however, was one of inconsistent practice not just across the criminal justice system, but often within individual agencies.

The Criminal Justice Review noted in 2000 that: *“A core value and objective of the criminal justice system is that it should have the confidence of the community it serves. Another is that it should treat people fairly and equitably regardless of their background.”* It is in this context that we consider the role of equity monitoring, both in terms of employment in the system and of the impact of the criminal justice process on different sections of the community.

While much has been achieved, this inspection report shows that there remains a significant task across the criminal justice system, as elsewhere in the public sector, to meet the requirements of implementing section 75 and its intention to effect positive change in people's lives. Inspectors found there are significant pockets of good practice in relation to equity monitoring across the criminal justice system. At the same time, this report shows that greater consistency of approach and more detailed information across the sector is required to have a more fully developed picture of any improvements in equality of opportunity.



Recommendations

For the criminal justice system

- We recommend that the Criminal Justice Board take immediate steps to ensure that the new monitoring process being commenced by the PSNI will, in conjunction with the Causeway IT system, provide the criminal justice agencies with a functioning equity monitoring system of defendants (*paragraph 2.4*).
- We recommend the Criminal Justice Board should produce an annual publication which contains as much equality data as is available in relation to the criminal justice system as a whole (*paragraph 2.8*).
- We recommend that a consultative forum on criminal justice matters be established encompassing the major criminal justice agencies represented on the Criminal Justice Board. One of its first tasks should be to review, in conjunction with the section 75 representative groups, current consultation methods across the criminal justice system (*paragraph 3.27*).
- We recommend that the proposed strategy for securing a reflective workforce across the system be accelerated and that the criminal justice agencies begin to monitor their staff in relation to the nine section 75 categories (*paragraph 4.9*).

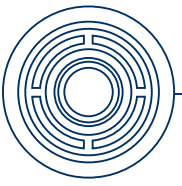
Agency specific recommendations

- We recommend the Northern Ireland Prison Service publish the findings of its internal review into its internal monitoring figures and prioritise the implementation of its recommendations (*paragraph 2.41*).
- We recommend that the Probation Board for Northern Ireland should take steps to extend appropriate section 75 monitoring across its various functions, in particular its work with adjudicated offenders and its community development funding (*paragraph 2.44*).
- We recommend the Youth Justice Agency takes steps to begin to monitor across its three core areas (*paragraph 2.51*).

Section



Inspection Report



Introduction



The provisions of section 75

- 1.1 The Belfast Agreement contained a commitment from the Government to create as a 'particular priority' a:

“statutory obligation on public authorities in Northern Ireland to carry out all their functions with due regard to the need to promote equality of opportunity in relation to religion and political opinion; gender; race; disability; age; marital status; dependants; and sexual orientation. Public bodies would be required to draw up statutory schemes showing how they would implement this obligation. Such schemes would cover arrangements for policy appraisal, including an assessment of impact on relevant categories, public consultation, public access to information and services, monitoring and timetables.”

- 1.2 The commitment to legislation culminated in section 75 of the Northern Ireland Act 1998, the relevant portion of which reads as:

1) A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity:

- *between persons of different religious belief, political opinion, racial group, age,*

marital status or sexual orientation;

- *between men and women generally;*
- *between persons with a disability and persons without; and*
- *between persons with dependants and persons without.*

(2) Without prejudice to its obligations under subsection (1), a public authority shall in carrying out its functions relating to Northern Ireland have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

- 1.3 This inspection focused on the impact of section 75(1) – the equality duty.

Designation under section 75

- 1.4 In 2000, the Criminal Justice Review recognised the importance of maintaining confidence in the criminal justice system through equity monitoring. It states:

“A core value and objective of the criminal justice system is that it should have the confidence of the community it serves. Another is that it should treat people fairly and equitably regardless of their background. It is in this context that we consider the role of equity monitoring, both in terms of employment in the system and of the



impact of the criminal justice process on different sections of the community. We note that section 75 of the Northern Ireland Act 1998 places a statutory duty on public authorities to have due regard to the need to promote equality of opportunity.”

To date more than 270 public bodies have been designated as being subject to section 75. All of the major criminal justice organisations are subject to it although the process by which they have been designated and the extent of the duty varies considerably between the agencies.

- 1.5 The Police Service of Northern Ireland (PSNI), the Probation Board for Northern Ireland (PBNI), the Office of the Police Ombudsman for Northern Ireland (OPONI), and the Northern Ireland Court Service (NICtS) are all subject to the section 75 duty in their own right and have been since shortly after the legislation came into force.
- 1.6 However, the Northern Ireland Prison Service (NIPS) and the Youth Justice Agency (YJA) are only subject to section 75 by virtue of the designation of the Northern Ireland Office (NIO), their parent Government department.
- 1.7 The Public Prosecution Service (PPS) was not designated under section 75 in the first round of designations of public bodies. By virtue of the Justice (Northern Ireland) Act 2002, the PPS is now subject to section 75, but importantly not in respect of its functions relating to the prosecution of offences. Nevertheless, if there

was any discrimination present in the prosecutorial process it would be detected by an equity monitoring system that collected data on what happened across the criminal justice system.

The character of section 75

- 1.8 Northern Ireland already has a framework of anti-discrimination laws concerning employment and access to goods and services. The Fair Employment and Treatment (Northern Ireland) Order 1998, the Race Relations (Northern Ireland) Order 1997, and the Disability Discrimination (Northern Ireland) Order 2006, all prohibit discrimination in the field of employment and in the provision of some goods and services.
- 1.9 Section 75 however, places additional obligations on public bodies and agencies above and beyond what was already expected of them in terms of existing anti-discrimination legal obligations. Section 75 is not a negative obligation in the sense that much of the pre-existing legislation is. It does not simply oblige public bodies not to discriminate. It requires them to have due regard to the need to promote equality of opportunity in the carrying out of their functions and to mainstream equality considerations into their activities. This is a deliberately onerous obligation and one which was designed to have a transformative effect on society in Northern Ireland.
- 1.10 CJI chose to inspect the *impact* of section 75 on the criminal justice system. We chose this title



deliberately in order to try and determine whether being subject to the duties contained in section 75 has had any discernible impact on the agencies making up the criminal justice system and on those who pass through the system – be they victims, suspects or witnesses. There have of course been a number of reviews of section 75 and its effectiveness across the public sector as a whole, perhaps the most significant of which was the review undertaken by the Equality Commission published in May 2007¹.

- 1.11 One of the conclusions of that review was that while section 75 had, in the opinion of the authors, a considerable cultural impact within the public sector, by placing equality considerations in the mainstream of policy development, there were serious challenges about illustrating that the legislation had had any tangible benefits in terms of reducing inequality. As the Equality Commission noted, section 75 was “introduced to effect positive change in people’s lives; to transform the practices of government, to reduce and ultimately remove inequalities and to promote equality of opportunity and good relations.” The Equality Commission felt that a key role for public bodies in the future was to be able to measure the impact of the duty on individuals. It is our view that this will be a particular burden for the agencies that make up the criminal justice system.

Evidence of the impact of section 75

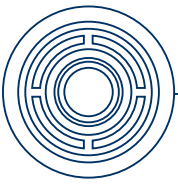
- 1.12 A major challenge for the criminal justice agencies which Inspectors encountered in the course of this inspection was the difficulty of *demonstrating* that section 75 had had an impact in terms of either reducing inequality or improving equality of opportunity. This is not to deny that much good work has been done by many agencies². This is a problem that is not only found in the criminal justice sector but it appears to be particularly acute in that sector. It stems from a lack of robust equality data relating to those who pass through the criminal justice system. As the Equality Commission has noted elsewhere in the same report:

“There is a certain reticence among some public authorities to engage in the [monitoring] process, whether from a lack of knowledge of the practical mechanics involved or from a lack of awareness of the need to understand who is benefiting from public services, and, perhaps more to the point, who is not.”

- 1.13 The authors of the Criminal Justice Review state that while they recognised the difficulties associated with the collection of this equality information, and the sensitivities associated with it, nevertheless, they considered it “*necessary if equality and equity issues are to be addressed. Not only does it assist the system in assessing whether it is operating*

1 *Keeping it Effective: Reviewing the Effectiveness of Section 75 of the Northern Ireland Act 1998*, Equality Commission for Northern Ireland, May 2007

2 For example, the PSNI has done a great deal in response, particularly, to the Patten Report, and can fairly be said to have made equality and diversity key themes in relation to its own human resources. The Probation Board for Northern Ireland has conducted extensive consultation which has affected the plans for re-location of offices, and its process for granting community development funding was revised to address inequalities. Similar points could be noted for other agencies, as recorded later in this report.



equitably, but, where differential treatment is identified, it enables agencies to research the reasons for such difference of treatment and, where appropriate, take action accordingly.”

- 1.14 They then recommended “*that the Criminal Justice Board and its research sub-committee be tasked with developing and implementing a strategy for equity monitoring in the criminal justice system, as it affects categories of people, in particular by community background, gender, ethnic origin, sexual orientation and disability, whilst ensuring that this is done in a way that does not compromise judicial independence.*” They also recommended that such information be made public.

Collecting information relevant to section 75

- 1.15 CJI recognises the difficulties associated with the collection of this information, as the Criminal Justice Review did. Nevertheless, it is a matter of significant concern that eight years after the publication of this recommendation, which was accepted by the Government, and 10 years after the passing of the Northern Ireland Act, such a system has yet to be put in place. To be fair to the agencies, there was some delay in issuing guidance on the interpretation of the duties. This resulted in a period of uncertainty, when the agencies were not sure how to proceed.
- 1.16 The Criminal Justice Board - which comprises the heads of each of the criminal justice agencies in Northern Ireland and is the vehicle for inter-agency initiatives – has made attempts

to address the issue of data collection. In 2005 it commissioned a scoping study which identified options and led to a self-classified equity monitoring scheme in the form of an arrestee survey administered by externally commissioned independent researchers in a sample of PSNI custody suites across Northern Ireland. This represented an investment of some £1.2 million. The pilot concluded in February 2006 and provided some useful lessons. It showed that the model used in the pilot was not suitable to be rolled out for longer-term use, but it indicated the sort of arrangements which the criminal justice system ought to be aiming at. A new scheme for collecting equity information relating to arrested persons will have commenced by the time this report is published.

- 1.17 The new scheme will require careful monitoring to ensure that it does produce statistically robust equity information and information that can be shared across the system. There was some concern that the information collected by the police would not necessarily be compatible with the Causeway IT system which is the system-wide information sharing IT mechanism. The information collected by the police should feed into Causeway which should make it available to authorised users at various stages of the criminal process. Latest information is that the PSNI NiCHE records management system has been adapted by its Canadian developers and that it will be possible for data to be transferred, though Inspectors are not completely confident that the way ahead is yet clear.



Equality of opportunity and equality of outcome

1.18 Section 75 is framed in terms of having due regard to the need to promote equality of opportunity. There is no presumption that the aim should be equality of outcomes, but data about outcomes cannot be disregarded. The Equality Commission guidance states that:

“the outputs and outcomes from policy delivery through services should demonstrate that equality has been effectively mainstreamed.”

