

# **A corporate governance inspection of the Public Prosecution Service for Northern Ireland**

April 2013

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



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# **A corporate governance inspection of the Public Prosecution Service for Northern Ireland**

Laid before the Northern Ireland Assembly under Section 49(2) of the Justice (Northern Ireland) Act 2002, (as amended by paragraph 7(2) of Schedule 13 to The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010) by the Department of Justice.

April 2013





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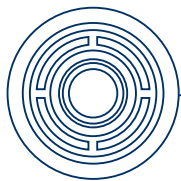
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## List of abbreviations

<b>AD(s)</b>	Assistant Director(s)
<b>CJI</b>	Criminal Justice Inspection Northern Ireland
<b>CMS</b>	Case Management System (in the Public Prosecution Service)
<b>CPS</b>	Crown Prosecution Service
<b>DIR(s)</b>	Decision Information Request(s)
<b>DoJ</b>	Department of Justice
<b>DPP</b>	Director of Public Prosecutions
<b>FTE</b>	Full-Time Equivalent
<b>HCA(s)</b>	Higher Court Advocate(s)
<b>HMCPSI</b>	Her Majesty's Crown Prosecution Service Inspectorate
<b>KPI</b>	Key Performance Indicator
<b>NICHE RMS</b>	NICHE Record Management System
<b>NICS</b>	Northern Ireland Civil Service
<b>NICTS</b>	Northern Ireland Courts and Tribunals Service
<b>ODPP</b>	Office of the Director of Public Prosecutions
<b>PP(s)</b>	Public Prosecutor(s)
<b>PPS</b>	Public Prosecution Service for Northern Ireland
<b>PSNI</b>	Police Service of Northern Ireland
<b>RP(s)</b>	Regional Prosecutor(s)
<b>SPP(s)</b>	Senior Public Prosecutor(s)



## Chief Inspector's Foreword

This inspection has found that the Public Prosecution Service for Northern Ireland (PPS) has made significant progress since it was established in 2005. It has recruited a large number of young lawyers to support a small cadre of more experienced staff from the previous Director of Public Prosecutions (DPP), and prosecutes some 55,000 criminal cases per year. The organisation now operates from a number of regional offices located across Northern Ireland and has developed a reputation for high quality decision making.

Inspectors noted good standards of advocacy being practised in the Crown Court and improvements in advocacy standards in the Magistrates' Courts. As expected the more recently recruited lawyers have increased their exposure to the demands of busy Magistrates' Courts, have developed their court craft and are more able to meet the demands of Judges and defence lawyers.

There was a sound governance framework in place, which had met the needs of the PPS during the period of expansion and development. However the joint demands of the current fiscal environment and stakeholders require the PPS move to the next stage of its development.

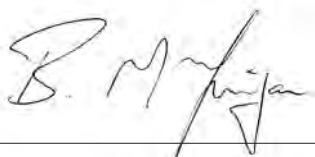
Inspectors found that the management structures and resourcing models which had served it well during its early days were in need of significant change, as indeed were the staff levels, information flows and performance regime. We believe that more can be expected of operational managers and there is a need to introduce a more consistent approach to performance management and accountability.

The PPS needs to invest more in training its senior managers to improve service delivery and to secure improved outcomes, as indeed has been the case in other jurisdictions. Other prosecution services have had to face similar challenges and we believe the PPS can learn a great deal from their experience.

We make only three strategic recommendations, which if fully implemented will help the PPS take that next step towards its ultimate aim of providing a first class prosecution service. We have also identified a further 11 areas for improvement which we regard as internal housekeeping for the organisation.

This inspection was led by Stephen Dolan of CJI, with significant support from Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) and other CJI colleagues, William Priestley, Dr Ian Cameron and Derek Williamson.

My sincere thanks to all those who participated in the inspection.



**Brendan McGuigan**

Chief Inspector of Criminal Justice in Northern Ireland  
April 2013



## Executive Summary

One of the most radical reforms advocated by the 'Review of the Criminal Justice System Northern Ireland' in March 2000 arose from their recommendations to create the PPS. The Review Team made proposals to transfer all prosecutions from the police to the prosecution service with consequences for the resources, independence, structure and accountability of the new PPS. In many ways the Review set the strategic direction for the service for a number of years, dependent upon how long it would take to implement structural change, complete recruitment and training, as well as the impact of the future devolution of justice. Now that most of the major changes have occurred, the PPS management team should be less cautious in implementing change and strive to be more influential within the wider criminal justice system and specifically in developing more effective joint working with other agencies.

Inevitably the early challenges facing the PPS shaped its assessment of success towards capacity and process in the shape of regional offices opened, numbers of files received, decisions made and prosecutions actioned. In many respects the PPS made good headway and recent Criminal Justice Inspection Northern Ireland (CJI) inspections and follow-up reviews charted substantial progress in a number of areas. Throughout this period the PPS delivered a very high quality of legal decision making - a testimony to the professionalism and commitment of its staff. On paper the governance structures meet the accepted models of good governance, including risk management, procurement policies and a management board with overall responsibility for setting the direction of the organisation. An independent audit report gave the governance arrangements of the PPS a satisfactory level of assurance and this was complemented by the annual PPS Audit Committee report that provided additional assurance to the Director covering governance and risk management.

Whilst acknowledging the adequacy of the structural and procedural aspects of governance, CJI adopted the 'Treasury's Code of Good Practice' with its wider emphasis on *'the way in which organisations are directed and controlled... the distribution of rights and responsibilities among the different stakeholders and participants in the organisation... the rules and procedures for making decisions on corporate affairs, including the process through which the organisation's objectives are set, and... the means of attaining those objectives and monitoring performance.'*

Thus, the overall assessment of the inspection team was that the governance structures and associated processes within the PPS provided a sound governance framework to introduce further improvements and deliver their ultimate aim of providing a first class prosecution service.

In the seven years since its inception, the challenges facing the PPS became increasingly business and efficiency related. The legal expertise of the PPS had served it well but the pressure to drive improvements in service delivery, meet the changing needs of stakeholders and to reduce costs demanded a fresh approach. Inspectors found that the PPS was constrained by its management structures, staff levels, information flows and performance regime. There was room to expand the role of operational managers and introduce a more consistent approach to performance management and accountability. There was also scope to improve the management information provided to senior management by reducing the reliance on local interpretation and replacing some of the activity based measures with clear measures of performance.

The management processes were due in part to the focus on capacity building carried over from the formative years of the PPS and in part to the fact that lawyers see themselves as lawyers first and managers second. Like many other specialists Public Prosecutors (PPs) face a perplexing career path, they spend a decade or so learning how to review case files, make sound legal decisions, present evidence to courts and think independently. Then



they get promoted and are faced with the responsibility of running a regional office or offices. Inspectors found that Prosecutors received insufficient management training with the expectation that being highly educated in the legal field was enough of a prerequisite for management. There was not enough being done to transition the tools of business to the legal environment and business plans needed to be more outcome focused.

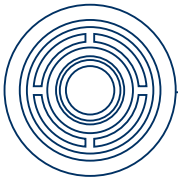
The end result was that even at the strategic management level the emphasis was on measuring activities, volumes of casework and management of inputs with not enough emphasis on delivery and holding managers to account for improved outcomes. There were occasions where the PPS created specific work streams that tended to deliver technical or operational improvements but corporate targets such as timeliness were not improving. Providing Regional Prosecutors (RPs) with a range of performance management indicators will allow them to address a wider range of issues than simply the legal decision making aspects, whilst holding them to account for improved delivery will overcome the tendency of the PPS to remove performance improvement from the mainstream.

Undoubtedly the changes in the operating environment for Prosecutors has taken some getting used to, and this coupled with the parallel demands of addressing the needs of victims and witnesses, improving the prosecutorial process and raising public confidence whilst remaining independent, has placed new demands on the resources and resourcefulness of the PPS. This may be the time for the PPS to draw upon the experiences of other bodies that faced similar challenges. The Crown Prosecution Service (CPS) of England and Wales operates across 13 areas with a well developed inspection regime using a range of comparative measures. Inspectors looked to the Wales area of the CPS as it held some parallels for the PPS. The obvious analysis showed that the average cost per case in the Northern Ireland PPS was higher in absolute terms than in Wales, but this hides the potentially greater fact that the range of costs in Wales was much smaller than in the PPS, and in the last two years the CPS in Wales made significant improvements in reducing costs and improving service delivery. The key to the improvements lay in the extensive use of management information that measured performance, used internal and external benchmarks and the accountability structures put in place to inform senior management and to delegate to operational management. As a model for improving general performance, involving staff and developing improved community confidence it offered the PPS a possible benchmark.

The core business of the PPS is giving legal decisions, preparing cases for court and prosecuting cases. An independent analysis by HMCPSI of a sample of 124 cases indicated compliance with the Prosecutors' Code in 96% of cases. The PPS assessment of its compliance with the Code was just under 99%. In any language this was an excellent performance and compared favourably with the 93% average achieved in England and Wales. All in all the performance of the PPS in respect of decisions was better than that recorded by the CPS in England and Wales with some caveats around the timeliness of decisions and some issues raised about the management of case files. The high quality of decision making by the PPS was sometimes overshadowed where high profile cases attracted adverse media attention suggesting the PPS might benefit from a review of its approach to engaging with the media and other public commentators.

As for prosecuting cases, the independent assessment of the advocacy skills of the PPS in-house Prosecutors carried out as part of this inspection rated them as competent, although it identified some examples where performance could be improved. Performance in the Crown Court was found to be of a higher standard and Inspectors found that independent Counsel provided a high quality of service.





Although performance was mostly satisfactory, Inspectors concluded that the PPS would benefit from introducing a more comprehensive and reliable assessment process. It was noted that the PPS was conducting a thorough review and that it had agreed advocacy standards to assess both independent Counsel and PP performance. The Director of the PPS confirmed that a new panel of Counsel had been commissioned with an improved mechanism for assessing performance. To further develop and improve the advocacy expertise within the PPS the Director made it clear that he was keen to increase the number of Higher Court Advocates (HCAs) in the PPS and Inspectors would welcome the launch of a clear strategy to implement this.

In conclusion, the PPS has emerged from a major development process as a body capable of delivering the legal elements of its services to a high standard but now faced a series of challenges that required a different approach. Developing the management structures and responsibilities, an increased focus on performance outcomes, and ongoing evolution of the performance management systems and tools were key to improving the overall service delivery. The experience of the CPS in Wales provided a possible pathway for the PPS as well as offering an ongoing benchmark. Increasing the involvement of operational managers in the development of business planning as well as the delivery of the service was seen as essential, along with a much greater emphasis on performance management and personal accountability to improve productivity. The PPS and the newly appointed Director face a significant challenge but it is also an opportunity to take the PPS to the next stage in its development.





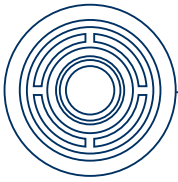
## Recommendations and areas for improvement

### Strategic recommendations

- The PPS should review the capacity model with a view to updating it to include a wider range of management information and improved links to changes in the volume of cases by the end of 2013 (Paragraph 3.18).
- The PPS should establish a benchmarking framework using comparative measures of internal statistics and also comparative measures from most relevant neighbouring jurisdictions by the end of 2013 (Paragraph 3.28).
- Inspectors recommend that an effective and objective assessment process of PPS Prosecutors, Counsel (and future Associate Prosecutors) is established by the end of 2013. This should include stakeholder feedback, court observations and management information on Prosecutor performance. The process should complement the appointment of the new panels of Counsel (Paragraph 4.71).

### Areas for improvement

- Projects or initiatives should be deemed successfully completed when the benefits realisation plan is fulfilled (Paragraph 2.19).
- Regular accountability meetings led by the Senior AD should be held using a range of performance metrics with action plans for improvement delivered by the RP. A record of the meeting with proposed remedial actions should be presented to the senior management team (Paragraph 2.37).
- The PPS business planning should focus more on delivering changes in service quality and efficient delivery targeting improvement with less emphasis on tasks, activity or volumes of workload. The task level objectives can be included in operational plans at RP level (Paragraph 3.9).
- The performance management regime for Prosecutors at every level in the PPS should reflect a wider range of targets including quality, timeliness and efficiency (Paragraph 3.31).
- The PPS should continue their efforts in reducing DIRs and take the lead on defining the main issues resulting in DIRs, and in conjunction with the police review the interface and establish a programme to improve the quality of police files (Paragraph 3.43).
- The PPS should monitor the quality of recording of decisions and instruct Prosecutors to use the appropriate facility on the CMS (Paragraph 4.17).
- The PPS should ensure that Prosecutors implement the PPS policy on disclosure of unused material (Paragraph 4.28).
- Where possible the PPS should aim to give Prosecutors experience of both directing and prosecuting cases (Paragraph 4.52).



- A more structured approach, including a survey of stakeholders with possibly dip-sampling, to assess satisfaction about any aspect of the prosecution process should be considered by the PPS (Paragraph 4.64).
- The PPS should review its training programme and link it more closely to the assessment process. Training should be provided shortly after feedback from the assessment process. Increased capacity on the advanced training programme should be sourced (Paragraph 4.79).
- The PPS should ensure that written legal applications properly outline in sufficient detail the legal and factual submissions upon which any application is based. Guidelines with quality assurance of these applications by SPPs should be introduced (Paragraph 4.97).

Section



# Inspection report

## CHAPTER 1:

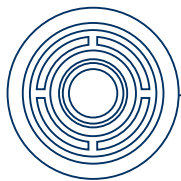
# Introduction



### Strategic context

- 1.1 The PPS was formally established on 13 June 2005, although development work had been underway since 2002, by the Justice (Northern Ireland) Act 2002. The Act ratified the recommendations of the *'Review of the Criminal Justice System in Northern Ireland'*<sup>1</sup> which addressed *'the arrangements for the organisation and supervision of the prosecution service, and for safeguarding its independence.'* The overall aim of the PPS is to provide the people of Northern Ireland with an independent, fair and effective prosecution service.
- 1.2 The Criminal Justice Review Team recognised the major issues facing the new PPS, including defining the responsibility for prosecutions, delineating the interface between investigation and prosecution and confirming the importance of an independent prosecution service. It made detailed recommendations governing interfaces, independence, structure and accountability, and even went as far as to postulate the scale and potential costs of the reconstituted PPS. In many ways the review set the strategic direction for the service for a number of years, dependent upon how long it would take to implement structural change, complete recruitment and training as well as the impact of the future devolution of justice.
- 1.3 The recommendations of the Criminal Justice Review Team were a sea change for the new organisation. The separation of investigative from prosecutorial functions increased the size and scope of the Office of the Director for Public Prosecutions (ODPP) with concomitant implications for the workforce and the physical structure. The Review Team also saw the timely management of cases and a focus of attention on evidential issues as key roles for Prosecutors. This gave rise to a requirement for close co-operation with, and on evidential matters, direction of the police on the part of the Prosecutor if cases are to be processed efficiently and to a high standard.
- 1.4 The Review Team was particularly prescient when recognising that delay would be a serious issue and that reform of the procedures for committal hearings in the Magistrates' Courts should be given serious consideration. The other issues raised in the Review Team report of relevance to the PPS included:
  - prosecutorial diversion;
  - prosecutorial fines;
  - raising confidence in the community;
  - local offices with RPs capable of directing prosecutions on most cases at the local level;
  - a comprehensive training and development programme; and
  - use of comparison with the CPS in England and Wales.
- 1.5 The PPS made significant progress in rolling out its services across Northern Ireland. Following the launch of the first PPS Pilot Project (in South Belfast) in December 2003, the PPS went on to provide services in Fermanagh and Tyrone, the PPS Belfast Region, the PPS Eastern Region and took responsibility for all youth

<sup>1</sup> *'Review of the Criminal Justice System Northern Ireland'* March 2000.




offences across Northern Ireland by the end of 2006. In 2007 offices were opened in Ballymena and Omagh and the regional infrastructure was completed by June 2010 with the opening of the Londonderry and Newry offices. This commitment to capacity building by the PPS added to the already significant challenges they faced and constrained the delivery of some of the other objectives envisaged by the Criminal Justice Review Team. With the main structural elements in place, a newly appointed Director and a devolved Minister of Justice, the PPS has the opportunity to make more progress. The PPS should prioritise through its business planning process development of the service, improvement in performance, delivery of efficiencies and greater engagement with the wider criminal justice system to reduce delay.

