

Telling Them Why

**An inspection of the Public Prosecution
Service for Northern Ireland's giving
of reasons for its decisions**

May 2012

Criminal Justice Inspection
Northern Ireland
a better justice system for all





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List of abbreviations

CJI	Criminal Justice Inspection Northern Ireland
CJR	Criminal Justice Review
CMS	Case Management System (in PPS)
COPFS	Crown Office and Procurator Fiscal Service (in Scotland)
CPS	Crown Prosecution Service (in England and Wales)
DCV	Direct Communication with Victims (Scheme)
HMCPSI	Her Majesty's Crown Prosecution Service Inspectorate
NICHE RMS	Records Management System created by Niche technology
NIVAWS	Northern Ireland Victims And Witnesses Survey
PPS	Public Prosecution Service for Northern Ireland
PSNI	Police Service of Northern Ireland
VSNI	Victim Support Northern Ireland



Chief Inspector's Foreword

Many people who enter into the justice system as victims, do so for the first time. As such they often will have very little knowledge of how the system works. It is important therefore that the criminal justice agencies provide as much information as is reasonable to ensure that victims can understand what is happening in order to help them cope with what can be a traumatic and life changing experience. This is particularly important for victims, who having engaged with the criminal justice process, are then advised that the case is not to be prosecuted or is being discontinued, revised or altered.

The giving of reasons for prosecution decisions is not however a straightforward issue. Some of the understanding historically advanced for a reluctance to provide detailed reasons regarding prosecution decisions have included that it might cast doubt on the innocence of a suspect without the protection of a trial process (providing reasons might indicate the testimony of a witness was unreliable, and that it might prejudice further action being taken by the police or lead to the identification of a confidential source). Consequently, there are a range of difficult competing and counter-balancing considerations which must be taken into account. The issue of the giving of reasons has been somewhat controversial and the subject of intense debate and widespread comment. The purpose of this inspection was to consider whether there were effective, appropriate guidelines and mechanisms in place surrounding the policy and practice of the Public Prosecution Service for Northern Ireland (PPS) on the giving of reasons.

Our overall view is that the PPS has taken important steps forward in the development of its policies and procedures regarding the giving of reasons to victims on prosecution decisions. The PPS operates its current policies in terms of three main tiers. Firstly, a general scheme in which victims are provided with generic reasons, for example, where there was considered to be insufficient evidence or that prosecution was not considered to be in the public interest. The second tier provides for further detailed reasons only on request. In the third tier more detailed reasons are provided in a range of more serious cases. We found many examples of good practice in this area. Inspectors also invited a wide range of PPS stakeholders to comment on practice in relation to providing feedback on reasons for its decisions. The vast majority of those spoken to were most complimentary of the feedback received from the PPS and its willingness to engage with those who provide evidence to it.

The inspection did find that operational practice could be improved and was not consistent across the organisation. Under the current PPS policy the offer to meet with victims/families concerning their cases and the decisions made, are a matter for discretion in individual cases. Inspectors found there was a paucity of such offers and we recommend that offers to meet are included in a range of more serious cases. In addition, Inspectors noted and found concerns regarding a perceived customary reluctance within the PPS to communicate fully and openly. Evidence was found that engagement was, at times, reluctant and insincere. Inspectors also found there was no automatic communication (in PPS correspondence) of the entitlement to ask for



either more detailed reasons, or a formal review of the decision, albeit a leaflet on the role of the PPS was enclosed outlining the ability to ask for a review of a decision. Inspectors also found that current practice does not address the previous recommendations made by Criminal Justice Inspection Northern Ireland (CJI) in its July 2007 baseline report of the PPS that, save in exceptional circumstances, substantive reasons should be given to all victims. We now repeat the recommendation that more detailed reasons are provided in all cases, where possible.

The main challenges thus for the PPS are to make further progress towards more, full and open engagement with all victims, insofar as might be possible within the limitations of the law. This will mean providing more detailed reasons in every case, where possible. Secondly, to move to a greater level of openness, transparency, understanding and engagement in order to further augment trust and confidence. Included here is a greater willingness to meet with individual victims/families to further explain prosecution decisions. Inspectors recognise that the measures recommended will require an investment of resources on the part of the PPS. However, this must nonetheless be regarded as a vital element of building further trust and confidence for the future.

The inspection was led by Derek Williamson and Rachel Lindsay of CJI. My thanks to all those who participated in the inspection process.

Dr Michael Maguire

Chief Inspector of Criminal Justice in Northern Ireland
May 2012



Executive Summary

The impact of crime on victims can be varied and for many, their contact with the criminal justice system simply adds additional anxiety within that system, which is both complex and unfamiliar. Many of those who enter the criminal justice system as victims will do so for the first time and will have had little or no knowledge of it. Furthermore, many victims and their families will have been the subject of very traumatic incidents. For some, these incidents will have been life changing events, physically and/or emotionally. It must therefore be regarded as vital that agencies of the criminal justice system provide as much information as possible to ensure that victims can assimilate what is occurring. This must be regarded as especially so in the case of victims who, having engaged with the criminal justice system, are then advised that the case is not to be prosecuted, or is being discontinued, revised or altered.

Historically, the issue of prosecution policies and practice surrounding the giving of reasons for decisions has been somewhat controversial. In the Northern Ireland context, it has undoubtedly been the subject of an even more intense debate and widespread public comment in recent times.

Consequently, this inspection set out to determine the current policy and practices within Northern Ireland and to assess the suitability and efficacy of those policies and procedures. While the issue of the Public Prosecution Service for Northern Ireland (PPS) giving reasons for its decisions primarily extends to providing victims with reasons in respect of all decisions, this matter was assessed by Inspectors as more acute in cases of no prosecution. However, the issue similarly arises in cases where during the course of prosecution, a decision is taken to amend/alter a charge, or to accept a plea to a lesser offence. Correspondingly, an equally important area concerns the communication of a decision to alleged defendants. The inspection incorporated each of these issues.

In considering the issues, what is immediately apparent is that the provision of reasons for prosecutorial decisions is not a straightforward matter. Instead, there are a range of competing and counter-balancing considerations which must be taken into account. Commonly, there are competing interests including, on the one hand, the entitlement of victims to know and understand the reasons for decisions, and on the other the rights of an accused who, particularly in cases of no prosecution, is entitled to have his/her good name and reputation upheld.

In terms of comparisons with other similar jurisdictions, Inspectors examined the policies in place in Scotland, England and Wales, as well as in the Republic of Ireland. The overall thrust of these policies is towards the engagement with victims and to providing explanations for decisions. However, policies differ in terms of the extent of their application, for example, in respect of the categories of cases to which the policies apply, and whether reasons are given only on request (or otherwise). Additionally, there are differences in each of these jurisdictions, including Northern Ireland in respect of the nature of communication and in offers of direct meetings with victims in order to explain decisions. It may be said for example, that policies in Northern Ireland are



more progressive than those in either Scotland or the Republic of Ireland, insofar as the PPS provide generic reasons in every case with more detailed reasons being provided in a range of more serious cases.

Historically, it has been the policy of many prosecution authorities not to give reasons for decisions. Some of the traditional reasons advanced for a reluctance to provide detailed reasons regarding prosecutorial decisions have included, for example, that the giving of reasons might cast doubt on the innocence of a suspect without the protection of a trial process. Increasingly however, the giving of reasons for a wide range of decisions is itself seen as being in the public interest. Moreover, it is generally accepted that providing reasons leads to fair and transparent decision making.

The PPS operates its current policies in three main tiers. The first is a general scheme in which victims are informed of the PPS decisions in very general terms only. The second is where victims are provided with further information merely on request. In the first tier Inspectors found there is no automatic communication (in PPS correspondence) of the entitlement to ask for either more detailed reasons or a formal review of the decision, albeit a leaflet on the role of the PPS is enclosed outlining the ability to ask for a review of a decision. The third tier of the PPS policy is known as the revised scheme. This is applicable to a range of more serious cases including, for example, vulnerable victims, homicide cases and sexual offences. In these cases more fulsome reasons are usually provided without request. In addition, under the revised scheme the entitlement to request a review of the decision is usually communicated to victims. Also under the current PPS policy the offer to meet with victims/families concerning their cases and the decisions made are a matter for discretion in individual cases. Inspectors found there was a paucity of offers to meet victims and a lack of clear corporate guidance on the issue.

In common with the recent inspection looking at the care and treatment of victims and witnesses in the criminal justice system,¹ Inspectors again noted the concerns from a number of victims/victims groups regarding a perceived customary reluctance within the PPS to communicate fully and openly. Inspectors heard for example, from victims and their representatives who, while clearly informed of decisions on the one hand, were left with an impression that the engagement was somewhat reluctant and insincere. Inspectors also found that current practice does not address the previous recommendations made by Criminal Justice Inspection Northern Ireland (CJI) in July 2007² that, save in exceptional circumstances, substantive reasons should be given to all victims. Inspectors were also of the opinion that the PPS policy, as currently set out, could leave room for some confusion.

In the conduct of their fieldwork Inspectors invited a wide range of PPS stakeholders to comment on practice in relation to providing reasons for its decisions. This was regarded as an important element of partnership working and the ability for both stakeholders and the PPS to develop further and learn from feedback. Inspectors were pleased to find that the vast majority of those spoken to were most complimentary of the feedback received from the PPS and its willingness to engage in individual cases, where necessary. All agencies who provide evidence to

¹ The care and treatment of victims and witnesses in the criminal justice system in Northern Ireland, CJI, December 2011.

² An inspection of the Public Prosecution Service for Northern Ireland, CJI, August 2007.



the PPS for prosecution decisions reported good working relationships which underpinned understanding of all decisions taken.

Moving forward, Inspectors consider the main challenge for the PPS is to make further progress towards more full and open engagement with all victims, insofar as might be possible within the limitations of the law. Secondly, to move from perfunctory formal compliance with policy to a greater level of openness, transparency, understanding and engagement in order to further augment trust and confidence. Included here is a greater willingness to meet with individual victims/families to further explain prosecution decisions, while at the same time providing an even more sensitive and compassionate service. While Inspectors do not suggest that these are absent, and recognise that in some cases the negative feedback heard may be conditioned by the outcome of cases (as opposed to the quality of decision making), closer attention to these matters and enhanced performance will reap benefits for all concerned. Inspectors recognise that the measures recommended will require an investment of resources on the part of the PPS. However, this must nonetheless be regarded as a vital element of building further trust and confidence for the future.





