

Criminal Justice Inspection
Northern Ireland
a better justice system for all



THE OPERATION OF
**BAIL AND
REMAND**
IN NORTHERN IRELAND

JANUARY 2023



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CONTENTS

List of abbreviations	3
Chief Inspector's Foreword	4
Executive summary	6
Recommendations	8
Inspection Report	
Chapter 1 Introduction	10
Chapter 2 Strategy and governance	14
Chapter 3 Delivery	19
Chapter 4 Outcomes	38
Appendices	
Appendix 1 Terms of Reference	50
Appendix 2 Methodology	54

LIST OF ABBREVIATIONS

CJI	Criminal Justice Inspection Northern Ireland
CJB	Criminal Justice Board
COVID-19	Official name issued by the World Health Organisation in 2020 for coronavirus
CTL	Custody Time Limit
DoJ	Department of Justice
GPS	Global Positioning System
HMCPSI	His Majesty's Crown Prosecution Service Inspectorate
HMICFRS	His Majesty's Inspectorate of Constabulary and Fire & Rescue Services
ICOS	Integrated Court Operations System (Courts)
JJC	Juvenile Justice Centre (Woodlands)
NIAO	Northern Ireland Audit Office
NICHE	Records management system used by the PSNI
NICTS	Northern Ireland Courts and Tribunals Service
NILC	Northern Ireland Law Commission
NIPS	Northern Ireland Prison Service
PACE	Police and Criminal Evidence (Northern Ireland) Order 1989
PPS	Public Prosecution Service for Northern Ireland
PSNI	Police Service of Northern Ireland
RUI	Released Under Investigation
STL	Statutory Time Limit
UK	United Kingdom
VAP	Violence Against the Person
YJA	Youth Justice Agency

CHIEF INSPECTOR'S FOREWORD

The current system of bail and remand in Northern Ireland is out of step with the rest of the United Kingdom. Legislation is disjointed, information is fragmented and in the absence of any alternatives, prison is too often the default revolving door. If there was ever a time to grip avoidable delay in our criminal justice system it is now, the pandemic has left a backlog of cases that need to progress to conclusion as soon as they can.

In Northern Ireland we have one of the highest rates for remanding in custody in Europe, double compared to England. Nearly 80% of all prison committals were remands and nearly 40% of our prison population are unsentenced prisoners.

This is our first inspection looking particularly at bail and remand and the evidence gathered and issues raised had familiar hallmarks from previous inspections. Time spent on police or Court Bail and remand in prison and case delay go hand in hand. Victims are kept waiting and are too often not kept informed of bail changes and case progression. Court lists and judicial, prosecutor and defence time and costs are spent dealing with recurring bail and remand extensions.

Of course, granting bail or remanding in custody at court is a judicial decision; focused on individual circumstances and balancing the need to protect victims, witnesses and the public with a defendant's rights to a fair trial and their case being dealt with in a reasonable time. But Judges need to be supported with accurate and timely information from

prosecutors and defence representatives to inform decisions and enable effective case management.

Given the historic delays in the criminal justice system it was no surprise that our prisons had too many people on remand in them for too long. Conversely, too many defendants were in and out of prison in a few days after a bail address was found, creating frequent churn in the prison population. Those convicted and released 'time served' missed opportunities to meaningfully address their offending behaviour and reduce risks of reoffending. Their victims feel let down and can see no punitive element when defendants are released from court or shortly after.

Custody time limits and statutory time limits to encourage case progression and disposal have been in place in other jurisdictions with mixed success. There has not been much appetite for them in Northern Ireland, but it might be timely to revisit that option and find time limits that create momentum, foster quality and enable better case progression. Committal reform should help but more tools are needed.

Better data and better use of management information is a recurring theme in many of our inspections and this one was no different. Information we asked for was not routinely produced as it is in other jurisdictions. Gaps in readily available information and analysis to inform decision making and resource demands needs to be addressed.

The recommendations in this report yet again press for legislative reform to meet the needs of our criminal justice system today and tomorrow. We all know to achieve this we need a legislature and a place on a legislative programme. How this is achieved is no mean feat nor possibly attractive for any Minister of Justice to deliver, however, I hope we have one again soon to ensure their legislative priorities include the reform of bail and remand.

This inspection was led by James Corrigan, Deputy Chief Inspector, supported by David MacAnulty and Rachel Lindsay. I am grateful to them and all who contributed to their work, particularly the Police Service of Northern Ireland, the Public Prosecution Service for Northern Ireland and the Northern Ireland Prison Service. I also want to thank NIACRO for facilitating interviews with those who had spent time on bail and remand.

Jacqui Durkin

Chief Inspector of Criminal Justice
in Northern Ireland

January 2023



EXECUTIVE SUMMARY

The operation of bail constitutes an essential part of the criminal justice system as police, prosecutors and the courts progress criminal cases, balancing the needs of victims and witnesses and the safety of the public with the rights of defendants. When bail is denied or not achievable, defendants can be remanded into a place of detention at a police station, prison or the Woodlands Juvenile Justice Centre for children.

There are three types of bail subject to legislation in the Police and Criminal Evidence (Northern Ireland) Order 1989. Street Bail has been used by the Police Service of Northern Ireland to deal with lower-level offending when suspects are not required to immediately attend a police station. It was more widely used during the COVID-19 pandemic, helping to manage the risk of infection, though there is now a need for the police to better understand its use and impacts, particularly for timely investigations and effective communication with victims.

Pre-charge bail has been used by the Police Service of Northern Ireland to release defendants with conditions while investigations are advanced and decisions on charges are considered. A Service Instruction was published in 2019, which outlined legislative responsibilities including time limits, extensions and review arrangements. Unlike England and Wales, police bail has not been the subject of any significant review, consultations or legislative changes in recent years, though the challenges and concerns are equal if not more evident, most particularly with regard to avoidable delays. Criminal Justice Inspection Northern Ireland (CJI)

has recommended that the Police Service of Northern Ireland should establish greater central oversight of bail, supported by improved management information. Existing legislative time limits, especially reviews after 28 days, have become irrelevant leading to non-compliance and multiple extensions often in the absence of any reviews of evidence. There is a need to learn from the recent experiences of England and Wales and consider options that can enable as well as respond to change.

After a defendant has been charged, they can be bailed or remanded into detention in advance of a court hearing. The COVID-19 pandemic led to new ways of working and innovations to ensure the administration of justice, one of which was the use of remote court hearings with live links between police custody and the courts for most bail hearings. Recovering from the COVID-19 pandemic and dealing with the backlog of cases will require such innovation and risk taking, including using cross justice planning arrangements to effectively manage emerging issues - one area for attention from this inspection was the need to review future custody arrangements operated by the Police

Service of Northern Ireland, the Northern Ireland Courts and Tribunals Service and the Northern Ireland Prison Service for those awaiting a first bail hearing and then either released on bail or remanded into prison detention.

A Bail Act for Northern Ireland, which was first recommended by the Northern Ireland Law Commission in 2012, would provide greater certainty and consistency to bail law while also providing an opportunity for wider engagement and consultation on possible legislative changes. Accepting the competing legislative priorities, the Department of Justice should go beyond what has been proposed for children and commence a public consultation on a new Bail Act in the next Northern Ireland Assembly mandate. In the interim, the Public Prosecution Service for Northern Ireland should update its legal guidance on bail decisions.

The increasing use of remand has been evident from recent data published by the Northern Ireland Prison Service which showed that 37% of all prisoners were unsentenced in 2021-22, which was much higher than England and Wales (16.5%) and other similar jurisdictions. The overall trend has been upwards since 2014-15 with an additional spike during the COVID-19 pandemic and a big increase for females in 2021-22. Remand prisoners accounted for 78% of all committals into custody in 2021-22. In February 2022, 73% of the total prison population had spent some time on remand with 25% of all prisoners on remand for over six months, 15% over one year and 5% over two years. The average daily remand population in the Woodlands Juvenile Justice Centre has increased from 65% in 2016-17 to 86% in 2020-21.

A significant proportion of remand committals have not resulted in an imprisonment disposal - it has fallen from 66% in 2013 to 56% in 2016 and 53% in 2020. Suspended custodial and more community sentences and monetary penalties were evident from the data supplied to Inspectors. For those on remand for longer than six months, the imprisonment rate was around 20%. As more prisoners have been held for longer on remand, there is a trend emerging to show less use of discharged 'time served' (27% in 2020) and more released from prison on bail (63% in 2020) which reflects the longer delays in the criminal justice system.

A remand incentive was found for some defendants who could discount their sentence by time spent on remand and were not required to participate in prison-based behaviour programmes. Finding a way for more remand prisoners to participate in these programmes should be a priority in the context of strategic priorities on rehabilitation and resettlement. This has been raised in CJI prison inspections, though solutions need wider input from criminal justice and education.

There is a need for the criminal justice system to establish governance and delivery arrangements to reduce the overall use of remand, be informed by improved management information, progress alternatives to remand and consider new and amended legislative options. Changes to bail and remand can help in the delivery of key outcomes such as reducing avoidable delay, lowering re-offending rates and having less crime and fewer victims. The longer-term benefits, both monetary and in terms of better outcomes, are significant.

RECOMMENDATIONS

STRATEGIC RECOMMENDATIONS

STRATEGIC RECOMMENDATION 1

The Department of Justice should undertake a public consultation on a Bail Act in the next Northern Ireland Assembly mandate.

(paragraph 2.17)

STRATEGIC RECOMMENDATION 2

The Department of Justice and the Police Service of Northern Ireland should develop an options paper for police bail to include the use of time limits, scrutiny arrangements and enhanced protections for victims and witnesses.

(paragraph 3.16)

STRATEGIC RECOMMENDATION 3

The Department of Justice, in conjunction with the relevant Criminal Justice System organisations, should immediately utilise and expand current cross justice planning arrangements for criminal Courts recovery to co-ordinate the development of a Joint Plan for managing detainees held in police custody awaiting first Court appearance.

(paragraph 3.31)

STRATEGIC RECOMMENDATION 4

The Criminal Justice Board should commission the Criminal Justice Improvement Group to establish governance and delivery arrangements for bail and remand. This should include:

- updating the terms of reference for the Remand Working Group with reference to the findings and recommendations of this inspection report;
- establishing improved management information for bail and remand, including more published data and analysis;
- developing a plan to reduce the use of remand to include progressing projects on electronic monitoring and bail support schemes; and
- considering new legislation and amendments.

(paragraph 4.37)

OPERATIONAL RECOMMENDATIONS

OPERATIONAL RECOMMENDATION 1

The Police Service of Northern Ireland should review its use of Street Bail within one year of publication of this report.

(paragraph 3.7)

OPERATIONAL RECOMMENDATION 2

The Police Service of Northern Ireland should establish greater oversight and analysis of police bail including the automated use of management information derived from NICHE. This should be in place six months after the publication of this report.

(paragraph 3.15)

OPERATIONAL RECOMMENDATION 3

The Public Prosecution Service for Northern Ireland should update its legal guidance on bail decisions.

(paragraph 3.33)

CHAPTER 1: INTRODUCTION

BACKGROUND

- 1.1 The effective operation of bail and remand is critical to the functioning of the criminal justice system in that it serves the dual purpose of protecting the rights of defendants¹ as well as supporting Government priorities of a safer society through reducing crime and rates of reoffending.
 - 1.2 There are many laws, policies and processes to direct and guide the operation of bail and remand, that require significant staffing and financial resources from across the criminal justice system.² Policing, prosecution, the courts, probation, youth services and the prisons each have a delivery responsibility but are also impacted by the decisions of others on the granting of bail and remanding defendants into custody. Defence practitioners represent the interests of defendants who are the users of these services. Victims and witnesses are also directly impacted by these decisions and wider public confidence in the justice system has often been tested by high profile cases, particularly when serious offences are committed on bail.
 - 1.3 The popular response has often been to support remand over bail. On other occasions, there are concerns that civil liberties, including the principle of innocence until proved guilty, which has been a cornerstone of the justice system for centuries, can be eroded when people are remanded in prison for long periods prior to the conclusion of their case. Delay is a widely acknowledged and pre-existing persistent feature in the Northern Ireland criminal justice system. The longer delays to case progression, as a result of COVID-19, has put a spotlight on remand times in particular and how Northern Ireland compares to its neighbouring jurisdictions.
- This Inspection**
- 1.4 As a result of COVID-19 restrictions and in line with public health requirements, the majority of the fieldwork for this inspection was completed in 2021 by video or telephone calls. The fieldwork used a qualitative approach with CJI Inspectors completing face-to-face individual or focus group interviews with people from across the main criminal justice organisations. This was augmented by self-assessments, documentation and data provided by the main inspected organisations.

1 The term defendant is used to refer to people who are suspects during an ongoing investigation, defendants appearing before a court under the terms of their bail conditions or defendants detained on remand.

2 The Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) provides the legislative basis for important elements of bail and detention.

Inspectors also spoke with, and received testimonies from people who were recently on bail and/or held on remand as well as meeting with stakeholder organisations with an interest in this area. Inspectors are confident that the work undertaken has provided a sufficient overview to allow an informative Inspection Report. Further details on the methodology used and organisations and individuals consulted can be found in Appendix 2.