## Accountability

- 1.6 The Criminal Justice Review, in considering the prosecution, made reference to international standards and identified a main theme that the prosecutorial authorities should be independent of the Executive.<sup>2</sup> They tempered the pursuit of independence by recognising that independence does not imply isolation or detachment from the rest of society or other criminal justice agencies.
- 1.7 The consultation process carried out during the review of criminal justice attracted widespread support for an independent prosecuting authority. Most of those advocating support focused on the desire to enhance public confidence by distancing the quasi-judicial decision to prosecute from the investigative function. The more complex debate surrounded the relationship between investigation and prosecution and the stage in a case when an independent Prosecutor should become involved. At one end of the spectrum was the call for complete separation of the investigative and prosecution processes. At the other the view was that early involvement of the Prosecutor well before the police submitted the investigation file for a decision on prosecution provided advantages.
- 1.8 Across this spectrum of opinion the tenet of independence giving rise to increased confidence within the community was consistent. The main agreed impetus was for an independent body responsible for all prosecutions and the subsequent structure of the PPS was formulated around this concept. Thus to distance the PPS from political influence meant that there was little support for a Minister of Justice having any role in relation to prosecutions, although there was a clear desire for the prosecution service to be more answerable to the public. Ideas included the DPP being accountable to the Assembly on finance and administration, being accountable to victims by giving of reasons and subject to external scrutiny of the work of Prosecutors.
- 1.9 Out of all this debate the current arrangements were promulgated. The PPS was created independent of political influence by way of being a non-ministerial department. The new PPS took on responsibility for all prosecutions in Northern Ireland and there was a clear separation between the investigative and prosecutorial roles. The office of Director of the PPS is by appointment by the Attorney General – since devolution by the Attorney General for Northern Ireland. One significant development is the changed relationship between the Attorney General and the DPP. Prior to devolution the Attorney General for England and Wales exercised a superintending role towards the DPP in Northern Ireland. Amongst other things this meant the Attorney General for England Wales retained the power to direct prosecutions (a power never exercised in Northern Ireland). Since devolution the relationship between the Attorney General for Northern Ireland and the DPP is described as a consultative relationship, as the Attorney General for Northern Ireland does not hold the DPP to account or retain the power to direct prosecutions.
- 1.10 The Department of Justice (DoJ) concluded consultations in May 2012 on the future arrangements that could govern the relationship between the Attorney General and

<sup>2</sup> Sources referenced: 'UN Guidelines on the Role of Prosecutors' and the 'Standards and Statement of Essential Duties and Rights of Prosecutors.'





the DPP.<sup>3</sup> The consultation aimed *inter alia* to address concerns as to whether the relationship between the PPS and the Attorney General is correctly pitched, and that there is currently no-one to answer on the floor of the Assembly on matters concerning the PPS. The Department consulted on four options (full details presented in Appendix 2) and will report in due course on the preferred way forward. The main challenge going forward will be to become more influential within the criminal justice system whilst retaining an appropriate level of independence.

### Developing community confidence

- 1.11 Within the wider context of accountability and greater transparency, lay the issue of increased community engagement. Overcoming historical issues presented significant challenges to all the Northern Ireland criminal justice agencies. While the PPS made some progress, including the creation of Community Liaison Teams and amendments to the Prosecutorial Code to improve communication with victims and witnesses, recent inspections by CJI<sup>4</sup> indicated that there was still room for improvement. In recognition of this the PPS re-developed the Community Liaison Teams along the lines of the Victims and Witness Care Units established by the CPS in England and Wales.
- 1.12 The PPS faced the problem that hard-won progress in improving community confidence could be quickly nullified by a single high profile case where community opinion was at odds with the PPS. The newly appointed Director has adopted a forthright approach to dealing with the media and addressing the public at large with some success. The most recent PPS Annual Report<sup>5</sup> recorded an increase in community confidence from 67.5% to 70% and the implementation of Victims and Witness Care Units should lead to further increases. Looking to the future, the PPS is giving priority to improving the prosecutorial

process, raising accountability, increasing community confidence and addressing the needs of victims and witnesses. The challenge to the PPS is to align its working practices towards achievement of these objectives and to make the corporate targets meaningful to the individuals within the PPS.

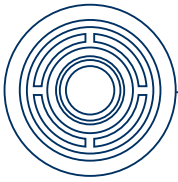
### Background to this inspection

- 1.13 CJI conducted a full inspection of the PPS in February and March 2007 to establish a baseline against which future developments could be judged. At the time of the inspection, the PPS was still a comparatively new organisation and had yet to be fully rolled out across Northern Ireland. It was also the first time the organisation had been subject to a comprehensive operational inspection. CJI carried out a follow-up review to the baseline inspection in 2009, along with a number of other inspections since. The current corporate governance inspection is one of a series of similar inspections being undertaken by CJI.
- 1.14 The 'Treasury's Code of Good Practice on Corporate Governance' published in July 2005 defines corporate governance as:
- 'The way in which organisations are directed and controlled. It defines the distribution of rights and responsibilities among the different stakeholders and participants in the organisation, determines the rules and procedures for making decisions on corporate affairs, including the process through which the organisation's objectives are set, and provides the means of attaining those objectives and monitoring performance.'*
- 1.15 Accordingly CJI does not narrowly interpret corporate governance as financial checks and balances, independent audit arrangements and so forth, but more widely as the whole set of arrangements for good strategic management of the organisation. In this inspection we sought to check that those arrangements were

3 'Governance and accountability of the Public Prosecution Service - a consultation paper', DoJ, February 2012.

4 Telling Them Why: 'An inspection of the Public Prosecution Service for Northern Ireland's giving of reasons for its decisions', CJI, May 2012; 'The care and treatment of victims and witnesses in the criminal justice system in Northern Ireland: a thematic inspection', CJI, December 2011; 'Securing attendance at court', CJI, June 2011.

5 PPS Annual Report and Resource Accounts 2011-12, PPS.



such in the PPS as to ensure not just that things did not go wrong, but that they positively supported good planning and performance management.

1.16 Since the baseline inspection, the PPS has been fully rolled out and handles all prosecutions from the Police Service of Northern Ireland (PSNI) and other investigative bodies across Northern Ireland. In April 2010 responsibility for the justice portfolio was devolved to the Northern Ireland Assembly. Within the devolved arrangements the PPS was designated as a non-ministerial Government department.

1.17 The post-devolution environment presented the PPS with some challenges, but also with opportunities to redesign the senior management structure of the organisation. Inherent to the process of devolution were raised expectations of greater transparency and accountability of how the criminal justice system in Northern Ireland works. Interest in how criminal cases are investigated, prosecuted and disposed of has increased among the public and the media with an expectation that the PPS will furnish greater explanations of its approach to prosecutions.

## Aims of the inspection

### *Corporate governance*

1.18 Drawing on previous inspections, the aims of this inspection are to examine a broad set of issues around the governance, performance and accountability in the PPS, including:

- a clear sense of corporate leadership and direction to develop the organisation and its people, improve performance and manage risk taking into account the needs of stakeholders/service users;
- that the PPS has clearly defined its role and its desired outcomes within a suitable corporate and business plan, with evidence of consistent communication of corporate standards throughout the PPS;

- the promotion of values for the whole organisation and demonstrating good governance through behaviour;
- management of resources to provide value for money outcomes, reflect changes in the operational environment and improve the efficiency and effectiveness of the PPS; and
- a management structure with clear lines of accountability, providing transparency of decision making and contributing to improvement in personal and corporate performance.

### *Quality of advocacy*

- Progress in the development and delivery of performance assessment measures of PPS advocacy staff;
- progress in developing and implementing the monitoring and assessment of the PPS and independent Counsel in the higher courts;
- progress in developing and implementing standards governing appointment to the panel of independent Counsel;
- evidence of performance management of Counsel using advocacy standards; and
- that the quality of advocacy and case presentation in the Magistrates' and Crown Courts is of the requisite quality for the proper and fair administration of justice.

### *Quality of casework*

- The timeliness and quality of decisions, the efficiency and effectiveness of case management and the appropriateness of the 'giving of reasons' (where no prosecution takes place) will be assessed;
- the assessment of advocacy will be informed both by preparation and presentation of prosecution cases; and
- the existing quality assurance process of casework quality will be assessed.

1.19 The full terms of reference are given at Appendix 1.



## CHAPTER 2:

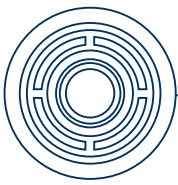
# Strategy and governance



### Setting the strategic direction of the PPS

#### *Strategy and leadership*

- 2.1 The relatively recent formation of the PPS has inevitably influenced the setting of its strategic direction. Like any new start-up organisation it dedicated its energies to creating structures and processes, recruiting and training staff, defining and delivering its core activities. In many respects the PPS made good headway. The most recent CJI inspections and follow-up reviews charted substantial progress in a number of areas, albeit most progress was characterised as procedural and policy with a little less progress in the performance management elements and in areas of outward facing service delivery (see Appendix 3).
- 2.2 Throughout its developmental phase the PPS has delivered a very high quality of legal decision making. This was a testament to the professionalism, experience and commitment of its staff. What is not in question is the energy, commitment and enthusiasm displayed by the staff within the PPS. However, enthusiasm and energy do not in themselves automatically translate into the delivery of successful outcomes. The PPS acknowledged the need for performance management, the improvement of services and budgetary constraint and have moved some way to implementing the necessary changes. There are barriers arising from the culture within the PPS, the legacy of their operating environment and a need for more management expertise.
- 2.3 The challenges facing the PPS in the early stages of its development centred on capacity building and in the business plans success was measured as the completion of various activities (see Appendix 4). There was less success in the business management areas where meeting timeliness targets and improved public confidence proved difficult. The focus on delivering specific activities – a task led approach – allowed achievement to be recorded but not always with the desired improvement in outcomes. Looking at the PPS plan to increasing public confidence gives an example of this task led approach.
- 2.4 The impression was that a range of various activities brigaded under the banner of increasing public confidence were put forward by the senior managers group. In the most recent business plan the objectives included delivery of a disability action plan, submission of an equality return and completion of a programme of outreach events. Whilst worthy aims in their own right, the direct linkage between these events and increasing public confidence is not absolutely clear and although these activities were recorded as mostly achieved, the target level for public confidence was not reached, although it did increase from 67.5% to 70% which is commended. Our conclusion is that the dependence on simple cause and effect objectives misses the opportunity to use the operational experience of the PPS and does not engage those delivering the service. In the case of increasing public confidence the reality is that whilst good publicity can be promoted by proactive public and media engagement, it can only be maintained by the constant delivery of competent services. By meeting the needs of its users and being seen to listen and respond



to those service users the PPS will improve public confidence.

- 2.5 The business planning process also reflects a top down process where the draft plan is created by the most senior personnel with less input from the operational managers. Even where other managers were consulted, Inspectors were told that the process was so far advanced that operational managers did not feel comfortable in making radical changes to the draft and felt it was too late in the process. A balanced scorecard approach is used which cascades the corporate objectives to the regional and functional elements within the PPS. Inspectors reviewed a number of the scorecards and were impressed with the level of detail included and the attempts to link the delivery to the corporate objectives. It is acknowledged that business planning across an organisation of 600 staff is never an easy task and Inspectors accept that the PPS made significant efforts to keep staff informed and the most recent staff and team briefings are evidence of improvement in this area.
- 2.6 In a recent staff survey the PPS found that three quarters of staff (75%) agreed the PPS had clear aims and objectives and 70% agreed their region/section had clear aims and objectives. Eighty percent agreed that they understand how their work contributes to meeting PPS aims and objectives although only 41% were familiar with the balanced scorecard for their region/section.

#### *Management structure*

- 2.7 The management structure and the roles of senior managers date from the previous ODPP - an organisation with 40 or 50 legal staff and relatively low volumes of specialised business. It is vertical in nature and this creates pressure on the top line managers to display multi-functional abilities. Within the PPS the emphasised skill is legal, however the barriers to improved efficiency are process and technology driven. Providing a conduit to deliver this type of thinking to the decision makers is becoming increasingly important.
- 2.8 The slow pace of change within the PPS is mentioned in a number of previous CJI reports and reflected in PPS staff surveys. With such a narrow management channel it is no surprise that making rapid change is difficult. Whilst the most senior directors are accountable they cannot know every aspect of the business and cannot take every decision. An opportunity is available in the shape of the RPs/Assistant Directors (ADs) who are the most senior managers responsible for the delivery of the PPS business. Increasing the business performance role of the RPs/ADs offers the PPS an opportunity to integrate the operational and strategic planning elements of the service. In comparison the equivalent grades of manager in the England and Wales CPS are held accountable for a wider range of performance metrics.
- #### *Business challenges*
- 2.9 The challenges now faced by the PPS mirror much of the public sector, namely an era of diminishing resources but an expectation of effective public service delivery. The PPS has strength and depth in legal expertise and draws its managers from its pool of legal talent. The presumed benefit of legal expertise at all levels of the PPS elides the requirement for a wider management based approach. Individual managers told Inspectors of their attempts to improve performance but it tended to be addressed to individuals, be one-off and resource intensive, and undermined by the lack of relevant and objective performance management information.
- 2.10 Echoing the approach to strategic planning within the PPS – with an emphasis on structure and process – the efforts of management was sometimes dissipated in meetings and did not always achieve the desired outcomes. An analysis of the minutes of meetings (RPs' Forum, PPS sub-committees on performance and personnel) revealed only irregular discussion of performance and in many cases it was focused on reviewing specific cases. These did not appear effective. A more structured approach was required. The CPS use

core quality monitoring standards as the basis for performance assessment and this methodology has delivered improvements in performance,<sup>6</sup> although not simply through the use of standards but more the consistent assessment of performance and holding managers to account for performance management. This is a model the PPS could usefully explore.

- 2.11 In CJI's 2006 report on avoidable delay<sup>7</sup> the complexity of the criminal justice system and the relationships between the various agencies was well documented. The criminal justice system in Northern Ireland is a challenging environment and no single agency can orchestrate change without the co-operation and contribution of the other players. The balancing of independence with influencing its partners is a recurring issue for the PPS but one that must be met. Of particular importance is the relationship between the PSNI and the PPS in the areas of file quality, early engagement with the investigators and pre-charge advice.

#### *Flow of management information*

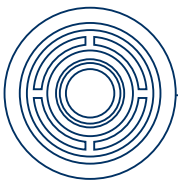
- 2.12 Inspectors discussed with the PPS the flows of information within and outwith the organisation and this is outlined in Diagram 1.
- 2.13 There were extensive information flows within the organisation with decisions being made at appropriate levels. As an example, business cases would be presented to a sub-committee that includes representation in the form of the RPs/ADs and approval would be granted if the value fell within the delegated limit. If it was outwith the delegated limit it would be referred to a higher level within the organisation. Management information would be presented to the regional offices and the regional offices would provide information on performance to the Senior AD – who also forms part of the senior management team (Appendix 5). Operational managers also have access to live reports via Business Objects. The

specific report known as the 80/40 day report is provided in direct support of operational staff.