Recommendations

Strategic recommendations

- It is recommended that the PPS includes an offer to meet and/or discuss the decision in a range of cases, to be devised in consultation with stakeholders. (Paragraph 2.34)
- Bearing in mind the previous recommendation made by Inspectors in July 2007 that ‘... *the onus should not be on victims to seek reasons... save in exceptional circumstances, substantive reasons should be given to victims,*’ Inspectors repeat the substance of that recommendation and further elucidate that in all cases substantive reasons are provided, where possible. It should be the exception that more detailed reasons are not provided and where they are not, reasons for so doing should be recorded on the case file. (Paragraph 3.23)

Operational recommendations

- It is recommended that further consultation with stakeholders in the area of domestic violence is undertaken to agree protocols for the receipt of information by domestic violence victims, for example, via third parties (such as solicitors, victim advocates or victim representative groups). Inspectors suggest this could be part of a needs assessment and personal choice for individuals to opt out of the general scheme in which detailed reasons are provided on request. (Paragraph 2.17)
- Inspectors recommend that Regional Prosecutors specifically dip sample 10% of all no prosecution decisions made in the public interest on a monthly basis. (Paragraph 2.21)
- Inspectors recommend that all correspondence communicating a PPS decision should routinely incorporate the entitlement to request further information and/or a review. (Paragraph 2.29)
- Inspectors recommend that the area acceptance of pleas to lesser offences, or substantially altering/dropping a charge, is separately addressed for those serious cases proceeding to the Crown Court in terms of PPS policy. The overarching aim should be to ensure that, excepting exceptional circumstances, victims/families are informed by the PPS of the detailed reasons, where possible. (Paragraph 3.16)
- Inspectors recommend that the Code for Prosecutors and the PPS Victims and Witnesses Policy are each updated to reflect the policy changes (including relevant matters in this report) in their next revision. (Paragraph 3.30)

Area for improvement

- In respect of the recording of information on consultations, Inspectors suggest that the PPS consider a practice note incorporating the kinds of standardised information which needs to be recorded in such circumstances. This could usefully be incorporated on the Case Management System (CMS) and made available as a printable pro-forma (integrating core guidance). (Paragraph 3.17)

Section



Inspection Report



CHAPTER 1:

The overall context



- 1.1 The impact of crime on victims can be varied and for many their contact with the criminal justice system simply adds additional anxiety within that system which is both complex and unfamiliar. Many of those who enter the criminal justice system as victims, will do so for the first time, and will thus have had little or no knowledge of it. Furthermore, many victims and their families will have been the subject of very traumatic incidents. For some, these incidents will have been life changing events physically and/or emotionally. It must therefore be regarded as vital that agencies of the criminal justice system provide as much information as is reasonable to ensure that victims can assimilate what is occurring. This must be especially so in the case of victims who, having engaged with the system, are then advised that the case is being discontinued, revised or altered. Prosecution policies surrounding the provision of reasons for its decisions are thus central to this.
- 1.2 The issue of prosecution policies and practice surrounding the giving of reasons for decisions is arguably a controversial topic and has been the subject of debate in a number of jurisdictions. In the Northern Ireland context, it has undoubtedly been the subject of intense debate and widespread public comment in a number

of circles in recent times. The spotlight of public comment and opinion has, to some extent, been framed by reference to a small number of high profile cases. However, what is clear from this is that there is a need to review and assess the current practices so as to ensure that public confidence in the wider criminal justice system can be informed by that review. Equally clear, is that this issue is not a simple one – rather it is complex and requires considered review and inspection, balancing the needs of victims with other considerations including, for example, the rights of the accused.

- 1.3 It was not the intent of this inspection to consider any aspect of prosecution decision making in individual cases. Rather, the aims and objectives of the inspection were:

‘With a view to increasing public confidence and understanding the operation of the criminal justice system, to determine whether there are effective and appropriate guidelines and mechanisms in place surrounding the policy and practice of the PPS on the giving of reasons.’

The fundamental focus and objectives for the inspection were set as:

- determining the current policy and practices within Northern Ireland;
- assessing the suitability and efficacy of



policies, procedures and processes used in dealing with the issue of the giving of reasons for decisions;

- stakeholder consultation in order to determine the experience and views of victims and others;
- best practice, drawing comparisons with other jurisdictions such as those in England and Wales, Scotland and the Republic of Ireland; and
- consider recommendations, if any, in order to deliver increased confidence and understanding in the criminal justice system.

The full Terms of Reference are attached at Appendix 1. The methodology for the inspection is illustrated at Appendix 2.

1.4 While the issue of giving reasons for its decisions primarily extends to providing victims with reasons in respect of all decisions, this matter is plainly more delicate in cases where a decision of no prosecution is made. The issue similarly arises in cases where, during the course of a prosecution a decision is taken to amend/alter a charge, or accept a plea to a lesser offence. Together with issues concerning the provision of updates to alleged defendants, this inspection considered each of these issues.

1.5 Historically, it has been the policy of prosecution authorities, both in the United Kingdom and in the Republic of Ireland, not to give reasons for decisions, and these policies have led to some deliberation. Some of the traditional reasons advanced for a reluctance to provide detailed reasons for prosecutorial decisions included:

- if detailed reasons are given in a small range of cases they will inevitably have to be given in every case;

- the giving of reasons might cast doubt on the innocence of a suspect without the protection of a trial process;
- providing reasons might indicate that the testimony of a witness was unreliable; and
- the giving of reasons might prejudice further action being taken by police or lead to the identification of a confidential source.

1.6 Increasingly however, the giving of reasons for a wide range of decisions has itself been seen as being in the public interest. Moreover, it is generally accepted that providing reasons leads to fair and transparent decision making and also to reducing the chances of arbitrary and capricious decisions. Citizens are now generally demanding greater openness and transparency in a rights orientated society. Challenges to administrative decision making are no longer confined, in today's society, to the courts and to judicial review. Rather, challenges can come through the media and from other sources of public accountability.

1.7 The general trend has moved to provide more detailed reasons in a range of cases. This is largely consistent with developments and transparency in public administration. The latter includes, for example, the Freedom of Information Act 2000.

1.8 Notwithstanding these general trends, it is apparent in considering this issue that there is an undeniable need to balance the rights of victims and the rights of others. These sometimes competing and difficult balancing decisions are discussed further within this report.

Legal position

- 1.9 In the United Kingdom there are quite a number of relevant legal cases which set the backdrop to current policies and practice, and to changes from the previous positions of very limited communication regarding the reasons for decisions. Two such cases relevant to the Northern Ireland context are discussed first.
- 1.10 Arising from the decision of the European Court of Human Rights in *Jordan v United Kingdom*³ it is made clear that, at least in relation to the use of lethal force by State agents, a failure to provide reasons for not prosecuting violates Article 2 of the European Convention on Human Rights. The case does not however provide any guidance on the Convention rights of other parties such as suspects or witnesses. Neither does it provide any guidance on the nature or specific reasons which should be provided in such cases.
- 1.11 In the case of a judicial review (in *Adams 2001*⁴) the court concluded that there was no legal duty on the PPS under the Prosecution of Offences (Northern Ireland) Order 1972 or at common law to give reasons for decisions.
- 1.12 In the case of a judicial review application by Lawrence Kinkaid⁵ the court stated, '*The decision not to provide further reasons (by the PPS) cannot be, by any standard, described as perverse.*' This seems to underline the position that there is no general 'legal' duty on the PPS to provide reasons.
- 1.13 It is also clear that issues of privacy and confidentiality under Article 8 of the European Convention are twin inter-related concepts and matters which must be taken into consideration by Prosecutors. In addition, the issue of proportionality must also be considered. Furthermore, Article 6(2) of the Convention provides the right for defendants to be '*presumed innocent until proven guilty according to law*'. As such, Prosecutors are obliged to consider this right and must not, in providing reasons for decisions, impinge an accused persons rights under the Convention. Nothing which would express or imply a defendants guilt may be said (see *Keith Hall v UK [Application No 28772/95]*). Prosecutors will also have to take account of defamatory statements and these must be avoided.
- 1.14 In the case of *Manning and another [2000]* unreported⁶ it was stated that the reasons for not prosecuting would have to be drawn with care and skill so as to respect third party and public interests, and avoid undue prejudice to those who would have no opportunity to defend themselves. However, the court in this case also recognised that more detailed reasons for a decision not to prosecute could be given, as long as these issues (ante) were addressed.
- 1.15 In addition to the responsibility of the PPS to take account of case law and precedent, decisions of the PPS to prosecute or not to prosecute may be subject to judicial review. A number of such cases (although none were upheld), make clear that the courts are likely to

3 (2003) 37 EHRR 2.

4 (2001) NICA 2.

5 [2007] NIQB 26 19/4/07.

6 Crown Prosecution Service, Legal Issues available at: http://www.cps.gov.uk/legal/d_to_g/direct_communication_with_victims_/index.html 28/1/11.



order a review of prosecutorial decisions in circumstances where:

- the law has not been properly understood and applied;
- some serious evidence supporting a prosecution has not been carefully considered;
- in a significant area a conclusion as to what evidence supports a prosecution is irrational;
- the decision is perverse and one which no reasonable Prosecutor could have arrived at;
- policy, such as the Code for Prosecutors has not been properly applied or complied with;
- the decision results from an unlawful policy; and
- the decision results from fraud, corruption or bad faith.

It is therefore axiomatic that the competing and balancing interests in the provision of reasons for decisions is labyrinthine.

The Criminal Justice Review (CJR)

1.16 The Criminal Justice Review (CJR) of 2000 dealt with the specifics of the subject of giving reasons under the banner of accountability. Significantly, the CJR recognised a series of difficulties in providing detailed reasons in every case. It commented on a number of instances where giving detailed reasons would not be in the public interest. However it concluded:

‘We think it right that victims should be given as much information about their case as they request, so far as is possible, and we can see that there might be circumstances where public confidence would be enhanced by providing explanations for decisions in individual cases.’

It also made the following recommendation:

‘We recommend that, where information is sought by someone with a proper and legitimate interest in a case on why there was no prosecution, or on why a prosecution has been abandoned, the Prosecutor should seek to give as full an explanation as is possible without prejudicing the interests of justice or the public interest. It will be a matter for the Prosecutor to consider carefully in the circumstances of each individual case whether reasons can be given in more than general terms and, if so, in how much detail, but the presumption should shift towards giving reasons where appropriate.’

1.17 In its sixth (and final) Annual Report published in June 2006 the Oversight Commissioner reported that the substance of the recommendations made by it had been satisfied.

1.18 The CJR also outlined that there may be the occasional high profile case, where it might be appropriate to respond to public concerns and make reasons for prosecutorial decisions more widely available, but this was envisaged to be the exception rather than the rule. Inspectors comment further on a number of such cases at Paragraph 2.9.

1.19 Significantly, the CJR also highlighted that, *‘... giving reasons might be slightly less of an issue if there were greater public understanding of the work of the prosecution service. This is also an important element of accountability, from what we have seen in other jurisdictions.’* Inspectors comment further on this issue at Paragraph 3.18.

Agreement at Hillsborough Castle (5 February 2010)

1.20 In the addendum to the Programme for Government set out in the above Agreement, it was outlined that there should be a Victims Code for Northern Ireland and this was launched in March 2011. However, the Agreement also outlined the following:

'It is envisaged that there would be a presumption of full and frank disclosure of information by the PPS to a victim under the Code except where to do so would prejudice the administration of justice or fail a public interest test. Consideration could be given to place all or part of the Code on a statutory footing.'