Bail

- 1.5 There is a general right to bail for all persons accused of offences or awaiting trial, subject to the powers of the police and the Courts to refuse bail. There are four types of bail in use in Northern Ireland.
- 1.6 **Street Bail** is where a defendant can be granted bail by the arresting Police Officer prior to attending the police station. The police cannot set conditions with Street Bail, other than to request attendance at the police station when required and the defendant may be able to attend for voluntary interview. It is intended to be used for less serious offences and where the arresting Police Officer is satisfied that the identity of the defendant can be verified and that they will answer bail at the police station. The option of using Street Bail, instead of immediately taking a suspect to the police station, helped the Police Service of Northern Ireland (PSNI) to better manage the number of people in police custody suites during the COVID-19 pandemic.
- 1.7 **Pre-charge** or investigatory bail allows the police to release a suspect from custody, usually subject to conditions, while Police Officers continue their investigation or await a charging decision. The conditions of bail should be necessary, justifiable and proportionate, especially as there is no fixed limit as to how long a suspect can be on this type of bail as this often depends on the type and complexity of additional evidence sought by the police such as interviews, closed-circuit television (CCTV) and mobile phones. The most common bail conditions set by the police relate to living at a particular address, not contacting certain people and reporting to a police station at certain times.
- 1.8 **Post-charge** bail applies where a person has been charged to appear at court sometime within 28 days of being charged. The setting of bail conditions by the police should consider whether they are necessary, justifiable and proportionate. When a breach of post-charge bail is detected, the suspect can be arrested and taken to the next available court.
- 1.9 **Court Bail** is granted by the Courts following a hearing and after Public Prosecution Service for Northern Ireland (PPS) and defence representations. There are two clear options available to the Court in advance of when a case can be heard – to release a suspect on bail with conditions or to remand them into detention which can be prison for adults or the Woodlands Juvenile Justice Centre (JJC) for children. In some cases, the defendant may have been in overnight police custody.

If bail is refused, a defendant can apply to the High Court. A major difference between post-charge bail and Court Bail is that additional conditions can be imposed by the Court. If these conditions are breached, a defendant can be arrested and remanded into detention.

Remand

- 1.10 When bail is denied by the court or cannot be perfected (that is, conditions are not completed) by the defendant and where there are breaches of conditions, a person will normally be remanded into detention. While someone can be remanded on bail, the term is used exclusively for those in detention for the purposes of this report. Pre-trial detention is subject to safeguards and restrictions that are overseen by the Courts starting in the Magistrates' Courts (adult and youth) and continuing with the High Court and the Crown Court (for defendants committed there). While there is a presumption of bail for all defendants, remand will be considered if a defendant is likely to commit a serious crime, interfere with the investigation or witnesses, or likely to not attend the trial. Time spent on remand counts towards any eventual custodial sentence.

Relevant CJI Inspection Reports

- 1.11 The subject of bail and remand has not been a theme of a previous CJI inspection though other organisational and thematic inspections have covered aspects of bail and remand.
- 1.12 Inspections on *Avoidable Delay*³ have documented the challenges of progressing cases from the initial police investigation through to the prosecution and the Court stages. Many defendants are often on police and Court Bail or remanded in prison detention as their cases move through the criminal justice system. A CJI inspection of *File Quality and Disclosure*⁴ in 2015 recommended that the PSNI and the PPS should develop the Working Together approach to speed up the progression of proportionate and high-quality case files. A joint Prosecution Team was tasked with developing improved bail management, including investigative bail management rules. A full CJI inspection, including assessing progress against these recommendations has been conducted in 2022, with publication planned after this report.

3 CJI has published three separate reports on Avoidable Delay in 2006, 2010 and 2012. All are available on the CJI website at: <http://www.cjini.org/TheInspections/Inspection-Reports>

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

- 1.13 Public protection inspections examining Sexual Violence⁵, Public Protection Arrangements⁶ and Domestic Violence⁷ found negative impacts of delays for victims and witnesses, which in turn contributed to adverse case outcomes and damage to public confidence in the administration of justice. For defendants, charges of serious sexual offences can often result in long periods in prison on remand while cases progress at Court. For bail applicants, the difficulties of obtaining a place in an Approved Premise was highlighted by CJI in 2019. Victims of sexual and domestic violence referred to concerns about defendants reoffending on bail.
- 1.14 Successive prison inspections as well as those on Resettlement⁸ and the Safety of Prisoners⁹ have reported on the high number of prisoners on remand and the challenges of providing prison-based behaviour programmes aligned with their strategies for rehabilitation and resettlement. These reports found that there was limited scope for the Northern Ireland Prison Service (NIPS) to work with people who had not been convicted of a crime and also that remand prisoners were found to have higher rates of self-harm. An inspection of the JJC found that it was used too often as a place of safety because there were no available alternatives and children remained in custody because a suitable bail address was not available.¹⁰
- 1.15 A CJI inspection of Police Custody, which was published in 2020, focused on the strategic management of police custody including the treatment of detainees as decisions on investigations and bail were made. Inspectors recommended that the Department of Justice (DoJ) should implement longstanding Northern Ireland Law Commission¹¹ (NILC) recommendations on the right to bail for children and young people and make provisions for alternative accommodation for children to minimise use of detention. The report stated that a Bail Act for Northern Ireland, or an alternative legislative mechanism, was necessary and long overdue.
- 1.16 An inspection of Court Custody¹², which was conducted in 2021 and published in March 2022 found that the quality of Court custody areas in some courthouses was not fit for purpose, though COVID-19 restrictions had led to reduced usage as a result of many defendants having video links with the Court from police custody.

5 CJI, *Without Witness Public Protection Inspection 1: A thematic inspection of the handling of sexual violence and abuse cases by the Criminal Justice System in Northern Ireland*, November 2018, available at:

<http://www.cjini.org/TheInspections/Inspection-Reports/2018/October-December/Sexual-Violence>

6 CJI, *Lawful Duty Public Protection Inspection III: A thematic inspection of the public protection arrangements Northern Ireland*, October 2019, available at:

<http://www.cjini.org/TheInspections/Inspection-Reports/2019/October-December/PPANI>

7 CJI, *No Excuse: Public Protection Inspection 11, A thematic inspection of the handling of domestic violence and abuse cases by the Criminal Justice System in Northern Ireland*, June 2019, available at:

<http://www.cjini.org/TheInspections/Inspection-Reports/2019/April-June/Domestic-Violence>

8 CJI, *Resettlement: An inspection of resettlement in the Northern Ireland Prison Service*, May 2018, available at:

<http://www.cjini.org/TheInspections/Inspection-Reports/2018/April-June/Resettlement>

9 CJI, *The Safety of Prisoners held by the Northern Ireland Prison Service*, November 2019, available at:

<http://www.cjini.org/TheInspections/Inspection-Reports/2019/October-December/The-Safety-of-Prisoners>

10 CJI, *An announced inspection of Woodlands Juvenile Justice Centre*, September 2022, available at:

<http://www.cjini.org/TheInspections/Inspection-Reports/2022/July-Sept/Woodlands-JJC-2022>

11 Northern Ireland Law Commission, *Report Bail in Criminal Proceedings*, September 2012, available at:

www.nilawcommission.gov.uk/32432_-_bail_report_nilc14__2012_.pdf

12 CJI, *Court Custody: The detention of persons in the custody of the Court in Northern Ireland*, March 2022, available at:

<http://www.cjini.org/TheInspections/Inspection-Reports/2022/Jan-Mar/Court-Custody-2022>

CHAPTER 2: **STRATEGY AND GOVERNANCE**

System wide Strategy

- 2.1 The most recent *Draft Programme for Government*¹³ set a vision of improving wellbeing for all by focusing on outcomes – the one with most relevance to criminal justice is ‘we have a safe community where we respect the law, and each other’. Three of the relevant indicators for success are a reduction in the percentage of the population who were victims of any Northern Ireland Crime Survey crime, a reduction in the average time taken to complete criminal cases and a lower reoffending rate.
- 2.2 The strategic priorities of the criminal justice system have been focused on reducing harm and rates of reoffending, improving service to users (particularly to victims following a number of critical reports) and attempting to increase effectiveness and efficiency through initiatives such as reducing avoidable delay, reform of committal proceedings, Working Together and Problem Solving Justice. The operation of bail and remand has not explicitly featured within any of the strategic priorities nor has it been a specific aim of any of the above initiatives.
- 2.3 A progress report published by The Executive Office in 2018, that included a section compiled by the DoJ, did not refer to bail or remand though it was evident that measures focused on the mental health of offenders or improving the employability of prisoners when they leave the criminal justice system would link into the operation of bail and remand. Likewise, reducing the percentage of people who are victims of a crime by initiatives such as Problem Solving Justice or by tackling the cycle of reoffending has implications for how bail and remand is delivered.
- 2.4 The DoJ *Corporate and Business Plan*¹⁴ outlined five priority work areas:
- Support Safe and Resilient Communities;
 - Address Harm and Vulnerability;
 - Challenge Offending Behaviours and Support Rehabilitation;
 - Deliver an Effective Justice System; and
 - Secure Confidence in the Justice System.

13 Northern Ireland Executive, *Draft Programme for Government Framework 2016-21*, available at:

<https://www.northernireland.gov.uk/sites/default/files/consultations/newnigov/draft-pfg-framework-2016-21.pdf>

14 Department of Justice, *Corporate Plan 2019-22 and Business Plan 2021-22*, available at:

<https://www.justice-ni.gov.uk/sites/default/files/publications/justice/doj-business-plan-april-21.pdf>

- 2.5 The Ministerial Foreword to the draft DoJ Business Plan for 2021-22 restates these policy priorities while also setting a target of recovering the justice system from the impacts of the COVID-19 pandemic and delivering a number of innovative ways of doing business in the future. The subsequent Northern Ireland Executive Recovery Plan from the pandemic, published in late 2021 placed a strong emphasis on vulnerability with implications for defendants as well as victims of crime.
- 2.6 The need to tackle delays in the processing of criminal cases has been one of the most challenging and long standing issues for the criminal justice system. Avoidable delays have placed pressures across all aspects of the administration of justice and served to undermine public confidence. These negative impacts have been reported in a series of CJI reports, reports from the Northern Ireland Audit Office and the Public Accounts Committee as well as the Gillen Review. Each report has provided evidence of long police investigations, slow decision making and cases not ready to proceed at Court with resulting adjournments and negative experiences for victims and witnesses as well as defendants. Official published data for 2020-21 showed large increased median times from when an incident was reported to the police to disposal in the Crown Court, Magistrates' Courts and Youth Courts.¹⁵ The average time taken for a charge case to be dealt with at Crown Court in 2020-21 was 470 days, an increase of 14.6% from 2019-20. Crown Court and Magistrates' Court Bulletins as well as Judicial Statistics have also demonstrated the trends in Court business as well as the impacts of the COVID-19 pandemic.
- 2.7 Attention has focused on how bail and remand has been impacted by delays, however there is also a need to consider how the operation of bail and remand could enable change and deliver improvements in case progression as well as better outcomes for defendants and victims and witnesses.

The legal framework

- 2.8 The prohibition of prolonged detention without charge, habeas corpus, was first introduced in England about a century after the 1215 Magna Carta and has formed a central tenet of criminal justice systems over the centuries. It is founded on the view that holding someone in detention in custody pending trial can cause major hardship and it is preferable to release on bail as many accused persons as possible pending trial. The presumption in favour of bail is underpinned by Article 5 (right to liberty), Article 6.1 (fair criminal trial) and Article 6.2 (presumption of innocence) of the European Convention on Human Rights (ECHR).¹⁶

15 Northern Ireland Statistics and Research Agency (NISRA) and DoJ, *Case processing time for criminal cases dealt with at Courts in Northern Ireland 2020-21, September 2021*, available at: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/case%20processing%20times%20202021.pdf>

16 Council of Europe, *Convention for the protection of human rights and fundamental freedoms, 1950*, available at: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=005>

- 2.9 Many legal jurisdictions had brought these statutory laws together in the form of a Bail Act – England and Wales had a Bail Act since 1976 and there is one in the Republic of Ireland since 1997.¹⁷ The introduction of a Bail Act has not only brought existing legislation together, it has also provided opportunities to amend existing legislation and introduce new laws and often coincides with a wider public consultation and debate on the purpose and expectations of the bail system. This was the case in the Republic of Ireland when the 1997 Act provided for ‘preventative justice’ where a Court can refuse the application for bail where a serious offence has been committed if it is satisfied that such refusal is reasonably considered necessary to prevent the commission of another serious offence.
- 2.10 The NILC Report - *Bail in Criminal Proceedings 2012* found that bail law and practice was beset by complexity, inconsistency and uncertainty and also acknowledged that the operation of bail was impeded by the lack of a Bail Act¹⁸. The foreword to the report stated that there was ‘a patchwork quilt of statutory sources, married with the exercise of the inherent jurisdiction of the High Court. This is considered unsatisfactory, given the substantial importance of bail in the context of the administration of criminal justice and the relatively intense degree of public interest and concern which this subject routinely generates’.
- 2.11 The NILC Report made a number of recommendations including the need for the inclusion in bail legislation of a general right to bail for all persons accused of offences or awaiting trial, subject to the powers of the police and the Courts to refuse bail. The DoJ at the time conducted a public consultation and indicated that it expected that bail legislation, based on the Commission’s recommendations, would be introduced in the Northern Ireland Assembly in 2016. That has not happened, due in large part to the collapse of the Northern Ireland Assembly in January 2017, though it is also acknowledged by DoJ officials that other legislative priorities took precedence.
- 2.12 The DoJ did commit to bringing forward legislation in relation to the operation of bail for children. That need was outlined in the Youth Justice Review published in 2011, which called for a focus on reducing the number of children held on remand. CJI assessed progress on the implementation of the Youth Justice Review recommendations¹⁹ in 2015 and found that a recommendation on the ‘development of an appropriate range of supported (and if necessary secure) accommodation, accessible at short notice, to reduce to an absolute minimum the use of the JJC as a place of safety under the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) pending a court appearance, had not been achieved, and that there was work required to ensure that ‘Looked After Children’, or children in care of Social Services should not have higher rates of remand compared to children in the general population’.

