

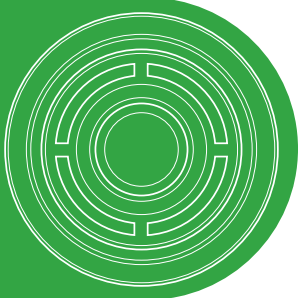


TELLING THEM WHY

**A follow-up review of the inspection of the
Public Prosecution Service for Northern
Ireland's giving of reasons for its decisions**

October 2015





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Criminal Justice Inspection
Northern Ireland
a better justice system for all





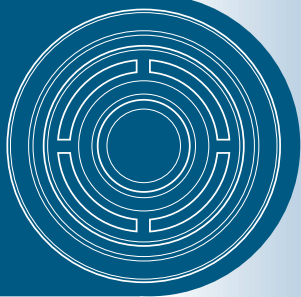
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List of abbreviations

CJI	Criminal Justice Inspection Northern Ireland
CMS	Case Management System (in the PPS)
EU	European Union
PPS	Public Prosecution Service for Northern Ireland
PSNI	Police Service of Northern Ireland
VOPO(s)	Violent Offences Prevention Order(s)
VWCU	Victim and Witness Care Unit



Chief Inspector's Foreword

Raising the status of victims and witnesses and improving their experience as they move through the criminal justice system has been a political and societal priority for some time and has led to significant developments and initiatives which are helping to deliver transformational change.

Providing reasons for decisions that impact on victims and witnesses increases fairness and transparency. It delivers accountability and strengthens the independence of the decision makers and most importantly, gives the citizen the explanation that can sometimes help them move on in their lives.

This follow-up review to Criminal Justice Inspection Northern Ireland's 2012 report of the Public Prosecution Service for Northern Ireland's giving of reasons for its decisions found the Prosecution Service have made cautious but satisfactory progress against the recommendations made in the original report. Getting it right increases public confidence, getting it wrong exposes organisations to criticism and ridicule and ultimately damages public confidence in the criminal justice system.

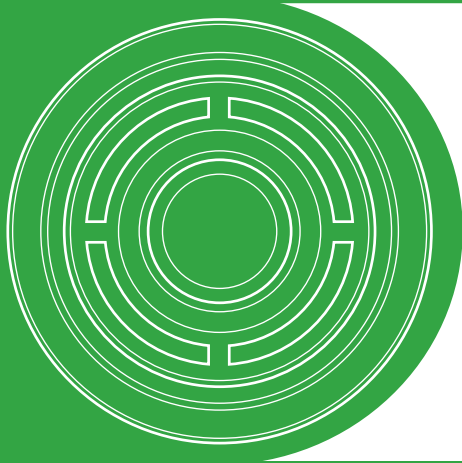
I accept that a balance has to be struck between greater openness on the part of decision makers and the integrity of professional practice

which supports the total independence of the Prosecution Service. The Victim and Witness Care Unit is part of the transformational change which will be further supported by the Victim Charter being enshrined in statute. I am confident that the continued commitment to and involvement of the Prosecution Service in these arrangements, will deliver the changes envisaged in our original report.

This review was conducted by Derek Williamson and David MacAnulty. My sincere thanks to all who contributed.

Brendan McGuigan
Chief Inspector of Criminal Justice
in Northern Ireland

October 2015



Follow-up Review



Introduction

Background to the follow-up review

For many crime victims the incidents in which they become involved 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 these victims can comprehend the decision(s) made in their case. This is particularly important in the case of victims who, having engaged with the criminal justice system, are then advised that the case is not to be prosecuted, is being discontinued, revised or altered. Giving reasons for a wide range of decisions is seen as being in the public interest and is generally accepted to lead to fair and transparent decision making.

In May 2012 Criminal Justice Inspection Northern Ireland (CJI) published an inspection report looking at the Public Prosecution Service for Northern Ireland's (PPS) policy and practice on giving reasons for its decisions. The purpose of the inspection was to consider whether there were effective, appropriate guidelines and mechanisms in place to inform victims of decisions in their cases.

The CJI inspection made two strategic recommendations. These were: that in all cases, substantive reasons are provided, where possible; and secondly, that the PPS includes an offer to meet and/or discuss its decision in a range of cases to be devised in consultation with stakeholders. In addition, there were five operational recommendations.

Changes since the previous inspection report

Some significant developments have occurred since the publication of the original CJI report including:

- A new European Union (EU) Directive¹ establishing minimum standards on the rights, support and protection of victims of crime. This entered into force on 15 November 2012. EU Member States are required to implement the provisions into their national laws by November 2015.

¹ Directive 2012/29/EU of The European Parliament and of The Council of 25 October 2012, Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA.