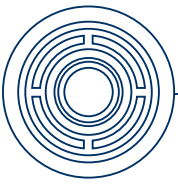
1.19 In principle one needs to check in two ways that equality of opportunity is being achieved. First, to check that the processes, rules, procedures and policies of the agencies are non-discriminatory, and then also to check that the outcomes are satisfactory. The adequacy of the processes needs always to be tested against the outcomes they produce. If the outcomes continue to be unsatisfactory, then there must be a presumption that there is something lacking in the policy and processes. It would not be defensible to continue to accept unfair outcomes on the grounds that the processes are as fair as they can be. Outcomes are the ultimate test.

Responsibility for taking forward work on section 75

1.20 During the course of this report CJI Inspectors examined what impact section 75 was having within each of the agencies under inspection. In addition, and most especially, we were interested in trying to determine

what impact it was having on the criminal justice system as a whole. This highlighted three issues in particular – monitoring, consultation and employment. As is discussed in the report, two of these issues were also the subject of major recommendations by the Criminal Justice Review eight years ago. The Criminal Justice Board, as previously explained comprises the heads of each of the criminal justice agencies in Northern Ireland and is the vehicle for inter-agency initiatives. It has been working on these two issues for some time and has an Equity Monitoring sub-group made up of representatives of each of the agencies. It has responsibility for taking forward the recommendations of the Criminal Justice Review in relation to equity monitoring and employment.

1.21 In addition to that sub-group, there is also an inter-agency group of officials who have responsibility for the implementation of section 75. All of the agencies involved in this inspection sit on this group with the exception of the Office of the Police Ombudsman for Northern Ireland (OPONI). The Youth Justice Agency (YJA) only occasionally attends the group. This group, which has met regularly over the course of the last few years, was set up on a largely ad-hoc basis in order to allow operational officials to exchange information on how they were dealing with section 75 in their respective agencies. Inspectors met with the group and met individually with the members. We were impressed with the initiative shown by the individuals involved in setting



up this group and it is clear that the individuals on the group have benefited from its establishment and have been able to learn from the successes and failures of their colleagues.

- 1.22 Inspectors were also impressed to note that the group, which was essentially at its inception an opportunity to exchange information, was beginning to develop into something more productive and was beginning to come up with ideas as to how section 75 might best have an impact on the criminal justice system as a whole.
- 1.23 Inspectors were surprised to learn that there were no formal links between this inter-agency group and the Criminal Justice Board or its Equity Monitoring sub-group. Individuals on the inter-agency group of course had colleagues on the Equity Monitoring sub-group and were broadly aware of discussions at that level. However it was clear that the operational section 75 staff we spoke to did not have a detailed insight into what was happening at Board level on equality matters.
- 1.24 The strength of the inter-agency group may well lie in its relatively informal nature (Inspectors were told for instance that the group had only recently begun to take minutes of its meetings). However, Inspectors are of the view that the Criminal Justice Board could benefit from greater exposure to the work of the inter-agency group, which in turn might benefit from a degree of system-wide strategic direction.

CHAPTER 2:

Monitoring



2.1 Section 75, which applies to all the functions of the designated agency, requires due regard to be had to equality of opportunity between nine different categories. Monitoring across those nine categories in relation to the key functions of the designated agency is therefore a vital first step in discharging the statutory duty a public body faces under section 75³.

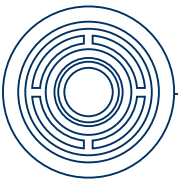
2.2 It is clear that in order to have ‘due regard’ to the promotion of equality of opportunity as between different categories of people in relation to an agency’s functions, information will have to be collected to determine the impact of those functions. For instance, if an agency was to take steps to promote equality of opportunity between men and women in relation to employment, it would need to know the gender breakdown of its current staff before devising a strategy to address any under-representation.

2.3 This is recognised in the various Equality Schemes which have been drawn up by each of the agencies and published. As the NIO Equality Scheme makes clear:

“Knowledge of the uptake of services provided by the Department and the impact of its policies on the different groups within the section 75 categories will be of assistance in assessing progress towards equality of opportunity.”

2.4 However, in terms of both system-wide and individual agency monitoring, the picture is less than satisfactory. We have already discussed earlier in the report the delay in implementing the system-wide equity monitoring processes called for by the Criminal Justice Review. Inspectors welcome the latest moves to implement a system for the monitoring of defendants at the point of detention, which will then hopefully allow for the production of equality information on defendants at various points across the system. However, the reality at the moment is that there is very little equality data that tells us anything about how the criminal justice system treats defendants, victims or witnesses. Given that, in terms of defendants, the point of arrest is the natural point within the criminal justice system at which to gather equality information in the expectation that it can then be fed

³ Some agencies raised questions about the ‘political opinion’ category, and it is clear that further guidance on the use of this category would be welcomed.



through the system, the Criminal Justice Board, as well as the PSNI, need to ensure that sufficient expertise and resources are diverted to this issue to ensure that finally, an effective equity monitoring process can begin. **We recommend that the Criminal Justice Board take immediate steps to ensure that the new monitoring process being commenced by the PSNI will, in conjunction with the Causeway IT system, provide the criminal justice agencies with a functioning equity monitoring system of defendants.**

Practice in England and Wales

2.5 In England and Wales, the use and publication of such monitoring information in relation to the criminal justice system is a matter of long-standing. Since 1992 statistics detailing efforts to promote equality within the criminal justice system have been published annually under section 95 of the Criminal Justice Act 1991. The figures that are published relate to a range of ways in which the criminal justice system impacts on the lives of citizens. They show the representation of ethnic minority groups at different stages of the criminal justice process including:

- stop and search;
- arrest;
- caution;
- youth offenders;
- prison receptions;
- prison population; and
- victims.

2.6 The England and Wales figures also detail the extent to which different

ethnic communities in England and Wales have confidence in the criminal justice system. They also chart the progress or otherwise of efforts which have been made to make the criminal justice workforce more reflective of society as a whole.

2.7 As will be illustrated in the rest of this report, the criminal justice system in Northern Ireland is not yet in a position to publish accurate figures on all of the matters that are covered by the annual figures in England and Wales particularly in relation to operational matters. Some data does exist in relation to employment and confidence levels in the system. Inspectors are of the view that publication of the data that Northern Ireland's criminal justice agencies do currently hold, supplemented by additional monitoring data as it becomes available, is a vital first step to meeting the system's equality commitments, increasing accountability, and sustaining confidence in the system.

2.8 Therefore **we recommend the Criminal Justice Board should produce an annual publication which contains as much equality data as is available in relation to the criminal justice system as a whole.** The raw data alone, however, will not provide an adequate analysis. It will need to be accompanied by a careful appraisal of the significance of the figures in relation to an understanding of wider societal trends, such as deprivation and its links with crime. Individual agencies too will need to develop their analytical abilities in this area.

Monitoring in individual agencies

2.9 The situation with regard to monitoring by each individual agency is that it is also generally underdeveloped. Some agencies have begun to gather some data and they are to be commended for doing so. Our real concern lies with those agencies that have failed to monitor substantively. We cannot see how any agency which is not regularly collecting equality data is properly discharging its statutory function under section 75. We would expect that the Equality Commission for Northern Ireland, which has a responsibility to monitor the section 75 duty in respect of individual agencies, might wish to monitor the extent to which each agency improves, where appropriate, on the situation outlined below.

Police Service of Northern Ireland

2.10 The PSNI's Equality Scheme states that a "system will be established to monitor the impact of policies in order to identify their effects on the relevant groups. This will be reviewed on an annual basis and the results widely and openly published. If monitoring and evaluation show that a policy results in greater adverse impact than predicted, or if opportunities arise which would allow for greater equality of opportunity to be promoted, we will ensure that the policy is revised."

2.11 The PSNI does monitor some aspects of their primary functions.

Stop and search

2.12 The PSNI monitors its use of stop

and search powers against some of the categories in section 75. This issue has been examined in some depth in the Northern Ireland Policing Board's Human Rights Annual Reports for 2007 and 2008. The figures published in these reports show that the vast majority of those stopped and searched by the PSNI were white males. Over 90% of those stopped under PACE and the Terrorism Act were male.

2.13 In terms of ethnicity, more than 97% of those stopped and searched were white. The figures also show an apparent disproportionality in the number of stops and searches of members of the Irish Traveller Community in that the total number of individuals from that community subject to stop and search amounted to 12% of the total Irish Traveller Community in Northern Ireland. The equivalent for the white population was 1%.

2.14 The authors of the 2007 Northern Ireland Policing Board report on Human Rights point out that, while the percentage of stops and searches of Irish Travellers leading to arrests is higher (12%) than the percentage of stops and searches leading to arrests for the total population (8%), "it is not so high as to justify the higher than average number of stops and searches against members of the Irish Traveller Community". The PSNI are therefore urged by the authors of the Northern Ireland Policing Board Human Rights Report 2007 to evaluate the increased tendency to stop and search members of the Irish Traveller Community. This is a good example of why such monitoring is



important and how it can lead to appropriate action being taken by the agency involved to determine if there is indeed a problem in the discharge of a particular function.

- 2.15 The PSNI has not been able to produce figures relating to the community and religious background of those they stop and search. This issue is discussed at some length in the Northern Ireland Policing Board's Annual Human Rights Report for 2007. The authors of the report conclude, after a detailed discussion of this issue, that:

“in light of the inconsistent approach to monitoring the exercise of powers to stop and search, it is difficult to determine whether the powers are used disproportionately....While we recognise that the Analysis Centre’s template may not be wholly effective in providing a robust monitoring framework where community background is not differentiated on the basis of geographical location, the onus is on the PSNI to develop a more effective means. We recommend therefore that the PSNI take steps to establish an effective method of monitoring the use of stop and search powers across districts.”

- 2.16 We respectfully agree with this conclusion. Any disproportionality in the use of stop and search powers has the capacity to seriously affect community/police relations as has often been the case in England and Wales. It is important therefore that the police keep this matter under observation which will require a reliable means of determining the community background of those


subject to the use of these powers. We note that in the 2008 Northern Ireland Policing Board Human Rights Report that significant progress has been made by the PSNI in effectively monitoring the use of stop and search powers across districts.

Arrests

- 2.17 Inspectors have already discussed the absence in Northern Ireland of an effective equity monitoring system across the criminal justice system. We have referred to initial attempts which were made under the auspices of pilots run by the Criminal Justice Board, to collect some equality data in relation to those arrested and held at certain police stations but these pilots were not pursued. The PSNI has now begun to put in place a new system to collect equity information at the point of arrest and it is to be commended for doing so. While this new process is still in its infancy, Inspectors hope that ultimately this will feed through to the criminal justice system as a whole and allow for analysis as those monitored pass through the various parts of the system. It is important however to point out that at the moment, no equality information is available to monitor those arrested beyond that which can be gathered administratively (generally gender and age).

Youth Diversion

- 2.18 The PSNI carried out an Equality Impact Assessment (EQIA) in relation to their Youth Diversion Scheme which was published in March 2007. The Youth Diversion Scheme aimed



to provide a framework within which the PSNI could respond to children aged between 10 and 17 years who came into contact with the police. The EQIA was based on an analysis of 915 case files. Information was not available on those files to determine a number of section 75 categories including disability, race, political opinion, dependants and sexual orientation. However, it was possible to determine age and gender. An analysis based on gender showed that boys were more regularly prosecuted after referral to the Youth Diversion Scheme but this was explained on the basis that boys generally tended to be referred for more serious offences.