17 Office of the Attorney General, *Bail Act, 1997*, available at:

<https://www.irishstatutebook.ie/eli/1997/act/16/enacted/en/print.html>

18 Northern Ireland Law Commission, *Report Bail in Criminal Proceedings, September 2012*, available at:

www.nilawcommission.gov.uk/32432_-_bail_report_nilc14__2012_.pdf

19 CJI, *Monitoring of progress on implementation of the Youth Justice Review recommendations, December 2015*, available at:

<http://www.cjini.org/TheInspections/Inspection-Reports/2015/October---December/Youth-Justice-Review-test>

- 2.13 In 2020 the Children’s Law Centre reported that some children were detained at Woodlands JJC due to lack of alternative accommodation and some were held on remand because they had breached unachievable bail conditions or were unable to perfect bail due to being homeless, despite the duty of Health and Social Care Trusts to provide such children with suitable accommodation. In the most recent CJI inspection, the Chief Inspector commented that the JJC was *‘still being used too often as a place of safety because there are no available alternatives and children remain in custody because a suitable bail address isn’t available.’*²⁰
- 2.14 The CJI Police Custody inspection report, published in 2020, recommended that *‘the Department of Justice should prioritise and secure support for required legislative reform to:*
- *implement longstanding Northern Ireland Law Commission recommendations on the right to bail for children and young people; and*
 - *make changes to the Police and Criminal Evidence (Northern Ireland) Order 1989 which make provisions for alternative accommodation for children charged with an offence and provide clarity for Custody Officers on the detention of children and young people’.*
- 2.15 Specific and planned provisions for bail and remand for children are intended to:
- strengthen the existing presumption of bail for children, through the introduction of a statutory right to bail;
 - introduce unconditional bail as standard and a requirement that any conditions applied should be proportionate and necessary; and
 - introduce specific conditions which must be met before a child can be remanded into custody, and for how long.
- 2.16 The DoJ intends to include legislative reforms in a next Northern Ireland Assembly mandate as outlined in its Strategic Framework for Youth Justice²¹, published by the DoJ and Youth Justice Agency (YJA) in 2022. It reaffirmed the core principle that a child should only ever be placed in custody as a last resort but also recognised that the legislative presumption in favour of bail for children was not operating in practice for a number of children. There was a commitment to improve existing arrangements for bail and remand for children through amendments to primary legislation and to consider alternative community arrangements for place of safety admissions in partnership with the Department of Health.²²

20 CJI, *An announced inspection of Woodlands Juvenile Justice Centre, September 2022*, available at <http://www.cjini.org/TheInspections/Inspection-Reports/2022/July-Sept/Woodlands-JJC-2022>

21 DoJ and YJA, *A Strategic Framework for Youth Justice 2022-27*, March 2022, available at: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/strategic%20framework%20for%20youth%20justice.pdf>

22 Since fieldwork was completed, the two Ministers for Justice and Health have provided an update on their plans including best use of the Woodlands Juvenile Justice Centre.

2.17 The proposed legislative provisions for children are welcome and should also provide an opportunity to consider more ambitious and wide ranging reforms to bail for all defendants. Preparing for the introduction of a Bail Act, along the lines proposed by the NILC, would not only consolidate and simplify the legislation but also allow for a wider public debate on achieving best outcomes. Inspectors heard significant support for a Bail Act from practitioners and stakeholders during this inspection.

STRATEGIC RECOMMENDATION 1

The Department of Justice should undertake a public consultation on a Bail Act in the next Northern Ireland Assembly mandate.

CHAPTER 3: DELIVERY

Police Bail

- 3.1 The PSNI is responsible for granting bail in accordance with Articles 38, 39 and 48 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), as well as PACE Code of Practice C. The aim of PACE is to establish a balance between the powers of the police and the rights and freedoms of the public. There is a presumption in favour of bail and where police believe it necessary to deny bail, there are criteria included in PACE that must be taken into account.
- 3.2 The PSNI operational responsibility for bail rests primarily with police custody functions within District Policing Command with Custody Sergeants making most decisions on whether bail is granted, authorisation of the initial 28 days, setting of bail conditions and management of people attending to sign their bail. Alongside the bail process, local Police Officers monitor and manage breaches in the community while Investigating Officers conduct further enquiries and prepare cases for a charge or reporting before submission to the PPS. Repeat Offender Units are also involved in monitoring higher risk people including making arrests where necessary.
- 3.3 The PSNI reviewed and reissued a bespoke Service Procedure for bail in March 2019, which outlines its core responsibilities and authorities. This instruction also outlined the approach to monitoring those persons who have been released on bail, whether by the police or a Court, with conditions imposed. An amended version of the Service Procedure was published on the PSNI website in August 2022.²³

Street Bail

- 3.4 The use of Street Bail, as an alternative to immediately bringing defendants to police custody, has been relatively non-contentious when it has been confined to low level offending and where defendants later comply with attending the police station as requested. It has also provided some additional flexibility to Police Officers and given them the discretion to tailor their response to specific needs of people such as those with childcare responsibilities.
- 3.5 Like other forms of police discretion, there are risks which need to be understood and managed which requires monitoring and corporate oversight of its operation. The NILC 2012 report stated that powers to grant bail elsewhere than at a police station should be repealed. Some PSNI Custody Sergeants and Inspectors told CJI during this inspection of their concern that it could be over-used and that alternative investigation approaches could have been used such as the established practice of voluntary attendance for interview at the police station.

²³ PSNI, *Service Instruction SI0219: Bail, 24/08/2022*, available at: <https://www.psnipolice.uk/sites/default/files/2022-10/Bail%20%2024%20August%202022.pdf>

- 3.6 The PSNI were unable to provide CJI with data on the frequency of the use of Street Bail, though CJI found that it was infrequently used during its Police Custody inspection in 2020. Since 2020, Police Officers in various Districts told CJI Inspectors that it was used more often, especially at times during the COVID-19 pandemic when custody suites were full. People are still required to attend police stations for Street Bail slots leading to additional pressures according to Custody Sergeants. Sergeants stated that they didn't know how many people were coming to stations as electronic diaries can't keep slots for Street Bail and double or triple appointments were happening. They suggested that a mini-custody record for Street Bail might be necessary to better monitor and manage those on Street Bail.
- 3.7 The lack of corporate oversight of Street Bail, including data on its use and impacts, does require more attention from the PSNI and a project to review its use should be undertaken within the next 12 months. A review should include consideration of whether it improves the timeliness of police investigations and any implications for communication with victims and witnesses.

OPERATIONAL RECOMMENDATION 1

The Police Service of Northern Ireland should review its use of Street Bail within one year of publication of this report.

Pre-Charge Bail

- 3.8 Pre-charge bail allows police to release a suspect from custody, subject to conditions, while Police Officers continue their investigation or await a charging decision. The PSNI Service Instruction provides clear guidance on what factors should be considered by the Custody Sergeant in setting and monitoring bail. A first period of bail should be a maximum of 28 days and the Instruction is that it should be proportionate and if there is a requirement to re-bail or extend bail for matters where evidence is readily available, this should be reviewed by an Inspector.
- 3.9 The PSNI had an authorisation process in place for police bail extensions with approval by an Inspector at the 28 days and three month limits. Extensions beyond six months require the approval of a Superintendent. These are minimum authority levels, although ranks may be exceeded. A decision on an extension is based on a review of '*readily available evidence*'. The practice however has been that little or no readily available evidence is available to review, particularly when it relates to computers, mobile phones and some types of drugs which were taking six months to one year to obtain. The six month limit was more readily applied in less serious summary cases, when cases can become statute barred (unable to proceed) and where more monitoring is undertaken by the PSNI and the PPS.

- 3.10 Custody Sergeants and Officers across the PSNI regions told Inspectors that it was increasingly rare to find cases that are ready to proceed within the 28 days limit. Extensions have become normal with Officers frequently using the term ‘waiting on forensics’ or ‘awaiting medical evidence’ to seek longer periods of police bail. A consistent view from practitioners and defendants was that the restrictions caused by the COVID-19 pandemic had placed more reliance on bail as investigations and case progression took longer.
- 3.11 The use of pre-charge bail in England and Wales has been the subject of consultations, reviews and new legislation since 2017 when the need for change followed concerns that extended bail times were used too frequently, with negative impacts, particularly when defendants were not subsequently charged. New legislation incorporating a ‘presumption against the use of police bail’ in favour of defendants ‘Released Under Investigation’ (RUI) was introduced and delivered by police forces.
- 3.12 A joint inspection by His Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) with support from His Majesty’s Crown Prosecution Service Inspectorate (HMCPSI) found that RUI had increased delays, due in part to investigations subject to less scrutiny and that victims were less protected without bail conditions.²⁴ By August 2022 the Home Office had issued a policy paper proposing a new Act to remove the perceived presumption against pre-charge bail and introducing greater protections for victims and witnesses.²⁵ The Act has extended time limits for the use of police bail with custody officers able to authorise the first period of pre-charge bail to a period of three months and further extensions will require approval of an officer of the rank of Inspector or above to six months, and a Superintendent or above will need to authorise any extension to nine months. Judicial approval will then be sought to extend beyond nine months. It was a recognition that existing time limits were not achievable, but also the need for more scrutiny of how it operated and its impacts for victims and witnesses as well as for defendants.
- 3.13 There are many lessons for Northern Ireland in terms of framing new legislation as well as the PSNI responses to measuring the effectiveness of current arrangements. Lack of information and data on police bail, which was very evident to Inspectors during this inspection, makes any assessment of performance very problematic. There was interview evidence from Police Officers across Districts and defence solicitors that the numbers on police bail were high (no overall figure was available), multiple bail extensions beyond 28 days was commonly used with lower levels of scrutiny compared to England and Wales and there was insufficient knowledge of impacts for defendants (for example, numbers not charged after police bail) and victims (such as effectiveness of notification of bail conditions and breaches).

24 HMCPSCI and HMICFRS, *Pre-charge bail and released under investigation: Striking a balance*, December 2020, available at: <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/pre-charge-bail-and-released-under-investigation-striking-a-balance-1.pdf>

25 UK Government Home Office, *Pre-charge bail: Police, Crime, Sentencing and Courts Act 2022 factsheet*, Updated 20 August 2022, available at: <https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-factsheets/police-crime-sentencing-and-courts-bill-2021-pre-charge-bail-factsheet>

3.14 A starting point is the need for better data and information to inform decision making on police bail. HMICFRS found that most forces in their inspection had well-established recording systems for bail and had a clear picture of the numbers of people on bail. CJI Inspectors received data from individual police stations such as Musgrave in Belfast which had over 1,000 defendants on police bail during 2021. But PSNI-wide data on the numbers of those on police bail, average times spent on bail and number of extensions granted could not be obtained. A separate CJI inspection on Police Custody in 2020, which examined a sample of 100 custody records showed that over one third (34%) were given police bail pending further investigation, while an additional 4% were transferred to Court for a breach of bail (Table 1).²⁶ PSNI management information provided by the Chief Constable to the Northern Ireland Policing Board in March 2022 showed 1,912 arrests were processed through custody suites in January 2022.²⁷

Table 1: Recorded disposals in custody record analysis*

Disposal	Overall	
	No.	%
Charged, refused bail	16	12
Charged and released to attend Court	21	16
Police bail pending further investigation	46	34
Released with view to report to PPS	36	27
Released unconditionally	3	2
Transferred to Court - breach of bail	5	4
Transferred to JJC	1	1
Transferred to prison	1	1
Community resolution	4	3
Other	1	1
Total	134	
Detention not authorised	3	

*Where totals add to more than 100% this is due to rounding issues.

Source: CJI, Police Custody: The detention of persons in police custody in Northern Ireland, September 2020.

3.15 The PSNI NICHE Records Management System is the primary source of individual bail records but feedback from many Police Officers was that extracting this information was often difficult and time-consuming. Doing manual searches of police incident numbers and occurrences and extracting relevant information to inform decisions on bail conditions and breaches was challenging, especially in a busy police custody suite. Officers in the PSNI Public Protection Unit told

26 CJI, *Police Custody: The detention of persons in police custody in Northern Ireland, September 2020*, available at: <http://www.cjini.org/TheInspections/Inspection-Reports/2020/July-September/Police-Custody>

27 PSNI, *Chief Constable's Accountability Report to the Northern Ireland Policing Board, March 2022*, available at: <https://www.nipolicingboard.org.uk/publications-search>

Inspectors that more accessible bail information on breaches in particular would better inform the Courts in terms of decisions on bail and that these requests are often made by the Judiciary. Prosecutors from the PPS stated that information on breaches of police bail was not readily available and that there would be benefits in having a log of breaches of bail to assist with bail applications. PPS prosecutors would also like to see a dedicated bail section on their own Case Management System where all bail information on each defendant would be held. The exception was the priority offender log that monitors and manages more serious and frequent offenders as part of Reducing Offending in Partnership (ROP) arrangements. ROP Investigating Officers are better aware of the history of defendants such as the number of bail breaches, offences committed on bail, breaches of Court Bail and applications for changes to conditions. Musgrave Police Station had a log of 70 offenders at the time of fieldwork.

OPERATIONAL RECOMMENDATION 2

The Police Service of Northern Ireland should establish greater oversight and analysis of police bail including the automated use of management information derived from NICHE. This should be in place six months after the publication of this report.

- 3.16 The use of Statutory Time Limits (STLs) for police bail by the PSNI, particularly at 28 days, has ceased to be relevant as time extensions have become standard practice. One of the outcomes arising from consultations and inspections in England and Wales was that realistic bail time limits are necessary and should be supported by regular monitoring and higher levels of scrutiny. The status quo in Northern Ireland is increasingly difficult to justify, though new time limits and authorisations will require legislative changes. An ongoing CJI inspection on file quality and disclosure has examined the quality of police files and supervision and is likely to make relevant recommendations.