1.21 In conclusion then, it is clear that there is a general trend towards a more open disclosure of information and frank engagement with victims by Prosecutors. Secondly, from a variety of cases, that the needs of victims must be balanced against the rights of others. It is in this context therefore that the policies of the PPS must be considered.

Comparisons

1.22 In Scotland, like many other of the common law jurisdictions within the United Kingdom, the Crown Office and Procurator Fiscal Service (COPFS) previously held the position of not giving reasons for its decisions. This stance was that reasons for not proceeding were confidential and would not be divulged to any third party, and this was based on the fact that statements and

reports are in themselves confidential. However, in February 2005 the then Lord Advocate for Scotland announced that victims and next-of-kins would routinely be able to request and receive an explanation for the decision not to proceed in a case.

1.23 In announcing the policy change the Lord Advocate said, *'If we are confident of the quality of our decision making, we should be prepared to be open and accountable to those whose lives have been affected.'*⁷ The Lord Advocate went on to explain, *'Whenever possible, victims and next-of-kins who request it will be provided with an explanation by the Crown for the decision to mark a case no proceedings, or where proceedings have been commenced a decision to discontinue proceedings, or accept a plea.'*

1.24 In effect then the Scottish policy means that where a decision is reached not to proceed with a case, to discontinue a case, to substantially alter or change a charge or accept a plea to a reduced charge, *on request*, and *whenever possible*, information on the decision will be provided by the Procurator Fiscal Service. In addition, the COPFS Prosecution Code excludes any public disclosure of reasons for decisions.

Republic of Ireland

1.25 In its Guidelines for Prosecutors⁸ the Director of Public Prosecutions in the Republic of Ireland sets out its stance on prosecutions and, in particular, the rights of victims and victims' relatives. Among other matters, the guidelines set

⁷ <http://www.crownoffice.gov.uk/news/releases/2005/07/prosecution-service-explains-itself-victims> (10/1/11).

⁸ Guidelines for Prosecutors, Director of Public Prosecutions, Revised November 2010.

http://www.dppireland.ie/filestore/documents/GUIDELINES_-_Revised_NOV_2010_eng.pdf (10/1/11).



out the following undertakings:

- to examine any request from a victim for a review of a decision not to prosecute and in appropriate cases to have an internal review of the decision; and
- when a decision not to prosecute is taken the reasons are given to the local State Solicitor and the investigating Garda. It is the Directors policy not to disclose this information publicly.

1.26 The policy of the Irish Director of Public Prosecutions is justified on a number of grounds as outlined in the Guidelines for Prosecutors. These include:

- if reasons are given in each case they must be given in all;
- in many cases the giving of reasons publicly would be tantamount to stigmatising a person as a criminal without there having been a trial; and
- the policy has been upheld by the Supreme Court in *H v Director of Public Prosecutions* [1994] 2 IR 589 at p.603 as follows:

'The stance taken by the Director of Public Prosecutions is that he should not, in general, give reasons in any individual case as to why he has not brought a prosecution because if he does so in one case he must be expected to do so in all cases. I would uphold this position as being a correct one.'

1.27 However, the above general policies have been revised and new procedures apply to the following offences occurring after 22 October 2008 in a range of cases including:

- murder;
- manslaughter;
- infanticide;
- fatalities in the workplace; and

- fatal road traffic accidents.

1.28 In these cases, reasons for a decision not to prosecute, or to discontinue a prosecution, will be given, *on request*, to parties closely connected with the deceased. The latter category includes:

- members of the deceased's family (or household);
- their legal or medical advisors; and
- social workers acting on their behalf.

1.29 Reasons will be given only in circumstances where it is possible to do so without creating an injustice. This includes situations where providing reasons would:

- expose potential witnesses or other persons to injustice such as by taking their good name;
- reveal the identity or existence of confidential sources or confidential methods or procedures of law enforcement; or
- have an adverse effect on law enforcement.

1.30 It is interesting to note that the Irish Director of Public Prosecutions has indicated a desire to expand its policy to include other serious cases, including sexual crimes, but at the time of writing had not done so. In effect then, mirroring the Scottish policy, in the Republic of Ireland reasons are provided only on request for more serious cases.

England and Wales

1.31 The Crown Prosecution Service (CPS) in England and Wales policies on giving reasons for its decisions are set out in separate policy documents including The Prosecutors Pledge and in the Code of Practice for Victims of Crime. The CPS' Direct Communication with Victims



(DCV) Scheme which forms part of the Code of Practice, provides relevant guidance both to Prosecutors and to the public.

1.32 The current guidelines applied by the CPS in England and Wales may be summarised as follows:

- the CPS provide explanations of its decisions not to proceed or substantially alter charges in all cases with an identifiable victim. The policy of the CPS is to provide as much information to a victim about a casework decision as is reasonable and appropriate;
- Prosecutors will offer a face-to-face meeting in a range of more serious cases including those involving a death, child abuse, sexual offences, racially/religiously aggravated offences or cases with a homophobic or transphobic element, and in which the offence was motivated by hostility. In all other cases Prosecutors have discretion to offer a meeting, if considered appropriate; and
- timescales are set for compliance with victim notification which are one working day for those considered vulnerable and within five working days for others. In addition, targets are set for the CPS to achieve 100% compliance with victim notification and 100% compliance with timeliness.

1.33 The CPS also applies the following guidance in communicating its decisions:

- the person requesting the information must have a genuine interest;
- the proceedings should have concluded;
- explanations are limited to telling the victim no more than he/she needs to know in order to understand how the decision was reached;

- the material provided must not be sensitive; and
- consent of any statement maker should be obtained (where the statement or information from it is being disclosed).

1.34 In effect then the CPS policy goes further than those in Scotland and in the Republic of Ireland in providing reasons in all cases (where possible) and further offering face-to-face meetings in a range of more serious cases.

Australia and Canada

1.35 The general policies in Australia, bearing in mind that each of its states has separate prosecution offices with discretion in respect of policies, is in favour of providing reasons for decisions not to prosecute, except where to do so may prejudice the administration of justice or cause harm or serious embarrassment to a victim, witness or accused. Reasons are usually provided in written form.

1.36 In Canada there are differing systems and again some divergence between federal matters and those dealt with at local level. However, the general practice is towards providing reasons for decisions, including decisions to discontinue proceedings. In some cases, reasons are provided publicly, by way of statements in court as to reasons.

The needs of victims

1.37 Inspectors conducted a series of discussions with victims and victims groups in the course of this inspection and the detailed methodology is described post. However, Inspectors assessed the core requirements and



common threads of concern amongst victims to be uncomplicated and encapsulated by the following need - a simple clear and unambiguous communication of the reasons why decisions (including no prosecution or the altering of charges) have been taken.

- 1.38 By way of further explanation of the needs of victims, the following examples illustrate the kinds of issues that Inspectors heard about in their contact with victims:
- commenting on a PPS letter indicating there was to be no prosecution one victim stated, *“I really didn’t understand what was being said. I hadn’t a clue what it was really saying”*;
 - another victim after receiving a letter from the PPS commented, *“It was a very bad letter - no detailed reasons - they had received the evidence but decided not to prosecute. It said our story was different but common sense would tell you that his [alleged perpetrators] story would be different.”*

While such comments reflect the views and perceptions of victims, rather than an assessment of the strict legal decisions or circumstances, they nonetheless do reflect the observations and strength of feeling amongst some victims.

- 1.39 In balance, Inspectors also heard from some victims who complimented the approach taken by the PPS. One such victim said, *“My sister and me went to a meeting with the PPS... they said they would be willing to reconsider if my daughter was able to make a statement. So, the option was left open and it was explained that at any time, at any age, the case could be looked at again. This was a more positive outcome for us. I was more positive after*

the meeting...” Following a meeting with senior PPS staff another victim commented, *“He [named PPS staff member] was very good and [second named PPS staff member] has also been very good - I have been able to ring her about anything.”*

- 1.40 Inspectors concluded from fieldwork that in those cases where there was direct contact from the PPS it was more likely that victims had a sense of understanding, and in consequence, greater satisfaction would result.

CHAPTER 2:

Public Prosecution Service policies



Introduction

2.1 In terms of the overall volumes involved it may be helpful to record that in 2009-10 the PPS issued 18,310 no prosecution decisions. That represents some 27% of the prosecution decisions overall at 67,485. Of course more than one prosecution decision may arise from a single incident. In terms of the reasons for those no prosecution decisions the following were the general reasons:

Did not pass the evidential test	Did not pass the public interest test
16,561 (90.4%)	1,749 (9.6%)

In the 12 month period between October 2010 and the end of September 2011, a total of 11,933 no prosecution letters were issued by the PPS. A total of 10,481 (87.83%) of these were general letters providing less detailed reasons (for example, failed to pass the evidential test). A total of 1,452 (12.1%) were more detailed, and letters were issued under the revised scheme. Both the general and revised schemes are described post.

PPS policy

2.2 The PPS policy on the provision of reasons for its decisions up until late

2009 was to provide those only in the most general of terms. The application of the policy was revised in 2009 for all cases received after 1 October 2009.

2.3 The then Director of Public Prosecutions in Northern Ireland, Sir Alasdair Fraser, set the backdrop for the current PPS position when he stated in his introduction to the PPS Annual Report 2009-10, *'An important development during the year was the implementation of our revised policy in respect of the giving of reasons for a decision not to prosecute. In the most serious cases, including those involving homicide, sexual offences, hate crime and victims who are vulnerable on account of their age or mental or physical incapacity, detailed reasons are now given to all victims and their families, irrespective of whether or not a formal request has been made. It is essential that these arrangements are effective and therefore it is planned to carry out an evaluation during 2010-11. This will involve consultation with a wide range of PPS stakeholders, such as Victim Support Northern Ireland.'*

2.4 Consequently, the PPS policies may usefully be categorised into three tiers. The first tier is the general scheme, the second is where information is provided on request, and the third tier is known as the revised scheme. Each are discussed post. While these policies



refer to the provision of reasons to victims, CJI also considered it an important aspect of this inspection to consider the entitlement of alleged defendants to be provided with details of the decision in their case. Consequently, these matters were incorporated in the inspection fieldwork.

The general scheme

2.5 The current policy of the PPS is set out in its internal departmental instruction (No. 10/2009) giving reasons in cases where there is no prosecution. Further information is publicly available in the Code for Prosecutors accessible on the PPS website. The Code sets out the following:

‘The policy of the Prosecution Service is to give reasons for decisions for no prosecution in all cases albeit in the most general terms. For example, in a case in which there is a technical defect, such as the unavailability of evidence to prove an essential aspect of the case, the Prosecution Service would normally indicate that it has concluded that there was insufficient evidence to afford a reasonable prospect of a conviction. In a case in which the evidence was sufficient but the decision was taken not to prosecute, for example, given the age and infirmity of the prospective defendant, the reason given would be that it was not in the public interest to prosecute.’