2.19 Information was not available on the files which allowed for analysis in terms of community background but interestingly, because the PSNI recognised the importance of this category in the context of Northern Ireland, they used a series of proxy indicators including name, address, school attended and other information to give what they termed a 'reasonable approximation' of the community background of more than 80% of those involved.

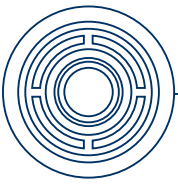
2.20 An analysis of the case files according to community background showed that across the 15 District Command Units surveyed, Roman Catholic juveniles were tending more often to be referred for prosecution and Protestant juveniles were tending more often to be referred for diversionary (i.e. non-prosecutorial) disposals. This pattern was analysed in some detail in the report and remained valid even when local demographic considerations were

taken into account. Interestingly, the disproportion was more marked in those DCUs where the PPS had not yet rolled out its local offices. The introduction of the PPS had reduced but not eliminated it.

2.21 Various factors were considered by those writing the 2007 PSNI Equality Impact Assessment of Youth Diversion Report as contributing to the disparities, but ultimately each file was looked at again and researchers concluded that there was no evidence of bias on the part of PSNI or PPS decision makers. Their conclusion was that for some reason which was unexplained, Roman Catholics were not being *“reported for the more minor offences which attract a diversionary disposal or they commit (or are reported or apprehended for) more offences, and more serious offences which attract higher tariffs. This may be connected with issues such as societal problems, or socio-economic difficulties and deprivation in some predominantly Roman Catholic and nationalist communities.”*

2.22 There does not seem to be any evidence that Roman Catholic juveniles *“commit more offences”*. Nor is it the case, according to the PSNI, that there is any different level of policing in Roman Catholic areas which could account for a higher level of arrests.

2.23 Some of these questions remain unanswered, but Inspectors would commend the PSNI for undertaking the EQIA and for introducing the use of proxy indicators to determine community background. The analysis that results from the findings is what



should be prompted by such monitoring, even if, in our view, it could have gone further.

Anti-Social Behaviour Orders

2.24 CJI recently conducted an inspection of the use of Anti-Social Behaviour Orders (ASBOs) in Northern Ireland. During the course of that inspection the Inspectorate obtained figures relating to the monitoring of those who had been issued with ASBOs by the end of 2007. The following table contains those figures. The issuing of an ASBO however is a matter for the courts and we do not have figures relating to applications.

2.25 A total of 65 ASBOs had been issued by the end of December 07. A total of 59 of them had been applied for by the PSNI. The PSNI deserves credit for its equity monitoring of those issued with ASBOs and its commitment to gathering information on eight out of the nine section 75 categories.

Northern Ireland Court Service

2.26 The Northern Ireland Court Service (NICtS) Equality Scheme commits the Service to establishing a “*system to monitor the impact of policies in order to identify their effects on the relevant groups.*” It goes on to say that knowledge of the “*uptake of services provided by the Northern Ireland Court Service and the impact of its policies on the different groups within the section 75 categories will be of assistance in assessing progress towards equality of opportunity.*” The scheme does indicate that it will need to take into account the resource implications of

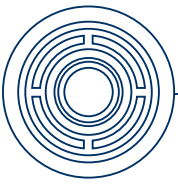
such monitoring, the readiness of the public to supply information and the availability of proxy measures.

2.27 The NICtS is in a similar position to the Probation Board for Northern Ireland (PBNI) and the Youth Justice Agency (YJA) in that it is an agency which is situated in the middle of the criminal process and to which cases are generally referred by other agencies. In addition, it is in a much more problematic situation in terms of its place in the system in that it would be unacceptable for it as an agency, to collect information on defendants and/or victims. That is not to say that such monitoring could not take place, but the collection of such information must take place earlier in the process to safeguard judicial independence. In addition, the NICtS, as a service which exists to administer the courts and support the judiciary, does not take substantive decisions affecting those passing through the courts.

2.28 Nevertheless, there have been some efforts by the NICtS to monitor the views of its customers by way of customer exit surveys, which have also been used to measure the impact of EQIA outcomes. These have informed policies relating to issues such as disability access, childcare facilities and symbols in courthouses. In addition, some work has been done on the civil side of the Court Service functions with a view to collecting equality data in relation to the granting of civil legal aid and the Enforcement of Judgements Office. While beyond the remit of this report, these efforts show a degree of innovation in terms of

Information regarding the monitoring of individuals issued with ASBOs at December 2007 (as contained in CJI's inspection report of the operation and effectiveness of ASBOs).

SECTION 75 MAIN CATEGORY	SUB-CATEGORY	NUMBER	PERCENTAGE OF INDIVIDUALS (%)
GENDER	Male	57	87.7
	Female	8	12.3
	Total	65	100.0
COMMUNITY BACKGROUND	Roman Catholic (RC)	25	38.5
	Protestant (P)	21	32.3
	Not Known (NK)	19	29.2
	Total	65	100.0
MARITAL STATUS	Married	4	6.2
	Single	55	84.6
	Separated	1	1.5
	Not Known (NK)	5	7.7
	Total	65	100.0
ETHNIC ORIGIN	White	63	96.9
	Irish Traveller	2	3.1
	Total	65	100.0
DISABLED	Yes	5	7.7
	Not recorded as having a disability	47	72.3
	Unknown/Not Disclosed	13	20
	Total	65	100.0
AGE	Under 18	30	46.2
	Over 18	34	52.3
	Not Known (NK)	1	1.5
	Total	65	100.0
SEXUAL ORIENTATION	Heterosexual	38	58.5
	Not Known (NK)	27	41.5
	Total	65	100.0
DEPENDANTS (care of child/children/ person)	Yes	4	6.2
	No	44	67.7
	Not Known (NK)	17	26.2
	Total	65	100.1
POLITICAL BELIEF	No detail provided		



approach to equality matters which should be welcomed.

Northern Ireland Prison Service (NIO Equality Scheme)

“The Department will establish a system to monitor the impact of policies in order to identify their effects on the relevant groups. This will be reviewed annually and the results published...”

- 2.29 The Scheme goes on to state that there may be legitimate differential impacts on particular groups because of steps being taken to address a previous imbalance (for instance, the police recruitment policy of 50:50). In other cases, differential impacts may be considered justifiable in terms of the broader human rights agenda and statutory obligations of the Department. If however, this is not the case, *“the Department will take steps either to put in place an alternative policy; or if this is not possible, will consider how the impact may be mitigated. The Department may, in these circumstances, commission special monitoring analysis to confirm the extent of the differential impact and/or the success of any mitigating measures. Information collated in this special monitoring would be taken into account in any future review of the policy. This will be reviewed annually and the results will be published and made available to the Equality Commission. If monitoring and evaluation show that a policy results in a greater adverse impact than predicted, or if opportunities arise that would allow for greater equality of opportunity to be*

promoted, the Department will ensure that the policy is revised.”

- 2.30 Clearly one of the key functions of the Northern Ireland Prison Service (NIPS), as recognised by their Corporate Plan, is to *“keep in secure, safe and humane custody those committed by the courts.”* In order to ensure that it is fulfilling this function, while having due regard to its section 75 obligations, the NIPS must monitor the prison population and it has provided Inspectors with detailed information regarding the outcome of this monitoring.
- 2.31 While the NIPS has no responsibility for any over-representation of particular groups in its prison population, it does have a responsibility to have due regard to any evidence suggesting a lack of equality of opportunity in the discharge of any of its functions relating to how prisoners are treated in its custody. To the credit of the NIPS, they do now monitor this aspect of their work, following recommendations in earlier CJI reports on particular prison establishments⁴ in Northern Ireland. In March 2008 the NIPS appointed an expert Equality Adviser on a full-time basis, and in June 2008 it published a new Diversity Strategy. Improved data gathering from the PRISM information system is now in place across all three establishments, which covers seven of the nine categories prescribed by section 75. New screening forms have also been introduced by the NIPS.

⁴ All CJI and HMIP reports on prisons in Northern Ireland published between 2004-08.



2.32 While the figures show some discrepancies in the extent to which Roman Catholic and non-Roman Catholic prisoners avail of work, gym and educational opportunities, the figures that give rise to most concern relate to the Progressive Regimes and Earned Privileges Scheme (PREPS) and adjudications. These were issues that CJI highlighted in previous prison reports following inspections of the prisons in Northern Ireland. There are three levels in the scheme – basic, standard and enhanced, with prisoners on the enhanced level being able to benefit more from privileges. The monitoring undertaken by the NIPS (and snapshots taken in the course of regular inspections by CJI and HM Inspectorate of Prisons) suggests that Roman Catholic prisoners in each of the three NIPS establishments are over-represented on the basic and standard levels of PREPS and under-represented on the enhanced level.

2.33 The figures relating to adjudications are particularly concerning and the disparity can be quite striking. It has to be borne in mind that the absolute numbers are small and the differences are therefore liable to fluctuation. This is being pursued by the NIPS, though it could be said that such action is overdue, given that the issue was flagged up by CJI and HMIP Inspectors as early as 2004.

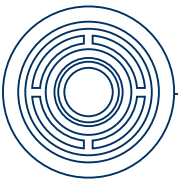
2.34 Inspectors have been provided with figures by the NIPS relating to admissions into prison which cast some light on that group of

defendants who have been committed to prison (a relatively small proportion of the total number of those arrested). The information relates primarily to monitoring by way of religion and is, generally speaking, a comparison between the prison population and the general population in Northern Ireland. The key findings of the monitoring are listed below:

- The estimate for the relevant Roman Catholic population in Northern Ireland is taken as 45%;⁵
- The figures provided for the prison population between January 2006 and October 2007 show that for each month the percentage of Roman Catholic prisoners was higher than the estimated Roman Catholic share of the relevant Northern Ireland population of 45%;
- The proportion varied from a marginal 46% in January 2006 to 52% in April 2007;
- In terms of remand prisoners, the situation is more pronounced. The range was from 51% to 58% in April 2007; and
- Likewise, in every month between January 2006 and October 2007, Roman Catholics were over-represented in the figures for those being received into prison. At the maximum in September 2007, they made up 59% of receptions.

2.35 While the detailed figures provided relate to the months between the beginning of 2006 and the end of

⁵ According to the figures provided by the Northern Ireland Prison Service which are based on the 2001 census, Roman Catholics make up 43.8% of the total Northern Ireland population. They make up 50.4% of the population aged 16-24 years, and 45.3% of the population aged 25-34 years. To reflect the age structure of the prison population, the Northern Ireland Prison Service has estimated the Roman Catholic share of the relevant Northern Ireland population to be 45%.



2007, they are not unique. Annual figures provided show that since 2002, the percentage of Roman Catholics within the prison population has exceeded the percentage within the general population in every year to date.