The specific relevant rights set out in the Directive include, for example:

- Article 4 establishes ‘...a right for victims to receive information’. The rationale behind this provision requires criminal justice authorities to provide extensive information proactively..., rather than the onus being on victims to seek out such information for themselves. Victims must be granted ‘effective access to information’.²
- Article 6 Paragraph 1 provides that ‘... **all victims** must be notified of their right to receive information related to (a) a decision to end criminal proceedings (including the reasons for this); and (b) the time and place of the trial and the nature of the charges. Once they are aware of such rights, victims can then receive such information if they so request. The rationale for giving these rights to all victims is that too often, they are forgotten in the administration of justice, so being entitled to such information should be one of the basic rights in the procedure.’³
- Article 11 is closely linked with Article 6. It states ‘**Member States should ensure that at least victims of serious crime have the right to a review of a decision not to prosecute**, in accordance with procedural rules determined by national law.’⁴ The process is required to be clear and transparent and not overly bureaucratic to ensure that victims can request the review without legal representation.
- The most significant practical change since the last inspection has been the introduction of the Victim and Witness Care Unit (VWCU) across Northern Ireland servicing all court tiers. The VWCU is a joint PPS/Police Service of Northern Ireland (PSNI) unit whose over-riding priority is ‘...to improve the experience of victims and witnesses in the criminal justice process’.⁵ The Unit is led by the PPS, but staffed on a roughly even split between the PSNI and the PPS. The VWCU is a direct interface for victims and witnesses. It provides ongoing feedback to both the PPS and the PSNI about how victims and witnesses view both organisations – information that can be used as a tool to improve overall service.
- The draft Faster, Fairer Justice Bill, the main purpose of which is to re-shape the system of justice to improve victim’s experiences and the general effectiveness of the justice process, is at an advanced stage. The Justice Bill 2014 was introduced to the Northern Ireland Assembly in June 2014 and aims to improve services provided for victims and witnesses, speed up the progression of criminal cases and make a number of other structural reforms to improve the effectiveness and fairness of the system. Some provisions in the Bill are as follows:
 - creating a single jurisdiction;
 - reforming the committal process;
 - encouraging earlier guilty pleas;

2 European Justice Guidance Document available at: http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf.

3 Ibid.

4 Directive 2012/29/EU of The European Parliament and of The Council of 25 October 2012, Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA.

5 Evidence given by the PPS to the Northern Ireland Assembly Justice Committee on 27 September 2012. Available at <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/September-2012/Witness-Care-Unit-Project-PSNIPPS-Briefing>.

- introducing statutory case management;
 - introducing prosecutorial fines;
 - allowing the PPS to issue a summons;
 - reforming juries;
 - making statutory provision for a Victim Charter and a Witness Charter;
 - a legal entitlement to provide a Victim Personal Statement;
 - increased opportunities for live links at court;
 - amending the aims of the youth justice system;
 - addressing a gap in the powers of court security officers;
 - allowing defence access to premises for the preparation of a defence case;
 - reforming the criminal history disclosure regime; and
 - creating Violent Offences Prevention Orders (VOPOs).
- Finally, a Victim Charter advising victims of crime about their entitlements and the standards of service that they can expect to receive when they come in contact with the criminal justice system, was launched in January 2015. It is currently administrative, but is intended to be placed on a statutory footing in late 2015. The Victim Charter helpfully sets out, in plain language, the information and commitments of the PPS to providing information on its decisions. Extracts relevant to this report are provided at Appendix 1.

It is also pertinent to highlight a further significant adjustment since the original inspection, namely the landscape of the financial position for public services. Without exception, all of the criminal justice agencies have had to absorb significant financial cuts which, to varying degrees, have and will continue to impact on services. While continuing to inspect for improvement, Inspectors are mindful of this situation. Others must also consider it.

The follow-up review

The purpose of this follow-up review was to consider the continuing validity of recommendations in the light of the changes set out, and to evaluate the extent to which continuing relevant recommendations, made in 2012, had been implemented. This was achieved through an invitation to the PPS to conduct a self-assessment and some additional fieldwork by Inspectors to validate that self-assessment. This was supplemented by consultations with some selected victims group representatives.



Progress against recommendations

Strategic recommendation 1

It is recommended that the PPS includes an offer to meet and/or discuss the PPS decision in a range of cases, to be devised in consultation with stakeholders.

Achieved.

Agency response

The PPS presently gives reasons for no prosecution decisions in all cases. Given the substance of this recommendation, the PPS embarked on a pilot project to monitor the level of demand for detailed reasons to be provided in all cases. The results of the pilot showed that the level of uptake for more detailed reasons was around 3.6%. There were no offence types that had a disproportionately higher demand for detailed reasons. Figures have continued to be monitored and that level remains approximately the same at around 3%.