2.6 The policy continues:

‘The propriety of applying this general policy is examined and reviewed in every case where a request for the provision of detailed reasons is made. In such cases, the Prosecution Service will consider what further information may reasonably be given balanced against the factors which militate against providing detailed reasons,

together with any other considerations which seem material to the particular facts and circumstances of the case.’

2.7 In summary then, for the majority of less serious offences victims can expect to receive a letter outlining in very general terms the reasons why a prosecution will not take place, either that there was insufficient evidence or that it would not be in the public interest to pursue a prosecution. Victims/families may request further details or indeed ask for a review of the decision, although this is not routinely communicated on the face of such correspondence with victims. As we note elsewhere, included with correspondence is a leaflet on the role of the PPS (see paragraph 2.25 post).

Exceptional cases

2.8 The policy further outlines:

‘However, the Prosecution Service recognises that there may be cases arising in the future, which it would expect to be exceptional in nature, where an expectation will arise that a reasonable explanation will be given for not prosecuting where death is, or may have been, occasioned by the conduct of agents of the State. Subject to compelling grounds for not giving reasons, including duties under the Human Rights Act 1998, the Prosecution Service accepts that in such cases it will be in the public interest to reassure a concerned public, including the families of victims, that the rule of law has been respected by the provision of a reasonable explanation. The Prosecution Service will reach a decision as to the provision of reasons, and their extent, having weighed the applicability of public interest considerations material to the particular facts and circumstances of each individual case.’



- 2.9 This provision relating to exceptional matters means the PPS may publicly provide details of reasons for its decisions. While this is of course discretionary, Inspectors found that it has applied in a number of cases. Examples include public statements (press releases) made by the PPS as follows:
- 31 July 2009 - PPS response to the House of Lords Judgement in the Debbie Purdy case (suicides);
 - 24 July 2009 - PPS response to comments by Alex Attwood MLA - explaining decisions and acceptance of pleas;
 - 5 June 2009 - legal professional privilege;
 - 7 May 2009 - acceptance of pleas;
 - 20 February 2009 - PPS statement in relation to prosecution decisions arising from an investigation carried out by the Police Ombudsman into the evidence given at the Omagh bomb trial by a number of Police Officers; and
 - 25 June 2007 - statement by the Director of Public Prosecutions for Northern Ireland in relation to decisions as to prosecution arising out of the Stevens III investigation.

2.10 The issue of public understanding and statements are linked to the CJR recommendation highlighted at paragraph 1.16 concerning greater public awareness of the work of the PPS. Further consideration of these issues also follows at paragraphs 3.18 and 4.6.

The revised scheme

2.11 Following an earlier recommendation by CJI in its baseline inspection report of the PPS, (conducted in conjunction with Her Majesty's Crown Prosecution

Service Inspectorate (HMCPPI), under the delegated statutory authority of the Chief Inspector of Criminal Justice in Northern Ireland), a pilot scheme to provide further information in a range of cases without a request being made was conducted by the PPS in its southern region between August 2008 and January 2009. This pilot scheme was rolled-out to all PPS regions for all cases received after 1 October 2009. This is known as the revised scheme.

2.12 The revised scheme can be summarised as meaning that in a specified range of cases (see below), victims will receive a more detailed letter indicating the reasons why a decision of no prosecution has been taken. The revised scheme does not apply to cases where the Prosecutors decision is one of diversion or indeed prosecution for a lesser offence than that recommended by investigating police. However, Prosecutors are given discretion to adapt standard letters where they consider appropriate. In addition, under the revised scheme where a decision has been made to prosecute, but that is subsequently changed resulting in proceedings being withdrawn, the PPS policy dictates that the matter should be referred to the Regional Prosecutor for decision as to whether a detailed victim letter is required in the circumstances. Further, the scheme does not apply to cases where a decision is made to substantially alter, but not reverse, a prosecution decision.

2.13 The specified range of cases included in the revised scheme may be summarised as follows:

- homicide offences;
- driving related offences (for example, causing death or grievous bodily





- injury);
- grievous bodily harm and serious injury;
- rape;
- sexual assault;
- indecent behaviour/exposure;
- child sexual offences;
- domestic burglary;
- matters where the victim is considered vulnerable having regard to age or mental capacity; and
- hate crimes.

2.14 In summary, the PPS policies differ from those in other similar jurisdictions. It can be said that PPS policies are more progressive than those in either Scotland or the Republic of Ireland, insofar as the PPS provide generic reasons in every case with more detailed reasons being provided in a range of more serious cases. This contrasts with reasons being provided only on request in Scotland or only in a range of serious cases and on request in the Republic of Ireland. Similarly, PPS policies may be described as less comprehensive/progressive than those in England and Wales where reasons are provided in all cases together with the offer of a face-to-face meeting in a range of more serious cases. However, Inspectors now understand that the CPS in England and Wales are reviewing the application of their policies with a view to reducing the level of service in light of financial pressures.

2.15 In considering the issue of public satisfaction with the current policies, Inspectors sought to examine available data. However unfortunately, in terms of the areas covered by the various Northern Ireland Victims And Witnesses

Surveys (NIVAWS)⁹, there is very limited data useful to the subject matter of this report. There are no questions included, for example, as to the satisfaction with reasons provided by the PPS. This could be considered for any future iterations of the survey or as a separate survey commissioned by the PPS. The types of questions to be included could usefully incorporate the following:

- Were you provided with an explanation of the reasons for no prosecution in the case in which you were involved?
- Were the reasons provided sufficient to aid your understanding of the decision?
- Was there signposting of entitlements to further information/a review?
- If charges were dropped/alterd were you informed of this and the reasons?
- Were you satisfied/dissatisfied with the reasons provided as to why your case was dropped/alterd?

Of course, further questions arise in respect of the reasons why respondents are satisfied/dissatisfied and these could be explored further.

Inspectors also noted that PPS surveys conducted in its southern region also provided very limited data.

Exclusions

2.16 Inspectors heard concern from one voluntary sector group regarding the exclusion of domestic violence from the categories of cases where more detailed reasons are provided. This concern was based on the continuing nature of domestic violence and the reluctance of its victims to engage with the criminal

⁹ Northern Ireland Victims And Witness Survey(s) published by Statistics and Research Branch, Criminal Justice Policy Division, Department of Justice.



justice system. There was further concern that such victims might be reluctant to further report domestic violence or involve themselves in the criminal justice process because of a lack of information or explanations and their low self-esteem. Inspectors were advised by the PPS that consideration was given to the inclusion of domestic violence in the scheme. However, Inspectors understand this was excluded on the basis that the provision of letters by post could lead to the compromise of, and further exposure to, domestic violence for some victims. The PPS have pointed out that the revised scheme includes a category of vulnerable victims and indeed the PPS issued a reminder to its staff that the issue of domestic violence could be included in this category. Inspectors regard these as legitimate concerns and, for example, learned from speaking with one stakeholder group in this area, that amongst victims there is a divergence of views as to how this matter should be handled.

2.17 In England and Wales the CPS provides specific guidance and training to its Prosecutors in dealing with vulnerable victims, including domestic violence victims, who are specifically and clearly included in this category. Matters which are addressed in CPS policy include, for example, the content of letters that may be seen by a defendant. While the PPS has provided specific domestic violence training for its Prosecutors, and have appointed specialist domestic violence Prosecutors, Inspectors consider, in the absence of any major policy difficulties for the CPS in this area, it is appropriate to follow a similar stance in Northern Ireland. **It is recommended that further consultation with**

stakeholders in the area of domestic violence is undertaken to agree protocols for the receipt of information by domestic violence victims, for example, via third parties (such as solicitors, victim advocates or victim representative groups). Inspectors suggest this could be part of a needs assessment and personal choice for individuals to opt out of the general scheme in which detailed reasons are provided on request. The generality of this matter is ultimately dealt with in terms of the specific recommendation at Paragraph 3.23 post. However, Inspectors recognise the need for further community and voluntary sector consultation designed to reach a more broad consensus on how victims of domestic violence can best be accommodated.

2.18 Inspectors understand the range of cases included in the PPS revised scheme was drawn up following consultation both internally and externally. This included feedback from the Northern Ireland Omnibus Survey on the categories of crime which were regarded as being of the most public concern. In addition, Inspectors examined the strategy documents which preceded the introduction of the revised scheme in order to assess the range of matters considered. It was apparent that consideration/consultation was included in the following areas:

- With the Independent Assessor of Complaints for the PPS;
- with the CPS;
- with the Director of Public Prosecutions in the Republic of Ireland;
- specific legal guidance, including on



human rights and defamation;

- surveys of opinion;
- implementation of a pilot scheme in the PPS southern region; and
- consultation with Victim Support Northern Ireland (VSNI).

2.19 In considering the PPS policy, Inspectors engaged with colleagues in HMCPSI. Having reviewed and considered the existing policy, Inspectors were of the opinion that, as currently set out, this potentially leaves some room for mis-interpretation. Despite the fact that training has been provided for PPS staff, it is set out in such a way as to leave some room for mis-understanding. Such confusion may be the inevitable existence of a general policy or scheme, and a revised policy which are melded together, rather than one straightforward policy. Further, HMCPSI found one paragraph “*confusingly*” drafted and pointed to difficulty in determining whether the range of offences set out were included or excluded from giving detailed reasons. Thus, interpretation could be difficult especially for busy Prosecutors who might refer only to the policy. However, the PPS had provided Prosecutors with a user-friendly laminate guide and as we report elsewhere, Inspectors found 100% compliance with the policy. Hence, Inspectors make no recommendation with regard to these issues.

2.20 A further issue CJI found during their inspection was the absence in the PPS policy of specific guidance in relation to cases involving children and young people and ethnic minority groups insofar as correspondence is concerned. While the policy did categorise vulnerable persons by reason of age, as well as those involved in hate crimes,

and the fact that there may be separate policies in respect of such groups, these could usefully be cross-referenced within the PPS policy on giving of reasons. More specifically, it would be useful for Prosecutors to have available template letters which deal with children/parents and/or guardians and other minority groups.

2.21 It was clear to Inspectors during their fieldwork that many members of the public do not understand and are deeply suspicious of no prosecution decisions which are made in the public interest. Although such decisions are a proper category and are used in prosecutorial decision making world-wide, Inspectors found that many will be distrustful of such decisions. This may simply be in consequence of a lack of understanding. One victims group told Inspectors that victims do not understand reasons for no prosecution in the public interest category especially, and considered the explanations provided by the PPS as failing to meet the needs of victims. Thus, particular care is required in communicating reasons in this category of cases. Given the particular sensitivity of such cases and in order to ensure that the explanation given for decisions not to proceed are monitored, **Inspectors recommend that Regional Prosecutors specifically dip sample 10% of all no prosecution decisions made in the public interest on a monthly basis.** This should act as a management quality assurance check, specifically on the nature and quality of the communication with victims in these cases. This will mean a check of three – four cases per month for each region. The purpose of such a check will be to provide ongoing measured quality assurance and learning.