2.36 The NIPS itself can have no impact on those figures. It merely takes in prisoners who have been sent into its custody by the courts. Nevertheless, these figures illustrate why monitoring across the criminal justice system should take place. They show overall a statistically significant over-representation of Roman Catholics at the end of the criminal process. While the figures for the sentenced prison population are not greatly out of line (and between January and May 2006 actually fell below the 45% level), the discrepancy for remand prisoners is a reason for the criminal justice system in Northern Ireland to examine its processes to determine what, if anything, is leading to this over-representation. But there is at least a question to be asked whether there is anything in the policies and practices of the criminal justice agencies which could be contributing to the disparity, and for that good, systemic monitoring information is essential.⁶

2.37 Inspectors have also been provided with figures by the NIPS relating to the breakdown of their staff. This is discussed in more detail in Chapter 4. The Northern Ireland Prison Service staff members are still

overwhelmingly male and Protestant. Unlike, the PSNI, the NIPS was not subject to a Patten style change programme. In a context of very limited recruitment, there has been little opportunity to change. While there have been increasing numbers of Roman Catholics and women applying for those positions that have been advertised in recent years, the actual numbers of recruits are so small that they will not make any significant impact on the overall workforce figures for the foreseeable future.

2.38 Although, all decisions are ultimately for Governors and there is a process of appeal, front-line prison officers make a major input into decisions as to what level of PREPS a prisoner is assigned to. Likewise adjudications predominantly arise because they are brought by staff on the wings. We therefore have a situation within the prisons where a predominantly Protestant staff is interacting with a majority Roman Catholic prison population and the evidence suggests that Roman Catholic prisoners are receiving less favourable treatment. On previous occasions when CJI has inspected the prisons, we have conducted snapshots of equity monitoring in particular months and these have revealed figures similar to those described above. It was this work that prompted us to recommend that the Northern Ireland Prison Service begin to collect this information on a more systematic basis.

⁶ On the face of it the inference might be that when it came to handing down custodial sentences the courts were rectifying disparities which had occurred at earlier stages of the criminal justice process, but much more would need to be known about the ages of offenders and the nature of their offences before it would be safe to draw any such conclusion.

2.39 Clearly, this is a complex and sensitive area. There is no supporting evidence of a direct link between a Prison Officer's religion and adjudication outcomes. It is the view of the NIPS, based on their research, that perceptions of inequality are not actually felt by prisoners. The NIPS has also provided Inspectors with the results of prisoner surveys which seem to suggest that significant majorities of prisoners believe that they are treated fairly in relation to their religious belief (68% in Maghaberry, 77% in Magilligan, and 96% in Hydebank Wood). Roman Catholic prisoners they suggest, are more likely to reject authority and that there is more affinity between Protestant prisoners and staff because they come from similar backgrounds and live in the same areas.

2.40 The NIPS has taken steps to review the information provided by the Inspectorate and has undertaken their own internal review of the monitoring information. The Prison Service intends to introduce 'minor reporting' and increase emphasis on interpersonal skills in training. They will also address the overuse of cellular confinement as a punishment following adjudication. It is important that the NIPS investigate the reasons why a statistically significant lower number of Roman Catholic prisoners progress to the enhanced level in comparison to Protestant prisoners. Figures supplied by the NIPS revealed that in June 2008, 42% of Roman Catholic prisoners were on the enhanced level in comparison to 55% of Protestant prisoners.

2.41 We acknowledge that the NIPS is now making a sustained effort to gather this data and they are to be commended for doing so. We are conscious of the fact that, at least to some extent, they may feel that they are being unfairly singled out because they have provided us with detailed data which some of the other agencies have been unable to produce. We are pleased that the Northern Ireland Prison Service has begun to grapple with this sensitive and difficult issue and encourage them to continue to do so. The findings highlight the importance of the collection of robust, timely and comprehensive monitoring information on an on-going basis. **We recommend the Northern Ireland Prison Service publish the findings of its internal review into its internal monitoring figures and prioritise the implementation of its recommendations.** This will be subject to further CJI inspection and reporting.

Probation Board for Northern Ireland

2.42 The Equality Scheme published by the Probation Board for Northern Ireland (PBNI) states that:

“knowledge of the uptake of services provided by the Board and the impact of its policies on the different groups within the section 75 categories will be of assistance in assessing progress towards equality of opportunity. The Board will establish a system to monitor the impact of policies in order to identify their effects on groups....The Board will make use



of proxy measures (e.g. postcode analysis) where appropriate.”

2.43 It continues: *“The Board will review on an annual basis the results of monitoring. If monitoring and evaluation show that a policy results in greater adverse impact than predicted, or if opportunities arise which would allow for greater equality of opportunity to be promoted, the Board will ensure that the policy is revised.”*

2.44 Apart from what PBNI collects administratively in relation to its users, it has not engaged in widespread monitoring. Some efforts have been made to monitor the spend of the PBNI under its community development funding. These efforts to date have not proven successful. We also understand that when it was first designated, PBNI did write on several occasions to the Equality Commission seeking specific assistance in relation to its monitoring obligations. We were told that the PBNI, along with other agencies, felt a degree of unease about engaging in monitoring before publication of guidance from the Equality Commission. **We recommend that the Probation Board for Northern Ireland should take steps to extend appropriate section 75 monitoring across its various functions, in particular its work with adjudicated offenders and its community development funding.**

2.45 Inspectors have a degree of sympathy with this position, particularly in relation to an agency like the PBNI, which generally receives referrals

from other agencies within the criminal justice system. The PBNI, like others within the criminal justice system, was awaiting the development of a system-wide equity monitoring process. In addition the Probation Board did engage in at least one pilot on monitoring offenders in 2002. It is not clear why this was not followed up because response rates were reasonably good. However, the PBNI has been subject to section 75 since 2000 and it is incumbent upon it to discharge its statutory responsibilities and to further develop mechanisms for doing so.

Youth Justice Agency (NIO Equality Scheme)

“The Department will establish a system to monitor the impact of policies in order to identify their effects on the relevant groups. This will be reviewed annually and the results published...”

2.46 The Scheme goes on to state that there may be legitimate differential impacts on particular groups because of steps being taken to address a previous imbalance, (for instance the PSNI recruitment policy of 50:50). In other cases, differential impacts may be considered justifiable in terms of the broader human rights agenda and statutory obligations of the Department. If however, this is not the case, *“the Department will take steps either to put in place an alternative policy; or if this is not possible, will consider how the impact may be mitigated. The Department may, in these circumstances, commission special monitoring analysis to confirm the extent of the differential impact*

and/or the success of any mitigating measures. Information collated in this special monitoring would be taken into account in any future review of the policy. This will be reviewed annually and the results will be published and made available to the Equality Commission. If monitoring and evaluation show that a policy results in a greater adverse impact than predicted, or if opportunities arise that would allow for greater equality of opportunity to be promoted, the Department will ensure that the policy is revised.”

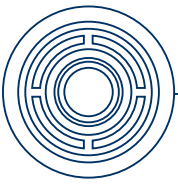
- 2.47 The Youth Justice Agency (YJA) has three basic functions – the Youth Conference Service, Community Services and the Juvenile Justice Centre. Monitoring is weak in relation to the former two functions.
- 2.48 CJI published a report on an inspection of the Youth Conference Service in February 2008 and as part of that inspection process, Inspectors examined the extent to which section 75 monitoring was carried out. It is useful to reproduce some of what we said here:

“In many of the case files examined by Inspectors section 75 data was missing or incomplete. Staff said that they rarely asked young persons for all of the section 75 information and it was not mandatory to do so. Some staff told Inspectors that they felt it would be inappropriate to ask young persons for such data as it may hinder what can sometimes be a delicate communication process. However, such data does not need to

be gathered during the first meeting of Youth Conference Service (YCS) staff with young people and it may be more appropriate to collect it during subsequent meetings after a rapport has been established. Coordinators often meet young persons on more than one occasion in the preparation phase of conferencing and it should be possible to obtain such data without threatening that relationship. Failing to record section 75 data hinders the process of reporting on the even-handedness of conferencing and whilst anecdotal evidence suggests that the system had been operated fairly, it would be useful to publish statistical evidence to that effect.

*...[section 75] information had not been collected in relation to victims and as in the case of young persons, had affected the ability of the YCS to report on the even-handedness of conferencing. The victim perspective is an important element of conferencing and whilst data had been gathered from victims, the YCS were unable to disaggregate it in respect of age, gender, or community background, for example. It would be useful to be able to examine the victim perspective by analysing it with regard to its application across the section 75 categories. **It is recommended that the collection of section 75 data on young persons and victims is made mandatory and that such data is actively monitored and analysed and reported to assess the impact of conferencing on all section 75 categories.**”⁷*

⁷ Youth Conference Service – An Inspection of the Youth Conference Service in Northern Ireland, Criminal Justice Inspection, February 2008.



- 2.49 In relation to the users of the YJA's Community Services, no equality information is collected beyond gender and age.
- 2.50 CJI also carried out an inspection of the Juvenile Justice Centre at Woodlands which is run by the YJA that was published in May 2008. Inspectors examined the population profile for the young people in the centre over a 22-month period. The bulk of the young people were male and the community background showed that 52% were Roman Catholic while 45% were Protestant.
- 2.51 The YJA therefore fails to monitor effectively in at least two of its three key functions. As with the Probation Board for Northern Ireland, this situation needs remedied as soon as possible and **we recommend the Youth Justice Agency takes steps to begin to monitor across its three core areas.**

Office of the Police Ombudsman for Northern Ireland

- 2.52 The Office of the Police Ombudsman for Northern Ireland's (OPONI) equality scheme contains a similar commitment to monitoring as that made by the other agencies:

“knowledge of the background of complainants and the impact of the Office's policies on the different groups within the section 75 categories will be of assistance in relation to assessing progress towards equality of opportunity. The Office will rely both on its own available data and research resources as well as those available from other

sources. It will establish a system to monitor the impact of policies in order to identify their impact on the relevant groups, and at the end of the first year of approval of this Scheme, it will assess the extent of monitoring and the scope for extending it.”

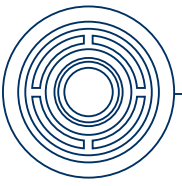
- 2.53 Like the other agencies, the OPONI received little guidance on monitoring from elsewhere. However, unusually amongst the criminal justice agencies, the OPONI, has attempted to monitor its customer base from the beginning of its designation and it has included information on this in its annual progress reports to the Equality Commission. Inspectors were impressed with this approach which may partly have resulted from the fact that the Police Ombudsman's Office was designated shortly after being established. However, senior officials in the office told Inspectors that from the point of designation, section 75 was a key organisation goal and the former Ombudsman had insisted on a focus being kept upon it.
- 2.54 Various mechanisms have been used to build a picture in terms of the satisfaction and confidence rates amongst those from each of the section 75 categories, but it is important to note that the OPONI have not sought to develop a perfect solution to the monitoring problem. In their annual progress reports, they discuss findings from the Omnibus surveys in terms of confidence in the Office, additional research carried out by the Northern Ireland Statistics and Research Agency (NISRA), and also customer satisfaction surveys carried out by the Police Ombudsman's Office itself. This latter mechanism is



one which the Office has relied on perhaps more than any other and which allowed it, at the beginning of this inspection, to provide Inspectors with a paper giving an overview of monitoring of section 75 groups over the course of the last seven years. The OPONI was unique in terms of its capacity for doing this among the rest of the criminal justice agencies.