STRATEGIC RECOMMENDATION 2

The Department of Justice and the Police Service of Northern Ireland should develop an options paper for police bail to include the use of time limits, scrutiny arrangements and enhanced protections for victims and witnesses.

- 3.17 Critical decisions on bail including setting conditions are made by Custody Sergeants with input from Investigating Officers as well as defence solicitors. CJI Inspectors found in an earlier inspection of Police Custody that bail conditions appeared to be proportionate to risk and there was evidence they were discussed with the defendant and their legal representative. Custody Sergeants felt confident to challenge Investigating Officers if they did not agree with bail conditions proposed.²⁸

²⁸ CJI, *Police Custody: The detention of persons in police custody in Northern Ireland*, September 2020, available at: <http://www.cjini.org/TheInspections/Inspection-Reports/2020/July-September/Police-Custody>

Solicitors told CJI during this inspection that challenges to the setting of conditions on a suitable address were frequent and particularly problematic for domestic violence cases though some defendants expressed a preference for police bail rather than Court Bail. There were examples of good communication between police and legal representatives around bail timings and arrangements. Breaches of bail conditions were reported to be common with many defendants having multiple breaches with increased risks of reoffending and re-arrest. Defendants told Inspectors about their experiences of police bail, and how their breaches were linked to alcohol and drugs addictions and also their difficulties in accessing local services such as health and social care when they were required to find alternative accommodation.

3.18 For victims, decisions on police bail and the setting of conditions can increase uncertainty and frustrations with the criminal justice system and can be magnified as investigations (and bail) are prolonged with increased risks of re-offending and breaches of conditions. Unlike Court Bail, these decisions are not public and can lack direct engagement and consultation with victims. On the other hand, it was evident to Inspectors that Investigating Officers and Custody Sergeants were very mindful of the interests of victims in decisions on bail and conditions and there was engagement through Liaison Officers where possible.

3.19 The challenges of managing police bail was outlined in detail by Officers across the PSNI. Musgrave Police Station in Belfast, as the largest single custody suite, had established a Bail Team with two dedicated Sergeants appointed to monitor bail and deal with all bail returns at a specific location. This was reported to work well, ensuring a focus on those bailed and taking pressure off up to five Custody Sergeants to deal with the management of others currently in custody. The specialised booking in and disposing arrangements also got support from solicitors and their clients who were getting faster and clearer lines of decision-making on issues such as changing of bail conditions.

3.20 The scope to extend this model to other command areas, where dedicated Officers would carry out the same function appears to be more limited due to the lower volume of cases and the geographical spread of stations and custody suites. The feedback from other regions, where some had previous experience of having a Bail Manager, was that bespoke administrative arrangements would improve the delivery of bail. Custody Sergeants and officers in Derry/Londonderry at Strand Road Police Station told CJI that there were 230 people on police bail at the time of fieldwork and acknowledged the difficulty of managing high bail numbers in a small custody suite. A Bail Manager was working in the PSNI South region where there was support from Custody Sergeants and an Inspector to continue with this arrangement as it has led to better management of the list known as 'Bail Boards' in terms of better updating and dealing with overdue bails. The wider use of a Bail Manager in Districts outside Belfast has not been proposed by senior Officers within the PSNI. There is however a need to review the resource model used outside and consider some pooling of expertise.

3.21 Centralising bail returners to larger suites was suggested to CJI, though this is likely to see resistance from solicitors and clients. The use of police custody 'clusters' was also mentioned though its operation could lead to a form of centralisation. A more viable suggestion from those working in police custody suites was to implement a flexible work pattern for Bail Managers with some working part time on bail management and perhaps limited to specific days each week. CJI would suggest that this is an Area of Improvement rather than an operational recommendation.

POST-CHARGE POLICE BAIL AND OVERNIGHT CHARGE CASES

3.22 After a defendant is charged, they are brought before the next available Court (overnight charge case) or the police may grant bail requiring the defendant to attend before a Magistrates' Court within 28 days from the date of charge. When the defendant attends Court, either the Investigating Officer or Court Connecting Officer provides details of the offence, connects the accused to the offence and then provides details to the PPS of any objection to bail and any conditions sought. The PPS makes representations to the Court and the Court determines whether to grant bail and what conditions to attach. When bail is 'perfected' (that is, the process of giving bail is finished or completed), the defendant will then be released on Court Bail usually with conditions. The defendant will normally be represented by their solicitor at this first Court appearance.

3.23 The PPS will ask the Court to remand the defendant in custody if it considers that there is a risk of the defendant:

- absconding and not appearing at Court again;
- interfering with or threatening witnesses;
- perverting the course of justice;
- committing further offences; or
- being a threat to public order.

The Judge must grant bail unless the prosecution can demonstrate specific risk. The defendant will enter into a recognisance with the Court to pay money if they break the conditions of bail. They may also be required to lodge money with the Court, hand in their passport or have sureties and also sign the recognisance.

3.24 The COVID-19 pandemic and restrictions resulted in the move to five Court hubs and largely remote Court hearings. The ability to conduct hearings by live video links in Northern Ireland was made possible by provisions in the United Kingdom (UK) Parliament Coronavirus Act 2020²⁹, which received Royal Assent in March 2020 and had a two year time limit. The provision for live links was supported by the over-arching direction of the then Lord Chief Justice that business should be conducted remotely where possible. This has been continued by the Lady

29 Schedule 27 makes provision for, and in connection with, the use of live links in proceedings in Courts and Tribunals in Northern Ireland.

Chief Justice's Office (LCJO). This included 'overnighters' being retained in police custody suites and remotely processed by the Court. All relevant parties were able to participate in the hearing from remote locations and the feedback to CJI from participants was generally positive. In developing a strategy for recovery from COVID-19, the DoJ together with the criminal justice organisations, have been reviewing the extension of these provisions together with consulting on longer term opportunities and benefits for the administration of justice.

- 3.25 The PSNI, as represented by a senior PSNI Officer and a number of Custody Inspectors and Sergeants, did raise a concern about the impact of holding Court detainees in police custody for extended periods for the purposes of attending their bail hearing and awaiting the approval of bail or transfer to prison on remand. They pointed to increased risks for the defendants and also additional pressures on police custody in having to manage more people in detention. The PSNI position was that the police custody estate was not designed for this purpose and that the extended periods of detention in police stations could not be sustained.
- 3.26 When a defendant's application for Court Bail is successful, there has been a legislative requirement for the bail papers to be signed by the District Judge or designated Northern Ireland Courts and Tribunals Service (NICTS) staff member in the General Office and then served on the defendant. As defendants were not in the courts, new processes became necessary to ensure any sureties required must be signed, any lodgements of money or documents must have occurred and the bail conditions must be read to the defendant (by NICTS staff) to ensure they were understood and then the recognisance form is signed by the defendant and by the NICTS staff. Despite the considerable efforts and flexibility demonstrated by those who have operated these arrangements, such as court based staff faxing forms to police and getting signatures of the court and defendants on paper copies, defendants have been required to remain in police custody until what can often be the afternoon of the bail hearing.
- 3.27 There is a recognition by all participants in remote court hearings that the use of police custody has helped to ensure the administration of justice during the pandemic and provided important lessons for what could be possible in terms of delivering modernisation to a system too dependent on paper processes and slow to change technology and certain practices.
- 3.28 A CJI inspection and Follow-up Review of the Courts Estate³⁰ found that retaining the existing courts estate infrastructure was increasingly difficult due to the poor condition of some courts, which did not meet acceptable standards for users such as victims and witnesses as well as defendants. This was reiterated in a CJI inspection of Court Custody published in March 2022.³¹

30 CJI, *Northern Ireland Courts and Tribunals Service: Adequacy of the Courts Estate, A follow-up review of recommendations, 2015* available online at: <http://www.cjini.org/TheInspections/Action-Plan-Reviews-Inspection-Follow-Up-Review/2015/Northern-Ireland-Courts-and-Tribunals-Service-Ade>

31 CJI, *Court Custody: The detention of persons in the custody of the court in Northern Ireland, March 2022*, available at: <http://www.cjini.org/TheInspections/Inspection-Reports/2022/Jan-Mar/Court-Custody-2022>

- 3.29 The issue as to whether a major capital investment in court custody represents the strategic way forward will need to be considered in light of these two CJI inspection reports and align with the NICTS strategic infrastructure plans for the next decade. Those decisions should also be informed by the potential for better utilisation of the PSNI custody estate, which is more modern and provides for higher standards in terms of safety and wellbeing of detainees. A move in this direction would also require a long-term solution to shortening the time spent by defendants in police custody. A range of options do exist, some of which were presented to Inspectors such as giving the power to a PSNI Superintendent at the police station to release a defendant on Court Bail. That would require a legislative change though there is precedence in that a Prison Governor already has this power.
- 3.30 A legislative solution suggested by the NICTS would be to change the requirement to physically deliver all bail administration. The requirement to physically sign a recognisance – which is a bond between the defendant (or anyone providing a guarantee or surety) and the court to pay money if they break the conditions of bail – has delayed the release of those held in police custody. England and Wales has moved away from this physical delivery and a similar approach in Northern Ireland would be beneficial now.
- 3.31 The Northern Ireland Executive’s COVID-19 Recovery Plan has an aim to learn the lessons in terms of promoting innovation and developing new ways of working. In addition to dealing with the immediate issue of defendants held in police custody during and after Court Bail hearings, there is an opportunity to consider the future use of remote Court hearings. In England and Wales, there are proposals within a new Parliamentary Bill for the permanent use of remote hearings with judicial consideration as to whether that approach for a hearing is in the interests of justice.

STRATEGIC RECOMMENDATION 3

The Department of Justice, in conjunction with the relevant Criminal Justice System organisations, should immediately utilise and expand current cross justice planning arrangements for criminal Courts recovery to co-ordinate the development of a Joint Plan for managing detainees held in police custody awaiting first Court appearance.

Court Bail

- 3.32 Many of the prosecution and defence representations made to the Magistrates’ Courts entail bail applications and setting of conditions. The defence has the right to make an application to the Court where bail is refused or where there is an objection to conditions. The police will generally oppose bail, though there are occasions when no Police Officer is called to Court to deal with a bail application.

- 3.33 It is the responsibility of the PSNI to provide details which affect the granting of bail to the PPS in advance of Court hearings. This includes a series of risks relating to victims, potential failure to attend Court, interference with witnesses and evidence, commission of further offences while on bail and potential for public disorder as result of release. Occasionally full details are not provided to the PPS, particularly of related cases, and that can have an impact on any decisions on bail and setting of conditions. Advice and guidance forms part of the PPS Code for Prosecutors. A bespoke and more comprehensive guidance document on police and Court Bail has been provided by the Crown Prosecution Service (CPS) in England and Wales³² which provides greater clarity of the law.

OPERATIONAL RECOMMENDATION 3

The Public Prosecution Service for Northern Ireland should update its legal guidance on bail decisions.

- 3.34 From March 2021, as a result of the COVID-19 pandemic, bail protocols were issued by the then Office of the Lord Chief Justice and the Presiding District Judge (Magistrates' Court) which introduced new bail forms to facilitate earlier decisions on variations of administrative bail. Solicitors, on behalf of their clients, submitted BAIL1 or BAIL2 forms which are then electronically shared with the prosecution (this includes the police views) and then shared with the defence. The Court is then able to either deal with the application on paper or fix a date for a hearing, which can be remote or in person in Court. While the deadlines have been tight (two days advance notice for Magistrates' Court and five days for High Court) and there have been some gaps (for example, the PPS not having details of the bail application on the completed form), the feedback to CJI has been mostly positive and there is an evident commitment to making these arrangements work and to consider further innovation and modernisation.
- 3.35 The High Court deals with repeat bail applications, such as an application to release a defendant from custody who has been refused bail by the Magistrates' Court. From November 2020 all High Court Bail applications have been dealt with by remote hearings using Sightlink video technology. Legal representatives apply for High Court Bail by email at least two working days in advance, which is then copied to the PPS and a hearing is listed. A maximum of 14 bail applications are listed per day. Emergency Courts, such as compassionate bail hearings, can also be arranged.
- 3.36 From 2016 to 2020 there has been a trend showing a decrease in High Court Bail applications and bail disposals. Figures for 2020 show that there were 1,586 applications for bail received in the High Court which was a 7% decrease from 2019 and 1,251 bail disposals which was 4% less than 2019.

32 *The Crown Prosecution Service, The Code for Crown Prosecutors, October 2018*, available at: <https://www.cps.gov.uk/legal-guidance/bail>

Just over half (53%) of bail applications disposed in court in 2020 were granted.³³ Quarterly data up to September 2021 shows that bail business accounted for 26% of all sitting days in the High Court.³⁴

- 3.37 High Court Bail applications have been carried out administratively on the papers through written submissions from defence representatives and the PPS and very often the Judge, PSNI Investigating Officers, PPS Prosecutor, Court staff, defence solicitors and defendants have not been required to go to Court. It has also allowed witnesses to give evidence remotely, which was previously only used in the Civil and Family Courts prior to COVID-19 and in criminal matters if a special measures application was made and granted.
- 3.38 At the time of fieldwork, the new arrangements for High Court Bail were:
- Defence bail application sent to the PPS by the NICTS.
 - Application is forwarded to the PSNI to provide an outline of case, charge sheet, criminal record, domestic violence record (if applicable), police objections to bail and bail conditions (should bail be granted).
 - The PSNI information is sent to the PPS Counsel who draft submissions.
 - The PPS submissions are sent to the Court and defence representatives.
 - Bail decision issued to all parties by the Court.
 - If bail is refused defence representatives can ask for an oral hearing (carried out remotely) or the Court will ask for an oral hearing in cases where a decision on bail cannot be made on the papers.
 - Sometimes compassionate bails/Prosecution appeals/Variations can be listed for oral hearing at very short notice and the Court will also require prosecution submissions in a short timeframe before the oral hearing.
- 3.39 The delivery of remote hearings for High Court Bail has been an example of innovation and modernisation in the face of the challenges of the COVID-19 pandemic. Seemingly, intractable issues have been overcome swiftly and the potential for solution-based modernisation has been demonstrated.