It is not a secondary check of the prosecution decision.

Communication of entitlement to a review and requests for further reasons

2.22 In terms of the general scheme, standard letters do not communicate either the entitlement to a review of the PPS decision, nor the entitlement to more detailed reasons. Such correspondence is accompanied by a leaflet, the contents of which are discussed at paragraph 2.25 (post). This absence of entitlements is despite the PPS policy and other documents outlining how victims/ victims' families may request a review of a prosecution decision. A review request is, in effect, a formalised process, whereas a request for further more detailed reasons under the general scheme is a less formal and simple request for further particulars of the PPS decision. This is assessed by Inspectors as one of the most significant barriers to improved performance.

2.23 In contrast, under the revised scheme where more detailed reasons are provided, standard letters available to Prosecutors do incorporate the entitlement to ask for a review of any decision made. Some might consider this as a reversal of the natural process insofar as those letters under the general scheme provide neither detailed reasons, the entitlements to further details or a review. Whereas, where more detailed reasons are provided recipients are also advised that a review may be requested.

2.24 In their case file reviews (see post) Inspectors noted that the great majority of letters seen did not include a meeting offer. Highlighting this issue, one victims

group told Inspectors that there was a varying level of acceptance in the PPS (depending on individuals and regions) both to engage directly with victims and also to offer a review, "...for fear of increasing the numbers of requests."

2.25 During their fieldwork Inspectors were advised by PPS staff that the entitlements of those affected were incorporated in a leaflet entitled The Role of the Public Prosecution Service which is sent with all letters under the schemes. This leaflet states:

'The PPS will inform a victim in general terms why it has decided not to prosecute a case. In a range of serious cases the PPS will provide to the victim or the victims family detailed reasons for not prosecuting. If a victim or the family still has concerns about a no prosecution decision, a review of the decision can be requested. The review process is set out in full in the Code for Prosecutors. A request for a review should be sent to the Regional Prosecutor at your local PPS regional office.'

This does not include, for example, the ability of victims to simply request more detailed reasons and could ultimately lead to requests for formal decision reviews.

2.26 Inspectors also noted that the issue of communication, and in particular the absence of copies of, or reference to, the Code for Prosecutors in the PPS correspondence with complainants has previously been highlighted by the Independent Assessor for Complaints for the PPS. In his fifth formal report for 2009 (published in March 2010) he notes for example, a domestic violence matter in which the complainant was concerned that a lesser



charge was brought than should have been the case. The Independent Assessor remarked, *'I made one recommendation/suggestion to the PPS in this complaint, and it is one I regret to have to report I have had to make a number of times. This was that the Prosecutor concerned should have made reference to the particular part of the Code for Prosecutors that explained the decision fully, and ideally also let the complainant have a copy.'* While this example highlights the issue of fulsome communication which is easily understood, this is against a backdrop of 41 complaints arising from 68,000 cases during 2009. That represents 0.06% of complaints as against a proportion of around 0.2% for the CPS in the same period.

2.27 Inspectors noted and were encouraged to see the PPS website which has a specific section on victims and witnesses, pointing to four areas in particular as follows:

- the Code for Prosecutors;
- the PPS victims and witnesses policy;
- the PPS booklet for victims and witnesses; and
- the Criminal Justice System Northern Ireland information for victims of crime leaflet.

2.28 While these publications variously refer to the PPS policies on giving reasons and victims and witnesses (at paragraph 6.3) they make reference to the victims right to *'...request a review of a decision not to prosecute...'* Inspectors found that there could be a more open and broad communication of this entitlement, including, for example, directly in communication (letters) and perhaps as a separate matter on the PPS website. That is not to invite frivolous requests

for further information or review, but rather to more adequately and transparently reflect the fact that such entitlements exist and signpost the range of options available to the public. Indeed, it may be considered that a more appreciable and distinctive signposting of the ability of service users to request detailed reasons could ultimately lead to a reduction in requests for formal decision reviews.

2.29 As an indicator of some confusion regarding these issues, Inspectors noted in its 2009-10 Annual Report (Page 37) the PPS states:

'The PPS leaflet (The Role of the Public Prosecution Service) has been revised to include clear guidance as to the procedures for requesting a review of a prosecutorial decision. All no prosecution decision letters sent to victims have also been updated to highlight this issue and provide signposting to the guidance.'

However, the reality is that the greater majority of letters (those under the general scheme) do not either highlight the issue of reviews nor provide signposting to the guidance. There is some signposting of the right to review in the PPS complaints leaflets and in the Code for Prosecutors, but again neither of these are referred to directly in letters under the general scheme.

Inspectors recommend that all correspondence communicating a PPS decision should routinely incorporate the entitlement to request further information and/or a review.

2.30 In the course of fieldwork Inspectors found that the recording of PPS complaints and requests for reviews was



subject to some apparent variations in interpretation. For example, the PPS Annual Report 2010-11 indicates that 135 requests for a review of the prosecution decision were received during that year. However, in interviews with Regional Prosecutors it was apparent that each estimated they were dealing with between two - eight such letters each week. If the average number were to be five then the number actually being received overall is more likely to be in the region of 960 (assuming 48 working weeks in the year). Inspectors believe that this is a matter of interpretation between what is considered routine correspondence, requests for further information, a request for a review or indeed a complaint. Inspectors also consider that there is an over reliance on the review process and to some extent a mis-interpretation within the PPS of what may be considered a review and a request for further information from victims. Indeed, underlining findings from their inspection report on the PPS in July 2007 Inspectors then noted *'Our findings show that there are, however, significantly higher numbers of informal requests for review.'*

2.31 Inspectors have also noted the fifth formal report (for 2009) of the Independent Assessor for Complaints for the PPS. It is clear from this report that the process of complaints handling within the PPS has caused some concern and the Independent Assessor notes (page 9), *'...an analysis of the very few complaints with which I have had to deal in 2009 along with the analysis of cases in my audit, indicates that there is still scope for misdirection at every level.'*

2.32 Arising from the recommendation of the

Independent Assessor of Complaints, the PPS have undertaken a review of the complaints process. Inspectors have examined the recommendations of this internal review and while at the time of inspection this had not resulted in a published policy document, it is understood that all of the recommendations made during the review have been accepted by PPS senior management. Inspectors have seen the recommendations and they include the following:

'Recommendation 1

The PPS complaints booklet should state very clearly:

- *the matters to be treated as a complaint;*
- *the matters which will not be treated as a complaint; for example, the requesting of reasons and reviews in relation to a prosecution decision; and*
- *where responsibility lies for complaints which relate to issues outside its control and the provision of contact details (e.g. NICTS, PSNI).'*

Bearing in mind the additional clarity this might bring, Inspectors simply encourage the PPS to make guidance to Prosecutors on this issue as detailed as possible.

Offers of meetings

2.33 The PPS policy outlines that in 'appropriate cases' (to be determined by the Prosecutor in consultation with line management), revised scheme letters should include an offer to meet the victim or his/her family, or to discuss the case by telephone. It is not immediately clear in the PPS policy what might be 'appropriate cases'. However, Inspectors



heard of one case from a children's charity in which the young person and her mother were brought into a 'nice' room and reasons for the PPS decision were explained to her by the Prosecutor. Of the 56 case files examined by Inspectors, offers to meet (or discuss) the decision were made in two cases. Inspectors assessed 16 of the case files as being 'serious' (murder or sexual offences). Thus, overall, offers of meetings were made in 3.5% of all cases and in 28% of 'serious' cases. If the definition of 'violent crime', including all offences against the person, sexual offences and robbery were to be used then the percentage of cases in which an offer to meet was made would be 4%. Also, during the inspection, CJI spoke to all Regional Prosecutors regarding this matter and found that the application of the policy was subject to some variance and that each case was considered on its own merits. There was thus no common standard or corporacy applied in the offer of meetings. While on the one hand Inspectors noted an appropriate articulation of the need to meet with victims, there was also a detectable disinclination for the offer of victim meetings amongst some staff, except when specifically requested by a victim or their representative.

- 2.34 Inspectors found in their examination of background papers that the PPS had given consideration to incorporating an offer to conduct a meeting with victims in correspondence. Discussion in respect of this matter was centred on the health and safety and security aspects for PPS staff and hence, in terms of policy, the PPS ultimately moved away from this stance. While Inspectors are conscious that these are legitimate concerns and do not dismiss them, they

do regard such matters as being capable of being adequately addressed and, above all, the balance in terms of public confidence best served by a re-examination of that standpoint. While Inspectors were provided with and noted draft guidance for Prosecutors meetings with victims in relation to no prosecution decisions, the longer-term interests of confidence in the PPS is best served by an even more open willingness to engage directly with victims. An undue pre-occupation with the risks associated with such matters could lead to a cultural reluctance to engage fully with the public. Inspectors learned that the CPS in England and Wales have had such a policy in place for some time without significant difficulty. Inspectors view this aspect of the PPS policy to offer a meeting only in appropriate cases as unclear and in need of revision. Of itself, this may be regarded as evidence of a wider historical reluctance to engage directly. This was an issue which several groups raised with Inspectors in terms of an overall hesitation in direct engagement with victims/families.

It is recommended that the PPS includes an offer to meet and/or discuss the decision in a range of cases, to be devised in consultation with stakeholders. Inspectors suggest that the range of cases incorporated in the current revised scheme policy are sufficiently serious to merit inclusion of an offer to meet. Inspectors view this as an important aspect of building more open and transparent engagement with the public and of increasing public confidence in the PPS. This would represent approximately 12% of the no prosecution decisions being taken by the PPS. One victim who spoke to Inspectors and who was initially unhappy



with the reasons for no prosecution in her case was assuaged following what she described as a 'positive' meeting with a PPS lawyer.

2.35 As we noted earlier, in terms of policy, it is worthy of reiteration that the CPS policy differs in substance from that of the PPS insofar as it aims to provide appropriate reasons in every case, unless for legal reasons it is unable to do so. In the instance of a range of more serious cases or where vulnerable victims are concerned it offers an enhanced service, including in every such case, an offer to meet the victims. In addition, in the case of vulnerable or intimidated victims the notification to such victims must be within one working day and for other victims within five working days.

2.36 Insofar as the CPS communication is concerned this is linked with and done in conjunction with the joint police/CPS Witness Care Unit in order to avoid duplication. The issue of Witness Care Units has already been the subject of a key recommendation by Inspectors in their report on the care and treatment of victims and witnesses in the criminal justice system (published December 2011).