2.57 While the situation of the OPONI is very different from the other criminal justice agencies, Inspectors do believe that in terms of innovative thinking and the importance accorded to section 75 and to monitoring, the other agencies could learn much from the approach adopted by the Police Ombudsman's Office.

- 2.55 Senior officials in the OPONI were also able to give us examples of how the identification of certain trends in their monitoring prompted them to seek assistance from representative groups. For instance, they recognised that response rates were low for sexual orientation questions and they consulted with the Coalition on Sexual Orientation (CoSO) to try and refine the questions with a view to maximising response rates. If they notice other such trends, they engage in outreach to the particular category of people.
- 2.56 It is important to stress, as the OPONI did, that the numbers of complaints they dealt with were much lower than the number of cases being dealt with by agencies in the criminal justice system. It is also important to stress that their monitoring is not perfect. Response rates to the customer satisfaction questionnaires could improve but Inspectors were impressed with the fact that these issues did not prevent the OPONI from monitoring at all. As one official put it, it was important not to "*let the perfect be the enemy of the good*".

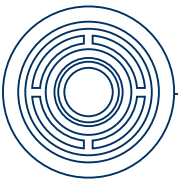


CHAPTER 3:

Consultation



- 3.1 A key aspect of discharging the equality duty under section 75 of the Northern Ireland Act is proper consultation with those likely to be affected by any policies under consideration. Consultation on public policy is a matter of good practice but section 75 and Schedule 9 to the Northern Ireland Act go much further than simply restating good practice. They place legal obligations on public bodies designated under section 75.
- 3.2 Schedule 9 to the Northern Ireland Act 1998 details the required contents of equality schemes to be drawn up by those public bodies subject to section 75. Paragraph 4 of Schedule 9 makes clear that the schemes must include the organisation's arrangements:
- “for assessing its compliance with the duties under section 75 and for consulting on matters to which a duty under that section is likely to be relevant (including details of the persons to be consulted);”* and
- “for assessing and consulting on the likely impact of policies adopted or proposed to be adopted by the authority on the promotion of equality of opportunity.”*
- 3.3 Public bodies are also obliged to “consult ...representatives of persons likely to be affected by the scheme” before submitting an equality scheme.
- 3.4 Crucially, public bodies are also required by Schedule 9 to “take into account” the results of the assessments and consultations carried out under Paragraph 4. Paragraph 9 (2) states that
- “in making any decision with respect to a policy adopted or proposed to be adopted by it, a public authority shall take into account any such assessment and consultation, as is mentioned in paragraph 4(2)(b) carried out in relation to the policy.”*
- 3.5 In other words, public bodies designated under section 75 are not just required to consult on the likely impact of the policies but are legally obliged to take the views expressed in those consultations into account. This is markedly different from most other exercises in public consultation where, while there may be a political imperative not to ignore the results of such consultations, there is no statutory obligation to take them into account.



3.6 Inspectors examined the equality schemes of each of the criminal justice agencies to determine their plans for meeting this obligation. We also spoke to those in each agency with primary responsibility for section 75. Much of the material in the various equality schemes is similar and much of it clearly echoes guidance issued by the Equality Commission for Northern Ireland to those tasked with drafting equality schemes. Nevertheless, it is useful briefly to recapitulate the main commitments on consultation contained within each scheme.

Police Service of Northern Ireland

- All consultation will be timely, open and inclusive and in line with the Equality Commission's Guiding Principles on Consultation.
- PSNI will consult as appropriate with the Equality Commission, the Community Relations Council and the other bodies on issues relevant to the fulfilment of the section 75 obligations and how best to obtain their views. It will respond constructively to proposals from those bodies relating to its compliance with the section 75 obligations.
- Consultation will be carried out through various methods at each stage and will involve face-to-face meetings, advisory group surveys, consultative panels, internet discussions, citizens' juries and other innovative ways of consulting.
- The police will aim to provide a period of at least 12 weeks for response from non-Government organisations.

- Information will be made available on request in accessible formats.
- Consideration will be given as to how best to communicate information to young people and those with learning disabilities and their carers.

Probation Board for Northern Ireland

- The Board is committed to carrying out timely, open and inclusive consultation and in doing so may use any of the following methods: letters or discussion papers, meetings, consultative fora, attitude surveys of service users, consultative panels, advertisements, internet, direct invitation, questionnaires.
- Consideration will be given to which method of consultation is most appropriate in the circumstances.
- Systems will be put in place to ensure that information is available on request in accessible formats.
- The Board will provide a period of at least two months for consultation exercises.

Northern Ireland Prison Service and Youth Justice Agency (NIO Equality Scheme)

- The Department will consult with the Equality Commission, the Community Relations Council, other public authorities and voluntary, community and trade union groups and organisations representing the various categories included in section 75.
- The Department will release for public consultation (subject to the Government security rules on the release of classified



information) any data relating to equality issues as they affect the section 75 categories.

- The Department will consult on the screening processes and subsequently on equality impact assessments with relevant public sector organisations and with those representative groups and individuals of the section 75 categories.
- In consulting representative groups the Department will aim to provide a period for response of at least eight weeks.
- In consulting on any matter to which the Scheme relates, the Department will normally initially write to the relevant bodies referred to in this section of the Scheme and if necessary, follow this up with a telephoned approach. The Department will then work with representative groups and individuals of the section 75 categories in order to identify how best to obtain their views.
- The Department considers it particularly important that sufficient, timely and appropriate information is provided to enable all affected groups and individuals to consider the full implications of proposals, and it will take steps to ensure this.
- The Department will publish its response to the comments received from those consulted.

Public Prosecution Service for Northern Ireland (Draft Equality Scheme)

- The PPS confirms that all consultation will be carried out in accordance with


the Equality Commission's Guiding Principles. It will endeavour to conduct all consultations in a timely, open and inclusive manner.

- The PPS will consult on the screening processes as widely as possible.
- The PPS will include the Equality Commission, the Community Relations Council, voluntary groups, community groups, trade union groups and other groups with a legitimate interest in the matter, including those directly affected, in all consultations. Organisations representing the various categories included in section 75 will also be included in any consultations carried out.
- All consultations will aim to allow a period of at least eight weeks except in emergencies.
- The PPS will engage with affected and umbrella groups from the section 75 categories in order to identify how best to consult or engage with stakeholders and obtain their views. Face to face meetings, advisory groups, surveys, consultative panels, internet discussions and other innovative ways of consulting are amongst the methods which will be considered as a means of consultation for different groups.
- Information will be made available in other formats.
- The PPS will release relevant data relating to equality issues as they affect the section 75 categories and other related documents such as consultation reports.



- 3.7 In order to try to judge whether the agencies had met the commitments contained in their Equality Schemes, Inspectors spoke to the agencies themselves, and examined documentation obtained from them in relation to consultation exercises and Equality Impact Assessments (EQIAs). We also met with the Equality Coalition, a broad based alliance of groups committed to the full implementation of section 75. The Coalition contains groups representative of all nine equality categories although membership is not restricted to such groups. The Coalition is co-sponsored by the trade union, UNISON, and the Committee on the Administration of Justice (CAJ). Amongst its members are the Northern Ireland Council for Ethnic Minorities (NICEM), Disability Action and the Children's Law Centre, all of whom were represented at the meeting with CJL.
- 3.8 All of those we spoke to had experience of being consulted by a number of the major criminal justice agencies within the remit of this inspection. They also had significant experience of being consulted by the broad range of public bodies designated under section 75. The groups which attended the meetings are amongst those that are on the consultee lists of most public bodies.
- 3.9 Many of the criminal justice agencies that we spoke to talked of a gradual move away from the practice of conducting solely paper-based consultations to different ways of working. A number, including the PSNI and the Youth Justice Agency, talked about an increasingly focused process of consultation which was undertaken by them. This meant that they would target groups from specific section 75 categories depending on the nature of the policy under consideration⁸. In this way, their view was that the responses that they got were more relevant to the policy and more useful to the agency. This was also leading in some agencies to a practice whereby specific focus groups have been formed in an effort to comply with the consultation requirements of section 75.
- 3.10 Inspectors understand why this approach has been adopted, especially in light of the sometimes very low return rates that agencies were getting from paper-based exercises. It is important to note that the representatives of the community and voluntary sector that we met were also sympathetic to the notion of focused and targeted consultation. However, they did have concerns about the process by which some of the agencies appeared to select the groups that they felt were necessary to fulfil their section 75 obligations.
- 3.11 The consultees acknowledged the failure of the early approach to consultation which was characterised by what the Equality Commission has described as "*general mailshots with no targeting and no follow-up.*" The consultees agreed that that approach had not worked and that

⁸ A good example of a focused consultation was the four-day conference '*Women in the Justice System*' organised by the NIPS at Hillsborough Castle in April 2008.

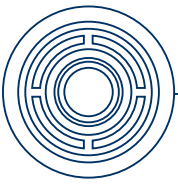


more focused and targeted consultation was required. They were concerned however that what had happened was that some of the agencies, when faced with the low response rates to the earlier attempts at general consultation, had decided on a policy of “*targeted but selective*” consultation. The consultee groups felt that this often had the outcome of excluding some of the voices which might be most critical of the approach being taken by the criminal justice agency involved.

- 3.12 It was also felt that it risked undermining the whole purpose of section 75. For instance, NICEM and Disability Action highlighted an event on sexual orientation from which they were excluded, but to which the various sexual orientation groups were invited. The consultee groups stressed that section 75 was about dealing holistically with equality of opportunity across a range of categories. As it was put to Inspectors, “*someone can be gay and disabled.*”
- 3.13 The consultees felt that the proper procedure for criminal justice agencies who wished to conduct more focused consultation exercises was to issue a general email to all of those consultees listed on their consultation lists, indicating the nature of the consultation about to be undertaken, and inviting expressions of interest from those groups that wished to be involved in the consultation. Inspectors believe this represents a sensible approach and one which we would endorse. It is also one which most of the agencies said they were either already

complying with or had no problem in moving towards.

- 3.14 Generally speaking the section 75 groups we spoke to were concerned that the major criminal justice agencies had little appetite for proper and meaningful consultation with affected groups. While they did point out some examples of good practice amongst the criminal justice agencies, and in the broader public sector, they felt that consultation was seen by the criminal justice system as something which had to be done before they could proceed to do what they were going to do anyway. The groups recognised that proper consultation was a challenge to all public sector organisations but felt that, given the history of the criminal justice sector in Northern Ireland, it was more difficult for that sector.
- 3.15 Inspectors were given specific examples of bad practice in terms of the time afforded for consultation. As can be seen from the commitments in their Equality Schemes, the criminal justice agencies generally commit themselves to providing at least eight weeks (and usually longer) for consultees to respond to consultations.
- 3.16 The Equality Schemes make clear (and Inspectors accept) that occasionally this timescale may need to be compressed because of the urgency of particular circumstances. However, three examples were given to Inspectors of consultations undertaken by the Youth Justice Agency where the timescales allowed were significantly shorter than the eight weeks promised in the NIO



Equality Scheme. The three consultations date from 2004-05 and 2006 and related to:


- a complaints charter where the timescale allowed was four weeks;
- a policy on child protection where the period allowed was six weeks including the Christmas period; and
- the agency's Corporate Plan where 10 days were allowed.