Recording of bail decisions by the Courts

- 3.40 Every part of Court business, including bail applications, have been processed on the NICTS Integrated Court Operations System (ICOS). From 2012 to 2020, the NICTS has been able to show that 50% of bail refusals are linked to the risk of committing further offences. The risk of absconding (12%), unlikely to abide by conditions (12%) and interfere with investigation/witnesses/injured party (9%) are the most common other factors recorded. An unsuitable address is mentioned in just 4% of bail refusals.

33 NISRA, *Judicial Statistics, 2020*, available at: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/judicial-statistics-2020.pdf>

34 DoJ, *Analytical Services Group High Court Bulletin July to September 2021, Research and Statistical Bulletin, Provisional Figures*, R Martin, 12 November 2021, available at: <http://drupdocs.intranet.nigov.net/DoJDocs/a2j-directorate/nicts/court-bulletins/high-court-bulletin-july-to-september-2021.pdf>

- 3.41 Data relating to the revocation of bail show a 50% increase in the number of defendants whose bail was revoked in the years between 2015 and 2020. The release of this data did lead to concerns expressed by the Northern Ireland Assembly Chair of the Committee for Justice as well as a critical newspaper report.³⁵
- 3.42 CJI was told that searches and retrieval of bail data from ICOS had similar problems to those found with the PSNI records management system (NICHE). This was highlighted in a paper produced by the DoJ and shared with Inspectors for this inspection. Court staff stated that a number of different bail refusal orders are recorded on ICOS and it was difficult to extract information on reasons for bail refusal in the Magistrates' Courts. They stated that it was often unclear from the Court room as to what was a bail application, who made it and the reasons for refusal. This made the recording more problematic. Staff also commented that there was a disparate system between different Courts and the use of different types of bail. The NICTS did confirm that staff have access to the Criminal Courts Bail Guidance manual, which was developed in 2013, and a Bail e-learning training package that is available to all staff and that daily manual bail checks are conducted to address any bail anomalies identified by the Causeway data sharing system.

Bail Information and Support Scheme

- 3.43 A number of practitioners and stakeholders referred to the benefits of having a Bail Information Scheme that would be available from the first application for bail in the Magistrates' Court and particularly when there are specific PSNI objections to bail. A multi-agency project team chaired by the Probation Board for Northern Ireland (PBNI) had suggested a pilot scheme where enhanced verified information would be available to sentencers to assist their decisions in relation to bail. It could ensure the availability of credible alternatives to remand in custody, and, consequently, a reduction in numbers held on remand for reasons other than that of public protection. It could also help to ensure successful completion of bail periods, including attendance at Court hearings and a reduction in offending while on bail.
- 3.44 A bail support programme has been in place in the Youth Court for high risk cases to help young people keep their bail conditions and avoid use of remand. The YJA provides Bail Support services to children as an alternative to remand in custody, which means that the Court can consider bail, even where there are 'substantial grounds' for refusal and it is approved by a District Judge. A total of nine bail support referrals were provided by the YJA to the Youth Courts in 2020-21.³⁶ The type of bail support included regular meetings with a YJA case worker, adherence to residing at an agreed address, attending agreed appointments and not taking alcohol and drugs.

35 *Belfast Telegraph*, *Number of people having their bail revoked is appalling: DUP*, 4 March 2021, available at: <https://www.belfasttelegraph.co.uk/news/northern-ireland/number-of-people-having-their-bail-revoked-is-appalling-dup-40155600.html>

36 *YJA, Performance Impact Report 2020-21*, 9 December 2021, available at: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/yja-performance-impact-report-2020-21.pdf>

While the number of cases have been low, feedback from the YJA does indicate an avoidance of offending while bail packages were in place and less use of remand in the JJC.

3.45 The new Strategic Framework for Youth Justice noted that *'in many cases where admission to custody is for breach of bail, the child is often released on bail once more, either with or without amended conditions. In 2020-21, there were 147 admissions (both on remand and under PACE provisions) to Woodlands where breach of bail was a feature, and 90 admissions were re-released on bail.'*³⁷

Remand

3.46 Remand refers to those:

- charged with an offence and a Judge decides they should be detained in custody pending trial;
- who the Courts have permitted to be released on bail pending trial but have not as yet met the conditions (usually financial) of the bail;
- who had been released on bail but have subsequently been re-admitted to prison because they breached a condition of bail; and
- who have been found guilty by the Court but have been ordered to be detained in custody pending sentence.

3.47 The numbers of remand prisoners has been rising since 2014. In 2021-22, 546 prisoners (37% of the total prison population – see Diagram 1) were held on remand which is the fourth consecutive year in which the remand population has increased and the largest proportion (other than 2020-21) in the last eight years.³⁸ A snapshot taken in March 2022 showed that 36% of the prison population was on remand. Remand receptions increased by 4% from 2,609 in 2020-21 to 2,722 during 2021-22³⁹ and this resulted in remand receptions accounting for 78% of total receptions.⁴⁰

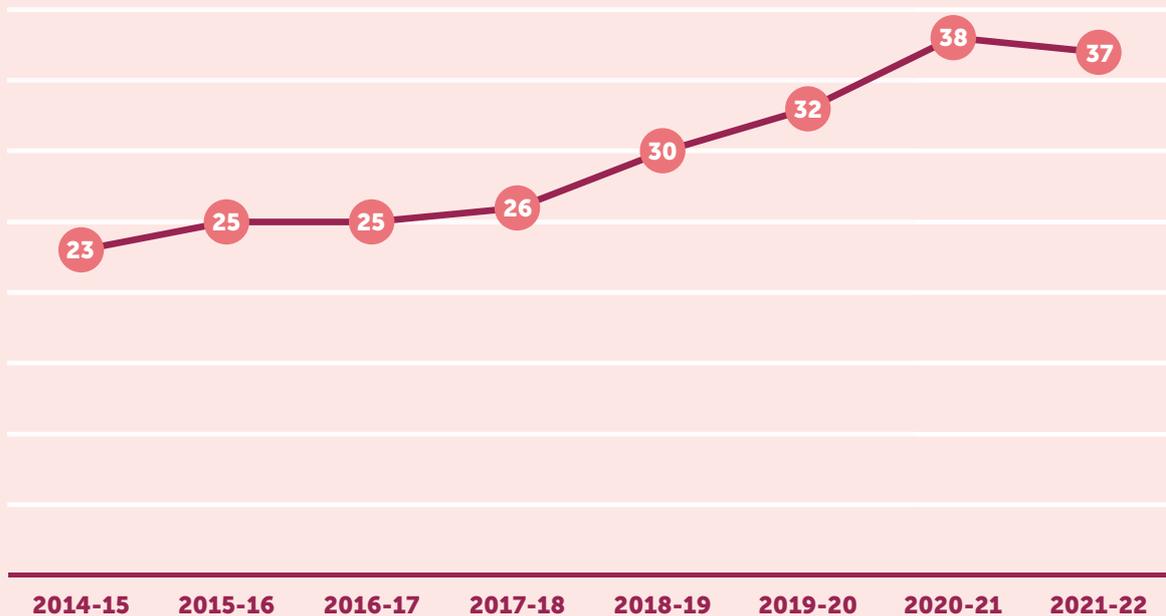
37 DoJ and YJA, *A Strategic Framework for Youth Justice 2022-27*, March 2022, page 34, available at: <https://www.justice-ni.gov.uk/publications/strategic-framework-youth-justice>

38 NISRA and DoJ, *The Northern Ireland Prison Population 2021-22*, September 2022, available at: <https://www.justice-ni.gov.uk/publications/northern-ireland-prison-population-2021-22>

39 *Ibid* page 2.

40 *Ibid* page 15.

Diagram 1: Percent of prisoners on remand 2014-15 to 2021-22



Source: DoJ, *The Northern Ireland Prison Population 2021-22 and 2020-21*

3.48 There are three main detention centres for remand prisoners in Northern Ireland. Maghaberry Prison had an average of 469 prisoners on remand during 2021-22 (Table 2), which was a small reduction on the highest number recorded in 2020-21.⁴¹ Remand prisoners account for half of all prisoners held in Maghaberry. In certain circumstances remands can be held in Magilligan Prison, which had an average of just eight unsentenced prisoners in 2021-22. Young males are held in Hydebank Wood Secure College where there was an average remand population of 31 while there were 38 females on remand at Ash House on the Hydebank Wood site – this was the highest number recorded since 2014-15 and a 41% increase since 2020-21.

Table 2: Average daily population on remand in each prison

Establishment	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Maghaberry	357	339	319	310	353	405	478	469
Magilligan	0	0	0	2	5	7	7	8
Hydebank Wood Males	41	36	36	37	51	47	33	31
Ash House Females	21	18	18	19	26	33	27	38
Total	419	393	374	368	436	492	545	546

Source: DoJ, *Northern Ireland Prison Population 2021-22 and 2020-21* (for 2014-15 data).

41 NISRA and DoJ, *The Northern Ireland Prison Population 2021-22, September 2022*, available at: <https://www.justice-ni.gov.uk/publications/northern-ireland-prison-population-2021-22>

- 3.49 All CJI published reports on Woodlands JJC have examined the characteristics of children held in custody.⁴² In 2020-21 the total average daily population in Woodlands JJC was 11 children. Of the 269 admissions in 2020-21, 207 (77%) related to PACE, 60 (23%) to remand and two were sentenced admissions.⁴³ The average daily population is predominantly remand which has increased from 65% in 2016-17 to 86% in 2020-21. In 2020-21 there were 3,896 days of custody provided by the JJC, 236 for PACE, 3,356 for remand and 304 for sentence.
- 3.50 Comparisons of the remand population with neighbouring jurisdictions in England and Wales as well as Scotland show spikes during the COVID-19 pandemic though their overall proportion of remand prisoners were significantly lower at 16.5% and 29% respectively in 2020-21. An international comparison published in the World Prison Brief of pre-trial detainees as a proportion of the total prison population shows that Northern Ireland was ranked 74 of 218 countries and regions.⁴⁴ This was based on a remand population of 40% and was higher than most European countries such as France (31%), Germany (20%), Republic of Ireland (22%) and Spain (15%) as well as the United States of America (23%).
- 3.51 As part of this inspection, CJI requested additional and then unpublished data⁴⁵ from the DoJ (extracted from the NIPS PRISM database of prisoners) to better understand the characteristics of the remand population. The data covered the years from 2013 to 2020 and included individual committals within a calendar year (as used in this report) as well as case data (which removes repeated individual committals on the same case). Some new data was published by the NIPS in September 2022. At the time of fieldwork, no data was available from the Causeway system, which captures information on cases and defendants from entry to the criminal justice system to disposal. Comprehensive Court prosecutions, convictions and out of Court disposals statistics are also published annually, but does not include data on remands as it is not a disposal.⁴⁶ CJI has been told that a separate DoJ-led project has commenced to extract and provide analysis of Causeway data.

42 The CJI inspection of Woodlands JJC found that there were 10 young people (nine boys and one girl) held in detention at the commencement of fieldwork on 22 January 2022. All but one was held on remand and most had been granted bail but a suitable address had not been approved. The CJI report is available at: <http://www.cjini.org/TheInspections/Inspection-Reports/2022/July-Sept/Woodlands-JJC-2022>

43 NISRA, *Youth Justice Agency Annual Workload Statistics 2020/21*, 7 October 2021, available at:

<https://www.justice-ni.gov.uk/sites/default/files/publications/justice/yja-workload-stats-bulletin-2020-21.pdf>

44 *World Prison Brief, World Pre-trial/Remand Imprisonment List (4th edition)*, April 2020, available at:

https://www.prisonstudies.org/highest-to-lowest/pre-trial-detainees?field_region_taxonomy_tid=All

45 New unpublished data was provided to CJI at time of factual accuracy. Some of this has been published by the NIPS in September 2022. Where data remains unpublished, CJI has treated this as not constituting official national statistics and accept that this may be subsequently amended over time.

46 NISRA and Department of Justice, *Court Prosecutions, Convictions and Out of Court Disposals Statistics for Northern Ireland*, I Graham, June 2022, available at: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/prosecutions%20convictions%20and%20diversionary%20disposals%202021.pdf>

3.52 An examination of all individual committals into custody in 2021 showed that 2,799 (78%) were remand with just 708 (20%) as immediate custody (see Table 3).⁴⁷ The average for remand committals from 2013 to 2021 was 72%, with the highest proportion (83%) recorded in 2020. Just over 12% of cases convicted at all courts resulted in a custodial outcome in 2021 while the corresponding figure for Crown Court was 49%.⁴⁸

Table 3: All Committals into Custody 2013-2021

Committal Category	Year of Committal									Total
	2013	2014	2015	2016	2017	2018	2019	2020	2021	
Remand	2,351	2,506	2,350	2,551	2,425	2,882	3,079	2,794	2,799	23,737
Immediate Custody	1,034	998	763	806	829	737	792	474	708	7,141
Fine Defaulter/ Immigration	162	51	326	498	530	355	161	82	86	2,251
Total	3,547	3,555	3,439	3,855	3,784	3,974	4,032	3,350	3,593	33,129

Source: Northern Ireland Prison Service Management Information System (PRISM)

3.53 There has been no maximum time that prisoners can spend on remand in Northern Ireland in contrast to the use of statutory Custody Time Limits (CTL) in England and Wales and Scotland. Both jurisdictions provide an absolute right to bail when the limit has expired. In September 2020 the CTL regulations in England and Wales were amended to temporarily extend the length of time adults and children can be remanded by the Crown Court from up to 168 days to 238 days. The maximum time limit in the Magistrates' Court of 56 days remained the same. Data provided in England and Wales showed a significant rise in the number of live CTL cases during 2021, 2,500 of the 12,000 people held in prison awaiting trial in December 2020 had been held for longer than eight months – a quarter of the remand population at the time. More than 3,600 people were held longer than six months. For extensions to be granted, a Judge should be satisfied that there are 'good and sufficient' reasons to do so.