2.37 In conclusion, PPS policy as it currently stands, has clearly been the subject of incremental development. In terms of the efficacy of the policy it is also clear that the PPS have adopted a staged or proportionate stance to its progress. In both cases this may be regarded as entirely proper in all the circumstances, which include the establishment of the PPS and the roll-out of the new service (in other words alternative matters were prioritised), together with the volume of

cases. However, Inspectors now consider that the time is right for further progress. The new service has been given time to develop and 'bed-in' with all regional offices now functional. Inspectors also note that the number of cases being received by the PPS has declined by some 7.8% during 2010-11 compared with the previous year. This is likely to reduce further given the impact of initiatives such as the use of police discretion and the introduction of streamlined file processes for many cases. This will be important to consider in terms of the recommendations which follow post. While Inspectors are conscious that capacity may well be affected by other considerations, such as a rise in the number of indictable case decisions, in the view of Inspectors the predicted future trends in workload are downwards. This includes, for example, an overall reduction in crime and the number of cases received by the PPS. This has the potential to create new opportunities for the PPS. While clearly the progress ultimately envisioned by Inspectors (and recommended in this report) will clearly have some resource implications, further incremental evolution, balanced against the benefits of increased transparency and confidence must be considered a prize worthy of the investment.



CHAPTER 3:

Public Prosecution Service practice



- 3.1 In assessing current PPS practice in respect of the giving of reasons for its decisions, Inspectors concentrated on three main areas in terms of their fieldwork. The first was a series of interviews with a wide range of PPS staff, including all Regional Prosecutors who have a specific role in terms of the PPS policies in this area. Secondly, Inspectors conducted a review of case files. The third area was a small scale survey with victims designed to elicit qualitative information. In addition to these three core areas a small number of victims were identified via VSNI and spoken to by Inspectors. The outcomes of this work are described post.
- 3.2 Bearing in mind the PPS' own internal review of May 2010 which reported some 54% compliance with the revised scheme, Inspectors were keen to speak with a sample of victims who had received letters in order to assess their experiences. A significant case file review process was undertaken as part of the inspection methodology. In all, 64 case files were reviewed by Inspectors with seven of those specifically relevant to the area of the acceptance of pleas to lesser offences.
- 3.3 Insofar as the case file sample was concerned, working with PPS staff, a random sample of 64 case files from the PPS CMS were highlighted for review.
- These covered all PPS regions and a variety of case types from the more minor cases dealt with in the Magistrates' Courts to those more serious cases dealt with in the Crown Court. With the exception of the seven case files highlighted above all of the remaining files examined were those where a no prosecution decision had already been made. This was on the basis that only these files required a 'reasons' letter and, secondly, were likely to be the most controversial.
- 3.4 In general, Inspectors findings from the case file reviews can be summarised as follows:
- Compliance with the PPS policy in respect of sending a 'reasons' letter was 100% insofar as all the sampled files included communication with the victims. To that extent there has been clear progress against the PPS' own internal review which found 54% compliance.
 - The standard of the communication was more varied and Inspectors found in approximately one fifth (21%) of these cases, that the correspondence was simply addressed 'Dear Sir/Madam'. This may leave some victims feeling that this was somewhat cold and un-empathetic. Similar issues were noted by Inspectors in their inspection report on sexual violence and abuse published in July 2010.



- Those letters where less detailed reasons are required under the PPS scheme, in compliance with the policy, did not include on the face of it an offer to review the decision, on request or indeed the ability to ask for further more specific reasons (see also paragraph 2.25).
- Some letters seen by Inspectors were drafts and this has the potential to cause confusion for those quality assuring or examining files as to which have actually been sent. It may be that the letter date would so indicate, however, this may not always be the case.
- There was no apparent regional variation in compliance with the policy, with 100% compliance in terms of the receipt of a letter.
- In every case examined a corresponding letter on the decision in the case had been sent to the person reported (alleged defendant).

3.5 In balance, Inspectors should also note that they have been given access to a small number of thank you letters from victims received by the PPS. One in particular noted by Inspectors thanked PPS staff for the passage of information. Clearly, therefore this puts the areas of concern in context and provides an indication that there are a great many people who receive a first rate service from the PPS. Inspectors also note that the PPS has established a new working group to review all aspects of PPS services to victims and witnesses. Among the key work areas reported in its 2010-11 Annual Report are:

- the audit and review of existing correspondence issued to victims;
- the review of the current victims and witnesses policy;
- the review of information leaflets;

- provision of an online portal for victims;
- the review of recommendations made by the PPS Quality Assurance Team; and
- a follow-up quality assurance review to be conducted in 2011-12.

3.6 In order to assess and gauge victim feedback in respect of the case file sample, Inspectors also wrote to 32 victims arising from 27 cases, seeking their permission to contact them and discuss their contact with the PPS. So as to ensure compliance with the Data Protection Act, letters were forwarded by the PPS enclosing a further letter and pre-paid reply envelope to Inspectors. This was preceded by a joint case file assessment by the PPS and Inspectors to ensure that those cases selected for a further letter were unlikely to cause significant further trauma to victims. Thus, for example, cases where victims had withdrawn their co-operation or support for a prosecution were excluded, as were cases where there was assessed to be a risk of further tension or trauma to a victim (including cases of domestic violence).

3.7 Arising from this, some of the feedback comments heard by Inspectors included the following:

- *“There really was insufficient detail - it [the letter] just said there was insufficient evidence. There’s no reason why in special cases you couldn’t just get a phone call or some personal contact.”*
- *“It [the letter] wasn’t constructed well. I still don’t understand why this case cannot go ahead.”*
- *“The letter was brief and disappointing. A standard letter where you just type in the details. Rather dismissive - bit like a circular. There’s a need before decisions*



are made for some personal interface with victims to qualify what the position is. This was like a very bad letter from the bank. It was short, precise and disappointing. Letters are not fit for purpose - does not meet the interests of the general public."

3.8 Of those respondents contacted there was also a clear common thread that the decision not to prosecute in itself gave cause for concern. A number of respondents reported that on reading the decision they were so dismayed that they read no further, including the reasons for such decisions and any accompanying material. One respondent stated, "*Didn't read it all - I was so disappointed with the decision but I didn't think too much of the letter.*" Inspectors therefore note and point out that some of the concerns heard will have been conditioned by the case outcome, as opposed to the quality of the decision made (which may of itself have been entirely appropriate). Hence all such comments need to be considered in that light. The vast majority of those respondents spoken to by Inspectors who did read the correspondence reported that the layout of the letters were broadly appropriate for their purposes. Some issues in terms of language and understanding were raised and these are discussed elsewhere in this report.

3.9 One victims group spoken to by Inspectors indicated that while the overall trend was for the PPS to become more open, there remained feedback regarding letters being "*cold, impersonal and very legalistic*" in their wording. The organisation further pointed to potential issues regarding people with learning difficulties or whose first language is

not English in understanding the PPS correspondence. One woman whose young daughter had been the subject of sexual abuse told Inspectors, "*I was not happy with the first letter at all. It said that there could be no prosecution because of the age of the perpetrator and a lack of evidence. I hadn't a clue what it was really saying. I just felt like my daughter was not being believed.*" Similar issues have previously been reported by Inspectors in their 2007 report on the PPS.

3.10 The position regarding the nature of correspondence is further underlined in comments made by the Independent Assessor of Complaints for the PPS with regard to the nature of communication. He acknowledges some progress on the part of the PPS, but notes, '*My audit activity suggests that the tendency to use legal language to complainants, that is more appropriate for communicating with fellow legal specialists, continues to reduce. Nevertheless, it seems that when legal professional people feel under pressure there is often the temptation to resort to legal language that only other legal professional people can fully understand.*'

Acceptance of pleas to lesser offences

3.11 The issue of the acceptance of pleas to lesser offences is clearly a matter of some public concern and, for example, Inspectors are aware of one high profile case in which the victims family have instituted legal proceedings concerning the alleged failure of prosecuting authorities to consult prior to accepting pleas to lesser charges. Inspectors await with interest the outcome of this case. Indeed, in recognition of the public concern and in order to aid public understanding surrounding these issues, on 7 May 2009 the PPS issued a news



release entitled accepting pleas to lesser offences: PPS. In addition, the PPS position is set out in the Code for Prosecutors and was referred to in the foreword of their 2009-10 Annual Report. All such documents are publicly available via the PPS website.

3.12 During fieldwork and contact with some PPS staff, Inspectors found that the PPS response to communication with victims with regard to the acceptance of pleas to lesser offences, was that the victims would be in court anyway and would therefore be consulted. There was thus no systematic way of managing or assessing this. In addition, Inspectors learned in a number of cases that this had clearly not been the recollection of victims and even when consulted by the PPS, some victims clearly did not truly understand the reasons for charges being withdrawn or reduced.

3.13 However as part of the review of case files, Inspectors examined an additional number of files (seven) in which a plea was accepted to a lesser offence (reduced charges). Inspectors findings in respect of these additional case file reviews can be summarised as follows:

- In all cases there was evidence of some level of consultation with victims prior to charges being revised.
- The level of consultation broadly reflected the nature and seriousness of the cases.
- In some of the cases examined there was clear evidence of far-reaching consultations with the victims and with investigating authorities.
- In one case Inspectors were pleased to see what was an exemplary representation of good communication with the victim of a

very difficult case. A letter set out in the most compassionate way why the case had to be discontinued. In addition, this followed extensive consultation.

It was apparent there was a variety of methods to record such consultations and this could leave room for gaps and later mis-interpretation of the facts and circumstances. For example, in one case Prosecuting Counsel noted that ‘*extensive consultation*’ had taken place. However, there was no immediate apparent evidence of exactly who was consulted, when, whether they had any additional support available or whether they clearly understood the matters at issue.

3.14 There is limited data specific to the area of accepting pleas to lesser offences. However, while not directly related to the subject matter, the following, from the NIVAWS 2010-11, may be considered indicative of some of the issues highlighted in this report:

‘Explanation of reasons for charges being dropped:

- *Twenty-three percent of respondents to the 2010-11 survey reported that the charges in their case had been dropped or the case had been dealt with by way of a formal police caution or warning.*
- *The proportion of respondents who reported that they had been contacted by the police or PPS and given an explanation of the reasons why the charges had been dropped and a trial would not be heard did not vary substantively across all three surveys (48% in 2008-09, 46% in 2009-10 and 50% in 2010-11).¹⁰*

¹⁰ Performance of the criminal justice system from a victim and witness perspective: comparison of findings from the 2008-09, 2009-10 and 2010-11 Surveys, Northern Ireland Statistics and Research Agency.



3.15 In effect then, in the 2010-11 survey 50% of people surveyed said they had not been given any explanation of why charges had been dropped in their case. The survey also reported, ‘... respondents involved in cases where the charges had been dropped were much less likely to report being satisfied with the case outcome than those involved in cases where the outcome had been a formal police caution or warning.’

3.16 Hence Inspectors point to this as a particular area of concern which should attract specific attention. Specifically, **Inspectors recommend that the area acceptance of pleas to lesser offences, or substantially altering/dropping a charge, is separately addressed for those serious cases proceeding to the Crown Court in terms of PPS policy. The overarching aim should be to ensure that, excepting exceptional circumstances, victims/families are informed by the PPS of the detailed reasons, where possible.** This should be appropriately recorded for audit purposes.