No explanation was given to the consultee for the compressed timescales involved despite correspondence being sent to the Agency, copies of which were seen by Inspectors.

- 3.17 Concern was also expressed about the consultation exercise undertaken by the Office of the Police Ombudsman for Northern Ireland in relation to their review of powers. The OPONI themselves acknowledged when Inspectors spoke to them that they did not handle the review of powers well and that the attendance at a number of public meetings they had held regarding the review, was very low. The OPONI said that in light of that experience they had now set up a standing arrangement with the Northern Ireland Tenants Association to ensure more effective consultation.
- 3.18 The consultee groups were also able to provide examples of good practice in terms of consultation including face to face meetings relating to EQIAs and follow up meetings where feedback was given regarding consultee comments. However, the picture painted by the consultee was

one of inconsistent practice, not just across the criminal justice system but often within agencies. One consultee praised the police for sending six officers to a meeting with her agency and said she felt that this, at the time, represented a new departure in police practice only for it not to be repeated. The groups were concerned that good practice within an agency was often led by one individual and when that individual moved on, the good practice did not seem to be passed on to anyone else, and the emphasis on consultation often noticeably declined.

- 3.19 The Probation Board for Northern Ireland was singled out by a number of the consultees as an agency which consistently outperformed the other criminal justice agencies in terms of its consultation and outreach. It was described as "*better at communicating*" and more "*pro-active*". It was also praised for its innovative approach to consultation. Most particularly, however, and in contrast to the experience with some of the other criminal justice agencies, it was described as listening to the comments that consultees made, making changes on the basis of those comments and providing regular feedback to its consultees. It is also important to note however, that Inspectors were provided with evidence by a number of agencies including the Northern Ireland Court Service, Police Service, and the Prison Service of consultations where they had similarly made changes as a result of responses received.
- 3.20 The consultee groups were also keen to stress that the burden of



consultation lies very much on the public bodies designated under section 75. The various obligations to consult in Schedule 9 to the Northern Ireland Act laid out at the beginning of this chapter were stressed by the consultee groups. They highlighted the fact that as voluntary and community groups, they did not have the time or the resources to track consultations on websites or pursue Government bodies to obtain copies of documents to comment on. They said the onus was very much on the public body to find a way to elicit their views, which they stressed, they were only too willing to provide.

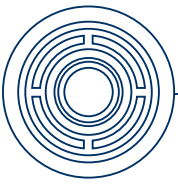
3.21 Inspectors agree with the view expressed by the Equality Commission for Northern Ireland and by nearly all of those that we met, that the “*general mailshot*” approach does not work. It has undoubtedly led to consultation fatigue amongst those to be consulted and those in charge of the process. We are pleased to see that the agencies generally are moving away from that approach but we are concerned that in doing so, they should not lose sight of the unique nature of section 75 which obliges consultation across the nine categories. The purpose of section 75 is to promote inclusiveness in policy making not to create artificial distinctions between different categories of groups.

3.22 We are encouraged by some of what we were told by the Probation Board for Northern Ireland and others about their efforts to keep everyone on their consultee list informed

about changes that have been made to draft policies in light of comments that had been made. The PBNI also contact those on their list on a six-monthly basis to ensure that they wish to be kept on the list of consultees. It also kept a ‘lessons learned’ log on consultation which, in its view, ensures their consultation processes continue to improve. This may well be reflected in the positive comments made about the PBNI in this regard by the community and voluntary sector representatives.

3.23 Inspectors were also impressed by the extent to which all of those leading for the agencies on section 75 recognised the benefits of proper consultation. Most agencies were able to give clear examples of policies which had been changed for the better as a result of consultee comments, and officials also recognised the advantages of consultation in producing better policies. However, this is not to say that practice could not improve, and as indicated, the picture from the other side of the consultation process was not always as positive.

3.24 Inspectors were also encouraged by discussions which we understand are taking place among the various section 75 officials with a view to setting up consultative forums on criminal justice. These would be standing fora within which issues regarding upcoming policy initiatives could be discussed between the formal system and the section 75 representative groups. The representative groups could indicate those initiatives where they wish to be closely involved in the



consultation. Any problems with the consultation processes could be addressed in this forum or its margins. As a result relationships between the statutory and voluntary sectors are likely to improve. Inspectors came across examples of this happening elsewhere in the public sector including in the education sector where there is a Joint Consultative Forum which is co-chaired by the voluntary and statutory sector. We were told that similar initiatives are also being undertaken on a more local basis within the health sector. It is noteworthy that the use of such forums is specifically mentioned in the Equality Schemes of a number of the agencies within the remit of this inspection.

3.25 It is perhaps useful for the agencies to bear in mind that, while consultation may well be a burdensome task, it is one which they are legally obliged to undertake. It is also one which, if undertaken properly, will have a positive impact on policy development. It is not a box-ticking exercise. If a particular approach is not working public bodies are under an obligation to try and find a better way to discharge their duty to consult.

3.26 There seems to be a general consensus that the current consultation efforts being undertaken by the agencies are not working as effectively as they might. The minds of the consultees and the agencies appear to be turning to the possibility of a consultative forum as an alternative method of consultation in the criminal justice sector. Inspectors

welcome this approach, which as indicated, is amongst the consultation methods included in most of the agencies' equality plans.

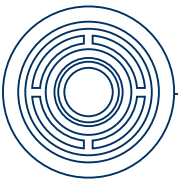
3.27 We therefore recommend that a consultative forum on criminal justice matters be established encompassing the major criminal justice agencies represented on the Criminal Justice Board. One of its first tasks should be to review, in conjunction with the section 75 representative groups, current consultation methods across the criminal justice system.

CHAPTER 4:

Employment



- 4.1 One of the functions which each of the agencies of the criminal justice system has, and which is therefore subject to section 75, is employment. Each of the agencies is subject to specific legislation aimed at ensuring that there is no discrimination on a number of grounds in terms of employment. Northern Ireland has a long history of fair employment legislation which outlaws discrimination in employment in terms of religious or political opinion. Equally, discrimination on the basis of gender has also been outlawed for some time, and more recently we have seen legislation seeking to address such discrimination on other grounds including race, gender, age and disability.
- 4.2 However, section 75 requires public bodies to have due regard to the need to promote equality of opportunity in relation to all of its functions including employment. This means going beyond simply not discriminating in terms of the recruitment and promotion practices of the organisation. Inspectors were therefore keen to determine how the criminal justice system agencies had dealt with this extra responsibility, particularly as this is a function common to all of the agencies.
- 4.3 We have published in Appendix 1 as much section 75 data on the workforces of the various agencies as we have been able to collect during the course of this inspection. As expected, there are some significant differences in the various workforces. The figures range from those for the Northern Ireland Prison Service, for example which show a massively unrepresentative workforce, to agencies such as the Probation Board for Northern Ireland, the Northern Ireland Court Service and the Public Prosecution Service which, while not precisely reflecting the community they serve, nevertheless are much more representative. However, because the Prison Service and the Police Service are by some distance the largest employers in the system - and because their workforces are still predominantly male and Protestant - the figures for the system overall are not representative of the community in Northern Ireland, at least in terms of gender and community background.
- 4.4 Inspectors have also noted the fact that the practice of collection of employee information across the range of section 75 categories differs significantly from agency to agency. The PSNI for example have recently begun to monitor its staff across all



nine categories. The Probation Board for Northern Ireland gathers data on eight of the nine categories whereas the Prison Service monitors four. The PPS has not generally collated any information for its own use and the information it can provide to date relates only to gender and community background.

4.5 It would obviously be of some value to have at least a degree of convergence on this issue across the criminal justice system. Indeed this was recognised in the report of the Criminal Justice Review in 2000. The fourth recommendation made by the Criminal Justice Review was that *“whatever machinery is devised for administering criminal justice matters after devolution, it should have as a primary task the development of a concerted and proactive strategy for securing a ‘reflective’ workforce in all parts of the system.”*

4.6 The value in monitoring the workforce for equality purposes was obvious to the Criminal Justice Review. As pointed out in the report:

“At one level, commitment to equality of opportunity must be part of the ethos of criminal justice agencies as employers: and from a merit perspective, it is important to ensure that candidates are being attracted from all sections of the community, including those identified in section 75 of the Northern Ireland Act 1998. However, securing a workforce that is as reflective as possible of the community as a whole should also

help enhance confidence in the criminal justice system. From another perspective, monitoring applications for posts in the criminal justice system will provide a useful indicator of whether all sections of the community are sufficiently confident in the system to work in it.”

4.7 Although the recommendation of the Criminal Justice Review refers to post-devolution arrangements, the Government has been working on an employment equality strategy for some time. Discussions have been held with the Equality Commission for Northern Ireland. Inspectors have been told that the NIO plan to consult with the criminal justice agencies in 2008 and submit a draft to the Criminal Justice Board. While Inspectors welcome this apparent progress, we are concerned at the delay in the production of the strategy, the publication of which was originally expected in early 2006.⁹

4.8 There is no doubt that, even in the absence of a system wide strategy, individual agencies can do a lot to increase the reflective nature of their workforces. Inspectors have been told of, and have been impressed by, outreach efforts currently being undertaken by different agencies to try and reach out to those groups that have traditionally been under-represented in their workforces.

4.9 As indicated above, the figures supplied by the different agencies show a diverse picture in terms of the extent to which the different

⁹ Fifth Report of the Justice Oversight Commissioner, Lord Clyde, January 2006, in which Lord Clyde commented that the delay in producing the strategy was *“regrettable although it should lead to an improved product.”*



agencies represent the communities they serve, and the extent to which each agency monitors its staff according to the nine categories contained in section 75. **Inspectors therefore recommend that the proposed strategy for securing a reflective workforce across the system be accelerated and that the criminal justice agencies begin to monitor their staff in relation to the nine section 75 categories¹⁰.**

- 4.10 The challenges of securing a reflective workforce are not underestimated by Inspectors and we recognise the efforts that have been made and continue to be made by the agencies.
- 4.11 In that context, CJI intend to return to this subject in a separate inspection at a later date. We would hope in the meantime that the agencies will have agreed a system wide strategy and begun to implement it. We would also hope they will continue with their ongoing efforts to address under-representation within their individual agencies.

Employment in individual agencies

- 4.12 The following section comprises notes on the employment patterns in individual agencies. Tables of figures relating to each agency can be found in Appendix 1.

Police Service of Northern Ireland

- 4.13 The PSNI are assisted in their attempts to get a balanced workforce by the imposition of a statutory requirement of 50:50 recruitment in terms of community background. Figures seen by Inspectors relating to a recent EQIA carried out by the PSNI on recruitment, suggest that the PSNI are close to matching the rate of female recruits in the Most Similar Force areas¹¹. Indeed, in the student officer rank, Inspectors have been informed that the rate of female recruits is 27.22%.
- 4.14 In relation to the recruitment of officers from ethnic minority groups, the EQIA on recruitment identified some barriers to recruitment which included socio/cultural variables including the perception of police as a career and profession by the family, community or culture; the police image; and the lack of ethnic officer profile within PSNI. The PSNI have recognised these issues and are now attempting to address them.
- 4.15 Once again, Inspectors believe that these examples prove the value of collecting this type of monitoring data.
- 4.16 Concerns have however been raised with Inspectors regarding two aspects of the PSNI's efforts to increase representation of Roman Catholics within its ranks.