3.54 No data sets on the time spend on remand have been published by the NIPS. Unpublished data provided to CJI shows that 12% of individual remand committals in the period 2013 to 2020 were for more than six months. It was 295 (14%) in 2020 (Table 4).

47 CJI was provided with unpublished data taken from the Northern Ireland Prison Service Management Information System (PRISM). The data was not verified for publication and may be updated by DoJ at a later stage. It is presented in calendar years.

48 NISRA and DoJ, *Court Prosecutions, Convictions and Out of Court Disposals Statistics for Northern Ireland, 1 Graham, June 2022*, available at: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/prosecutions%20convictions%20and%20diversionary%20disposals%202021.pdf>

Table 4: Time spend on remand by Committal year 2013-20

Time on Remand	2013	2014	2015	2016	2017	2018	2019	2020	2013-20	%
2 years and more	12	16	3	9	7	14	26	0	87	0
Between 1 year and 2 years	77	90	76	56	57	73	90	96	615	4
Between 6 months and 1 year	205	161	145	134	168	177	197	199	1386	8
Between 5 months and 6 months	53	55	53	56	27	55	65	53	417	3
Between 4 months and 5 months	66	64	56	50	55	68	75	89	523	3
Between 3 months and 4 months	113	108	95	98	98	134	132	156	821	5
Between 2 months and 3 months	168	143	142	153	163	183	226	237	1415	9
Between 1 month and 2 months	264	278	287	278	282	337	423	392	2541	15
Between 1 week and 1 month	474	567	516	581	562	649	653	576	4578	28
Less than 1 week	437	545	527	607	537	558	609	378	4198	25
Total	1869	2027	1900	2022	1956	2248	2496	2176	16581	100

Source: Northern Ireland Prison Service Management Information System (PRISM)

3.55 A separate extract of live data on the 21 February 2022 showed that 73% of the total prison population had spent some time on remand with 25% of all prisoners on remand for over six months, 15% over one year and 5% over two years (Table 5). While the two data sets are not comparable with different counting rules, it does indicate a concerning number of prisoners on remand for lengthy periods of time.

Table 5: Time spent on Remand for those in custody on 21 February 2022

	Frequency	%
Between 3 and 5 years	13	1
Between 2 and 3 years	62	4
Between 1 and 2 years	160	10
Between 6 months and 1 year	154	10
Between 3 and 6 months	184	12
Between 2 and 3 months	113	7
Between 1 and 2 months	139	9
Between 1 week and 1 month	194	12
Up to 1 week	136	9
No Remand	428	27
Total	1583	100

Source: Northern Ireland Prison Service Management Information System (PRISM)

- 3.56 The average time spent on remand for children in Woodlands JJC was 24 days in 2020-21. Where remand to custody is deemed necessary, a child can be held for up to 28 days at a time before the case is reviewed. There is no time limit on the remand period, although any remand period extending beyond three months requires reasons to be provided in open Court.
- 3.57 PACE detentions are much shorter, typically of about one day as children await a Court hearing.⁴⁹ About 50% of PACE admissions do not return from Court on remand, meaning that children are released following their Court appearance, either with or without bail.⁵⁰ Previous CJI inspections found that a small number of remanded children had been granted bail but preferred to remain in custody and refused to perfect their bail.
- 3.58 CJI has previously expressed concerns in the 2018 and 2022 Woodlands JJC inspection reports regarding children that continue to be held on remand in the JJC as they were unable to perfect bail and recommended that the YJA and its statutory partners should set targets to improve the current arrangements for children who do not have a suitable bail address and ensure children cannot refuse to perfect their own bail.

49 CJI, *An Announced Inspection of Woodlands Juvenile Justice Centre, September 2022*, available at: <http://www.cjini.org/TheInspections/Inspection-Reports/2022/July-Sept/Woodlands-JJC-2022>

50 DoJ and YJA, *A Strategic Framework for Youth Justice 2022-27, March 2022*, available at: <https://www.justice-ni.gov.uk/publications/strategic-framework-youth-justice>

- 3.59 A joint Departmental consultation⁵¹ on the *Establishment of a Regional Care and Justice Campus* in 2021 had responses which expressed concern about the lack of suitable alternative accommodation options for young people which meant that they were remanded to Woodlands JJC. Stakeholders told CJI that specialist accommodation in a community setting represented the best alternative and that a bail hostel is not the answer for children. There was a concern expressed to Inspectors that when the new structures are in place, more children could be sent there by the Courts, including on remand.
- 3.60 There are procedures in place when dealing with children to avoid the use of remand and the Judiciary try to grant bail with a package put in place to try and rehabilitate them. Efforts are made to grant bail to an address with someone who will care for children and help them abide by their bail conditions. Where there is no family or other address available, they will be bailed to a children's home. Social workers and other key workers can be involved where reports are provided to the Court, with an update provided on how the young person is coping within the environment. This will be kept under review so that the Court can see if this is the best place for the young person to stay.

51 Department of Health and DoJ, *Establishment of a Regional Care and Justice Campus, Consultation Document, October 2020*, available at: <https://www.health-ni.gov.uk/sites/default/files/consultations/health/rcj-consultation.pdf>

CHAPTER 4: OUTCOMES

- 4.1 The Outcomes Based Accountability (OBA) model of the draft Programme for Government provides the framework to measure and assess the impact of bail and remand and its alignment with broader criminal justice priorities such as Outcome 7 to *'have a safe community where we respect the law, and each other'* and its targets of speeding up the progression of criminal cases, reducing crime and the number of victims and lowering reoffending rates.
- 4.2 The Northern Ireland Executive published its COVID-19 Recovery Plan⁵² in July 2021, which has priorities on improving the health of the population and tackling inequalities. Interventions were proposed to target support for the most vulnerable in society, including victims of crime as well as defendants. Criminal justice responses in the Plan referred to supporting vulnerable young people at risk of criminal exploitation or harm, supporting victims of domestic and sexual violence and abuse and continue to deliver and develop Substance Misuse Courts, as part of the Problem Solving Justice approach.
- 4.3 With the exception of strategies on youth justice and children and proposed legislative changes to bail for children, there has been little explicit reference to how the operation of bail and remand can help deliver the outcome of safer communities. The operation of bail and remand has been framed around processes and policies (for example, PSNI Service Instruction, PPS Codes for Prosecutors, Court Manuals and Protocols and Prison Service Rules) rather than a broader consideration of outcomes. Measuring outcomes has been a bigger challenge across all aspects of Government.

Management Information

- 4.4 The starting point in measuring outcomes is access to reliable management information – a significant gap evident at the time of fieldwork for this inspection. The lack of reliable data and analysis has impeded decision making within criminal justice organisations as well as at the Criminal Justice Board (CJB). It is also a necessary part of supporting future legislative changes. New laws impacting on bail and remand in England and Wales together with Scotland were supported by research projects, parliamentary inquiries, inspections and public consultations. A Parliamentary Inquiry into the use of remand in Scotland in 2018 published significant data and analysis on the use of remand, reasons for remand and its impacts for different groups of prisoners as well as society. All of this analysis informed its conclusions and future policy options.⁵³

52 Northern Ireland Executive, *Building Forward: Consolidated Covid-19 Recovery Plan*, July 2021 available at <https://www.executiveoffice-ni.gov.uk/sites/default/files/publications/execoffice/consolidated-covid-19-recovery-plan.pdf>

53 *An Inquiry into the Use of Remand in Scotland*, The Scottish Parliament Justice Committee, 7th Report 2018 at <https://sp-bpr-en-prod-cdnep.azureedge.net/published/J/2018/6/24/An-Inquiry-into-the-Use-of-Remand-in-Scotland/JS052018R07.pdf>

4.5 Some, but not all, information gaps found during fieldwork were:

- PSNI Street Bail numbers and outcomes;
- Police bail numbers, lengths of time, number of extensions and outcomes;
- Breach history for those on police bail (except more serious repeat offenders);
- Conversion rates from police bail to Court Bail;
- Court Bail numbers, lengths of time, number of extensions and outcomes;
- Court time and resources utilised on bail and remand hearings; and
- Split times for remands before Court verdict and from verdict to sentence (this data is provided in England and Wales).

4.6 Better access and use of management information has been evident since the DoJ (Criminal Justice Policy and Legislation Division) did a review of the remand prison population in 2019. The decision by the CJB in 2022 to establish a Working Group on remand has the potential to significantly increase the use of management information from across the criminal justice system. The NIPS published more information on remand prisoners in its annual prison population statistics report in September 2022. The Criminal Justice Improvement Group, which reports to the CJB is best placed to review the scope and objectives of a delivery project and ensure access and analysis of bail and remand data.

Reducing Avoidable Delays

4.7 Reducing delays in case processing times has been one of the key targets for Government in delivering an outcome of safer communities. The impacts of these delays on the operation of bail and remand covered in Chapter 3, best demonstrated with regard to longer bail times and more defendants on remand for longer periods. The purpose of this section of the report is to explore and assess whether the operation of bail and remand, has or could, impact on case progression and how it facilitates performance improvements in the investigation and prosecution of cases.

4.8 Key decision points for bail and remand, such as police bail extensions, Court Bail applications and committals to remand, represent an opportunity to apply greater scrutiny to case progression. Where it ceases to be effective, such as reviews of evidence for police bail extensions, it needs to be reviewed and changed to avoid non-compliance and potential irrelevance. While some of the key enablers for change are legislative and will take some time to deliver, others involve policies and processes which can be changed through guidance and directions from within the criminal justice system. The recommendation for a CJB commissioned bail and remand project should consider potential impacts on reducing delays in case progression.

- 4.9 The use of CTL in England and Wales and Scotland was covered in Chapter 3 – Scotland also operates Statutory Time Limits (STL) for the completion of criminal cases. The use of one or both sets of time limits provides legal safeguards against undue delay in bringing criminal cases to trial, though greater non-compliance and extensions were found during the COVID-19 pandemic.⁵⁴ In Northern Ireland, where delays have been worse from before the pandemic (see Chapter 2), no similar STLs are in operation. CJI recommended the phased introduction of STLs starting with Youth Court cases in 2012 but this has not been delivered despite the further deterioration in performance. Making a recommendation for statutory CTLs, especially with current case backlogs, would not be supported by the criminal justice system. There is however a need for clear performance targets for case processing, remand times and bail which are realistic and challenging and aligned with plans to deliver the necessary transformational change and recovery from the pandemic.
- 4.10 Adverse outcomes for defendants and victims, as a result of delays, were evident during this inspection. Defence solicitors told Inspectors that delay was one of their primary concerns with some defendants making a guilty plea against legal advice due to having spent the equivalent of a sentence on remand awaiting trial. This is described as a ‘plea of convenience’ and is regarded by defendants as ‘buying off the risk’ to be released from prison. This type of outcome is hard to measure as it is not monitored in disposal data.
- 4.11 Delays can increase the likelihood of unreasonable detentions, that is, when a Court does not impose a custodial sentence including an acquittal or the sentence is not more than the period of remand. Committals with a remand element resulting in an imprisonment disposal have been decreasing in recent years dropping from 66% in 2013 to 56% in 2016 and 53% in 2020 (Table 6). Other disposals in 2020 included 402 (14%) for suspended custodial and 167 (6%) for community sentence.

54 HMCPSI, *Crown Prosecution Service handling of custody time limits: Management of custody time limit cases by the CPS during the Covid-19 period, December 2021*, available at: <https://www.justiceinspectors.gov.uk/hmcpsi/wp-content/uploads/sites/3/2021/12/HMCPSI-Custody-time-limits.pdf>

Table 6: Remand Disposals 2013-20

Disposal	Year of Committal							
	2013	2014	2015	2016	2017	2018	2019	2020
No Disposal data - Still in custody / Discharged from Custody	40	43	33	43	52	77	122	210
Missing data	34	39	41	38	35	27	38	33
Other	167	236	259	292	234	294	332	308
Discharge	29	25	38	29	29	24	44	38
Monetary Penalty	64	106	96	125	120	138	154	160
Community Sentence	112	173	197	187	193	240	254	167
Suspended Custodial	366	413	413	436	421	446	494	402
Imprisonment	1,585	1,510	1,339	1,483	1,425	1,703	1,714	1,511
Total	2,397	2,545	2,416	2,633	2,509	2,949	3,152	2,829
Imprisonment %	66	59	55	56	57	58	54	53

Source: Northern Ireland Prison Service Management Information System (PRISM)

4.12 Further analysis for those on remand for longer periods (six-plus months) shows that 174 (62%) received an imprisonment disposal in 2020 – just 9% higher than the same disposal for all remand committals (see Table 7). The imprisonment disposal for remand committal of more than six months was 197 (72%) in 2019 and 188 (83%) in 2018, which is more reassuring and based on more complete data.