These findings were presented to Victim Support Northern Ireland in May 2014. Following that presentation the representatives from Victim Support endorsed the current policy on the giving of reasons which they felt was proportionate in meeting the expectations of victims.

*Given the results of the pilot and the results of the continuing monitoring of these statistics, there is no empirical evidence to suggest that **detailed** reasons should be provided in respect of all no prosecution decisions. When set against available resources, this recommendation is not justifiable and is a disproportionate use of same, particularly in light of the enhanced service to victims that is provided by the VWCU, the suite of commitments contained in the Victim Charter, and the implementation of the action plan for bereaved families. It is the considered view of the PPS that this recommendation should be reviewed in this context.*

Inspectors' assessment

It is clear from the PPS self-assessment and fieldwork conducted by Inspectors that the landscape and entitlements of victims has changed in recent years. This includes the entitlements clearly set out in the Victim Charter and in particular, a specific section on 'Decision on prosecution'.⁶ The PPS provide general reasons for no prosecution decisions together with an offer of more detailed reasons, on

⁶ See section 2, Victim Charter 2014, Department of Justice; and Appendix 1 of this review.

request. In a range of more serious cases detailed reasons are provided automatically. Additionally, in a range of cases an offer to meet and discuss prosecution decisions is made. The latter has been formulated following a range of consultations with stakeholders and on strict interpretation of recommendation, the PPS have achieved this recommendation. However, CJl maintain that open communication to victims should be available for decisions in all cases, as a minimum standard.

Strategic recommendation 2

Bearing in mind the previous recommendations made by Inspectors in July 2007⁷ 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 suggest 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.

Partially achieved.

Agency response

Current PPS policy states that in cases involving a number of specified offences, where a decision not to prosecute is taken, detailed reasons in respect of that decision will be provided to the victim by letter.

The specified offences are as follows:

- *those involving death or serious injury i.e. murder, manslaughter, infanticide, death or grievous bodily injury caused by careless or dangerous driving, attempted murder, Section 18 of the Offences Against the Person Act 1861, and offences of similar gravity arising from investigations conducted by the Health and Safety Executive;*
- *sexual offences;*
- *hate crimes;*
- *domestic burglaries; and*
- *cases where the victim is considered to be vulnerable by virtue of age or mental capacity.*

All such letters include an offer to discuss the decision with the prosecutor who directed on the file and provide information on the victim’s right to request a review of the decision and how to go about doing so. The leaflet ‘Role of the PPS’ which explains the test for prosecution and how to ask for the decision to be reviewed, is also included.

The VWCU was launched in May 2013 and provides victims and witnesses with a single, informed point of contact to supply information and updates as their case progresses through the prosecution process. This includes the assignment of a dedicated caseworker who informs the victim when a file has been received from police by the PPS, communicates status updates, informs the victim of the decision in the case and provides information on specified hearing dates and the ultimate outcome of the case. The PPS is committed to continually reviewing the operation of the VWCU to identify service improvements. One

⁷ An inspection of the Public Prosecution Service for Northern Ireland, CJl, August 2007 p.21, para 5.16 - www.cjini.org.

recent example concerns the provision of staff training on bereavement. All letters advising victims of a no prosecution decision issued by the VWCU contain an offer to discuss the case with the prosecutor who directed on the file. The letters also include information on the victim's right to request a review of the decision and the leaflet 'Role of the PPS' which explains the test for prosecution and how to ask for the decision to be reviewed. The exact text is copied here:

'If you would like a further explanation of the reasons for this decision, please contact the Victim & Witness Care Unit on the above telephone number. They will arrange for the prosecutor who took the decision to contact you to answer any queries you may have.

You also have the right to request a review of the decision not to prosecute. This means that the decision will be reconsidered.

I enclose a leaflet entitled the Role of the PPS which provides further information in relation to the Test for Prosecution and about how to request a review of the decision not to prosecute.'

Furthermore the PPS has signed up to an action plan with the Department of Justice which was implemented at the end of March 2015 involving bereaved families in the criminal justice system. In circumstances where a victim is deceased, either as a result of the alleged criminal conduct or whilst their case is progressing through the system, the PPS will offer to meet a representative from the bereaved family at specified times during the process. This includes an offer to meet immediately prior to or following a prosecution decision (including a no prosecution decision), prior to or following a decision to discontinue proceedings, substantially alter a charge or offer no evidence.