10 Since June 2007 the PSNI has been monitoring recruitment in relation to all nine categories.

11 During 2006, the Police Standards Unit developed a Most Similar Force group to compare the performance of the PSNI against peer forces in England and Wales. The comparator forces are Nottinghamshire, West Yorkshire, Greater Manchester Police (GMP), Northumbria and West Midlands.



4.17 The first relates to figures produced during the Equality Impact Assessment carried out by the PSNI in relation to recruitment. This EQIA was based on figures relating to one campaign of recruitment undertaken by the PSNI, Campaign Seven. Concerns were raised by one respondent to the EQIA, the Committee on the Administration of Justice, that when applications were examined, Roman Catholics constituted 34.4% of the general pool but when the candidates were appointed to the merit pool (from which the 50:50 recruitment takes place) only 24.5% were Roman Catholic. While this is a point of limited impact currently (because of the 50:50 rule), it may well become an issue if unaddressed. The PSNI had undertaken to analyse the data on the earlier campaigns to determine if this was a pattern. It published the 'Recruitment EQIA' in March 2008, and has since had discussions on it with CAJ. The PSNI has seen a marked increase in Roman Catholic applications in the most recent recruitment campaigns.

4.18 Of some concern, it has been reported in the press and confirmed by police figures, that of those 132 officers who have left the police, having been recruited between 1 January 2001 and 31 December 2006, 40 (i.e. 30%) were Protestant, 89 (i.e. 67.4%) were Roman Catholic and three were non-determined. We have been told that the Equality Commission sought information from the PSNI about the retention rates of Protestant and Roman Catholic officers and, that the reasons for

differential retention rates was being investigated by the PSNI. This issue is of critical importance in terms of the success of the arrangements to increase the representative nature of the PSNI and needs careful monitoring.

4.19 Current PSNI workforce figures are published on their website. The PSNI should be given credit for its approach to promoting diversity generally within the workforce, including its Gender Action Plan and its Shared Future (Diversity) Strategy.

Public Prosecution Service

4.20 During the baseline inspection of the Public Prosecution Service for Northern Ireland carried out by CJI and HMCPSI in 2007, Inspectors were told by senior management in the PPS that they were not aware of the complexion of their workforce because that information was collected and reported to the Equality Commission as part of the overall returns of the Northern Ireland Office. Inspectors recommended that in future senior managers in the PPS regularly obtain the equality figures for their staff. CJI also requested and obtained figures relating to the community background and gender profile of the current staff and published those in the baseline inspection report. We reproduce those figures in Appendix 1. Insofar as we are aware there has been no monitoring of the PPS staff according to the other section 75 categories. We would expect this to form part of the PPS response to our baseline recommendation.

4.21 As can be seen from the figures provided, the PPS workforce is more than 62% female and has a slight under-representation from the Protestant community.

Northern Ireland Court Service

4.22 The Northern Ireland Court Service has engaged over the last five years with the Equality Commission for Northern Ireland in devising an Employment Equality Action Plan to address imbalances in its workforce. Recognising that efforts to address such imbalances require long term engagement, the NICtS, in late 2007, agreed a second such plan covering 2007-09 and published it. Inspectors were impressed by the Plan, which not only contains clear organisational commitments to diversity and equality, but underpins those commitments with targets for addressing any imbalances and sets out time-limited programmes of actions.

Northern Ireland Prison Service

4.23 The Northern Ireland Prison Service only monitor four of the nine section 75 categories – community background, disability, race and gender. They are planning to extend this monitoring to capture data relating to sexual orientation as part of a new diversity strategy.

4.24 The outcome of the most recent monitoring of staff within the NIPS confirms the Service's own view that its staff is "*predominantly male, white and from a Protestant community background.*" The figures, contained in

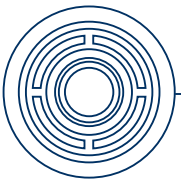
Appendix 1 (which are accurate as of October 2007) show that the workforce is almost 80% Protestant and more than 80% male. Only 2% of staff report that they have a disability.

4.25 The figures relating to community background and gender are published in the Annual Report of the Northern Ireland Prison Service.

4.26 The NIPS is conscious of the need to take steps to try and address the massive imbalance in its workforce. It has demonstrated its commitment to this endeavour by publishing in spring 2008 a new Diversity Strategy.

4.27 The Prison Service has been engaged in discussions with the Equality Commission for Northern Ireland to determine what steps it can take to address the imbalances in its workforce. It has undertaken a range of specific outreach activity in order to try and encourage applications from under-represented groups. This has included welcome statements on advertisements, visiting schools and community groups and offering work experience to young people. The NIPS is confident that this activity has had an impact in terms of applications for posts that they have advertised and this does appear to be the case.

4.28 Inspectors have examined applicant and appointment rates for women and Roman Catholics for three recruitment campaigns in each of the years 2004 – 06. The figures show that in relation to both groups, applicant rates are higher than the proportion they represent in the



current workforce.¹² It is also the case that in relation to women, they are being recruited at higher levels than they are applying. For instance, in one competition, females accounted for 20.6% of the applicants and 27.4% of appointments. This is a positive example of how outreach to such under-represented groups is supposed to work and the Northern Ireland Prison Service should be commended for these efforts. The same is not the case, however, for Roman Catholic applicants, who in the same competition constituted 15.9% of applicants but a slightly lower proportion, 14.2%, of appointees. This pattern (for both groups) was repeated in each of the three competitions Inspectors examined.

Probation Board for Northern Ireland

- 4.29 The Probation Board for Northern Ireland monitors its staff in relation to eight out of the nine section 75 categories. Political opinion is not monitored because the PBNI has not been able to identify a question for this category.
- 4.30 Monitoring takes place every two years although the last survey was undertaken in early 2005. A further survey has now been carried out and Inspectors understand that once an accuracy check is completed, substantive work on outcomes and analysis is set to be carried out before the end of 2008.

- 4.31 The latest available figures for PBNI (last updated in December 2007) are detailed in Appendix 1. As can be seen, the majority of PBNI staff are female and there is a slight over-representation in terms of the Roman Catholic community, reflecting the pool from which social work qualified staff are recruited. The PBNI has taken action to address this and there has been an upturn recently in the recruitment of males.
- 4.32 The PBNI also told Inspectors that previous staff surveys had underestimated the numbers of staff with a disability, and that the Board had taken steps to address this with a consequent increase in the response rate on the next occasion. The PBNI have also attempted to address the under-representation of males and Protestants by specific outreach to those groups.

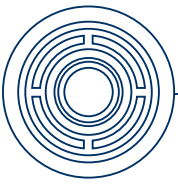
¹² Although it must be noted that applicant rates are still far from reflecting the proportion of women and Roman Catholics in the community.

CHAPTER 5:

Conclusion



- 5.1 This inspection was designed to try to identify the extent of the *impact* of section 75 on the criminal justice system in Northern Ireland. We knew in advance that this would be a difficult task. It has been more difficult than we anticipated however, because of the relative absence of robust data showing how the system or its constituent parts, impacts on the various categories of people under section 75. We gave each agency an opportunity to provide us with evidence of that impact and invited them to give their views as to what the impact had been. They laboured under the same difficulties as we did in terms of the absence of monitoring data. It is almost impossible to measure any improvements in terms of equality of opportunity in the absence of any baseline data from the point of designation under section 75. Given that section 75 requires agencies to take steps to improve equality of opportunity it follows that, in the absence of data, it is almost impossible to measure its impact in terms of outcomes.
- 5.2 We have discussed this issue and drawn attention to the fact that this absence of data is not unique to the criminal justice sector, but afflicts much of the broader public sector as well. However, the problems are acute in the criminal justice system, and it is arguably more important to gather the data in this area than any other.
- 5.3 In light of this, it is impossible for Inspectors to fully measure the impact of section 75. In addition, in the areas where data did exist, for instance in relation to employment, agencies found it difficult to disaggregate the impact of section 75 from the plethora of existing anti-discrimination legislation already in force in Northern Ireland covering a number of the categories also covered by section 75.
- 5.4 The specific impact of section 75 that was most often highlighted by agencies when faced with this question related to internal processes. In other words they pointed to the way in which procedures within their department, particularly in relation to policy development, had now changed in light of designation under section 75. New policies were now subject to equality proofing in that they had to be screened to determine if they required full Equality Impact Assessments (EQIAs).

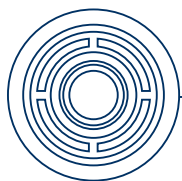


- 5.5 Generally speaking such EQIAs are necessary if there is evidence that the policy will have an adverse impact on any of the different groups under section 75. There are various ways to determine this of course including but not limited to an analysis of quantitative data. The absence of data makes the task harder and Inspectors detected a degree of frustration amongst some agencies that they had to constantly subject new or changed policies to this type of exercise. This process could be made considerably easier if more data was available.
- 5.6 A number of agencies drew attention to what they saw as the potential negative impact of section 75 in that it required screening and potentially EQIAs even when policies were being changed. They felt that this represented an undue burden on agencies when they were trying to discharge their basic functions. They felt that in some respects this inhibited good policy development. It appears to Inspectors though that when properly discharged and combined with robust monitoring, it is a duty which can contribute much to policy development. The challenge is very much for the criminal justice system to grasp the opportunity that section 75 offers. Given the history of Northern Ireland, it offers the agencies a way to engage with difficult to reach communities, and to demonstrate to the public at large, that the system is operating fairly and equitably. It is a legal duty and one which cannot be ignored but, we are convinced that ultimately, it will be in the best interests of the criminal justice system to see it as an opportunity and grasp it with both hands.

Section



Appendices



Appendix 1

Employment Tables

Table 1 - Police Service of Northern Ireland

SECTION 75 MAIN CATEGORY	SUB-CATEGORY	NUMBER	PERCENTAGE OF INDIVIDUALS (%)
GENDER	Male	n/p *	78.26
	Female	n/p *	21.74
	Total	n/p *	100.00
COMMUNITY BACKGROUND ¹³	Roman Catholic (RC)	n/p *	16.81
	Protestant (P)	n/p *	79.37
	Not Determined (ND)	n/p *	3.82
	Total	n/p *	100.00
MARITAL STATUS	Married	n/p *	64.89
	Divorced	n/p *	n/p *
	Single	n/p *	n/p *
	Separated	n/p *	n/p *
	Widowed	n/p *	n/p *
	Co-habiting	n/p *	n/p *
	Unknown / Not Disclosed	n/p *	n/p *
	Total	n/p *	64.89
ETHNIC ORIGIN	White	n/p *	97.02
	Mixed Race	n/p *	n/p *
	Not Disclosed	n/p *	n/p *
	Total	n/p *	97.02
DISABLED	No detail provided	—	—
AGE	41 – 45	n/p *	26.48
	All other ages across ALL ranks	n/p *	n/p *
	Total	n/p *	26.48
SEXUAL ORIENTATION	No detail provided	—	—
DEPENDANTS	No detail provided	—	—
POLITICAL BELIEF	No detail provided	—	—

n/p * Not provided

All information provided, except Community Background, based on total staff as at 1 Nov 2007.