Table 7: Time on Remand over six months by Disposal 2013-20

Disposal	Year of Committal							
	2013	2014	2015	2016	2017	2018	2019	2020
No Disposal data	9	3	7	3	5	7	21	44
Missing URN data	5	9	10	5	10	5	15	13
Other	6	8	7	4	14	8	7	12
Discharge / Monetary Penalty	14	6	5	5	4	4	10	15
Community Sentence	4	4	7	5	4	4	6	8
Suspended Custodial	14	11	4	8	10	11	18	16
Imprisonment	224	192	167	150	150	188	197	174
Total	276	233	207	180	197	227	274	282

Source: Northern Ireland Prison Service Management Information System (PRISM)

4.13 Additional data provided to CJI on the final status of remand committals allows an aggregation of discharges into time served, on bail and non-custodial. For 2020, the majority (63%) were discharged on bail (57% in 2016 and 48% in 2013) (see Table 8). This shows an increasing reliance on bail post remand as cases progressed through the criminal justice system. At the same time there has been a decrease in time served as a disposal going from 39% in 2013, 29% in 2016 and 27% in 2020. It is likely that there is a correlation between these two trends of post remand use of bail and post remand with a time served outcome. The proportion with a non-custodial disposal has remained at around 10%. An acquittal disposal has been shown at less than 1% for most years of this dataset.

Table 8: Remand disposals 2013, 2016 and 2020

Discharge type	2013	%	2016	%	2020	%
Total Discharged time served	892	39%	720	29%	707	27%
Total Discharged on bail	1,100	48%	1,397	57%	1,623	63%
Total discharged non custodial	241	11%	260	11%	201	8%
Total discharged - immigration	39	2%	90	4%	42	2%
Total (excluding other)	2,272	100%	2,467	100%	2,573	100%

Source: Northern Ireland Prison Service Management Information System (PRISM)

4.14 Making comparisons with other jurisdictions has been more problematic due to different counting rules. There is however merit in presenting some evidence from England and Wales in 2020 which found that 10% of remands were acquitted at trial and a further 14% of people received a non-custodial sentence.⁵⁵ A quarter of remand prisoners were not sent to prison following their trial, though this will include those with time served. Research commissioned by the Scottish Government showed that between 2014 and 2017, 57% of remand prisoners who were later convicted in summary proceedings (less serious without juries), and 29% of remand prisoners who were later convicted in solemn proceedings (serious on indictment at trial with judge and jury), did not receive custodial sentences.⁵⁶

4.15 A CJI inspection on children held in Woodlands JJC found that the conversion rate from PACE admissions to remanded by Court or sentenced to custody has remained at around 50% in recent years. The DoJ and YJA have published data for children on remand in the JJC which shows that in 2020-21 there were 162 occasions where a young person was placed on remand but only 12 custodial sentences were served.⁵⁷ It goes on to state that ‘some children can spend a

55 *Fair Trials, Locked up in Lockdown: Life on Remand During the Pandemic, 2021*, available at: <https://www.fairtrials.org/sites/default/files/Locked%20up%20in%20lockdown%20-%20Life%20on%20remand%20during%20the%20pandemic.pdf>

56 *The Scottish Parliament Justice Committee, An Inquiry into the Use of Remand in Scotland, 7th Report 2018 (Session 5)*, available at <https://sp-bpr-en-prod-cdnep.azureedge.net/published/J/2018/6/24/An-Inquiry-into-the-Use-of-Remand-in-Scotland/JS052018R07.pdf>

57 *Department of Justice and Youth Justice Agency, A Strategic Framework for Youth Justice 2022-27, March 2022*, available at: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/strategic%20framework%20for%20youth%20justice.pdf>

significant length of time on remand in custody, over a year in extreme cases, but ultimately receive a community, rather than a custodial, sentence. The high numbers of children admitted to custody each year on remand for offending or breaching their bail, and the low numbers who subsequently go on to serve a custodial sentence, would therefore suggest that the legislative presumption in favour of bail for children is not operating as well as we would like in practice’.

Reducing Crime and the number of Victims

- 4.16 Assessing the impact of bail and remand on crime rates and number of victims of crime has been problematic with indicative evidence rather than a direct link. There has been evidence from policing studies that certain crimes have been reduced in communities when repeat offenders are detained in custody (on remand and sentenced). There has also been evidence that effective bail management can also impact on crime rates. More research and analysis would be beneficial in better understanding these relationships.
- 4.17 A relevant finding from inspections and reviews of police bail from England and Wales was that a decision to reduce the use of police bail in favour of non-bail investigations was that victims and some defendants felt less supported by the criminal justice system, particularly the conditions and added scrutiny available through pre-charge bail. It found that defendants had a greater risk of committing crime when not subject to the same conditions as applied with bail. This was one of the main factors in the UK Government decision to re-introduce a presumption in favour of bail.
- 4.18 *Victims and Witnesses: The care and treatment of victims and witnesses by the Criminal Justice System in Northern Ireland* was published by CJI in 2020 and reported that victims in particular were fundamentally unaware of their rights to information, support and protection and that services to assist them were still not being consistently delivered to a quality standard. Similar issues were raised by victims and by Victim Support Northern Ireland (VSNI) in their meetings and responses as part of fieldwork for other CJI inspections and follow-up reviews on hate crime, domestic violence, sexual violence and child sexual exploitation.
- 4.19 A multi-organisational Victim and Witnesses Steering Group has been leading on the implementation of the Victims and Witnesses Strategy for Northern Ireland 2021-24 and delivery of relevant CJI recommendations. A number of work streams from the Gillen Review on Serious Sexual Offences are included in the Strategy.⁵⁸ The Minister of Justice has made it one of her priorities ‘*doing everything in my power to ensure that the needs and interests of victims are at the centre of the justice system*’.⁵⁹

58 *Gillen Review: Report into the law and procedures in serious sexual offences in Northern Ireland, Part 1, April 2019*, available at <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/gillen-report-may-2019.pdf>

59 *DoJ. Long: The needs of victims must be at the centre of the justice system, 11 November 2021*, available at: <https://www.justice-ni.gov.uk/news/long-needs-victims-must-be-centre-justice-system>

4.20 There is no specific reference to bail or remand in the Victims and Witnesses Strategy though broader objectives on including victim needs into policies and operational procedures as well as engagement with victims and the provision of timely and accurate information on case progression should apply to decisions on bail and remand. It was evident from meetings with the police, prosecution and the Courts administration that victim concerns were a significant consideration when granting and extending bail, setting conditions, dealing with breaches and applying sanctions such as arrest and remanding a defendant in prison. Decision makers for police bail were particularly attuned to the needs of victims especially in domestic violence cases. Defence solicitors also referred to the prominence attached to victim's needs though also expressing concerns when bail conditions such as limitation to contact with families can become extended due to delays in case progression.

4.21 Police Officers confirmed that the needs and concerns of victims have been central to many decisions on bail, including conditions such as curfews and restricting contact, but victims are seldom consulted or informed in advance of these decisions. There is an assumption among police and prosecutors that victim interests are best served by making objections to bail, having strict conditions and using remand where risks are considered high. But that is not routinely communicated to victims, which has been made more difficult by the slow progression of cases through the criminal justice system. Victims have also expressed concerns when bail conditions are amended without consultation and when remand prisoners are released from detention, often with little advance notification.

Lowering Reoffending

4.22 Data on rates of reoffending has been published annually by the DoJ with figures relating to 2019-20 used in this report.⁶⁰ The one year reoffending rate was highest for those released from custody (47% in 2019-20) compared to other disposals such as community or diversionary which reflects differences in offences as well as the history and characteristics of offenders. As remand is not a disposal, there has been no specific analysis to show reoffending rates for those having spent time on remand. Likewise there was little available information on the longer term outcomes for those on police and Court Bail. In the short term Inspectors were told that the COVID-19 health regulations meant that some suspects were unable to meet bail conditions around contacts and were more likely to be remanded. Some prisoners who were released early breached their conditions and were re-arrested and placed back on remand.

60 NISRA and DoJ, *Adult and Youth Reoffending in Northern Ireland (2019/20 Cohort)*, November 2022, available at: <https://www.justice-ni.gov.uk/publications/adult-and-youth-reoffending-northern-ireland-201920-cohort>

- 4.23 The increasing proportion of prisoners on remand together with longer remand times has placed pressures on the NIPS to seek better outcomes for nearly half its prison population. The CJI inspection reports on prisons as well as thematic inspections on the *Safety of Prisoners held by the Northern Ireland Prison Service*⁶¹ have referred to the lack of participation by those on remand to prison-based rehabilitation programmes, and more bespoke approaches to offending behaviour had mixed results. Prisoners on remand have been predominantly focused on the outcome of their case and prison life tends to be structured around Court appearances and meeting with their legal representatives.
- 4.24 NIACRO and former prisoners have told Inspectors that those on remand have received less planned and structured resettlement support in comparison to a sentenced prisoner. Former prisoners felt that the system is set up to fail them and a number referred to the loss of housing and difficulties in accessing health and social services as high risk factors after release from prison. Inspectors were told of cases where a prisoner had been released without any advance notification due to a Court granting bail or an acquittal. Some stated that the Northern Ireland Housing Executive could do more to assist remand prisoners in the same way as sentenced prisoners.
- 4.25 PSNI Officers have commented on the increased occurrences of reoffending when prisoners are released from remand often where employment, community and family connections have been broken by a period of detention. The PSNI has also highlighted the particular risk of reoffending when a defendant has been released 'early' due to 'time served' on remand. A CJI inspection report on *Resettlement*⁶² covers these issues in more detail.
- 4.26 Aligning offender behaviour programmes to prisoner needs requires a better understanding of the characteristics of the remand population including offence categories. Published data from England and Wales shows that 50% of remand prisoners have committed offences in two groups – Violence Against the Person (VAP) and drugs. In Northern Ireland, VAP is the most common principal offence category associated with 194 (36%) of the average prison population remanded to custody in 2021-22 (see Table 9) and is similar to that for the total prison population.⁶³ The trend in the data shows an increasing proportion of VAP offences relating to those on remand rising from 147 (30%) in 2019-20 to 200 (37%) in 2020-21 and 194 (36%) in 2021-22. The next most common principal offence categories for remand prisoners in 2021-22 were criminal damage and arson, drugs, burglary and sexual. Sexual offences have shown an increase each year since 2017-18 while public order offences have been lower since the COVID-19 pandemic.

61 CJI, *The Safety of Prisoners held by the Northern Ireland Prison Service, November 2019*, available at: <http://www.cjini.org/TheInspections/Inspection-Reports/2019/October-December/The-Safety-of-Prisoners>

62 CJI, *Resettlement: An inspection of resettlement in the Northern Ireland Prison Service, May 2018*, available at: <http://www.cjini.org/TheInspections/Inspection-Reports/2018/April-June/Resettlement>

63 NISRA and Department of Justice, *The Northern Ireland Prison Population 2021/22, September 2022 (Revised)*, available at: <https://www.justice-ni.gov.uk/publications/northern-ireland-prison-population-2021-22>

Separate unpublished data provided to CJJ for all remand committals (2,829) shows that Violence against the Person (VAP) accounted for 954 or 34% of all principal offences in 2020.

Table 9: Average daily Prison Population remanded by Principal Offence

Principal Offence	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Violence against the Person	115	120	117	140	147	200	194
Sexual	31	24	21	30	41	47	48
Robbery	21	23	27	19	33	29	32
Theft	20	19	20	26	27	20	21
Burglary	48	44	46	62	75	64	55
Criminal Damage & Arson	32	28	28	33	39	51	61
Drugs	53	48	43	49	72	58	56
Possession of Weapons	7	9	6	8	6	6	5
Public Order	33	23	27	28	11	16	18
Motoring	2	5	4	5	4	5	4
Fraud	1	0	3	3	3	2	3
Other Offences	29	30	25	30	35	48	47
Missing Offence	1	1	1	0	0	0	0
Total	393	374	368	436	492	545	546

Source: NISRA and DoJ, Northern Ireland Prison Population 2021-22

- 4.27 Further analysis of offence histories can inform better responses and interventions. Research commissioned by the Scottish Government found that previous convictions and the seriousness of the offence were the two most common reasons for remand in Scotland.⁶⁴ This is in line with international research that shows that these factors are the two best predictors of custodial sentences.

Cost of Remand

- 4.28 Remanding a person into prison can be a more expensive option compared to bail – the additional cost is realised when the case disposal is shown as non-custodial which has constituted about 10% of remand committals (see Table 8). Time spent on remand is counted when a defendant receives a custodial sentence so that monetary cost has not been additional. The average cost per prisoner place in Northern Ireland was £44,868 in 2021-22, which is now more comparable with Scotland (£44,150 in 2020-21) and England and Wales (£48,162 in 2020-21).

64 *The Scottish Parliament Justice Committee, An Inquiry into the Use of Remand in Scotland, 7th Report 2018 (Session 5)*, available at <https://sp-bpr-en-prod-cdneq.azureedge.net/published/J/2018/6/24/An-Inquiry-into-the-Use-of-Remand-in-Scotland/JS052018R07.pdf>

A higher remand population in Northern Ireland has also been a factor in establishing the overall costs. There has been no cumulative analysis of the costs of bail, which has included the work of the police, prosecution, Courts, legal aid and probation, though it would be significantly less than imprisonment.

- 4.29 For children the costs of remand are higher. In 2020-21 it was £253,608 based on dividing operating expenditure (excluding non-standard costs) by the 36 places the JJC is resourced to accommodate based on current staffing levels and resources available for service delivery.⁶⁵ The average daily population was 11 in the same period.