The Victim Charter, which was published on an administrative basis on 31 December 2014 and is expected to become law in autumn 2015, entitles victims to request a meeting with the PPS to discuss a no prosecution decision, to discuss a decision to substantially alter a charge, discontinue all proceedings or offer no evidence and when a case results in an acquittal or conviction for a less serious charge. Bereaved family members are entitled to ask the PPS for a meeting at any point during the prosecution process.

Inspectors' assessment

CJI have consistently advocated that victims and witnesses should, where possible, be entitled to detailed reasons for PPS decisions. That basic principle remains intact.

PPS policy was to provide reasons for no prosecution decisions. Detailed reasons on no prosecution files were provided for more serious cases or upon request. Reasons for decisions to prosecute were not available, nor was the opportunity to request reasons. The PPS were prevented from discussing evidence with witnesses or be involved in conduct that could be considered training or coaching.⁸ However the PPS, with ongoing feedback from the VWCU, were in the process of redrafting the letter informing victims of the decision to prosecute. These letters were to contain more detailed information of the decision including: an explanation of the decision type; what 'needs assessment' was to be carried out; making a Victim Personal Statement and; an option for a review of diversion decisions and to allow a request for reasons for a diversion. This extended the general information

⁸ See R v Momodou and Limani (2005) EWCA Crim 177.

which outlined details of a personal caseworker (in the VWCU) to contact and an offer of general guidance. In keeping with established practice in the Crown Prosecution Service in England and Wales, Inspectors expect future guidance to further develop the building of rapport with witnesses and a more open approach to prosecutors communicating with victims and witnesses.

Minimum standards are set out in the EU Directive to proactively provide victims with access to information⁹ about the decisions which affect them. The PPS had made some progress in developing a more open approach for victims and witnesses to access information. This recommendation was partly achieved. As with operational recommendation 3, further progress is reliant on the new letters being formally adopted and continued direct input from victims and witnesses and the VWCU.

Operational recommendation 1

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 from 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.

Achieved.

Agency response

Please see Agency Response under strategic recommendation 2 in respect of the establishment of the VWCU. At the outset of the VWCU involvement in a case, once a dedicated caseworker has been assigned, contact is made with the victim and they are asked to confirm how they wish the VWCU to communicate with them. This can be done through correspondence, email, telephone call or via a representative. From that point, and in respect of all information and updates to be provided, the VWCU caseworker will communicate with the victim via their preferred means of contact and, if possible, at their preferred time of day. This, of course, includes victims of domestic violence.

Inspectors' assessment

It is widely acknowledged that the establishment of the VWCU has made a significant and positive difference to the experience of a range of victims and witnesses. Nonetheless, Inspectors have heard some continuing concerns indicating operational gaps in the response. In respect of victims of domestic violence, some concern arises that initial communication is often forwarded to the last known address - an address which may still be occupied by the perpetrator. An ongoing significant concern also relates to information provided to victims regarding defendants bail, particularly in domestic violence cases where it is vitally important to the wellbeing and safety of victims, that they are notified immediately of bail. Third sector support agencies highlighted a continuing gap in this respect which CJI reported on in its recent follow-up report¹⁰ on the care and treatment of victims

⁹ EU Directive, Op Cit Article 4.

¹⁰ The care and treatment of victims and witnesses in the criminal justice system in Northern Ireland, incorporating the use of special measures - A follow-up review of inspection recommendations, CJI, March 2015 - www.cjini.org.

and witnesses. In respect of a specific recommendation on the provision of timely and accurate information on bail, Inspectors said *'Clearly not all VWCU staff were aware of existing procedures with potential confusion and negative outcomes for individual victims. For Inspectors, this simply affirmed the need to further embed existing procedures.'*

The principle that victims and witnesses can choose the method of communication and timing is encouraging and goes some way to meeting the spirit of the recommendation. However, Inspectors are aware VWCU case officers do not routinely have access to text messaging - a relatively common communication method. For example, Ofcom stated that in 2014, 93% of people in the United Kingdom owned/used a mobile phone while 16% of people live in a mobile only home.¹¹ To that extent, although assessed as achieved, the operational delivery of the recommendation requires further consideration by the PPS.

Operational recommendation 2

Inspectors recommend that Regional Prosecutors specifically dip sample 10% of all no prosecution decisions made in the public interest on a monthly basis.

Partially achieved.

Agency response

Present PPS policy is that Regional Prosecutors and Assistant Directors dip sample a number of files each month including four files in which no prosecution has been directed. Of these files one must be in respect of sexual offences and one in respect of domestic violence. The files are a random selection provided to senior management. The PPS policy in respect of requests for reviews of prosecution decisions routinely means senior management review additional no prosecution decisions (outside of the dip sample requirement) as and when review requests are received. In Central Casework Section all decisions are overseen and supervised by the Assistant Director for that section.