- 2.14 Management information is supplied to the management board, senior management group, ADs and business managers. Corporate performance is discussed at the senior management group and sub-committees (on which ADs are represented). There are regular meetings between the Senior AD and RPs. Running alongside this were a series of individual projects and working groups focusing on improvements to processes, efficiency, and policy which feed back recommendations to the senior management for approval to implement. A newsletter was circulated that dealt with business and also human interest issues and guidance and updates on legal issues were regularly disseminated to staff. In terms of the depth and breadth of data available and the channels for distribution PPS performs well.
- 2.15 Inspectors' observation was not that the quantity of information or the channels to disseminate it were lacking but rather the tangible outputs arising could be improved. One particular area is that of performance management. There was ample raw data provided to management under the banner of performance management but as will be discussed later on it tended to vary widely across the regional offices and needed significant interpretation for senior managers. It also was subject to a caveat by local managers and Inspectors felt this reduced accountability. There was no external benchmarking or comparative data that would provide directors – and especially non executive directors – with a yardstick against which to assess how the PPS was performing.
- 2.16 At the more operational level a PPS Business Improvement Team conducted a series of reviews using LEAN process techniques and made recommendations aimed at improving working practices, regulating staff grading and

<sup>6</sup> 'Thematic review of the CPS Core Quality Standards Monitoring Scheme', HMCPSI.

<sup>7</sup> 'Avoidable delay: a thematic inspection of delay in the processing of cases in Northern Ireland', CJI, May 2006.

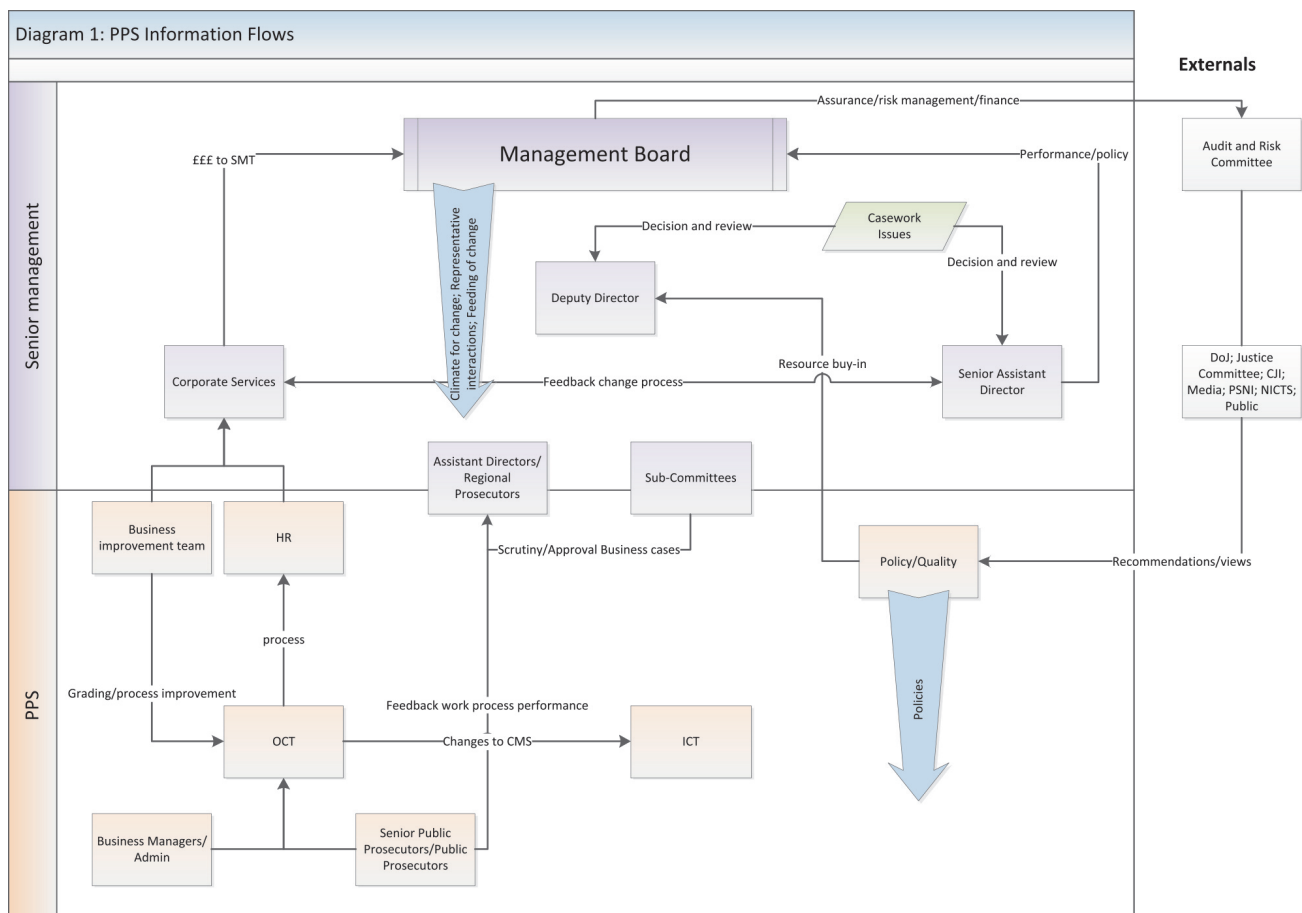


staff numbers. In similar vein the PPS Organisational Change Team and Information and Communication Team developed strategies that contributed to the continuous improvement process within the PPS as witnessed by the development of the case management system and increased use of technology. These teams provided reports to various sub-committees within the PPS on which the RPs sit, thus providing a linkage between the operational management and change management.

2.17 Alongside the number of PPS inspired projects and initiatives was specific external pressure in the form of recommendations, initiatives, consultations and requests from third parties, not least from CJI. Overarching all of this was the newly appointed Director's enthusiasm to make change happen. The end result is a massive amount of energy translating into many activities within a series of reforms, pilots and projects.

2.18 The conclusion of Inspectors was that the structures and processes to manage information flows and to identify initiatives for improvement were in place and the PPS did not suffer from a lack of ideas. If there was any criticism it was that change appeared to take longer than expected. Also Inspectors felt that whilst the mechanics of projects were delivered corporate improvement was slow. This is not unique to the PPS as often project management is day-to-day with success being measured in the completion of tasks and achievement of performance milestones. The actual outcomes of the project lie outside the project management process and should be pursued by the project board after the project is completed using the project benefits realisation plan.

2.19 ***Projects or initiatives should be deemed successfully completed when the benefits realisation plan is fulfilled.***



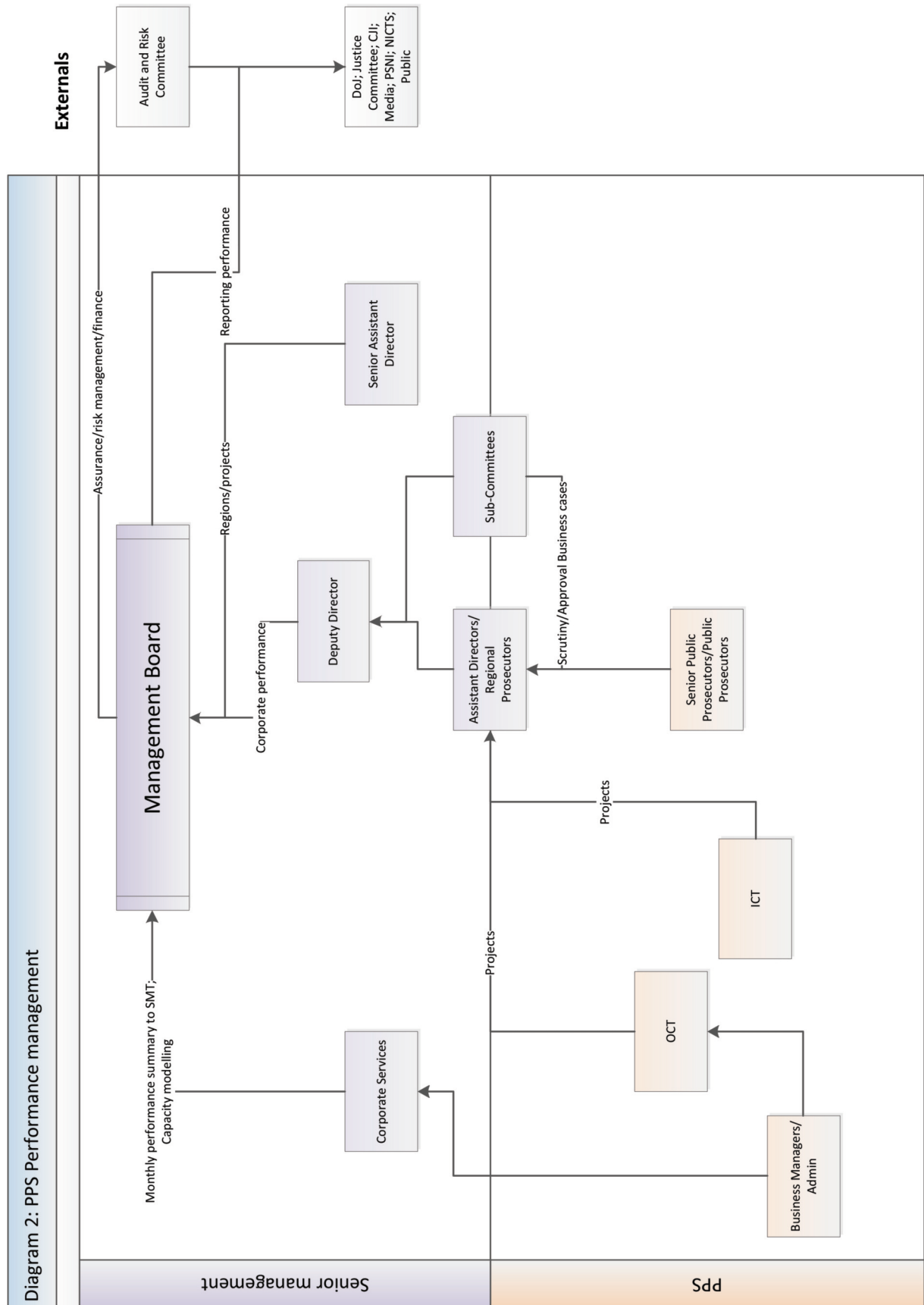


## *Use of sub-committees*

- 2.20 Inspectors also reviewed a range of working groups and sub-committees tasked with various projects. The PPS sub-committees covered a significant amount of ground with many germane issues discussed. Reading the minutes of these meetings it is obvious that the PPS were acutely aware of their operating environment, the challenges they faced and in many cases the reasons for problems arising. As a forum for improving performance they suffered in a number of ways although some good work is done. Creating a group that becomes responsible for improving performance and delivery can lessen the accountability of individual managers. The scope of the group often widens and focus is lost. Unless each specific activity is linked to performance measures the recording of action points is the substitute for achievement. So whilst significant effort was invested in certain issues such as unserved summonses and locate and trace, the completed actions were the setting up of joint working groups. Similarly, police training on interview summaries is discussed but the recorded achievement was the agreement on training guidance. If the activities were aligned with specific individual performance targets then the implementation of the measure would be achieved when the improvement in performance is delivered.
- 2.21 To change this the PPS need to combine the accountability for the delivery of its work with the other initiatives they identify within the working groups. Using a regular structured reporting process with consistent measures of performance and action for improvement allocated to specific personnel they will more easily track improvements in the mainstream business. It is also more likely to give real time benefits.

## *Flow of performance data*

- 2.22 Diagram 2 below shows the hierarchical steps in the flow of performance management data. Thus the PPs report to the Senior Public Prosecutors (SPPs) who in turn report to the ADs or RPs. The line management reporting is through the standard Northern Ireland Civil Service reporting pro forma and includes a mix of quantitative and qualitative measures. The ADs and RPs in turn report to the Senior AD on the performance of their region or division.
- 2.23 One of the key findings was that the monthly performance management information that was issued was heavily caveated with localised intelligence. There were a few instances where individual performance was questioned when the number of cases processed consistently fell below the required number but this is a piecemeal approach to performance management and makes a limited contribution to corporate performance. Inspectors did not see evidence that performance in dealing with victims and witnesses, advocacy at court or quality of files and records was a consistently measured element of the performance management process.
- 2.24 The failure to meet timeliness targets should be one of the biggest priorities for the PPS and a key target for all staff. In some ways it was. There was much debate about the timeliness targets and RPs told CJI that they made it a priority when speaking to their prosecution staff. The PPS told Inspectors that they supported a range of initiatives aimed at reducing delay including:
- youth engagement pilot;
  - immediate diversion scheme;
  - streamlined files;
  - early intervention in indictable cases;
  - statutory time limits in youth cases;
  - direct transfer of indictable cases to the Crown Court; and
  - early guilty pleas.



- 2.25 The challenge was to convert this desire for change into actual change. A possible starting point for this was to look to the CPS in England and Wales for an example of a prosecution service that dramatically improved performance. The experience of the Wales CPS Group provided a possible example to the PPS.

### **Wales CPS Group**

Placed twelfth of 13 areas assessed by HMCPSI in 2009 Wales CPS was deemed to be failing. The discontinuance rate was excessively high compared with national standards and timeliness targets were not being met. Management at the time was not driving improvement and - amongst other things - identified the poor quality of police files and issues in court as major reasons for under-performance. Even so, management did not have any high level meetings with stakeholders, including the police, and any meetings tended to be operational and often chaired by deputies. Morale within the area was low and deteriorating.

Under new leadership a revised performance management approach was implemented and underpinned by a governance structure with defined roles, quality standards that explained what Prosecutors should do and an extensive range of validation measures to indicate performance.

Improving liaison with the police was given higher priority and adverse case reports were shared with them. Simple things like numbering documents transferred from NICHE Record Management System (RMS) to Case Management System (CMS), naming statements and providing interview summaries improved the process. A LEAN review of admin processes led to admin staff concentrating on fully completing individual files rather than moving forward a batch of half completed ones. This not only improved timeliness but also gave a much clearer indication of the number of files that were being delayed.

The performance management targets were reviewed with emphasis on casework teams. Increased focus was on guilty pleas, discontinuances, not guilty pleas and timeliness. A drive to contact victims and witnesses through email, text and phone rather than paper based was successfully pursued. Also victims and witnesses defined the level and frequency of contact.

The performance management meetings were altered so that managers reported performance for their area using a structured format with emphasis on analysis and not accusation. The sharing of lessons learned has driven improvements. Reporting is by exception with a dashboard approach to identify all the parameters but high level analysis on a smaller number of key measures. Prosecutors completed feedback forms to capture qualitative data.

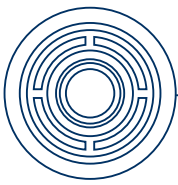
*"Performance improved even though it was the same people delivering,"* Business Delivery Manager.

Additional training was provided for district Prosecutors also designated as lawyer managers. A range of Key Performance Indicators (KPIs) isolated weaknesses and reports on file quality gave managers insight when dealing with the police. Through reporting at regional management group meetings managers shared findings and received support from their peers. All this led to a cultural change that the lawyer managers were there to manage and drive performance improvement not to simply review casework and line manage absenteeism.

*"I manage upwards of 23 lawyers, some of whom have more experience than I do and some of whom may be better lawyers than I am... but the formal reporting of KPIs, core quality standards and adverse case reports all support my role as manager and clarify expectations,"* Lawyer Manager.

The emphasis is on performance management of individuals and teams be it Prosecutors, Business Managers and admin internally, and engagement of police – and even the defence – externally. This has paid dividends with Wales CPS moving to fifth in the national rankings alongside a 16% fall in expenditure in two years and a similar fall in expenditure forecast by the end of the comprehensive spending review period.





2.26 The rapid improvement of performance in Wales CPS is notable because it occurred in a short timeframe (two years), without a massive haemorrhage of staff. The focus was on doing the day-to-day business better and using recognised performance management metrics and systems to drive this. Thus the KPIs indicated corporate performance but the adverse case reports (see Appendix 6) and regular reports from the lawyer managers measured operational performance. Improving the operational processes and highlighting failings informed the meetings between the various parties and eventually the evident improvements in corporate performance. The use of a compendium of validation measures including cost analysis also provided a comprehensive measure of performance.