¹³ Data as at 1 August 2007



Table 2 - Public Prosecution Service for Northern Ireland

SECTION 75 MAIN CATEGORY	SUB-CATEGORY	NUMBER	PERCENTAGE OF INDIVIDUALS (%)
GENDER ¹⁴	Male	204	37.8
	Female	336	62.2
	Total	540	100
COMMUNITY BACKGROUND ¹⁵	Roman Catholic (RC)	270	50
	Protestant (P)	260	48.1
	Not Determined (ND)	10	1.9
	Total	540	100
MARITAL STATUS	Married		
	Divorced		
	Single		
	Separated		
	Widowed		
	Co-habiting		
	Unknown		
	Not Disclosed		
Total	540	100	
ETHNIC ORIGIN	White		
	Mixed Race		
	Not Disclosed		
	Total	540	100
DISABLED	Yes		
	No		
	Unknown / Not Disclosed		
	Total	540	100
AGE	20 – 29		
	30 – 39		
	40 – 49		
	50 – 59		
	60 +		
	Total	540	100
SEXUAL ORIENTATION	Heterosexual		
	Lesbian		
	Gay		
	Bi-sexual		
	Transsexual		
	Unknown		
	Total	540	100

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15 Criminal Justice Inspection Northern Ireland *An Inspection of the Public Prosecution Service for Northern Ireland*, July 2007.



Table 2 - Public Prosecution Service for Northern Ireland continued

SECTION 75 MAIN CATEGORY	SUB-CATEGORY	NUMBER	PERCENTAGE OF INDIVIDUALS (%)
DEPENDANTS	Care of child / children - Yes Care of child / children - No Care of child / children - Unknown Care of those with incapacitating disability - Yes Care of those with incapacitating disability - No Care of those with incapacitating disability - Unknown Care of elderly - Yes Care of elderly - No Care of elderly - Unknown Total		
POLITICAL BELIEF	No detail provided		

All information provided based on total staff as at July 2007.

Table 3 - Northern Ireland Court Service

SECTION 75 MAIN CATEGORY	SUB-CATEGORY	NUMBER	PERCENTAGE OF INDIVIDUALS (%)
GENDER	Male	245	31.9
	Female	524	68.1
	Total	769	100.0
COMMUNITY BACKGROUND	Roman Catholic (RC)	292	38.0
	Protestant (P)	437	56.8
	Not Determined (ND)	40	5.2
	Total	769	100.0
MARITAL STATUS	No detail provided		
ETHNIC ORIGIN	No detail provided		
DISABLED	No detail provided		
AGE	No detail provided		
SEXUAL ORIENTATION	No detail provided		
DEPENDANTS	No detail provided		
POLITICAL BELIEF	No detail provided		

All information provided based on total staff as at 7 December 2007.

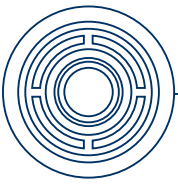


Table 4 - Northern Ireland Prison Service

SECTION 75 MAIN CATEGORY	SUB-CATEGORY	NUMBER	PERCENTAGE OF INDIVIDUALS (%)
GENDER	Male	1480	82.0
	Female	325	18.0
	Total	1805	100
COMMUNITY BACKGROUND	Roman Catholic (RC)	160	8.9
	Protestant (P)	1443	79.9
	Not Determined (ND)	202	11.2
	Total	1805	100
MARITAL STATUS	No detail provided	—	—
ETHNIC ORIGIN	No detail provided however stated "predominantly... white"	—	—
DISABLED	Yes	48	2.7
	No	n/p *	n/p *
	Unknown / Not Disclosed	n/p *	n/p *
	Total	48	2.7
AGE	No detail provided	—	—
SEXUAL ORIENTATION	No detail provided	—	—
DEPENDANTS	No detail provided	—	—
POLITICAL BELIEF	No detail provided	—	—

* Not provided

All information provided based on total discipline staff (excluding administration and other support staff) as at 1 October 2007.

Table 5 - Probation Board for Northern Ireland

SECTION 75 MAIN CATEGORY	SUB-CATEGORY	NUMBER	PERCENTAGE OF INDIVIDUALS (%)
GENDER	Male	116	32.1
	Female	245	67.9
	Total	361	100
COMMUNITY BACKGROUND	Roman Catholic (RC)	157	43.4
	Protestant (P)	154	42.7
	Not Determined (ND)	50	13.9
	Total	361	100
MARITAL STATUS	Married	227	62.9
	Divorced	10	2.8
	Single	84	23.3
	Separated	10	2.8
	Widowed	0	0.0
	Co-habiting	21	5.8
	Unknown	4	1.1
	Not Disclosed	5	1.3
Total	361	100	
ETHNIC ORIGIN	White	358	99.2
	Mixed Race	2	0.5
	Not Disclosed	1	0.3
	Total	361	100
DISABLED	Yes	22	6.10
	No	191	52.9
	Unknown / Not Disclosed	148	41.0
	Total	361	100
AGE	20 – 29	48	13.3
	30 – 39	97	26.9
	40 – 49	116	32.1
	50 – 59	88	24.4
	60 +	12	3.3
	Total	361	100
SEXUAL ORIENTATION	Heterosexual	338	93.6
	Lesbian	1	0.3
	Gay	0	0.0
	Bi-sexual	1	0.3
	Transsexual	0	0.0
	Unknown	21	5.8
	Total	361	100

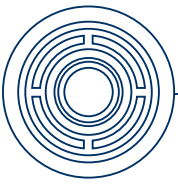


Table 5 - Probation Board for Northern Ireland continued

SECTION 75 MAIN CATEGORY	SUB-CATEGORY	NUMBER	PERCENTAGE OF INDIVIDUALS (%)
DEPENDANTS	Care of child / children - Yes	171	47.4
	Care of child / children - No	156	43.2
	Care of child / children - Unknown	34	9.4
	Total	361	100
	Care of those with incapacitating disability - Yes	12	3.32
	Care of those with incapacitating disability - No	322	89.2
	Care of those with incapacitating disability - Unknown	27	7.48
	Total	361	100
	Care of elderly - Yes	23	6.4
	Care of elderly - No	312	86.4
	Care of elderly - Unknown	26	7.2
	Total	361	100
POLITICAL BELIEF	No detail provided	—	—

All information provided based on total staff as at 6 December 2007.

Table 6 - Youth Justice Agency

SECTION 75 MAIN CATEGORY	SUB-CATEGORY	NUMBER	PERCENTAGE OF INDIVIDUALS (%)
GENDER	Male	140	47.6
	Female	154	52.4
	Total	294 ¹⁶	100.0
COMMUNITY BACKGROUND	Roman Catholic (RC)	114	38.8
	Protestant (P)	139	47.3
	Not Determined (ND)	41	13.9
	Total	294	100.0
MARITAL STATUS	Married	No detail provided on categories listed	
	Divorced		
	Single		
	Separated		
	Widowed		
	Co-habiting		
	Unknown		
	Not Disclosed		
Total			
ETHNIC ORIGIN	White	No detail provided on categories listed	
	Mixed Race		
	Not Disclosed		
	Total		
DISABLED	Yes	5	1.70
	No	—	—
	Unknown/Not Disclosed	289	98.3
	Total	294	100.0
AGE	20 – 29	No detail provided on categories listed	
	30 – 39		
	40 – 49		
	50 – 59		
	60 +		
	Total		

¹⁶ Total of 294 is based on operational staff only

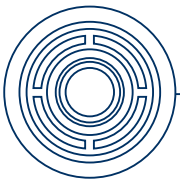


Table 6 - Youth Justice Agency continued

SECTION 75 MAIN CATEGORY	SUB-CATEGORY	NUMBER	PERCENTAGE OF INDIVIDUALS (%)
SEXUAL ORIENTATION	Heterosexual	No detail provided on categories listed	
	Lesbian		
	Gay		
	Bi-sexual		
	Transsexual		
	Unknown		
	Total		
DEPENDANTS	Care of child / children - Yes	No detail provided on categories listed	
	Care of child / children - No		
	Care of child / children - Unknown		
	Total	No detail provided on categories listed	
	Care of those with incapacitating disability - Yes		
	Care of those with incapacitating disability - No		
	Care of those with incapacitating disability - Unknown		
	Total	No detail provided on categories listed	
	Care of elderly - Yes		
Care of elderly - No			
Care of elderly - Unknown	No detail provided on categories listed		
Total			
POLITICAL BELIEF	No detail provided		

All figures are based on operational staff only as at December 2007.



Table 7 - The Office of the Police Ombudsman for Northern Ireland

SECTION 75 MAIN CATEGORY	SUB-CATEGORY	NUMBER	PERCENTAGE OF INDIVIDUALS (%)
GENDER	Male	67	53.6
	Female	58	46.4
	Total	125	100.0
COMMUNITY BACKGROUND	Roman Catholic (RC)	57	45.6
	Protestant (P)	57	45.6
	Not Determined (ND)	11	8.8
	Total	125	100.0
MARITAL STATUS	Married	No detail provided on categories listed	
	Divorced		
	Single		
	Separated		
	Widowed		
	Co-habiting		
	Unknown		
	Not Disclosed		
Total			
ETHNIC ORIGIN	White	No detail provided on categories listed	
	Mixed Race		
	Not Disclosed		
	Total		
DISABLED	Yes	No detail provided on categories listed	
	No		
	Unknown / Not Disclosed		
	Total		
AGE	20 – 29	No detail provided on categories listed	
	30 – 39		
	40 – 49		
	50 – 59		
	60 +		
	Total		

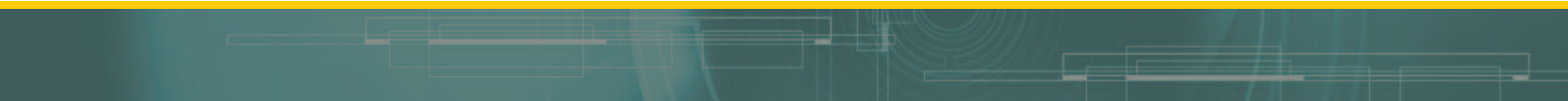




Table 7 - The Office of the Police Ombudsman for Northern Ireland continued

SECTION 75 MAIN CATEGORY	SUB-CATEGORY	NUMBER	PERCENTAGE OF INDIVIDUALS (%)
SEXUAL ORIENTATION	Heterosexual	No detail provided on categories listed	
	Lesbian		
	Gay		
	Bi-sexual		
	Transsexual		
	Unknown		
	Total		
DEPENDANTS	Care of child / children - Yes	No detail provided on categories listed	
	Care of child / children - No		
	Care of child / children - Unknown		
	Total	No detail provided on categories listed	
	Care of those with incapacitating disability - Yes		
	Care of those with incapacitating disability - No		
	Care of those with incapacitating disability - Unknown		
	Total		
	Total		
Care of elderly - Yes			
Care of elderly - No			
Care of elderly - Unknown	No detail provided on categories listed		
Total			
Total			
POLITICAL BELIEF	No detail provided		

All information provided based on total staff as at January 2007.

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