A quality assurance review was carried out in early 2012 and a report provided in April 2012 in relation to no prosecution decisions taken in the public interest. This indicated that in the majority of such cases, the public interest test was properly applied. The review revealed that a different approach was being taken with cases where an injured party had withdrawn their evidence. Some prosecutors considered this to be a public interest issue (where they were not willing to compel the party to give evidence) while others considered it to be evidential (the evidence is no longer available as the complaint has been withdrawn). In light of these findings, a recommendation was made that a common approach needed to be established for the recording of cases where the injured party withdraws their complaint and a decision is made not to compel his or her attendance. This recommendation was accepted and implemented and changes were made to the PPS Case Management System to allow prosecutors to record no prosecution decisions under this category.

¹¹ Ofcom. <http://media.ofcom.org.uk/facts/>.

PPS internal management information confirms that in 2012 a total of 919 decisions were taken not to prosecute in the public interest. In 2013 this figure had dropped to 755 and in 2014 it fell again to 614. A new monthly dip sampling scheme for Senior Management has recently been introduced following a public consultation. Alongside this, an interim dip sampling scheme of no prosecution decisions in public interest will now occur monthly for the next six months. After that period a decision will be taken as to where such cases are incorporated with monthly senior management dip sampling.

Inspectors' assessment

Records examined by Inspectors indicated that 317 cases were quality assured in 2012-13, 378 in 2013-14 and 295 to the end of January in the 2014-15 year. This demonstrates senior management quality assurance continues to take place. The PPS have put in place systems to ensure the recording and review of this quality assurance process however, the purpose of this recommendation was to ensure greater consistency of approach by the PPS, to no prosecution decisions made in the public interest and their recording. A PPS internal quality assurance review carried out in 2012 made some recommendations specific to public interest decisions. Since Inspectors carried out this follow-up review, the PPS began interim dip sampling public interest no prosecution decisions. No decision had been made to regularise this sampling long-term and the process was too new to review, and therefore the recommendation could not be considered achieved at the time of inspection.

Operational recommendation 3

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

Partially achieved.

Agency response

The VWCU is responsible for issuing letters communicating the prosecution decision to victims. All letters advising victims of a no prosecution decision issued by the VWCU contain an offer to discuss the case with the prosecutor who directed on the file. The letters also include information on the victim's right to request a review of the decision and the leaflet 'Role of the PPS' which explains the test for prosecution and how to ask for the decision to be reviewed. The exact text is copied here:

'If you would like a further explanation of the reasons for this decision, please contact the Victim & Witness Care Unit on the above telephone number. They will arrange for the prosecutor who took the decision to contact you to answer any queries you may have.

You also have the right to request a review of the decision not to prosecute. This means that the decision will be reconsidered.

I enclose a leaflet entitled the Role of the PPS which provides further information in relation to the Test for Prosecution and about how to request a review of the decision not to prosecute.'

All letters advising victims of a decision to prosecute contain the following text depending on whether the case is proceeding in the Magistrates' Court or the Crown Court:

Magistrates' Court

'A print out of the decision is attached. I would ask you to note that this document is in a standardised computer format. Should you require further information in relation to this decision, please contact the Victim & Witness Care Unit.'

Crown Court

'A print out of the decision is enclosed. I would ask you to note that this document is in a standardised computer format.'

The hearing of this case will take place in the Crown Court. However all Crown Court cases must first proceed through a stage called 'committal', which takes place in the Magistrates' Court. During the Committal Hearing a District Judge will consider the evidence and decide whether it is sufficient to allow the case to proceed to the Crown Court. Most Committal Hearings are very short and no evidence is called. The date of the Committal Hearing is set for []. You are not required to attend. However if you wish to attend, please contact your Case Officer in the Victim & Witness Care Unit who will be able to assist with this, or with any other queries you may have.'

Inspectors' assessment

This recommendation was made to ensure that all correspondence communicating a PPS decision included an explanation of the entitlement to request either further information or a review. The recommendation previously made concentrated on a broader communication of entitlements. There will be instances where the prosecution decision, even where a prosecution is to proceed, does not either meet the expectation of victims or is not understood and the routine communication of entitlements to further information and/or a meeting, would be necessary. The revised letters being drafted by the PPS may go some way to address the victims and witnesses access to more detailed information. As with strategic recommendation 2, there are legal restrictions which prevent the prosecution from discussing evidence with victims and witnesses. The PPS must continue to work closely with the VWCU to develop an open and transparent process which keeps victims and witnesses involved and informed. This recommendation was partly achieved whilst Victims and Witness letters were being redrafted and work was ongoing with the VWCU.