2.27 Overarching all this was strong leadership. In interviews with Wales CPS staff Inspectors heard the consistent refrain that leadership by senior management was the key. Stepping up to the challenges presented by outside agencies was a key role but equally important was acceptance of performance challenges within Wales CPS and creating accountability and management approaches that led to change.

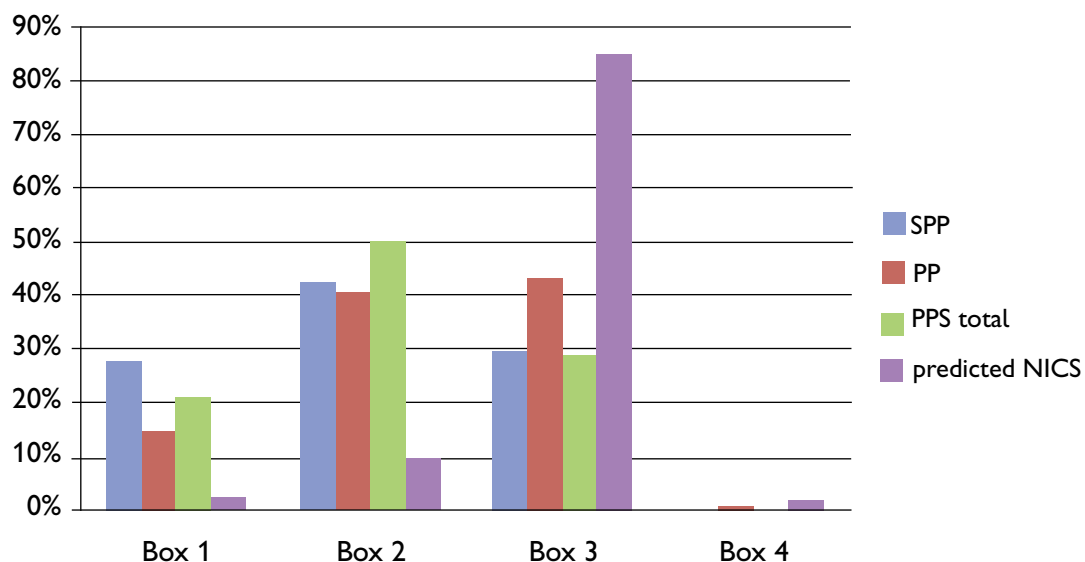
2.28 The PPS tended to look for the golden bullet solution with specific initiatives, working groups

or structures seen as the solution. In the PPS the flow of performance information was not easily traceable in the various reports produced and the monthly performance management summary did not support an accountability mechanism or a structured process for performance improvement. Doing the day-to-day business consistently well, having transparent metrics and clear lines of accountability with a willingness to step outside the boundaries of the organisation drove improvement in the Wales CPS and, Inspectors believe, would do the same for the PPS.

#### *Performance measures and objectives*

2.29 Overall, the performance management regime within the PPS needed development, particularly in respect of the quality of analysis. In some instances local factors appeared to be too readily accepted as reasons for non-achievement and the variation in performance statistics across the regional offices made valid comparisons very difficult. The prime example of this was the setting of a target number of cases per day for the SPPs and PPs. Whilst a numerical target is a valid element of any performance management system it had become a dominant feature of the thinking of Prosecutors and their managers. It was a

**Graph 1: PPS box markings by grade**



very narrow measure of performance as it did not address quality issues or advocacy skills and was often complicated by requests for applications and issues about the case-weights. The box markings for individuals in the PPS not only deviated from the predicted norms within the wider Northern Ireland Civil Service (NICS) system they also did not correlate with the declining performance in the corporate timeliness targets. Whilst recognising that external comparisons often require a range of caveats, there is evidence to support some benchmarking with a most similar prosecution service in England and Wales to provide directors with some objective measures against which individual and corporate performance may be assessed.

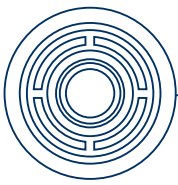
- 2.30 Most recently, 71% of PPS staff achieved a Box 1 or Box 2, the NICS predicted norm would be below 20%. Twenty-nine percent receive a Box 3, the expected norm is around 75%. The lack of correlation between individual performance assessment and corporate achievement indicated a mis-match between the two. It also corroborated the findings in the staff survey where management of poor performance received a low score. Inspectors found that the disconnect between the individual performance and the corporate performance contributed to the culture that the corporate performance was not an issue for individual Prosecutors provided they met the set number of decisions or attended the requisite court days. In turn this removed the operational staff from the process to improve performance, placing the pressure on the senior managers to identify initiatives or projects which had met with limited success. The PPS already deliver a high quality of casework but understanding the business environment is key to delivering a better service overall.

#### *Efficiency, cost control and operational reform*

- 2.31 The PPS is facing a budget reduction of 5% over the course of the current comprehensive spending review and is implementing a new fee scheme and rationalising the use of Senior Counsel, alongside savings from reduced

current expenditure and better procurement. Despite these cost cutting measures, at the time of writing there remained a budget deficit in the final year of the budget cycle.

- 2.32 The introduction of more comprehensive and relevant performance information in Wales CPS along with improved performance management by operational managers not only improved service delivery as seen in an improved ranking by HMCSI, but also reduced cost.
- 2.33 Bringing together the delivery and performance management elements of the PPS should provide a mechanism to use feedback on service delivery to drive improved performance in a real time environment. Rather than instituting various initiatives and projects and then evaluating these outside day-to-day business, a continuous assessment of performance and comparisons with internal and external benchmarks will provide a measure of how well things are going.
- 2.34 The role of the RP/AD could be redefined to include a greater degree of business management. This would be supported by a range of performance metrics, (the CPS core quality standards and the Wales CPS performance management regime provide a good model). In this model of governance the RP/AD could still review the most serious and complex casework but a large part of this effort should be delegated to the SPs.
- 2.35 In Diagram 3 the role of the RPs/ADs is the linkage between the operational and senior management levels. The diagram is not a hierarchical representation but is meant to reflect the role of the RP providing the linkage between the director level and the operational level within the organisation and being the main conduit for performance delivery. Thus the intelligence from operations would inform strategic direction. The annual business plan and longer term corporate plans do not need to be formulated at the centre and issued for consultation – which tends to be desultory. Rather, during the course of the year the variances in performance, the feedback from

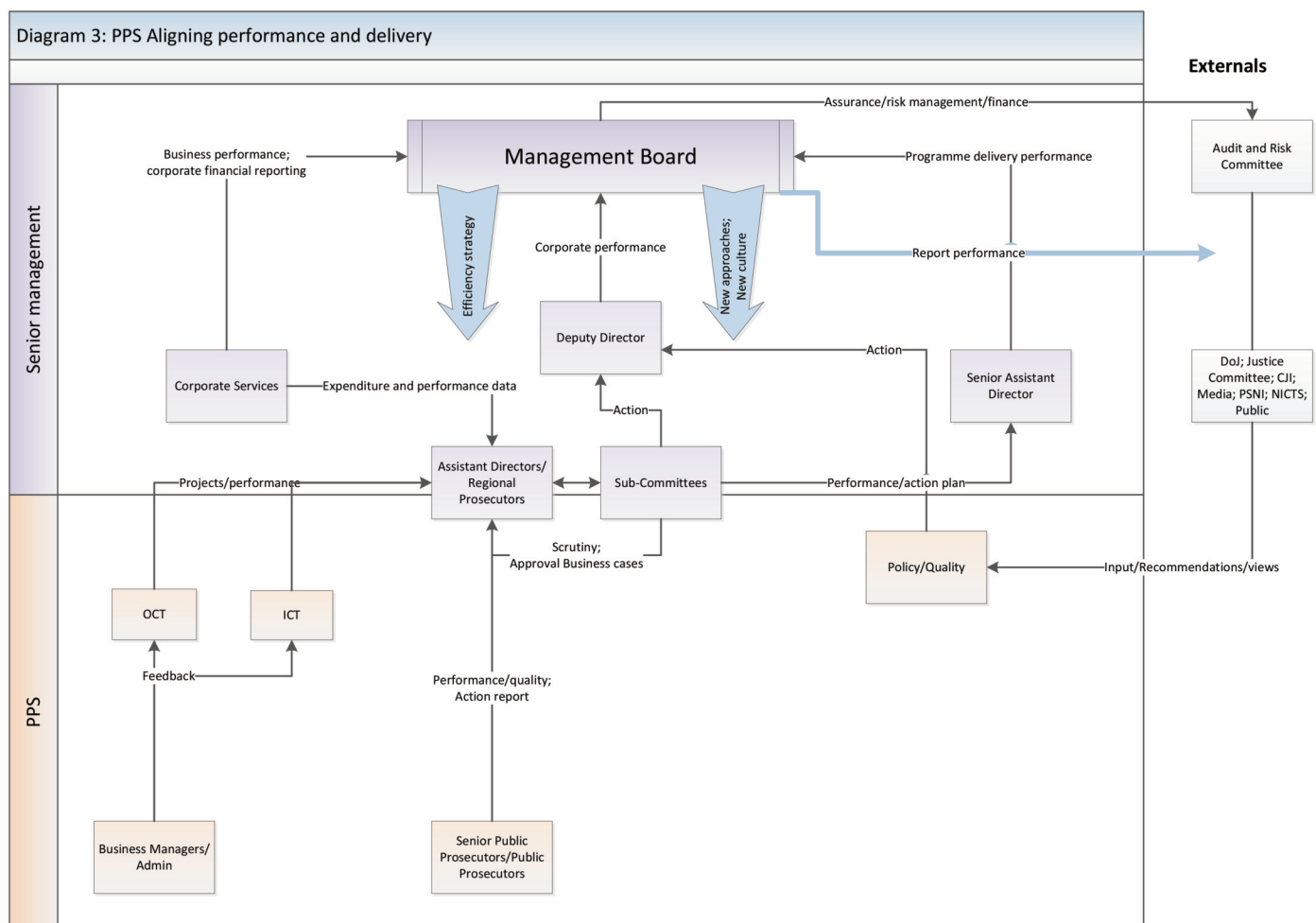


stakeholders and the actions plans from the RPs/ADs will identify some of the priorities and the objectives for the PPS.

- 2.36 The strategic elements would emanate from senior management. The operational improvements are vested in the Organisational Change Team and business managers. The RPs/ADs would become the centre for service delivery and improvement. They would be the accountable people through regular performance reporting mechanisms using KPIs and validation measures. The monthly performance management report would become the vehicle by which issues are raised that affect performance and by which solutions are identified. Performance below target or a

downward trend in performance would be flagged for improvement action. The RP/AD would prepare the report on performance with actions for improvement and these would be reviewed at the monthly performance management meeting. The action points and associate activities would be stated but achievement would not be recorded as realised until the performance metric improves.

- 2.37 **Regular accountability meetings led by the Senior AD should be held using a range of performance metrics with action plans for improvement delivered by the RP. A record of the meeting with proposed remedial actions should be presented to the senior management team.**



## CHAPTER 3:

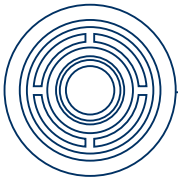
# Delivery



### *Strategic and business priorities*

- 3.1 The PPS developed business plans almost from a standing start, as the new body differed dramatically from the ODPP in both volume and nature of prosecutions undertaken. Looking at the objectives in the formative business plans they tend to focus on capacity building, which is to be expected from a new organisation. This process is repeated for a number of years.
- 3.2 A high level assessment was that the organisation tended to achieve objectives when defined as activities but the associated targets were missed and in some instances the direction of travel was downwards. The linkage between the performance measures for individuals and corporate measures was reflected in the high quality of decision making but not in the achievement of other corporate performance.
- 3.3 This reflects the wider observations of Inspectors in Chapter 2 of this report, that performance management within the PPS needed to be reviewed with greater focus on operational input being used to inform corporate performance management. The proposal to reinvigorate RPs/ADs as the performance managers within the PPS encompasses a role whereby they provide feedback on performance with actions to address issues. Their feedback will generate performance milestones and targets that are directly linked to the delivery of improved services.
- 3.4 Reinforcing the role of the RPs/ADs will also give impetus to the delivery of services through the regional offices. More management information at regional level and greater input from operational managers increases accountability. Previous CJI reports noted that the PPS took a cautious approach to change and introduced pilot studies that tended to be protracted.
- 3.5 One particular example illustrates how process can elide achievement. In 2007, CJI's baseline inspection report of the PPS made a recommendation stating that, '*Directing lawyers should, save in exceptional circumstances set out clearly to the victims or personal representatives their reasoning for directing no prosecutions or withdrawing proceedings.*' The PPS introduced a pilot programme for the giving of reasons. A CJI follow-up review in 2009 indicated some progress. Around this time the PPS set up an evaluation process to assess how well it was delivering. An interim evaluation was completed in April 2010. A further interim evaluation was completed in September 2010 with the full evaluation delivered in December 2011 for internal consultation. By March 2012 a report on the pilot was presented for consideration – some five years after the recommendation.
- 3.6 At roughly the same time a further CJI report<sup>8</sup> was published recommending that the PPS implement the earlier findings. This slow and somewhat torturous process is the result of prioritisation and processes within the PPS. They recognise priorities but implementation is

<sup>8</sup> 'Telling them why: an inspection of the Public Prosecution Service for Northern Ireland's giving of reasons for its decisions', CJI, May 2012.



slow and pilot programmes tend to drag on.

- 3.7 In similar vein the Business and Corporate Plans of the PPS up to 2011-12 do not record much progress in delivering a formal process to assess the quality of advocacy. In light of the proportion of resources committed to court advocacy and the risks to the organisation, if the quality of advocacy adversely affects a high profile trial this should have been of the highest priority within the PPS. Inspectors are pleased to note that the current PPS Corporate Plan 2011-14 gives an increased emphasis to advocacy. It includes an objective to develop and embed the advocacy strategy as a key element of the strategic priority 'to deliver an efficient and effective prosecuting service'. Metrics on quality of advocacy should form part of the performance management regime discussed in Paragraph 3.30.
- 3.8 The other strategic priorities for the PPS could include improving the performance management and accountability regimes, improving training and development, focusing on defining and delivering improved outcomes with less emphasis on activities and tasks.
- 3.9 ***The PPS business planning should focus more on delivering changes in service quality and efficient delivery targeting improvement with less emphasis on tasks, activity or volumes of workload. The task level objectives can be included in operational plans at RP level.***

#### *Caseload and the capacity model*

- 3.10 The PPS approach to changing demand is usually considered within the context of its resource model – known as the capacity model. Over the last seven years the relevance of the capacity model and the associated productivity measure has reduced. When the PPS was being established, the level of resources needed to meet the estimated demand of casework and service a regional structure was considered. Before the PPS, the

ODPP dealt with serious cases (about 24%) and police prosecuted the remaining 76% of cases. One possible resource model considered was to simply allocate resources equivalent to the ODPP and the police prosecution element. On this basis the Criminal Justice Review Team posited £10 million as the cost of the new service (equivalent to around £16 million in 2012).

- 3.11 Recognising that this was not only a simplistic premise but also obsolescent, a more detailed analysis of possible workload and the associated resources was undertaken. A capacity model based on the number of Prosecutors needed to handle an annual caseload of 40,000 to 80,000, and staffing to cover courts and the regional offices was determined. The capacity model indicated a workforce of some 609 staff at an annual cost of £35 million. The latest incarnation of the capacity model predicts a total caseload in 2011-12 of 58,800 cases with Prosecutors directing roughly nine decisions per day for summary cases and averaging about four cases per week for indictable offences.
- 3.12 Over the last four years the total number of files received by the PPS has fallen by 2,599 (5%). During that period the caseload has varied considerably with over 63,000 files received in 2009 and less than 53,000 files received in 2011. Within these general variations the number of more serious or indictable cases rose and the number of less serious or summary cases fell. The fall in summary cases is to be expected as initiatives such as directed cautions, diversions from court and increased police discretion take hold. Against a backdrop of a fall in reported crime the increase in indictable cases is less easily explained. The initial police charge is the basis for the caseweight category and it maybe that summary cases are reclassified as discussed in an earlier CJI report.<sup>9</sup> Considering the costs and resource implications for the PPS understanding the variables governing their presented workload should be a priority.