3.17 ***In respect of the recording of information on consultations, Inspectors suggest that the PPS consider a practice note incorporating the kinds of standardised information which needs to be recorded in such circumstances. This could usefully be incorporated on the Case Management System (CMS) and made available as a printable pro-forma (integrating core guidance).*** This is considered an area for improvement.

Broader communication

3.18 In their fieldwork, Inspectors were eager to test the extent of the CJR recommendations regarding public understanding of the work of the PPS. Based on feedback from stakeholder groups, interviews with PPS staff and the public communications referred to at paragraph 2.9 concerning exceptional cases, Inspectors concluded that further work is required in this area. While it was apparent that much good work has been done and, for example, media training has been provided to senior PPS staff and engagements have been ongoing with the media (media breakfasts etc), the benefits could be further maximised. Indeed, at the time of inspection, the PPS reported from September 2010 to March 2011 staff attended 160 outreach events involving a staff contribution of some 665 hours. However, it remains the case that there is limited public understanding of the work of the PPS. An examination of the PPS website in terms of media releases provides a picture of an organisation which is largely reactive responding to negative publicity post-event. While Inspectors understand the very nature of PPS work means that engagement with the public via the media is hugely challenging (for a variety of reasons, including legal restrictions), there are nevertheless important opportunities arising to explain the essential work of the Service, which must be further developed in the longer-term. This would be a further important investment in the public confidence of the PPS.





Progress against inspection

3.19 In the joint CJI/HMCPSI inspection of the PPS in July 2007¹¹ it was stated (paragraph 5.16), ‘...the onus should not be on the victim to seek reasons, and the current policy may discriminate against the less articulate or those who do not have English as their first language. In order to improve public confidence... we consider that, save in exceptional circumstances, substantive reasons should be given to the victim.’ Inspectors at that time also drew attention to cases where proceedings had been withdrawn and noted that usually no substantive explanation was given. Indeed, it was then stated that, ‘The need to improve its communications with victims and their representatives - especially when decisions were taken not to prosecute or withdraw cases - was one of the key findings of the 2007 inspection.’ A subsequent recommendation stated, ‘We recommend directing lawyers should, save in exceptional circumstances, set out clearly to the victim or personal representative their reasoning for directing no prosecution or withdrawing proceedings.’

3.20 In the follow-up review of progress in June 2009 Inspectors noted some progress and stated, ‘There has remained some resistance from Prosecutors to providing more detailed reasons for its decisions. There is growing public interest in the work of the PPS, and it is important that the organisation meets expectations in terms of openness and transparency. Further progress is required and clearer direction and support from senior managers is essential in driving any change of approach forward.’

3.21 In this regard while progress has clearly been made (as we note in paragraphs 3.28 and 4.9), Inspectors remain disappointed to note that the entirety of the recommendations made previously have not been met. Inspectors acknowledge that the revised scheme represents a significant shift from the previous policy, but it does not go far enough in meeting the previous recommendation, nor the expectations, for example, set out in the Hillsborough Agreement¹² (referred to at paragraph 1.20).

3.22 Following the previous CJI recommendations the PPS conducted a pilot scheme and seem to have concluded that there was no public appetite for detailed reasons in all cases. Inspectors have examined a range of policy documents in relation to the decisions made following the pilot scheme. The evaluation of its pilot scheme dated 23 February 2009 has additionally indicated that, ‘There is ... little empirical evidence upon which to evaluate the success of this pilot scheme. The view expressed by our key stakeholder VSNI is in favour of the provision of reasons for decisions whenever possible. The low rate of returns of feedback letters from victims and the anecdotal accounts given by the CLT¹³ suggest that the desire for the reasons is focussed upon the more serious cases. This impression is shared by the Regional Prosecutors and Public Prosecutors.’ On this basis the scheme was limited to a range of the most serious cases.

11 An inspection of the Public Prosecution Service for Northern Ireland conducted by Her Majesty’s Crown Prosecution Service Inspectorate under the delegated statutory authority of the Chief Inspector of Criminal Justice in Northern Ireland, July 2007.

12 Agreement at Hillsborough Castle, 5 February 2010, (http://www.nidirect.gov.uk/castle_final_agreement15__2_-3.pdf)

13 Community Liaison Team.



3.23 Bearing in mind the previous recommendation made by Inspectors in July 2007 that ‘... the onus should not be on victims to seek reasons... save in exceptional circumstances, substantive reasons should be given to victims,’ Inspectors repeat the substance of that recommendation and further elucidate that in all cases substantive reasons are provided, where possible. It should be the exception that more detailed reasons are not provided and where they are not, reasons for so doing should be recorded on the case file.

3.24 Among the various benefits of adopting this approach include:

- promotes good practice;
- promotes openness and transparency;
- simplifies the current policies and difficulties in interpretation;
- further embeds the culture of victim awareness; and
- may impact positively on confidence in the PPS.

3.25 The PPS have indicated to Inspectors that the provision of reasons in all cases, and the communication of the entitlement to a review together with the routine offer of meetings in a range of cases, will each bring additional work, which cannot be sustained within existing resources. The PPS have provided CJI with a memorandum setting out what it considers to be the extant resourcing pressures and implications of changes in the current arrangements. Inspectors consider that it is important to note the principle that the further changes recommended are necessary to pursue once the issues of capacity and efficiencies elsewhere are

resolved. The matters raised will require further detailed analysis and CJI may well return to the underlying issues in their forthcoming inspection of corporate governance in the PPS. However, in the meantime, Inspectors consider that the longer-term and important issue of confidence together with the supporting imperative for the PPS to become open and transparent seems to require further progress. Consequently, advancements which are focussed on a future which could see the PPS become a more self-confident and even more transparent organisation are required.

3.26 Inspectors are conscious of the volume of letters involved in these cases and have learned that in the 12 month period between October 2010 and September 2011 some 11,933 no prosecution letters were issued by the PPS. A total of 1,452 of these (12.1%) were in the revised scheme category requiring more detailed reasons letters. Inspectors understand that the offer of more detailed reasons on request in the remaining circa 88% of letters will have an initially unknown consequence in terms of the response. However, Inspectors remain of the view that the communication of this offer must be made in order to develop the current entitlements and increase public confidence.

3.27 Extending the offer of access to more detailed reasons to victims of all crimes will undoubtedly create some extra work for Prosecutors. However, this can be mitigated by the provision of a range of standardised text options to be adapted by Prosecutors. Similar options were, in fact, available to Prosecutors in the pilot scheme run by the PPS in its





southern region and included issues, for example, such as identification dispute/circumstantial evidence/absence of essential evidence/conflicting accounts. Indeed, Prosecutors are already providing investigating agencies with details of decisions, and with some amendment the extension of this, together with standardised texts being available to victims is regarded by Inspectors as achievable and sustainable. It should not be beyond experienced professional staff with support from well trained administrators to do so. Inspectors are further of the view that the administration and resource implications of further letters will diminish over time as systems achieve optimum efficiency and the system 'beds down'. Indeed, Prosecutors in England and Wales, at the time of inspection, were expected to provide explanations of its decisions not to proceed in all cases, albeit Inspectors understand this position was being reviewed in the light of the current fiscal demands. This also needs to be considered in the context of the issues discussed at paragraph 2.38.

3.28 Inspectors have also previously drawn attention to matters concerning the process for formal reviews of prosecution decisions and noted that the process, unlike the complaints process, was not contained in a separate booklet. Currently, that position remains. However, Inspectors do note that attention is drawn to the process in the Code of Practice for Victims of Crime published in March 2011. To that extent, some progress has been made.

3.29 One further area highlighted by Inspectors in their 2007 report concerned the provision of reasons for prosecution decisions to investigators.

Inspectors findings in respect of current practice are reported post.

Other findings

3.30 Inspectors found that the Code for Prosecutors did not specifically reflect the changes made in the Directors revised policy scheme. Similarly, the PPS Victims and Witnesses policy does not refer specifically to the revised scheme. Inspectors have already noted the PPS work in respect of its review of policies/literature/correspondence at paragraph 3.6. However, **Inspectors recommend that the Code for Prosecutors and the PPS Victims and Witnesses Policy are each updated to reflect the policy changes (including relevant matters in this report) in their next revision.**

Quality assurance

3.31 Inspectors found that a quality assurance review had been undertaken by the PPS in respect of its revised scheme. This had made a number of recommendations all of which had been implemented at the time of inspection.

3.32 Among the recommendations made were:

- a reminder (email) was to be issued reminding Prosecutors of the need to comply with the scheme. A communiqué was issued to all legal staff dated 22 July 2010;
- a laminated card indicating those offences falling within the scope of the scheme be provided to Prosecutors as a guide;
- a library of examples of good practice should be commenced;
- a further review should be conducted



within three – six months from the date of the reminder; and

- the next review should specifically include both hate crime and vulnerable witnesses.

3.33 In fact, the further PPS quality assurance review was used by Inspectors as the basis of their self-assessment in this area.



CHAPTER 4:

Stakeholder perspectives and conclusions



- 4.1 While Inspectors have reported their findings from case file reviews and also in respect of contact with a limited number of victims at Chapter 2, it was apparent that the feedback provided by the PPS to other stakeholders was also an important consideration in the overall assessment of the issue of giving reasons. As a result Inspectors undertook a series of interviews with, or invited interested parties, to comment on the subject of the Prosecution Service giving reasons for its decisions. This included a range of agencies who might submit material to the PPS, for example, the Committee on the Administration of Justice.
- 4.2 These matters can be broken down into agencies using the PPS for the prosecution of matters investigated by them, and secondly to other interest groups.

Agency feedback

- 4.3 Arising from interviews with those agencies who provide case files to the PPS for consideration of prosecution, the general feedback was most positive. Across a range of agencies including the Police Service of Northern Ireland (PSNI); Her Majesty's Revenue and Customs; the Office of the Police Ombudsman for Northern Ireland; the

Social Security Agency; and the Health and Safety Executive, all praised the PPS willingness to engage in discussions regarding prosecutorial decision making. Furthermore, Inspectors heard that the routine provision of reasons for no prosecutions was good and allowed agencies to understand and learn from those matters. Inspectors view open engagement as vital in allowing other agencies to learn and develop and were pleased to see active and open engagement.

- 4.4 In terms of policing, which makes up the vast bulk of PPS decision making, Inspectors were again pleased to find that in all cases reviewed and in discussion with the vast majority of personnel, that there was clear communication of decisions and reasons. However, Inspectors were concerned that there was no mechanism in the PSNI to review those files being returned as no prosecution, in order to learn and develop for the future. While it was apparent that individual PSNI Officers might have been assimilating the learning, it nonetheless appeared to Inspectors that some central monitoring by police of no prosecution decisions (where a prosecution had been recommended) would be beneficial both to the PSNI and to the PPS in terms of the quality of future files.