Operational recommendation 4

Inspectors recommend that the area of acceptance of pleas to lesser offences, or of 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.

Achieved.

Agency response

The general practice is that the directing officer, the Regional Prosecutor or prosecuting counsel will meet with the victim when an offer to plead to a lesser offence has been made to take their views as regards acceptance of such a plea. This procedure is set out in the PPS Victims and Witness Policy (which is currently being revised) at paragraph 4.3 (copied below):

'In some cases a decision may be taken not to proceed with the original charge directed or to accept a plea to a lesser offence. This may arise, for example, if there is a change in the evidence available or a significant public interest consideration has arisen. When considering whether this should be done, PPS will, whenever possible, and where the victim wishes, explain to the victim why this is being considered and listen to anything the victim wishes to say. However, sometimes these issues have to be dealt with relatively quickly at court in circumstances where it is not always possible to speak to the victim.'

Furthermore, the recently published Victim Charter (see above) entitles victims to ask the PPS for a meeting in certain circumstances, one of which being a PPS decision to substantially alter a charge, discontinue all proceedings or offer no evidence. This formalises the position above and gives victims entitlements to meetings and explanations at key points in a case.

The Bereaved Families Action Plan, which has been drafted in conjunction with the Department of Justice and was implemented by the PPS at the end of March 2015, includes an offer to meet prior to or following a decision to discontinue or substantially alter a charge and prior to or following a decision to discontinue proceedings or offer no evidence.

Inspectors' assessment

The spirit of this recommendation was to ensure that in the majority of cases where charges are dropped or substantially altered victims were fully informed of the PPS decision and, again, for the majority of cases in advance. The current policy and practice of the PPS outlined in a Staff Instruction (04/14) which has been examined by Inspectors reflects this. However, this concentrates on the legal aspects of victim and witness consultation and additionally leaves noteworthy room for discretion. While CJI recognised the need for some discretion in its original report and continues to do so, it will not be until some further quality assurance of the numbers and reasons for consultation occurring post event is available, that we can be confident the intention of the policy is being met. The PPS are encouraged to look separately at this issue through its quality assurance regime, bearing in mind its own resources and priorities. Additionally, the policy itself could be enhanced by a more positive emphasis on the victim's perspective.

The PPS advises that it is in the process of reviewing its Victims and Witnesses policy, which was planned to go out for public consultation in Autumn 2015. This is a welcome development and should further strengthen the policy. In the meantime, the recommendation that policy addresses the issue of pleas to lesser offences has been achieved by the PPS Staff Instruction on 'Consulting with Witnesses'.

Operational recommendation 5

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.

Partially achieved.

Agency response

Both the Code for Prosecutors and the PPS Victims and Witnesses policy are currently being updated to reflect recent policy changes and changes in the law. The revised Code for Prosecutors was released for public consultation in May 2015, having been considered by the Attorney General and Advocate General. The Victims and Witnesses policy was being updated to reflect operational and policy changes including VWCU, Victim Personal Statements, the Victim Information Portal, expenses, the EU Victim Directive, the Victim Charter and the complaints procedure. It is anticipated to go to public consultation in Autumn 2015.

Inspectors' assessment

It is evident that the number of changes across the landscape of victim and witness care in Northern Ireland in recent years has necessitated significant policy revisions. In turn, the nature of this change has meant that revisions have naturally had to await other anticipated developments. It has not therefore been possible to expedite the process of revision and final delivery has not yet been achieved. Given the change noted this is to be expected, but inevitably means that the recommendation can only be assessed as achieved in part.

Area for improvement 1

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).

Achieved.

Agency response

A 'Staff Instruction on Consultations' was issued to all legal staff in May 2014. This instruction provided clarification for staff with regards to what should and should not be discussed during a consultation and confirmed the procedure to be followed during the consultation process. It included information on how to deal with any disclosure issues that may arise, contained a dedicated section on consulting in cases of rape or other serious sexual assaults and addressed the issue of record keeping.

Inspectors' assessment

Inspectors have examined PPS instructions on this issue and consider they broadly address the subject of the recommendation and specifically refer to the matter of recording. However, the PPS may wish to consider some quality assurance of compliance in due course, bearing in mind its own strategic priorities and resources.