<sup>9</sup> 'The use of early guilty pleas in the criminal justice system in Northern Ireland' CJI, February 2013.



**Table 1: Files received between 1 January 2008 – 31 December 2011 by caseweight category**

Caseweight	2008	2009	2010	2011	Change 2008 - 2011
1	213	177	176	221	4%
2	975	1,189	1,148	1,327	36%
3	852	1,127	1,105	1,442	69%
4	2004	2,279	2,131	2,661	25%
<b>1 to 4</b>	<b>4,044</b>	<b>4,772</b>	<b>4,560</b>	<b>5,651</b>	<b>28%</b>
5	7,598	11,122	11,719	12,520	65%
6	13,786	15,532	13,805	11,560	-16%
7	13,774	13,599	13,771	11,413	-17%
8	16,301	18,141	16,797	11,760	-28%
<b>5 to 8</b>	<b>51,459</b>	<b>58,394</b>	<b>56,092</b>	<b>47,253</b>	<b>-8%</b>
<b>Sum:</b>	<b>55,503</b>	<b>63,166</b>	<b>60,652</b>	<b>52,904</b>	<b>-5%</b>

3.13 Looking more closely at the caseload of regional offices shows that, although the overall number of cases has fallen by more than 5,000 the number of indictable cases rose by 1,188 (+31.7%). The capacity model primarily focuses on the number of cases processed and as such creates a one dimensional response – namely more cases means more people. Although not intended as a performance management tool, Inspectors found that discussions with managers about performance and performance management were dominated to the exclusion of other measures by references to the number of cases directed upon by staff. Increasing the emphasis on other meaningful management information and performance management data would assist managers in making better use of existing resources and to objectively review the current resource level.

3.14 The emphasis on the cases per Prosecutor used in the capacity model does not necessarily support the PPS view that additional staff were required. As an example of how statistics may be interpreted, the PPS capacity model indicated an average of 16 decisions per month<sup>10</sup> for a SPP. In theory at this rate a

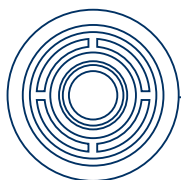
total of 1,188 files could be processed by 7.5 Full-Time Equivalent (FTE) SPPs. The PPS workforce numbers shown below indicated a carrying complement six FTE SPPs above that predicted by the capacity model. The conclusion being that the increased workload could have been absorbed within resources. Similarly, although the number of PPs is less than the target level the summary caseload level is also below target.

**Table 2: Staffing numbers 2012**

Admin staff		SPP		PP	
Capacity Model	Actual	Capacity Model	Actual	Capacity Model	Actual
433	397	48	54	90	82
	92%		113%		91%

3.15 Against the backdrop of decreasing numbers of cases and a seemingly adequate level of staff, the reported pressure on staff and deterioration in timeliness figures indicated that the capacity model could be improved to make it fit for purpose.

<sup>10</sup> January 2012 monthly performance summary – internal PPS document.



3.16 One particular failure of the capacity model was the lack of attention given to increases in applications, disclosure requirements and correspondence. With the limited performance metrics available to the PPS many of these changes in a working environment were discussed and acted as caveats to the information on workforce numbers indicated by the capacity model and as a result the capacity model as a model for resource planning and performance management was not only redundant but it limited innovation.

3.17 Although not intended as a performance management tool the caseload figures intrinsic to the capacity model became *de facto* performance targets for staff and operational managers. Unsurprisingly, in this role the capacity model was limited with evidence of instances where actual performance deviated from target performance without a standardised response from the PPS to remedy these issues. In an earlier CJI report<sup>11</sup> the need for performance management as opposed to performance monitoring was made and the PPS recognise the deficiencies in the capacity model. There was a need to clarify what were the performance management indicators within the PPS, to provide consistent management information to support managers in assessing performance and develop a framework by which managers can improve performance and be held to account for doing so.

3.18 **The PPS should review the capacity model with a view to updating it to include a wider range of management information and improved links to changes in the volume of cases by the end of 2013.**

#### Efficiency and value for money

3.19 Table 3 summarises a recent report of the average number of decisions per Prosecutor for March 2012. This data was provided to RPs and Directors each month.

**Table 3: Average number of decisions per Prosecutor for March 2012**

CW category	FTE	1-4	5-6	7-8	All
<b>Belfast</b>					
SPP	11.2	15.1	12.3	8.2	35.6
PP	25.8	2.9	24.4	13.3	40.6
<b>Eastern</b>					
SPP	7	18	6.4	1.6	26
PP	17.7	1.6	30.7	25.9	58.2
<b>Ballymena</b>					
SPP	5	16.6	7.6	2.4	26.6
PP	10.5	1.6	20.1	17.5	39.2
<b>Foyle</b>					
SPP	2.5	27.6	2.4	2.8	32.8
PP	9.9	0.8	29.9	26.8	57.5
<b>Western</b>					
SPP	4	5.8	16.3	9.8	31.8
PP	8.6	2.4	41.4	36.7	80.6
<b>Southern</b>					
SPP	2.8	9.3	24.3	17.9	51.4
PP	7.8	3.8	27.2	27.1	58.1
<b>All Regions</b>					
SPP	32.5	15.3	11.1	6.5	32.8
PP	80.3	2.2	26.1	22.3	50.8

\* Coloured text illustrates lowest and highest range.

3.20 The first observation from this report was the high level of disparity in recorded performance statistics across the regions. Singling out some of the largest differences helped clarify the point. The cases deemed within Caseweight Category 7 and 8 were the most straightforward cases and were quite similar in nature. There were also very large volumes of these cases which helped to smooth out individual variances. In general, one would therefore expect a Prosecutor to be directing decisions on roughly a similar number of cases in any given timescale. The figures indicated that PPs in the Western region directed almost three times the number of cases in the 7-8 caseweight category compared to PPs in Belfast. A reasonable monthly target per PP would be around 80 to 90 summary file decisions per month.<sup>12</sup>

11 'The use of early guilty pleas in the criminal justice system in Northern Ireland' CJI, February 2013.

12 Allowing for court-time PPs would direct on about 10 working days a month at a rate of nine files a day.



- 3.21 Conversely, this data showed that the number of 1 - 4 caseweight decisions, normally undertaken by SPPs, in the Belfast region was almost three times that in the Western region, with the average number of decisions made by SPPs ranging from 5.8 to 27.6 each month. Although the nature of these cases is more variable the target was set at an average of four decisions per SPP per week or 16 per month.
- 3.22 The RPs could offer some possible explanations for the significant differences in performance across the regions but the views were not often supported fully by evidence. The minutes of the regular meetings of the regions did not reflect much analysis of this other than staff absence levels and the picture is further complicated as not all staff direct on cases.
- 3.23 In any event the impact of individuals or regions not meeting the targets was unclear. It appeared to Inspectors that the PPS recognised strict adherence to these targets for individuals as a performance measure was unfair and the high level of variability ruled out their use as a reliable resource planning tool. Therefore, our conclusion is that they are used in the absence of anything better. The PPS need to redefine their performance management regime to iron out the inconsistencies in the data provided to managers and to use benchmarking to set performance standards.

#### *Unit cost per case in regional offices*

- 3.24 The PPS does not routinely monitor its unit costs, however a unit cost of £534 per case was recently quoted by them.<sup>13</sup> This unit cost covered both Magistrates' and Crown Court cases which is useful as a very high level indicator in the absence of anything else. For the purpose of this inspection the total costs of the PPS were simply apportioned across the number of SPPs and PP's working in the regions. Dividing the costs of the SPP and PP equivalents by the number of cases received in each category of Prosecutor gave a unit cost per SPP (equivalent to Crown Court) case of £1,461 and per PP (equivalent to Magistrates' Court) case of £428. The combined unit cost

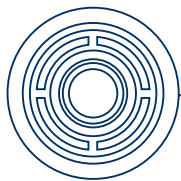
for all cases was £537 – not dissimilar to the earlier estimate provided by the PPS.

- 3.25 Taking this analysis a stage further unit costs for the regional offices were estimated and it should be noted that these are very much estimates. Even so the most interesting aspect of this analysis is the significant range of costs. The indicative cost per Crown Court case in Ballymena is 25% above the average for the regional offices as a whole, and 57% more than the cost of a case in Foyle. Similarly, a PP (Magistrates' Court) case in the Western region is 34% below the average, the Belfast region is 18% above the average and 77% more than the Western region. Differences in the grading and number of PPS staff will obviously have the biggest impact but what the cost comparison does is to quantify, admittedly in a blunt manner, the relative differences and points towards a means of prioritising measures to improve efficiency. The overall aim is to move the debate away from simply the legal aspects of the business process and to introduce other dimensions to the management process.

**Table 4: Average cost per case**

Regional office	FTEs	1-4 cases	5-8 cases	Variance cost	Average against overall average
<b>Belfast</b>					
SPP	11.2	1,657		£1,665	14%
PP	25.8		12,596	£505	18%
<b>Eastern</b>					
SPP	7	1,327		£1,300	-11%
PP	17.7		10,567	£413	-4%
<b>Ballymena</b>					
SPP	5	677		£1,820	25%
PP	10.5		5,525	£468	9%
<b>Foyle</b>					
SPP	2.5	530		£1,162	-20%
PP	9.9		5,138	£475	11%
<b>Western</b>					
SPP	4	642		31,535	5%
PP	8.6		7,450	£284	-34%
<b>Southern</b>					
SPP	2.8	563		£1,225	-16%
PP	7.8		4,744	£405	-5%

<sup>13</sup> Response to Committee for Justice review of the CJI report, 'Use of legal services by the criminal justice system' 28 June 2011.



3.26 A general comparison with England and Wales where the unit costs of a Magistrates' Court case was £302<sup>14</sup> and a Crown Court case was £743<sup>15</sup> revealed higher average costs in Northern Ireland, although in one instance the unit cost in Northern Ireland was under that in England and Wales. Making comparisons with the CPS in England and Wales invites the response that Northern Ireland cases require more PPS input due to preliminary hearings, more applications or greater disclosure demands arising from the role of defence in Northern Ireland Magistrates' Courts. Arguing these issues to a conclusion where comparative evidence becomes an acceptable benchmark is fraught but retains some merit where the differential exceeds 50% of cost. Of more benefit is an examination of regional variations in cost, for what is ostensibly the same service, as a starting point to analyse the impact of operating policies and practice.

3.27 For instance, an investigation in the Wales CPS group looked at the disparity in unit costs per Crown Court case across their district offices. Since 2009 the mean unit cost per case fell 12% from £840 to £740. Of perhaps greater relevance to the PPS is the range of unit costs across the various offices fell from £600 to £100 following the implementation of best practices from the other parts of the region. The key to this was availability of reliable and consistent management information that was supported rather than being caveated by local knowledge. The Wales CPS also used multi-disciplinary teams of lawyers and administrative staff from the centre and regions to carry out the analysis and report to the senior management. The PPS Business Improvement Teams were well positioned to carry out this work.

3.28 **The PPS should establish a benchmarking framework using comparative measures of internal statistics and also comparative measures from most relevant neighbouring jurisdictions by the end of 2013.**

#### *Performance management*

3.29 The conclusions of the inspection team were that a higher awareness level of performance measures among staff existed than in the past. There were some improvements in access to/awareness of data, but the raw data alone needed more analysis and explanation of how it reflected performance (see Appendix 7). Overall, the approach to performance management was still weaker than desirable.

3.30 The PPS gathered a significant amount of data that could contribute to improved performance. Inspectors felt that one weakness was the variation in the data presented to managers which led to a tendency to explain why targets were difficult to meet. Some progress was being made in addressing poor performance at an individual level but a consistent approach was hindered by the poor quality of the available performance metrics. Improvements in performance were more likely to be due to individual personnel than any performance management system within the PPS. This led to inconsistency across regional offices. A wider range of metrics was required and consideration should be given to the model adopted by CPS Wales (Appendix 8).

3.31 ***The performance management regime for Prosecutors at every level in the PPS should reflect a wider range of targets including quality, timeliness and efficiency.***

3.32 There are issues outside the PPS operational sphere that affect its performance. A key aim for the PPS identified in the original review was to influence its partners and stakeholders across the criminal justice system to assist its delivery. The view of Inspectors was that much remained to be done in this area although the recent public statements by the Director were welcome and a step in the right direction.

3.33 Performance Improvement Partnerships brought together key stakeholders such as the PSNI, the Northern Ireland Courts and

14 'An audit of CPS performance relating to the handling of discharged committals' HMCPsi, October 2010.

15 Wales CPS Group performance data, 2011-12 internal report.

Tribunals Service (NICTS) and the PPS. The PPS also met with the PSNI at district level to discuss relevant issues. Inspectors assessment was that more evidence was needed indicating performance improvement. Some local issues were being addressed through this process but the main barriers to improved performance remained. Inspectors were of the view that these meetings lacked an imperative to make change happen with action points tending towards specific activities and reviews that may or may not have an impact.

- 3.34 The experience of CPS Wales was the regular reporting of performance against a range of metrics and validation measures gave a better insight into performance and the sharing of comparatives, both internal and external, identified means for improvement.

- 3.35 ***As part of the early intervention pilot Prosecutors should be allocated at the earliest stage of the investigation. A specific target of improved timeliness should be allocated to this pilot and made the responsibility of a RP/AD.***

#### *The interface between investigation and prosecution*

- 3.36 The delivery of an effective prosecution service hinges to a large extent on the relationship with the investigatory authority – in this instance the PSNI. In discussion with PSNI senior personnel one issue that was raised, and was also the subject of an earlier CJI report,<sup>16</sup> was the early involvement of Prosecutors in police investigations in the more complex and serious cases. The interface between investigation and prosecution was considered in detail during the review of the criminal justice system in Northern Ireland. The conclusion of these considerations was a recommendation *‘that it be a clearly stated objective of the prosecution service to be available at the invitation of the police to provide advice on prosecutorial issues at any stage in the investigative process.’* The PPS is introducing a parallel process whereby a Prosecutor will be allocated at an earlier stage

and this should lead to an improvement in case progression and performance against time limits. A specific target of improved timeliness should be allocated to this initiative and made the responsibility of a RP/AD. In the CJI report on avoidable delay<sup>17</sup> the importance of the interface between the PSNI and PPS was reflected in the recommendation that: *‘The PSNI and the PPS should incorporate the joint Criminal Justice Performance Standard into their respective corporate/business plans.’* The PPS and PSNI have made progress in this area with the launch of the Indictable Cases Early Intervention Pilot.

#### *Police files*

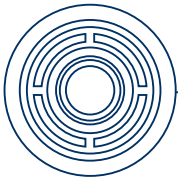
- 3.37 As an indicator of the management response to issues that influence the core of the PPS business, the concern around the quality of the police files presented to the PPS was germane. File quality was important because poor file quality had manifold impacts on the timeliness of decision making, the quality of the prosecution case and the ultimate end result for both defendants and injured parties. This was a recognised problem since the establishment of the PPS and even before in the DPP’s Office.

- 3.38 A Prosecutor issued a Decision Information Request (DIR) to the PSNI if they believed the file was incomplete. Although the number of DIRs was not necessarily a measure of the quality of police files, there were large variations in the number of DIRs issued by PPS regional offices. The DIR rate for indictable files in the PPS Foyle office was 70%, whereas that for the PPS Omagh office was quoted at 43%. Inspectors discussed with PSNI and PPS staff the possible reasons for the wide variation and concluded that the working relationship between the Prosecutor and investigator was a factor. Some Prosecutors revert to the investigator more readily than others.