4.5 One other minor issue raised with Inspectors during the course of fieldwork concerned some Prosecutors including requests for further information in the text of their reasons for no prosecution. Inspectors confirmed in a small number of cases examined via the CMS that this was the case. This could lead to such matters not being picked up as a task for Police Officers in the NICHE Records Management System (RMS) and hence left undone. It is suggested that the PPS may wish to discuss this matter with the PSNI to agree a common approach.

Interest groups

4.6 In terms of feedback from other interest groups, this was limited. However, those who did speak with Inspectors reflected mixed views on the willingness of the PPS to engage and/or be open and transparent regarding its decision making. Some reflected a very welcome willingness to engage in outreach, which itself was said to be making a very positive contribution to mutual understanding. Other concerns heard by Inspectors largely related to historical cases and matters concerning the explanation of PPS decisions. As Inspectors found and commented upon in their report on the care and treatment of victims and witnesses in the criminal justice system, it was also apparent that in the vast majority of cases it is the PPS reliance on written (letter) communications which can lead to some negative concern and feedback. There will clearly be those high profile/controversial or complex cases in which Prosecutors should consider personal communication and consultation rather than resort to

formalised letters. In this way public confidence, openness and transparency might be better delivered. However, on balance, given significant evidence heard by Inspectors of the outreach and engagements by senior PPS staff, Inspectors concluded that the direction of travel was welcome and positive, but that this is an area which will require continuing and enhanced attention. This is also linked with the matters discussed at paragraph 2.9 and 3.18.

4.7 A further issue of concern for some stakeholders was the nature of the PPS engagement with victims and their families. While compliance with the policy was 100% in the case files seen, it is clear not only that this communication could be improved, but even more importantly that the communication skills which are an important aspect of this area are further improved. In highlighting this issue Inspectors would once again draw attention to the fact that the PPS were undertaking a review of communication at the time of inspection.

Conclusions

4.8 Overall, the current PPS policy has developed positively in terms of the revised scheme. Given that the policy was introduced in late 2009 and that improvements have already been made in terms of compliance with that policy and that a quality assurance regime is in place, it must be acknowledged that the PPS have made considerable strides in the right direction. This is particularly so in terms of the engagement with stakeholder agencies who report matters to the PPS. However, Inspectors consider that the time is now right for further progress in the areas highlighted.



4.9 The main challenges for the PPS are to move towards a fuller and more open engagement with all victims, insofar as possible within the limitations of the law. Put in a different context, to move from formal compliance with existing policy to a greater level of openness, transparency, understanding and engagement in order to augment trust and confidence. While Inspectors recognise that this will require an investment of time on the part of individual Prosecutors, it must nonetheless be regarded as a vital element of building further confidence going forward. Some of the ways this can be achieved are:

- providing detailed reasons, where possible, in all cases;
- in terms of formal communication, extending direct engagement with victims/families, including offers to meet and discuss cases. This should be considered as part of providing a more considerate and compassionate service;
- greater use of personal communication; and
- continued and enhanced public engagement via the media and in community outreach.

4.10 Inspectors are most conscious of, and grateful to, those victims who spoke with them and gave their time to this inspection.





Section



Appendices



Appendix 1: Terms of Reference

1. Introduction

- 1.1 The topic of prosecution policy and practice surrounding the giving of reasons for decisions has been the subject of widespread public comment and debate in recent times. The spotlight of public comment and opinion has been framed by reference to a small number of high profile cases. What is clear from this is that there is a need to review and assess the current practices so as to ensure that public confidence in the wider criminal justice system can be informed by that review. Equally clear is that this issue is not a simple one – rather it is complex and requires considered review and inspection, balancing the needs of victims with other considerations including, for example, the rights of the accused.
- 1.2 Historically, it has been the policy of many prosecution authorities not to give reasons for decisions and such policies have led to some controversy. However, the policy of the Public Prosecution Service for Northern Ireland (PPS) is to give reasons for ‘no prosecution’ decisions in general terms, indicating whether the decision was taken on evidential or public interest grounds. In addition, when a request for detailed reasons is received, the PPS now considers what further information may reasonably be given, balanced against factors which, in the PPS view, militate against providing detailed reasons. In October 2009 this policy was further developed by the PPS and reasons are now given, without request, in a range of cases identified as being of most concern to the community, such as in cases where a death occurs and sexual offences.
- 1.3 Criminal Justice Inspection Northern Ireland (CJI), as part of its 2010-11 inspection programme, now intend to conduct an inspection of the prosecution policies on the giving of reasons for decisions on the basis of these Terms of Reference.
- 1.4 CJI have conducted preliminary research and plan to undertake further research, consultation and fieldwork with appropriate agencies, the voluntary and community sectors by the beginning of February 2011.

2. Scope and definition

- 2.1 The aim of the inspection is with a view to increasing public confidence and understanding of the operation of the criminal justice system, to determine whether there are effective and appropriate guidelines and mechanisms in place surrounding the policy and practice of the PPS on the giving of reasons.
- 2.2 The fundamental focus and objectives for this inspection will be:
 - determining the current policy and practices within Northern Ireland;
 - assess the suitability and efficacy of, policies, procedures and processes used in dealing with the issue of the giving of reasons for decisions;
 - stakeholder consultation in order to determine the experience and views of victims



and others;

- best practice, drawing comparisons with other jurisdictions such as those in England and Wales, Scotland and the Republic of Ireland; and
- consider recommendations, if any, in order to deliver increased confidence and understanding in the criminal justice system.

2.3 The inspection framework will follow accepted CJI practice with the three main strategic elements as follows:

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

Constants in each of these areas are:

- equality and fairness; and
- standards and best practice.

2.4 This inspection will specifically identify the statutory and procedural issues and responsibilities currently operated in the arena of prosecution policies on the giving of reasons for decisions.

2.5 Contacts with each agency and key stakeholders (including the voluntary and community sector) will be agreed. The purpose is to liaise with the Lead Inspector and provide an overview of current systems in place, agree legislative and procedural references, and identify any links to objectives and associated targets, sources of information/research, supply of documentation and help to co-ordinate a specific timetable for the fieldwork.

3. Methodology

The following methodology is proposed.

3.1 Research and review of documentation

A full literature review will be conducted by CJI during January 2011. Agencies will be asked to supply CJI with all relevant documentation including policy documents, reports, protocols and relevant management information by the end of January 2011. Stakeholders will also be asked for submissions by the end of February 2011.

3.2 Hypothesis formulation

Hypothesis formulation will take place after the relevant documentation is received from the agencies and stakeholders have been reviewed.

3.3 Fieldwork

The main inspection fieldwork is scheduled to occur during February/March 2011. CJI will agree with each agency and stakeholders an outline programme detailing dates, times and people. Fieldwork will consist of interviews with appropriate stakeholders at various grades and an examination of appropriate documentation including policies, records, files and management information.



3.4 Analysis and report writing

Analysis of research, fieldwork and other material will facilitate the development of emerging findings which will provide a structure for drafting the inspection report. Findings will be discussed with the agency contacts to clarify understanding. CJI intend to circulate a draft inspection report for factual accuracy checks in April/May 2011.

Proposed CJI Schedule

Outline Timetable – 2011

Prosecution Giving Reasons					
	January	February	March	April	May
Preparation					
Research					
Hypothesis					
Fieldwork					
Analysis and Report					
Final Report and Briefings					

Resource Usage

Prosecution Giving Reasons	DW	RL	Total
Preparation	12	0	12
Research/Consultation	7	2	9
Hypothesis Formulation	3	0	3
Fieldwork	25	15	40
Analysis & Report Writing	20	5	25
Final Report & Briefings	7	2	9
Total	74	24	98



Appendix 2: Inspection methodology

Desktop research

The inspection commenced with desktop research of literature and guidance documentation which was reviewed in relation to the policy of the PPS and those in the Republic of Ireland, in Scotland and in England and Wales. Some limited consideration was also given to policies in Australia and Canada. Among the literature reviewed were the following:

- Crown Office and Procurator Fiscal Service Prosecution Code;
- Crown Prosecution Service - the Code for Crown Prosecutors;
- The Code of Practice for Victims of Crime - Crown Prosecution Service Operational Guidance;
- Guidelines for Prosecutors - Office of the Director of Public Prosecutions;
- Office of the Director of Public Prosecutions - Report on Prosecution Policy on the Giving of Reasons for Decisions; and
- Office of the Director of Public Prosecutions (Republic of Ireland) - Discussion Paper on Prosecution Policy on the Giving of Reasons for Decisions.

A further review was also conducted by CJI with the PPS being asked to supply CJI with all relevant documentation, including strategy documents, action plans, reports, protocols and relevant management information.

All the above were used also to inform interview questions during the fieldwork phase.

Fieldwork

Fieldwork for this inspection was conducted during January, February and March 2011.

The questions used during the fieldwork for this inspection were informed by the areas of investigation undertaken during desktop research.

No 'self-assessment' was required by Inspectors during this inspection. Instead, the PPS provided a full copy of its internal quality assurance report and recommendations in the subject area which had been conducted in late 2010.

A number of focus groups and unstructured one to one interviews were conducted with a range of personnel within the PPS and relevant agencies. Unstructured interviews were also conducted with others who had a key interest in the area of the provision of reasons for decisions.

Representatives from the following areas were interviewed during the fieldwork:

Stakeholders:

VSNI;
Northern Ireland Ombudsman;
Committee on the Administration of Justice; and
Women's Aid Federation.



Agencies:

PSNI: Assistant Chief Constable Crime, Criminal Justice Department, Head of Organised Crime, District Commander (x1) , PSNI Focus Groups;
OPONI;
NICTS;
SOCA;
Post Office; and
Social Security Agency.

PPS (Internal):

Inspectors conducted a number of meetings with Prosecutors from various PPS regions and departments. This included two Senior Assistant Directors, a number of Assistant Directors and all Regional Prosecutors.

Others:

Crown Prosecution Service;
Her Majesty's Crown Prosecution Service Inspectorate;
Department of Justice; and
The Independent Assessor for Complaints for The Public Prosecution Service of Northern Ireland.

Other organisations invited to comment:

NICEM;	HSENI;
NSPCC;	PBNI;
Rainbow Project;	Attorney General;
Children's Law Centre;	Lord Chief Justice;
Women's Support Network;	Bar Council;
Nexus;	Law Society;
VOYPIC;	Age Concern;
Participation Network;	Children in Northern Ireland;
Chinese Welfare Association;	Human Rights Commission;
Compensation Agency;	NIEA; and
NICCY;	DVLA.
DHSSP;	

Case File Review(s)

A significant review of case files as described in the main report was conducted. Overall, 64 case files were reviewed by Inspectors.

Victim feedback

Inspectors sent letters to 32 victims in 27 of the cases reviewed (47%). Returns were received from 12 and 6 of these indicated a willingness to speak with Inspectors. While the numbers of replies were extremely limited, this assisted with qualitative assessment. The details are described in the main report.



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