Conclusion

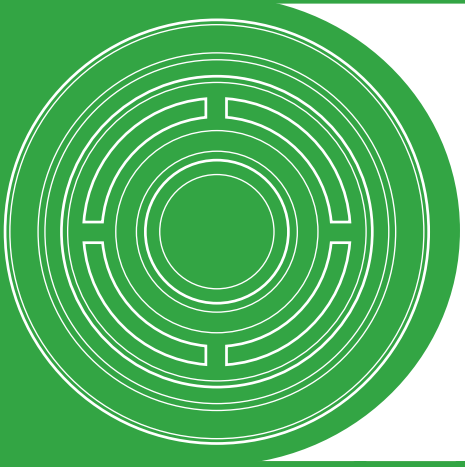
In total CJI made seven recommendations in its 2012 inspection report. This follow-up review indicates that three (43%) have been achieved and four partially achieved (57%). This represents satisfactory overall progress.

The important finding of this follow-up review is that the changes made across the justice system as a result of the successful implementation of the majority of the 2012 CJI recommendations (and in concert with other changes previously recommended by CJI¹²), contribute greatly to transforming the landscape for victims and witnesses. The position of victims within the justice system is now much more material and readily visible. The breadth of changes made – not only specifically to achieve compliance with the previous specific recommendations but also the surrounding landscape of the justice system – have the capacity to be transformational. Among these are the commitments shortly to be made statutory in the Victim Charter and the EU Directive referred to in Chapter 1. These provide notable levels of protection for victims. It is giving operational meaning and consistent implementation of the commitments while focussing on the outcome of victim satisfaction which will now become the challenge.

One of the foremost difficulties in consistent implementation of the change is the impact of austerity. Its effect on public services cannot be ignored. This means that both the agencies of the justice system and indeed CJI in its approach to inspection, must consider balancing the rights and expectations of victims and witnesses on the one hand with a proportionate response on the other. Consideration of the now existing protections, the PPS's own work on need, and the resource implications in the current financial climate is required. In the context of information on prosecution decisions, CJI believes the entitlements in the Victim Charter (see Appendix 1) set a clear, balanced and appropriate framework. Their full and uniform implementation must continue to be delivered.

It will be vitally important going forward that the PPS continues to preserve a sharp focus on maintaining high standards of care for victims and witnesses and, particularly in this context, providing access to information on its decisions in a timely way. This should ultimately have a positive effect not only on confidence in the justice system, but also in the confidence of victims and witnesses to come forward and support it in the future. Getting this wrong or permitting standards to drop will have the opposite and damaging effect of decreased confidence. The test going forward therefore is one of maintaining the gains through operational compliance and further increasing confidence in the face of other change.

¹² The care and treatment of victims and witnesses, CJI, December 2011 and The use of special measures in the criminal justice system in Northern Ireland, CJI, April 2012.



Appendix



Appendix 1

Extracts of Entitlements to Information on Prosecution Decisions contained in the Victims Charter (as at April 2015*)

Decision on prosecution

Where an investigation file has been sent to the Public Prosecution Service a decision will be made on whether or not someone will be prosecuted for the offence, based on the test for prosecution. A Public Prosecution Service lawyer can decide to prosecute, not prosecute or offer an alternative to prosecution.

Standard: Information on a decision to prosecute/not prosecute/alternatives to prosecution

In relation to prosecution decisions (including decisions on alternatives to prosecution) you are **entitled**:

- to ask the Public Prosecution Service to take your views into account when deciding whether to prosecute or give an alternative to prosecution;
- to be informed by the Victim and Witness Care Unit, as soon as possible (and at least within five working days), of a decision by the Public Prosecution Service to prosecute or not prosecute an alleged offender or offer an alternative to prosecution;
- to be informed by the Victim and Witness Care Unit of the reasons why a Public Prosecution Service lawyer has made a decision not to prosecute or offer an alternative to prosecution (except where the reasons are confidential), for example, that there is not enough evidence or it is not in the public interest to prosecute;
- in more serious cases, to be given detailed reasons from the Public Prosecution Service for the decision not to prosecute, through the Victim and Witness Care Unit;
- in all cases, to ask the Victim and Witness Care Unit for detailed reasons to be given to you for the Public Prosecution Service not to prosecute or to offer an alternative to prosecution; and
- to ask to meet with the Public Prosecution Service decision maker in the case.

If you do not understand or speak English you are **entitled**, on request, to have the relevant information translated into a language that you do understand.

If a decision is taken by the Public Prosecution Service not to prosecute or offer an alternative to prosecution, and you do not agree with this, you are **entitled** to:

- receive information from the Victim and Witness Care Unit on how you can ask for a review of the Public Prosecution Service decision;
- have the Public Prosecution Service review the decision, where you ask for this; and
- have the review completed by someone other than the person who took the original decision, where no additional evidence or information is provided. If additional evidence or information is provided the original prosecutor will consider the case.

* An updated Victim Charter was published immediately prior to the publication of this review in October 2015. Copies of the full document can be obtained from the PPS website - www.ppsni.gov.uk; the ni direct website - www.nidirect.gov.uk/victimcharter and the DoJ website - www.dojni.gov.uk.