- 3.39 The PPS for their part have assessed the type of DIRs issued and categorised them, and they held meetings with the local PSNI Commanders where the issue of file quality

<sup>16</sup> ‘Avoidable delay’ CJI, June 2010.

<sup>17</sup> Ibid.



was raised. Although there was some evidence to indicate that the variation in DIRs between the regional offices was reducing, progress in improving file quality had been slow and one of the reasons was the differing views of the PPS and PSNI. In the case of the PPS they believe that files are not of sufficient quality to support a decision to prosecute, whereas PSNI personnel told Inspectors that they felt some of the information requests from the PPS were nugatory and not essential to a prosecution. As part of this inspection CJI and HMCPSI reviewed a selection of files to ascertain what type of DIRs are requested and if they are actually necessary for the Prosecutor to make a decision (full details Appendix 9). A general finding was that the level of DIRs was not significantly different from that experienced in England and Wales and similar areas of deficiency were evident. Whilst recognising that the file sample was comparatively small three salient points arose. These were:

- the automatic inclusion of CCTV evidence where it is available and its submission along with the file would be beneficial;
- an interview summary should be included with all files; and
- the sequencing of the file should reflect the Prosecutors approach to the case.

3.40 The final point presents the greatest difficulty. The assembly of the police file is driven to a large extent by the NICHE system and this does not mirror the chronology that a Prosecutor would adopt, but rather the order in which the police put them onto their system. Inspectors are told that aligning the process flows in the NICHE and PPS CMS systems was difficult and possibly expensive. There is also evidence that file details included in NICHE, such as statements, are not universally visible on the PPS system, leading to nugatory DIRs being issued as well as a sense of frustration among Prosecutors.

3.41 The issue of file quality has been around for a while and previously the interface between prosecution and police was characterised by a period of less than helpful exchanges between

the two agencies through to acceptance, some co-operation and finally a shared recognition that something should be done. The obvious point is that neither agency can solve it on their own and the improved relationship between the PPS and the PSNI offers an opportunity to progress this matter. The PPS have made progress in this area and it would be useful to reinvigorate their efforts.

3.42 There is some evidence from England and Wales that earlier involvement by the prosecuting lawyers on how investigations could meet the evidential test reduced later DIRs. Police told Inspectors that whilst the protocol for involvement of Prosecutors in police investigations existed, the process was dependent in many instances on the working relationships between the relevant Officer and the Prosecutors.

3.43 ***The PPS should continue their efforts in reducing DIRs and take the lead on defining the main issues resulting in DIRs, and in conjunction with the police review the interface and establish a programme to improve the quality of police files.***



## CHAPTER 4:

# Outcomes

### Corporate objectives

4.1 The PPS Corporate and Business Plan 2011-12 identified four strategic priorities. These were:

- delivering an efficient and effective prosecution service;
- building the confidence and trust of the community we serve;
- strengthening our capability to deliver; and
- building the capability of our people.

4.2 The PPS addressed each of these priorities through a range of performance milestones and associated targets which are reported in its latest annual report.<sup>18</sup> These are summarised below. In one regard the PPS was successful and recorded achievement or partial achievement of 20 out of 26 performance milestones (five of the remaining six performance milestones were deferred). However, this did not lead to similar success in meeting the more important specific delivery targets with only seven out of 19 being achieved.

4.3 The PPS has performed well by delivering high quality casework decisions which is clearly a priority, and in overall terms they have bettered the national average attained by the CPS in England and Wales. In other areas such as timeliness they have achieved less improvement. Table 5 summaries the PPS performance in delivering its business plan targets in 2011-12.

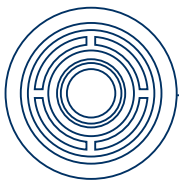
**Table 5: Achievement of milestones and delivery targets for each strategic priority 2011-12**

Strategic Priority		1	2	3	4	Total
Performance milestones	Achieved	3	4	8	1	16
	Partially Achieved	3	-	1	-	4
	Not Achieved	1	-	-	-	1
	Deferred	3	1	1	-	5
Delivery targets	Achieved	4	2	1	0	7
	Not Achieved	6	1	2	3	12

4.4 A closer examination of the performance milestones might offer some explanation of the relative disparity between the achievement of performance milestones and delivery targets. In the first instance, the performance milestones were a range of activities, the achievement of, which may or may not lead to the PPS meeting its delivery targets. As an illustration, Strategic Priority 4 (from the Corporate and Business Plan 2011-12) was to 'build the capability of our people with one performance milestone – annual corporate training plan agreed'. The performance milestone was recorded as achieved as a plan was agreed but the three associated delivery targets were not met. The delivery targets covered staff attendance and staff satisfaction, which on the face of it do not link to the priority. A more

<sup>18</sup> 'PPS Annual Report and Resource Accounts 2011 – 12', PPS.





relevant target might have been delivery of the training programme as some staff reported to Inspectors that elements of their training was yet to be delivered.

- 4.5 Moving away from the higher level aspect of PPS outcomes, the work of the Service may be distilled into three business products – decisions to prosecute, preparing the cases for court and the delivery of the actual prosecution. Acknowledging that these workstreams demand a range of skills and include an increasing number of concomitant activities, does not lessen the value of these outcomes as measures of PPS corporate performance. The PPS has some internal assessment of these three areas although performance measurement of advocacy is less rigorous and only recently formalised. In this inspection the quality of decision making and the quality of advocacy were both assessed by legal Inspectors for HMCPSI working on behalf of CJI. A summary of their findings is given below.

## Quality of decision making<sup>19</sup>

### Summary of findings

An analysis of 124 case files was carried out.

Over 96% of decisions were assessed by HMCPSI Inspectors as compliant with the Code for Prosecutors. The PPS self-assessment indicated a figure of 98%.<sup>20</sup>

In 25% of cases Inspectors assessed the correct charges were not directed.

In 54% of pre-charge cases review notes could be improved.

In 29% of case reviews (excluding pre-charge) the notes could be improved.

- 4.6 The significant finding here is that the PPS comply with the Code for Prosecutors at least 96%<sup>21</sup> of the time (compared with England and Wales 93%).<sup>22</sup> This is a high standard. The evidential and public interest stages of the test for prosecution in the Code for PPs (the Code) were applied correctly in almost all cases. Of the 124 cases Inspectors examined, there were five cases that did not meet the standard for various reasons (prosecution decisions after receipt of a police report, reviews of charges and a decision to terminate proceedings).<sup>23</sup> In some of the cases the initial failure at pre-charge stage was not identified at the subsequent full file review stage.
- 4.7 Whilst cases failed evidentially for a variety of reasons, issues around the quality of identification evidence was a recurring theme as illustrated below.

In one case there was an evidential failure where identification was the key prosecution evidence; there was a clear breach of the requirements of the Police and Criminal Evidence Act and no formal identification procedures undertaken. This was not corrected either at decision stage, trial preparation or when considering a defence skeleton argument to exclude the identification.

19 Note on methodology: Inspectors assessed the application of the two stage test for prosecution at different stages of the case, dependent on the circumstances. In cases that had been reported to the PPS by the PSNI, Inspectors considered any decision in respect of prosecution to be akin to a pre-charge decision in England and Wales. As a result, it was only in reported cases that Inspectors answered relevant questions on the HMCPSI database. These questions focus on both the correctness of the decision and the quality of the review. In cases where the pre-charge decision was to prosecute (as opposed to diverting or not prosecuting), there may then have been a further review at full file stage and additional ad hoc reviews triggered by a change in evidence or circumstances. Any such additional reviews would also be assessed by us and our views recorded. In cases that had been charged by the PSNI and then submitted post-charge to the PPS, Inspectors did not answer any of the pre-charge questions, but rather assessed any decision using relevant questions. As with pre-charge these questions focus on both the correctness of the decision and the quality of the review.

20 The measure of compliance is also open to interpretation in some cases where a decision to prosecute or not to prosecute is taken and Inspectors allow a level of tolerance that gives an upper range of 98% for the PPS.

21 The measure of compliance is also open to interpretation in some cases where a decision to prosecute or not to prosecute is taken and Inspectors allow a level of tolerance that gives an upper range of 98% for the PPS result.

22 CPS London follow-up report February 2011 combined.

23 The PPS disputed three of the five.

4.8 In 2010 CJI reported that the PPS prosecuted less than 25% of rape cases.<sup>24</sup> The recommendation at that time was to investigate if there were any underlying reasons for this. In this inspection, CJI concluded that although certain decisions were not outside the bounds of those which could be taken by a reasonable Prosecutor, there were still indications of a risk-averse approach. In one case where a complainant withdrew an accusation of rape the view of Inspectors was that the review by the Prosecutor was very brief and did not explore whether anything could be done to support the complainant and mount a prosecution.

4.9 What is not in question is the need to improve the recording of prosecution decisions that could provide some insight into the thinking behind the Directing Officers' decisions. In too many instances review decisions were often poorly recorded and did not set out the rationale or thought processes underpinning decisions to prosecute or selection of charges. Although the number of Code test failures is low, there were a number of weak cases where Inspectors would not have directed prosecution.

4.10 Inspectors noted a tendency for Prosecutors to adopt police charges in many cases without any obvious analysis of whether or not they were the most appropriate. This often resulted in overcharging with the PPS endorsing the PSNI selection of all potential offences, as opposed to reflecting the crux of the criminality. In over 25% of cases Inspectors held the view that the most appropriate charges were not directed. Other CJI inspection activity suggests this may be a barrier to successfully implementing an early guilty plea scheme.<sup>25</sup>

In a domestic violence case the defendant allegedly entered his ex partner's house, assaulted her and damaged her phone, making threats to her in the process. This scenario resulted in the police charging common assault, criminal damage

x 2, threats to commit criminal damage, threats to kill and possession of cannabis; a selection that was endorsed by the PPS despite the fact that the criminality ought to have properly been reflected in fewer charges.

4.11 Decisions to discontinue cases were taken correctly, but often this was a *fait accompli* when witnesses did not attend for trial and adjournments were refused. Summary cases do not appear to be kept under effective continuous review once the direction to prosecute is issued. As a result the Prosecutor tasked with conducting the trial would raise relevant issues at the last minute. The Victim and Witness Care Unit should deliver improvement in this area.

4.12 On a positive note Inspectors did see some cases where difficult decisions had to be taken and where the PPS evidenced thoroughly their decision making.

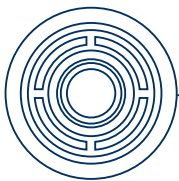
In a complex and serious investigation of the sudden death of a six month old child who had slept in the same bed with his parents, the PPS advice was well reasoned and involved the obtaining of expert medical advice on 'Sudden Infant Death Syndrome' and other enquiries. Despite police objections, the no prosecution direction was supported by a SP.

#### *The recording of decision making*

4.13 A transparent decision making process should include the recording of decision making at all key stages of the case. In Northern Ireland's challenging criminal justice environment it is important that Prosecutors are able to authoritatively justify their decisions, which may be some years after the event. In our inspection, CJI found a general lack of recorded case reviews during the file examination. As well as directing decisions, there were very few examples of written or computerised notes

<sup>24</sup> 'Sexual violence and abuse' CJI, July 2010.

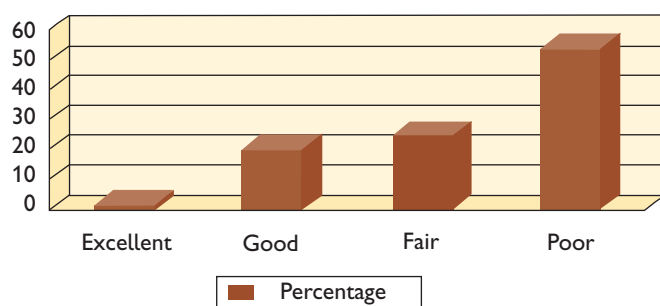
<sup>25</sup> 'The use of early guilty pleas in the criminal justice system in Northern Ireland' CJI, February 2013.



explaining decisions to accept or decline summary jurisdiction (where that option lay with the PPS), decisions to accept pleas or alternative charges either before or at trial, decisions to withdraw or otherwise terminate live cases.

- 4.14 The graph below shows the Inspectors' assessment of the quality of the recording of pre-charge advice (not the actual advice) categorised as excellent, good, fair and poor. (n = 78).

**Graph 2**



- 4.15 As stated above, the paucity of recorded review continued through all stages of proceedings and did not just affect pre-charge decisions in the simpler cases. Inspectors found that only 29.8% of reviews (excluding pre-charge) met the required standard. Whilst the better quality reviews that Inspectors encountered tended to be in the more serious cases, Inspectors also noted examples of serious casework where there was no documented review or a review of poor quality. For example out of nine cases that Inspectors examined involving an allegation of rape, Inspectors assessed three case reviews to be not of sufficient quality.

In a rape allegation case the victim stated that after agreeing to go back to the flat of a man she met on a night out, she was then raped by both him and his flat mate. Whilst Inspectors agreed with the decision to charge it was disappointing that there was no recorded review whatsoever despite the fact that there were two suspects and different issues applied to each.

In a murder involving a lengthy history of domestic violence and a significant amount of bad character material, the case resulted in a plea of guilty to manslaughter. There was virtually no recorded review explaining the decision to charge or accept the plea despite the complex issues and the gravity of the case.

- 4.16 The quality of recording needs to improve substantially in many cases. In practice there appears to be no one system that dictates where a review is documented. In our file sample Inspectors encountered reviews recorded under 'Notes to Prosecutor' in the decision section of the CMS, reviews in the 'File Notes' section of the CMS, reviews in handwritten format on the physical file and reviews that were played out in correspondence rather than a stand-alone decision by the lawyer. Clearly the lack of consistency results in an increased risk that any documented review is missed by a subsequent reviewer leading to duplication and additional cost. The facility is clearly available on the CMS to enable Prosecutors to record their decisions, but this must be used properly and the process managed effectively.
- 4.17 ***The PPS should monitor the quality of recording of decisions and instruct Prosecutors to use the appropriate facility on the CMS.***
- 4.18 In addition to recording the key elements of the Code decision, the sample of files rarely contained any documented consideration of ancillary aspects, including assessments of victim and witness issues and the use of special measures.

In a serious case of blackmail involving implied threats of violence directed towards the main victim and his family, there was no documented consideration of special measures, and despite the fact that the witness statement of the injured party was in the name of 'Witness A' there was no guidance provided to a court Prosecutor on the anonymity aspect - this was subsequently raised at court.

4.19 Better recording was seen in Crown Court cases where decisions to discontinue were taken on the day of trial. These set out why the case had to be dropped and reflected that it had been done in consultation between Counsel and the Directing Officer. These decisions tended to be included either within court endorsements recorded by those PPS staff supporting the advocate or in formal advice on evidence from independent Counsel in the form of ‘*directions on proofs*’ or in an email message sent to the Directing Officer (PPS lawyer).

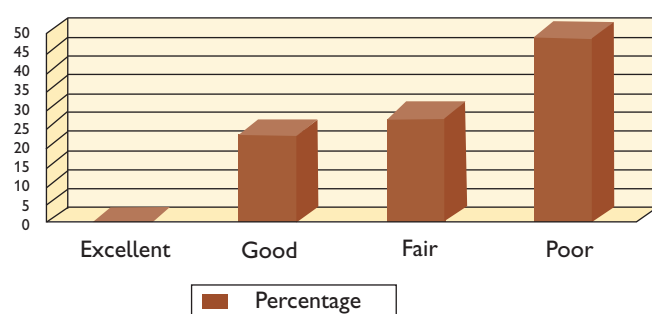
#### *Avoidable delay and case progression*

4.20 The findings from the file examination reflected that there was significant and avoidable delay at every stage of the process. The underlying reasons for delay have been documented extensively in a series of CJI reports<sup>26</sup> and the recommendations are being implemented through an action plan overseen by the Criminal Justice Delivery Group.