Alternatives to Remand

- 4.30 Identifying and scoping alternatives to remand, including better use of bail options, has been a higher priority for the DoJ and the NIPS in recent years as the numbers of remand prisoners have continued to increase, but progress on implementation and delivery was less advanced at the time of fieldwork.
- 4.31 The lack of alternative options available to Judges was highlighted to Inspectors by members of the judiciary including the Lady Chief Justice. It was also the subject of a number of recommendations put forward by the DoJ as a follow-up to its research papers in 2017 and 2018 and has been a stated priority of the Criminal Justice Board.
- 4.32 The importance of having a structured and funded Bail Support Scheme which would address the obstacles to bail including suitable accommodation, services for addiction and mental health and employment support were raised by a number of those interviewed by CJI Inspectors. A Police Custody Officer commented that access to alcohol and rehabilitation programmes at the start of bail would be of great benefit in giving meaningful bail.
- 4.33 This approach aligns with Problem Solving Justice, where addressing the causes of offending could be linked with decision-making on bail and remand. The Northern Ireland Human Rights Commission saw the potential of Problem Solving Justice in addressing the significant proportion of crimes which have been related to addictions and offering support at an early stage, when decisions on bail are taken. This was presented as one means of delivering a 'spend to save initiative' focused on earlier interventions. NIACRO stated that 58% of women on remand in 2018 were in custody for issues around mental health, alcohol misuse, homelessness and suicide attempts.

65 YJA, *Youth Justice Agency Annual Report and Accounts For the year ended 31 March 2021*, available at: [http://drupdocs.intranet.nigov.net/DoJDocs/reducing-offending-directorate/yja/reports-and-publications/corporate-agency/yja-annual-report-and-accounts-2020-21-\(published-8-july-2021\).PDF](http://drupdocs.intranet.nigov.net/DoJDocs/reducing-offending-directorate/yja/reports-and-publications/corporate-agency/yja-annual-report-and-accounts-2020-21-(published-8-july-2021).PDF)

- 4.34 The greater use of electronic monitoring by Global Positioning System (GPS) in Northern Ireland has been under consideration for a number of years, particularly where it can support bail conditions such as curfews and reduce the numbers on remand. The DoJ Reducing Offending Directorate was tasked with preparing a paper in conjunction with the PSNI Public Protection Branch on the availability of GPS tracking/electronic monitoring for bail and early prison releases. The DoJ considered the introduction of GPS to the electronic monitoring service, but did not proceed due to cost and the decision to have a re-procurement of the contract. GPS availability will be considered as part of the new tender process. The use of electronic monitoring has potential to significantly reduce the numbers and length of remands as well as provide enhanced monitoring of bail conditions.⁶⁶
- 4.35 The greater use of electronic tagging on bail does raise a broader issue regarding incentives for bail and whether or how electronic tagging should count as time served in the same way as remand in prison is discounted. The Minister of Justice responded to a Northern Ireland Assembly Question in 2020 that *'any proposals to replicate the different arrangements in England and Wales for time remanded on bail to count towards time served would require significant reforms to both electronic monitoring and sentencing arrangements in Northern Ireland'*. Some defendants and their legal representatives told Inspectors that sometimes there was a preference for remand in prison rather than bail – this was linked to the discount available, though other factors such as a place of safety from threats in communities were also important. PSNI Officers who work with repeat offenders know that some offenders regard remand time as *'easy time'* and all are aware that time served on remand counts towards a sentence.
- 4.36 The UK Government announced in 2019 that there would be a national roll out of new GPS tags which would include a wide range of offenders including those subject to bail granted by the Court.⁶⁷ This followed an evaluation of a pilot project in eight police force areas in England which found that GPS location monitoring had supported the effective management of those on Court Bail – 220 of the 586 GPS tag wearers were Court-imposed bail. There was a view that some of those on bail may have been effectively managed in the community without the GPS tag. Positive findings were that monitoring supported compliance and that it allowed wearers to preserve family links and either find or maintain employment. The estimated cost per wearer on the pilot was approximately £7,000 (£55 per day). The evaluation concluded that *'GPS tagging has the potential to be a less costly alternative to time in custody when used appropriately'*.⁶⁸

66 Vivian Geiran, *Electronic Monitoring in Ireland: Disruptive Innovation, Affordance, or a Technology in Search of a Rationale?*, *Irish Probation Journal*, Volume 18, October 2021, available at: <https://www.pbni.org.uk/files/pbni/2022-06/IPJ%20Vol%2018%20-%20Electronic%20Monitoring%20in%20Ireland%20Disruptive%20Innovation%20Affordance%20or%20a%20Technology%20in%20Search%20of%20a%20Rationale.pdf>

67 UK Government Ministry of Justice, *Justice Secretary unveils GPS tag rollout to better protect victims*, 16 February 2019, available at: <https://www.gov.uk/government/news/justice-secretary-unveils-gps-tag-rollout-to-better-protect-victims>

68 UK Government Ministry of Justice, *Process evaluation of the Global Positioning System (GPS) Electronic Monitoring Pilot Qualitative findings, Series 2019*, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779199/gps-location-monitoring-pilot-process-evaluation.pdf

- 4.37 Developing alternatives to remand should be taken forward by the Criminal Justice Improvement Group.

STRATEGIC RECOMMENDATION 4

The Criminal Justice Board should commission the Criminal Justice Improvement Group to establish governance and delivery arrangements for bail and remand.

This should include:

- updating the terms of reference for the Remand Working Group with reference to the findings and recommendations of this inspection report;
- establishing improved management information for bail and remand, including more published data and analysis;
- developing a plan to reduce the use of remand to include progressing projects on electronic monitoring and bail support schemes; and
- considering new legislation and amendments.

APPENDIX 1: TERMS OF REFERENCE

A THEMATIC REVIEW OF THE BAIL AND CUSTODY REMAND POPULATION IN THE CRIMINAL JUSTICE SYSTEM IN NORTHERN IRELAND

TERMS OF REFERENCE

Introduction

Criminal Justice Inspection Northern Ireland's (CJI) Business Plan for 2020-21, under the heading *Better efficiency and effectiveness*, proposed a *Remand and Bail thematic inspection to assess the impact of the remand population across the criminal justice system*.

This inspection topic arose during the Chief Inspector's consultations about the Inspection Programme for 2020-21, during which a number of senior stakeholders expressed concern about aspects of bail and remand.

In Court, the decision to grant bail or remand in custody is a matter for the judiciary and is not part of this review.

Context

The Police Service of Northern Ireland (PSNI) can grant police bail:

- after a suspect has been arrested, but there is insufficient evidence to charge them at that stage, so they are released pending further investigation; and
- when someone has been charged with an offence, the PSNI have to decide whether to release them on bail to appear at court; or refuse bail and produce them at the next available court.

The Public Prosecution Service (PPS) may agree to a remand on bail or apply to the court for a remand in custody. When bail is granted, it is usually:

- on a recognisance (a promise to return to court on a specific date or forfeit money);
- with sureties (monies promised by other persons to ensure the defendant will return to court); and
- with conditions, for example the defendant must reside at a specific address.

Court decisions about granting bail are informed by factors such as:

- seriousness of the alleged crime;
- whether the defendant is likely to abscond;
- risk of committing further offences; and
- interfering with or threatening witnesses.

When bail is refused in the Magistrates' Court, it can be applied for in the High Court if there is a change in circumstances. Bail conditions may also be varied during the progress of a case in court.

The imposition of bail conditions and remands in custody are important ways of protecting the public and ensuring that defendants appear before court to answer their charges. The prosecution team has to balance the rights of the accused with protection of society, particularly victims and witnesses.

Northern Ireland does not have one unified Bail Act with specific consistent legislation to provide for bail and remand. In 2012 the Law Commission report on bail law in criminal proceedings in Northern Ireland made a number of recommendations including a unified bail act for Northern Ireland. However, the law governing bail in Northern Ireland remains in a range of legislation and common law sources.

This inspection will take due cognizance of the relevant human rights framework and any impact of particular groups of people such as children, woman and foreign nationals.

The bail and remand process impacts on key organisations in the criminal justice system including the PSNI, the PPS, the Northern Ireland Courts and Tribunals Service (NICTS) and the Northern Ireland Prison Service (NIPS). It requires considerable financial and other resources, for example:

- police custody arrangements and transport to court;
- Belfast Magistrates' Court has a dedicated remand court, other courts have remands included with other listed business;
- the NICTS has on-call arrangements for remand courts at weekends and public holidays;
- although Northern Ireland's prison population rate is consistently low (77 per 100,000 of national population in May 2020, compared to 135 in England & Wales), the remand population is very high - 34.1% of the total prison population on 31 December 2019 compared with 12.1% in England & Wales, 16.2% in Scotland and 20.7% in the Republic of Ireland;
- the NIPS receives around 5,000 committals each year. Committal is a time consuming and stressful process for everyone involved, yet many remand prisoners are subsequently released after a short period at very short notice. Prisoners can spend the vast majority of their time in prison on remand with little time, if any, as a sentenced prisoner. These issues can cause practical difficulties in planning for discharge, such as obtaining accommodation and medication; and

- many children who are detained in custody stay in Woodlands Juvenile Justice Centre (JJC) for very short periods and can return on multiple occasions. This is disruptive and costly.

Aim of the inspection

The aim of this inspection is to assess the current arrangements for dealing with bail and remand in Northern Ireland and the impact on adult and youth defendants in the criminal justice system.

Objectives

- assess police bail arrangements, including utilisation and outcomes;
- review the PPS process to inform remand and bail applications and judicial decision makers;
- assess the use of technology and plans for reform relating to remand cases;
- review the impact of remand cases and decisions on all aspects of the criminal justice system, including the impact of the remand population on the NIPS and the JJC and outcomes for adult and youth defendants;
- compare the Northern Ireland system of bail and remand with practice in other jurisdictions, including alternatives to remands in custody and any link to delay in the criminal justice system; and
- make evidence-based recommendations to improve the current system and processes associated with bail and remand in Northern Ireland.

Methodology

The inspection will be based on the CJI Inspection Framework. The three main elements of the framework are:

- Strategy and governance;
- Delivery; and
- Outcomes.

CJI's inspection methodology can be found at www.cjini.org.

The methodology comprises two core components:

1. Research

- request and review criminal justice agencies strategies, policies and procedures, data and management information, financial costs, minutes of meetings, previous reports; and
- obtain benchmarking and best practice evidence from elsewhere.

2. Fieldwork

- Interviews and focus groups will be conducted with stakeholders to obtain insight into:
 - how bail and remand procedures have developed and how processes could be improved; and
 - the impact of remand cases on the criminal justice system and defendants.

Fieldwork requiring face to face contact will be planned and risk assessed by the Lead Inspector with the relevant organisation or individual and any required public health advice such as social distancing adhered to.

Relevant criminal justice organisations will be asked to complete a self-assessment of their approach to dealing with bail and remand.

The criminal justice agencies should each identify liaison personnel for the purposes of this inspection.

Feedback and writing

Following completion of the fieldwork and data and evidence analysis is carried out, a draft report will be written and shared with the relevant agencies for factual accuracy check. These agencies will be invited to complete an action plan within four weeks to address any recommendations. If the plan has been agreed, it will be published as part of the final inspection report. The final inspection report will be shared, under embargo, in advance of the publication date with the agencies involved.

Indicative Timetable

Requests for evidence/Research: September 2020-January 2021.

Fieldwork: February-April 2021.

Draft Report to agencies: June 2021.

Factual accuracy feedback received: July 2021.

The above timetable may be impacted by factors such as COVID-19 restrictions and/or Ministerial request for an urgent inspection. The inspected organisation will be kept advised of any significant changes to the indicative timetable.

Inspection publication and closure

- The final report is scheduled to be completed by September 2021.
- It will be sent to the Minister of Justice for permission to publish.
- A CJI press release will be prepared and shared with relevant agencies prior to publication and release.
- A suitable publication date will be agreed and the report will be issued.

APPENDIX 2: METHODOLOGY

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

Research literature and guidance documentation was reviewed in relation to bail and remand. A Terms of Reference was developed and shared with the relevant criminal justice organisations.

Self-assessment and document review

The organisations were asked to provide documents and data as part of a self-assessment of the delivery of bail and remand. This was also used to inform interview questions during the fieldwork phase.

Data requests

All of the main organisations were requested to provide relevant data and analysis (published and unpublished) which would assist the inspection. Subsequent data requests were made to the DoJ and the NIPS with regard to extracting unpublished statistics on remand committals.

Scope of Fieldwork

No site visits were conducted to observe the operation of bail and remand decisions in police or court settings. One-to-one and focus groups interviews were conducted with a range of personnel within the relevant criminal justice bodies and stakeholder organisations. Interviews were also conducted with those with direct experience of bail and remand and these were facilitated by NIACRO.

Stakeholder consultation

CJI Inspectors met with representatives from the following organisations:

- Lady Chief Justice and Crown Court Judge;
- Representatives of the Belfast Solicitor's Association;
- Representatives of the Law Society of Northern Ireland;
- Northern Ireland Human Rights Commission;
- NIACRO Project Workers;
- NICCY;
- Children's Law Centre;
- Include Youth; and
- Mindwise NI.

Interviews and Focus Groups

Interviews and focus groups were undertaken with personnel in inspected organisations in the following roles:

- DoJ Policy;
- DoJ Statisticians;
- PSNI Custody (ACC, Inspectors, Sergeants and Constables);
- PSNI Crime Investigations Departments (Inspectors, Sergeants and Constables);
- PSNI Local Policing Teams (Inspectors, Sergeants and Constables);
- PSNI Community Safety (Chief Superintendent);
- PSNI Public Protection;
- PPS Prosecutors;
- NICTS Court Administration;
- NICTS statisticians;
- The Probation Board for Northern Ireland;
- The Youth Justice Agency; and
- NIPS policy team.

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