If the Public Prosecution Service decides to prosecute, the case will go to court. You will usually only have to give evidence if this is necessary to prove the case, or should the defence or judge wish to ask you questions about any victim personal statement (see Section 3) that you make.

Changes to charges

In some cases a decision may be taken not to proceed with the original charge or to accept a plea to a less serious offence. This may happen, for example, if the available evidence has changed or a significant public interest consideration has arisen. When considering whether this should be done, the Public Prosecution Service will, whenever possible, and where you want this, explain to you why this is being considered and listen to your views. In some cases it may not always be possible to speak to you if issues have to be dealt with relatively quickly at court.

Where the charges against a defendant change you are **entitled** to have the Public Prosecution Service or the police (in some cases through the Victim and Witness Care Unit) inform you, where possible, and where you ask give you reasons, for any decision the Public Prosecution Service makes to:

- substantially alter a charge;
- discontinue all proceedings; or
- offer no evidence in all proceedings.

Where this occurs on the day of a court hearing or trial, prosecution counsel will try to advise you of this where it is possible to do so and where they are aware that you are at court.

Meetings with the Public Prosecution Service

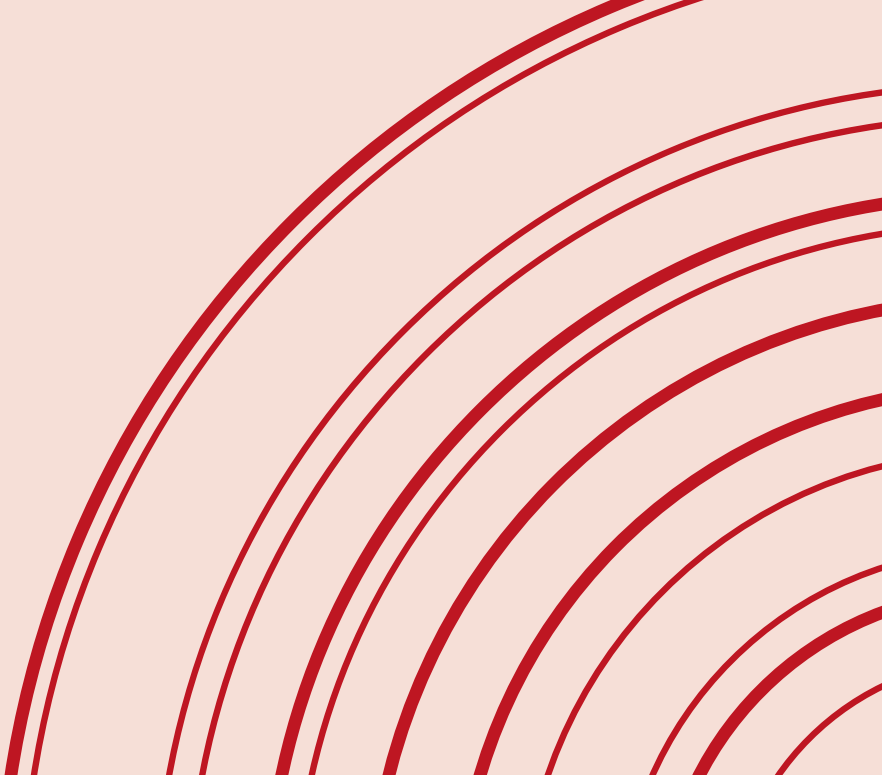
There may be occasions where you wish to receive additional information from the Public Prosecution Service. You are **entitled** to ask the Public Prosecution Service for a meeting:

- to discuss a Public Prosecution Service decision not to prosecute a suspect, where detailed reasons for this have been requested;
- to discuss a Public Prosecution Service decision to substantially alter a charge, discontinue all proceedings or offer no evidence in all proceedings;
- if a case results in an acquittal or a less serious charge.

While the Public Prosecution Service will try to meet with victims, where asked, the decision in each case will depend on the particular facts and circumstances of the case. You can also ask to meet the Public Prosecution Service prosecutor or barrister, who will be presenting the case in court, where you are to give evidence. This would normally take place on the day of the trial.

For serious and complex cases they will try to meet with you before the trial. Prosecutors are bound by strict legal rules and professional guidelines in relation to what they can and cannot discuss with victims and other witnesses in the case. Whilst each individual case depends on its own facts and circumstances there may be issues or matters relating to the case that the prosecutor cannot discuss with you before you have given evidence because of these rules.

A bereaved family member is also **entitled** to ask for a meeting with a prosecution representative at any point in the process.



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