4.21 The PPS had a range of internal targets aimed at improving timeliness but they had been met with limited success. Case progression relied upon a number of agencies within the criminal justice system and progress to date had been slow.

4.22 The graph below shows the proportion of the 90 relevant cases where Inspectors assessed the case progression as excellent, good, fair and poor.

**Graph 3**



4.23 Although some Prosecutors took a pragmatic approach and directed when there was sufficient evidence, coupling it with a request to the police for the outstanding material, it was rare to see a case committed for trial until every piece of evidence had been received. It is quite possible that this is a consequence of the process of holding preliminary hearings where the expectation is that the prosecution will be trial ready. There was also a need for the PPS to exercise caution in deciding the quality and completeness of committal papers as alternate applications for ‘*No Bills*’ would be inevitable.

4.24 This is part of the challenging criminal justice environment in which the PPS operates. Matters that, in England and Wales, would be dealt with by an admission of agreed facts have to be proved evidential piece by evidential piece. Having to call the photographer to court because the defence do not accept their evidence is difficult to understand. However in a few very recent cases and more particularly in the regions (especially Northern), there are some encouraging signs that people are alive to the merits of getting on with cases and agreeing uncontroversial evidence.

4.25 There were some issues around witness availability where delays in proceedings required the PPS to re-issue invitations to attend court and also created problems with rostering of police witnesses. The CJI report<sup>27</sup> on securing attendance at court gives a more considered assessment of these matters.

4.26 On the positive side in the absence of any challenges to evidence the vast majority of committal hearings were completed at the first Magistrates’ Court hearing.

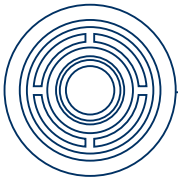
#### *The disclosure of unused material*

4.27 In summary cases non-sensitive schedules of unused material were rarely endorsed which was a deviation from the PPS policy on disclosure of unused material. This appeared to arise from the practice of the police scanning

<sup>26</sup> ‘*Avoidable delay*’ CJI, May 2006, June 2010, January 2012.

<sup>27</sup> ‘*Securing attendance at court*’, CJI, June 2011.





the schedules onto the PPS CMS. The Prosecutors could not endorse the schedules electronically and therefore there was no record of their decision in respect of the individually listed items. The position was better in Crown Court cases where the schedules were usually printed off, endorsed and signed by the Prosecutor. Inspectors adjudged the duties of initial disclosure to have been complied with in almost half of the 88 cases reviewed. More often the failure was the lack of clear, recorded assessment as to whether unused material met the test for disclosure and in only two of those cases was non-compliance due to a failure by the PPS to disclose material that could have undermined the prosecution or assisted the defence. A caveat to this finding is that often, because of the lack of an endorsed schedule, Inspectors could not identify what, if anything, had actually been disclosed.

**4.28 *The PPS should ensure that Prosecutors implement the PPS policy on disclosure of unused material.***

4.29 In keeping with the approach to initial disclosure, record keeping in respect of continuing disclosure was not good and it was often very difficult to identify what, if any items, had been disclosed due to a lack of endorsement on the file. More often than not, the only way of identifying any disclosure actions was through the chain of correspondence. Compliance with the completion of the disclosure record sheet (a requirement under the PPS disclosure policy) was very poor. Out of 86 relevant cases only four record sheets were completed fully, most were blank or absent from the file. This is not a purely bureaucratic function; it provides a record of the Prosecutor's decision and the reason why it was taken. As with the recording of reviews it provides the Prosecutor with an evidence based justification for decisions which may later be challenged.

4.30 It was however encouraging that Prosecutors

were challenging appropriately the adequacy of defence case statements that they considered did not comply with the requirements of the Criminal Procedure and Investigations Act 1996. Defence challenges to non-disclosure using Section 8 of the Act procedure were resisted appropriately.

4.31 Inspectors noted a well formulated procedure for access to third party material that appeared to operate effectively, especially in indictable cases. At an early hearing the Judge would make an order that the prosecution identify and disclose details of the holders of potentially relevant third party material (for example, doctor's records, social services records). This ensured that such issues were usually addressed well in advance of any trial date.

*Victims and witnesses*

4.32 The subject of victims and witnesses within the criminal justice system<sup>28</sup> and the use of special measures by the PPS was also recently inspected by CJI.<sup>29</sup> Reflecting on the findings of that report, the impact of delay on victims and witnesses had the most significant effect. Unsurprisingly Inspectors encountered examples of cases that had a protracted history and that resulted in an unsuccessful outcome due to the eventual withdrawal of support by the key witness.

4.33 The overall quality of letters to victims explaining why there can be no prosecution or the reason for discontinuance is improving and examples of good personalised explanations were seen. In one example the Directing Officer gave a good and clear explanation of the reasons for not prosecuting the driver of a motor vehicle involved in a collision with a pedestrian which resulted in serious injuries.

4.34 The implementation of Victims and Witness Care Units by the PPS is a major investment in this area and should provide welcome improvements.

<sup>28</sup> 'The care and treatment of victims and witnesses in the criminal justice system in Northern Ireland', CJI, December 2011.

<sup>29</sup> 'The use of special measures in the criminal justice system in Northern Ireland', CJI, April 2012.



## Quality of advocacy

4.35 This section of the report reviews the quality of advocacy of PPS lawyers and independent Counsel in the Magistrates' and Crown Courts. As a general rule, PPs prosecute criminal cases in the Magistrates' Courts. In the Crown Courts the PPS employs independent Counsel, selected from a panel, to prosecute cases on its behalf, although the HCAs pilot scheme, which will be referred to in more detail below, is beginning to blur this boundary.

4.36 Advocacy is a vital element of the overall performance of the PPS, and is the most public-facing aspect of its role. Good advocacy assists the court in arriving at a just decision; poor advocacy can mislead the court, and when lacklustre is unimpressive to those for whom each case is extremely important.<sup>30</sup>

### Previous inspection reports

4.37 The CJI led inspection of the PPS in 2007<sup>31</sup> found that the PPS Code of Ethics provided general guidance in the absence of formal advocacy standards. The report found a range of competency with a small number of Prosecutors falling below the requisite standard. The report recommended regular and effective monitoring of prosecution advocates with prompt feedback given to the Prosecutor and any needs addressed.<sup>32</sup>

4.38 In respect of the Crown Courts, the inspection found that all the Counsel seen by Inspectors were competent. Inspectors recommended a structured system to monitor the quality of Counsel advocacy in the Crown Courts.<sup>33</sup> The 2007 report also identified a need for management information from the NICTS on the proportion of late vacated, cracked and ineffective trials in Crown and Magistrates'

Courts, and to take remedial action where necessary.

4.39 A follow-up to the inspection in June 2009<sup>34</sup> found that the PPS had implemented monitoring of PPs by SPPs, to take place between two and four times per year for each PP. Since then the PPS has published advocacy standards to improve the consistency of advocacy assessments and the Director has committed to an advocacy training programme for all Advocates who attend court.

4.40 However, a structured system for monitoring the quality of advocacy of Counsel in the Crown Courts had not progressed.<sup>35</sup> There was more progress in the provision of information from the NICTS with monthly data on cracked and ineffective Magistrates' Court trials available to the PPS, although the inspection concluded that some PPS managers were unaware or unsure of what use to make of the information. There was no data on Crown Court proceedings at the time the report was published.<sup>36</sup>

4.41 A more recent CJI report on the use of early guilty pleas<sup>37</sup> confirmed that this data was still not being received by the PPS and makes recommendations to use the rates of cracked and ineffective trials, and the reasons for these, so that performance improvements can be tracked and addressed over time.

4.42 A CJI report looking at domestic violence and abuse published in December 2010, also raised concerns about the performance of some Prosecutors in the Magistrates' Courts. Examples were provided of Prosecutors not appearing to be sufficiently familiar with the file or prepared for court prior to contest (for example, asking for information already provided in the file, lack of knowledge about

<sup>30</sup> 'Report of the thematic review of the quality of prosecution advocacy and case preparation', HMCPSI, July 2007.

<sup>31</sup> 'An inspection of the Public Prosecution Service for Northern Ireland', CJI and HMCPSI, July 2007.

<sup>32</sup> Ibid.

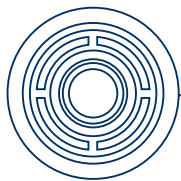
<sup>33</sup> Ibid.

<sup>34</sup> 'The Public Prosecution Service for Northern Ireland - a follow-up review of the 2007 baseline inspection report recommendations', CJI and HMCPSI, June 2009.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> 'The use of early guilty pleas in the criminal justice system Northern Ireland' CJI, February 2013.



the status of the defendant, apparently not having consulted with the victim) or not being sufficiently robust in dealing with the defence (for example, not objecting to bail).

- 4.43 This report reiterated the recommendation that the PPS instigate regular and effective monitoring of the performance of prosecution Advocates in the Magistrates' Courts with prompt feedback and training needs assessed.<sup>38</sup> Issues around training for Advocates on the care and treatment of victims and witnesses were raised in a number of CJI reports with specific emphasis on the nature and quality of Counsel's engagement with victims and witnesses.<sup>39</sup>
- 4.44 A further CJI report into the use of legal services in the criminal justice system recommended that the PPS should implement a quality assurance scheme on advocacy skills.<sup>40</sup> In the context of the strategic priorities of the PPS developing such a scheme would be a more appropriate performance milestone than those quoted in the annual business plan. The delivery of such a scheme would also be a more germane delivery target than those recorded in the 2011-12 Annual Report (see paragraph 4.4 of this report).
- 4.45 So, in summary, there is no doubt a number of previous reports have highlighted the need for an objective structured system to assess the quality of advocacy by PPS Prosecutors in the Magistrates' Courts, and by independent Counsel in the Crown Courts. The provision of targeted training where performance falls below the standards is required. The use of better management information such as cracked and ineffective trials to improve case preparation with its relevance to performance in respect of advocacy was also clearly identified. The use of improved management information and performance metrics reflects

the findings in Section 2 of this report.

#### *The approach in England and Wales*

- 4.46 In 2006 the CPS for England and Wales implemented a five year strategy to consistently deliver high quality advocacy in all courts. In 2009 HMCPSI found that the CPS had made significant progress against the strategy in the volume of work undertaken, but that there were still significant concerns over the quality of advocacy.<sup>41</sup>
- 4.47 A follow-up inspection in 2012 found that the basic competence of CPS Advocates had improved, although the gap in quality between the Crown Advocates and self-employed Counsel had widened.
- 4.48 In the England and Wales Magistrates' Courts there were less Advocates graded as not competent, although the overall standard tended towards average. A priority recommendation was to give independent assessors feedback on the action taken as a result of their assessment, especially where performance was poor.<sup>42</sup>

#### *The PPS Advocacy Strategy*

- 4.49 The Director of the PPS has made it clear that he is keen to develop the advocacy role of Prosecutors within the organisation. One SPP described this new emphasis as a "seismic shift". In addition, since taking up post in November 2011, the Director has prosecuted a number of court lists in the Magistrates' Court sending a strong signal throughout the PPS that court advocacy is an important issue for the organisation countering the perception of some Prosecutors that advocacy was under-valued in the PPS with a lack of senior advocate role models.<sup>43</sup>

38 'Domestic violence and abuse – a thematic inspection of the handling of domestic violence and abuse cases by the criminal justice system in Northern Ireland' CJI, December 2010.

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

40 'Use of legal services by the criminal justice system', CJI, June 2011.

41 'Report of the thematic review of the quality of prosecution advocacy and case presentation', HMCPSI, July 2009.

42 'Follow-up report of the thematic review of the quality of prosecution advocacy and case presentation', HMCPSI, March 2012.

43 Leadership was a significant issue in the PPS staff survey. Only 26% of respondents declared they had confidence in the PPS senior managers, down from 31% in 2009-10; PPS staff survey 2010-011; Summary of Key Findings.

4.50 The work to design and implement the Advocacy Strategy for the PPS commenced in early 2012 and a Project Initiation Document was published in April 2012. At the time of writing, the document had been agreed and was awaiting approval by the Director – the deadline for implementation being September 2013 (Appendix 10 gives details of the objectives and workplan for this project). The Project Initiation Document outlined that any future assessment of quality will be based on the new advocacy standards (Appendix 11). One of the main issues for consideration will be the means of providing this assessment and options for the PPS to include the use of monitoring forms, quality assurance reviews, and the appointment of an assessor of advocacy for the PPS.

4.51 Inspectors view this aspect of the project as key to a successful Advocacy Strategy and the PPS should include performance milestones and targets that measure the actual quality of advocacy.<sup>44</sup>

4.52 **Where possible the PPS should aim to give Prosecutors experience of both directing and prosecuting cases.**

#### *Assessment of quality of advocacy - PPS Advocates*

4.53 During fieldwork Inspectors observed variable levels of monitoring and management of PP performance in respect of advocacy. The issues raised by PPs included uncertainty around what assessment criteria were used, the templates used by SPPs during assessment in court, if the SPPs examined the case files as part of the assessment process and what courts the SPPs intended to visit. It was generally agreed that the assessment of their advocacy skills in court was not a formal process and was often summarised in the end of year performance appraisal along the lines that ‘*advocacy performance meets the relevant standards*’.

4.54 Some **areas for improvement** could be considered by the PPS.

- Increase the frequency of assessment and be consistent in application.
- The format of assessment should be standardised across the PPS.
- SPPs should receive training and guidance in respect of the assessment process.
- Decision Variation Forms should be used as management information or linked to the individual’s performance assessment.
- A mechanism within the PPS regions to validate the assessment process at regional or cross-regional level should be in place.
- Direction on dealing with poor performance flagged by the proposed performance assessment process should be developed.<sup>45</sup>

#### *Assessment of quality of advocacy - independent Counsel*

4.55 The PPS policy states that the performance of Advocates must be routinely monitored and used when considering the allocation of work to Counsel. A performance assessment form is completed and includes opinions on:

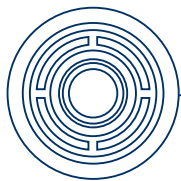
- punctuality;
- appeared prepared;
- met with victims/witnesses prior to court;
- explained outcome to witnesses; and
- exhibited a courteous and professional manner.

4.56 The form also includes space to record comments by the Judge, victim or witnesses, the court business manager and for the Prosecutor/AD to give an opinion in respect of the management of the legal issues of the case, for example, highlighting unusual or late requests. The aim is that a Senior AD gives feedback on a six monthly basis with sanctions applied to under-performing Advocates.

4.57 PPS managers told Inspectors that independent Counsel were not PPS employees and were therefore not subject to performance

<sup>44</sup> PPS Corporate Plan 2011-14.

<sup>45</sup> This was supported by the PPS internal staff survey which found that just over two fifths (42%) agreed that their line manager dealt with poor performance effectively. This was down from 51% in 2009-10. The figure in Belfast region was 23%; PPS staff survey 2010-011 Summary of Key Findings.



agreements or annual reports. One RP advised Inspectors that they sought feedback from the judiciary about the performance of independent Counsel during their regular meetings with the Judges. In addition, Crown Court clerks were very experienced, and RPs and SPPs would be confident that if there was an issue in court, the RPs would be made aware of it.

4.58 Whilst the evidence was that the majority of Counsel perform well, there had been a small number of cases where performance was below the acceptable standard and the PPS had taken action. These issues had been brought to the attention of the PPS by way of critical comments, usually by a member of the judiciary or via a complaint.

4.59 In 2010-11 the PPS spent in excess of £5 million on fees to independent Counsel,<sup>46</sup> which is approximately 15% of its total budget.<sup>47</sup> The PPS need to assess the performance of independent Counsel and the quality of advocacy provided.

4.60 In a new process implemented by the PPS in August 2012 court clerks will complete assessment forms in respect of Crown Court Counsel supported by new guidelines.<sup>48</sup> A quality assurance review will be conducted in February 2013.

#### *Stakeholder feedback to the PPS on quality of advocacy*

4.61 The PPS could make better use of informed feedback in relation to advocacy from stakeholder groups such as the judiciary, the PSNI, the NICTS and victims of, and witnesses to, crime.

4.62 The PPS process to gather stakeholder feedback was passive, relying as it did on stakeholders raising issues. One interviewee said “We don’t go looking for it” and went on to

say that there was no formally defined process for feeding information back unless it was through a formal complaint. This supported the views of Inspectors that feedback was ad hoc and incomplete.

4.63 Some RPs and SPPs had regular meetings with District Judges, local police commanders and Occurrence Case Management Teams at which the quality of advocacy would be discussed. The PPS also met with other court-users, Victim Support Northern Ireland and the National Society for the Prevention of Cruelty to Children where quality of advocacy might be discussed. The Northern Ireland Victim and Witness Survey included questions on various aspects of the PPS role and performance at court.<sup>49</sup> Negative correspondence from victims and witnesses was dealt with as appropriate, and a formal response made to the person concerned.

4.64 ***A more structured approach, including a survey of stakeholders with possibly dip-sampling, to assess satisfaction about any aspect of the prosecution process should be considered by the PPS.***

#### *Management information - quality of advocacy*

4.65 In Chapter 2 of this report the box marking performance appraisal process is discussed. When compared to the court advocacy observations of HMCPSI below, the inference is that the box markings are not good indicators of advocacy performance. The PPS rightly point out that the box marking arrangements measure performance across a range of performance objectives, only one of which is likely to refer explicitly to advocacy. CJI accept this and a range of interviewees provided evidence that the assessment of advocacy was piecemeal and unstructured at best. This ultimately led to the conclusion that

46 The Public Prosecution Service Annual Report and Resource Accounts 2010-11 provides a figure of £5.195m on fees to independent Counsel. This included £103.6k in respect of Counsel opinions.

47 The Public Prosecution Service Annual Report and Resource Accounts 2010-11 provides a Net Resource Outturn (Estimate) of £33.3m.

48 PPS internal minute of RPs meeting 30 April 2012.

49 Performance of the criminal justice system from a victim and witness perspective: detailed breakdown of findings from the 2009-10 survey, DoJ Statistics and Research Branch.



box markings were not a good indicator of performance in this area, possibly because they have to consider a broad range of issues, but most probably because a more rigorous assessment of advocacy is needed. Paragraph 4.55 *et al* sets out the need for improved assessment protocols for advocacy.

4.66 The need to collate and analyse a broader range of management information and performance indicators to manage PPS business equally apply to the overall assessment of the quality of advocacy. The value lies once again in the regular comparison across the individual courts or PPS regions of such things as cracked trials, ineffective trials and the rates and distribution of the submission of Decision Variation Forms.

4.67 The PPS recorded complaints made by members of the public, although not all of the complaints relate to advocacy. In 2009-10 the PPS received 56 complaints (26% upheld or partially upheld) of which three related to the conduct of PPS staff; five to the conduct of Counsel and nine to how the PPS conducted a case at court.<sup>50</sup> This is about 30% of complaints that may be related to advocacy issues.

4.68 In 2010-11 the PPS received 60 complaints (43% upheld or partially upheld) of which 12 were about the conduct of PPS staff; three were about the conduct of Counsel and 13 were about how the PPS conducted a case at court equivalent to about 46% with the potential to be advocacy related issues.<sup>51</sup>

4.69 This was a low number of complaints but issues around sensitive cases can be out of proportion to the overall number of complaints. In light of some SPPs saying that they were not aware of any complaints or trend information about their particular area of work this information could be used to assess and improve the quality of service

provided. The Independent Assessor of Complaints publishes a report each year and PPS Prosecutors should be aware of this report and the findings of the Assessor.

4.70 Although the PPS does not have a formal baseline measure of the standard of advocacy, managers have a good idea of the performance of most Prosecutors and Counsel. The introduction of a more formal assessment process can draw upon this experience so that improvements in performance can be measured.

4.71 **Inspectors recommend that an effective and objective assessment process of PPS Prosecutors, Counsel (and future Associate Prosecutors) is established by the end of 2013. This should include stakeholder feedback, court observations and management information on Prosecutor performance. The process should complement the appointment of the new panels of Counsel.**

#### *Training, support and mentoring regarding advocacy*

4.72 Although not specific to advocacy, staff training and development was highlighted as a significant issue in the PPS internal staff survey. Only 34% of respondents declared that they were satisfied with their training and development, down from 44% in 2009-10. In addition, the survey found that 38% of respondents felt that their workload did not allow them to devote the time that they should to training and development, but this was up from 36% in 2009-10.<sup>52</sup>

4.73 A recent RPs meeting consulted with SPPs and PPs to establish training needs and feedback indicated three areas:

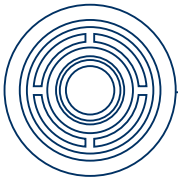
- Basic advocacy – along the lines of the presentation given at induction or could be delivered locally by experienced Counsel.
- Advanced training on particular issues such

50 The PPS advise that the numbers in the various categories exceed the total number of complaints recorded as some complainants referred to more than one issue. Inspectors have calculated the category percentages on the basis of the total matters reported by complainants which were 57.

51 The PPS advise that the numbers in the various categories exceed the total number of complaints recorded as some complainants referred to more than one issue. Inspectors have calculated the category percentages on the basis of the total matters reported by complainants which were 89.

52 PPS staff survey 2010-11 Summary of Key Findings.





as bad character applications and skeleton arguments.

- Evidential training – which would be easy to access guidance such as a handbook.

4.74 It was agreed that basic contest training would be delivered to new PPS and court staff and would be delivered in local areas. It was also agreed that master classes provided by external expert Advocates would be the best way to provide more advanced training on specific topics.

4.75 In the case of the advanced advocacy course the number of applications heavily outweighed the availability of places. There was clear dissatisfaction expressed that a number of temporary PPs<sup>53</sup> and casework staff had been allocated a place on the course while other permanent staff, who were prosecuting in court on a daily basis, had been applying for the course year after year without success. The Director was working to increase the capacity of these training programmes.

4.76 On the plus side there are regular CPD events and internal PPS communication about legislation, legal issues, procedures and good practice. At internal meetings and through the Policy and Information Section regular guidance on legislative changes and legal and policy matters is given to Prosecutors.<sup>54</sup> One of the strongest elements of the PPS was the collegiate atmosphere that existed amongst Prosecutors. They were very supportive of one another and communicated relevant issues about courts, cases, prosecutions and other legal matters as required.

4.77 Inspectors formed the view that training and development in the PPS was primarily a matter for the individual. The corporate targets in the Business Plan focused on an agreed plan but there was no measurement of efficacy of training. The professional development of a Prosecutor was approached as would be the case for lawyers in private practice. Many SPPs

were available to provide advice and guidance as necessary to PPs, with specific examples of unusual or complex cases being discussed with the PP presented to Inspectors. This quality of delivery was at odds with the results of the PPS staff survey where less than half of the respondents (48%) agreed that their line manager coached them to develop their skills, down from 57% in 2009-10.<sup>55</sup> It is not clear why staff felt this way. A formalised approach – such as a mentoring scheme could provide staff with a more substantive coaching regime.

4.78 Within the Advocacy Strategy Project the key deliverables ‘*exploration of the scope and means of delivery of advocacy training*’ and ‘*determination and delivery of an advocacy training programme for PPS staff*’ provide the vehicle to develop the training programme for Prosecutors.

4.79 ***The PPS should review its training programme and link it more closely to the assessment process. Training should be provided shortly after feedback from the assessment process. Increased capacity on the advanced training programme should be sourced.***

#### *Casework -v- advocacy*

4.80 In some areas in the PPS there was a distinction between PPs who were casework Directing Officers, and those PPs who prosecuted in court. Inspectors were advised that the distinction was an issue for RPs to manage and that there was a concerted move to ensure that all caseworkers conduct some court work, with the exception of those excused on medical grounds. The predominant view expressed to Inspectors was that PPs should be skilled in both areas and that the two roles complemented each other because Prosecutors with experience of the courts made better decisions, which in turn made it easier for the Advocate to master their brief.

53 Due to resourcing issues the PPS have recruited a number of legally qualified temporary PPs, on a 51 week contract, to cover PP vacancies.

54 Corporate Plan 2011-14 and Annual Business Plan 2011-12, PPS.

55 PPS staff survey 2010-11 Summary of Key Findings.

4.81 The most effective and efficient position would be for PPs to direct on cases and then prosecute them in court, and this happened in some of the PPS regions. However, Inspectors were advised that the caseload and complexity of the listing arrangements, particularly in Belfast, made it logistically impossible for Prosecutors to always present cases they had directed on. Inspectors would encourage the PPS to focus on increasing the continuity where possible, although we recognise that this might be more difficult to achieve in Belfast.

4.82 During the inspection fieldwork, CJI detected a measure of dissatisfaction about the current split. Inspectors were told by PPS staff that there was a perception among those PPs who were primarily Prosecutors that advocacy took a back seat to casework and was evaluated differently. Also, those PPs involved in casework were perceived as more likely to progress within the organisation. This issue is referred to further in the summary findings from the court advocacy observations below.

#### *Higher Court Advocates (HCAs)*

4.83 One element of the Advocacy Strategy Project that is moving forward is the introduction of HCAs. As a pilot exercise three Prosecutors were selected through an internal competition, and after a training regime provided by internal PPS staff and CPS Crown Advocate trainers, took up post in March 2011. They prosecute cases in the Crown Court up to jury trials including Section 20 Assaults, Burglary and Driving Offences. At this juncture HCAs do not prosecute the most serious Crown Court cases but they are available to prosecute Magistrates' Court appeals in the County Court and their availability for High Court bail is under review.

4.84 An evaluation of the pilot found the performance of the HCAs in court and the

scheme's financial viability to be generally favourable.<sup>56</sup> Another benefit of the HCA pilot was an increased ownership of cases with improved continuity of advocacy which can be important to the various parties to the case. Over time the HCAs may provide the PPS with a more flexible resource and more control of advocates in the Higher Courts.

4.85 The lesson to be learned from the experience of a similar scheme in England and Wales is to match the supply of HCAs to demand. HMCPSI found that many of the CPS areas in England and Wales had more Crown Advocates than they required. The risk is that HCAs could drift into work more suitable for PPs with cost implications.

#### *Reconstituting the panels of Senior and Junior Counsel*

4.86 The panels of Senior and Junior Counsel were re-established with the changes to the previous arrangements being:

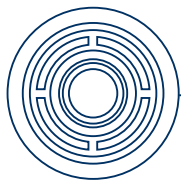
- smaller numbers of Counsel more dedicated to prosecution;
- independent Counsel leading HCAs with the associated transfer of skills;
- payment under the new PPS Fee Scheme, including fixed sessional fees in the Magistrates', Youth and County Courts which make the use of Counsel cost effective compared to PPS staff; and
- performance monitoring of Counsel.<sup>57</sup>

4.87 The PPS is currently considering the possible appointment of an Independent Assessor of Advocacy<sup>58</sup> and has looked at examples from other neighbouring jurisdictions. Any assessment process for Counsel would require negotiations with the Bar Council and the assessment process will not be in place to monitor the new panels. The PPS should prioritise the implementation of the assessment process to reduce the risk of the Director

<sup>56</sup> The PPS staff survey found that just under half (49%) of the staff felt motivated in their job, down from 56% in 2009-10, and reasons given for the lack of motivation included a lack of promotion opportunities, PPS staff survey 2010-11 Summary of Key Findings.

<sup>57</sup> 'Design and implementation of an Advocacy Strategy for the PPS: Project Initiation Document', April 2012, PPS.

<sup>58</sup> The PPS Annual Business Plan 2012-13 states that the PPS Advocacy Working Group is considering enhanced assessment options and the new arrangements will be implemented during 2012-13. The associated milestone is for enhanced arrangements to be in place for the assessment of Panel Counsel and Public Prosecutor advocacy by 31 March 2013.



employing Counsel that are not subject to an element of performance assessment.

#### Associate Prosecutors

4.88 The CPS in England and Wales introduced a paralegal function with responsibility for decision making and prosecution in basic summary cases, and Associate Prosecutors now prosecute nearly one third of Magistrates' Courts hearings in England and Wales. In some respects this is similar to the role of the police prior to the formation of the PPS. The PPS intend to complete a scoping study by 31 March 2013 to consider a PPS scheme, in particular the potential to recruit legally qualified staff (Associate Prosecutors) in this role.<sup>59</sup>

4.89 The PPS also intend to consider the role of Designated Caseworkers as distinct from Associate Prosecutors and the implications for:

- reduced cost of decisions in basic summary cases;
- the job descriptions and duties of the PP role; and
- future resource planning after the transfer of internal staff to HCA roles.

#### Summary of findings from the court observations

4.90 As part of the fieldwork Inspectors from CJI and HMCPSI observed PPS Advocates and Independent Counsel in Magistrates' and Crown Courts across Northern Ireland. The findings below follow a standard format where performance in a specific category is assessed against an expected level of competence using a range of indicators. This is applied to Crown and Magistrates' Courts with a case example provided and any relevant recommendations. The general comment is that PPS Advocates and Counsel met the required standards with some exceptions.

#### General conduct and ethics

*'Performance expectation: The Advocate complies with the requirements of their professional body and the PPS and conducts themselves in a manner appropriate for their role as a Prosecuting Advocate.'*<sup>60</sup>

4.91 The working environment of the Magistrates' Court and in particular the listing patterns where the larger, busier courts, have court lists in excess of 100 cases with numerous cases receiving little more than a mention and a formal adjournment arguably encourages an administrative and less involved approach to advocacy. Even allowing for this there was evidence that some Prosecutors lacked dynamism in court with frequent references to the case documentation that in some instances lead to a halting presentation. The large volume of case files that Prosecutors had to deal with was a contributory factor.

4.92 Inspectors observed some examples of Prosecutors proceeding with cases or applications that arguably were not Code compliant.

#### Case example

In a Magistrates' Court contest the prosecution served on defence, unused material that significantly undermined the prosecution case. The defence, having had an offer to plead to a lower charge refused, properly submitted a hearsay application to adduce these records at the contest. The application was duly made but opposed by the PPS. The Judge unsurprisingly admitted the evidence and, in her comments was critical about the PPS's unrealistic opposition. The PPS ought to have reviewed the case and made the correct decision to reduce the charge on their own initiative.

<sup>59</sup> 'Design and implementation of an Advocacy Strategy for the PPS: Project Initiation Document', April 2012, PPS.

<sup>60</sup> All performance expectations cited are from HMCPSI inspection guidelines.

## Planning and preparation - non-advocate preparation

*'Performance expectation: The file provided by the PPS for the hearing contained sufficient information for the Advocate to conduct the hearing effectively and all appropriate actions had been taken to ensure that the case progressed.'*

### Crown Court

4.93 Our examination of case files both during the file examination phase of the inspection and at court during our advocacy observations, indicated that cases committed to the Crown Court were well prepared, at least in the sense that they contained all the key statements and all supporting statements dealing with issues such as continuity. The fact that cases are prepared to such a high degree results in there being less post-committal case building to be done, especially with regard to the more administrative aspects. However, a great deal of this preparation was nugatory if the defendant pleaded guilty at the Crown Court. The PPS are currently working with their criminal justice partners to consider the introduction of some form of early guilty plea scheme. There is certainly scope for such a scheme to improve efficiency in Northern Ireland, but only if it includes a requirement for a less comprehensive file build.

4.94 Whilst the cases are well prepared in the sense that the bundles contain all the key and supporting statements there was scope to improve the documented reviews that set out the Directing Officer's views on the evidence, the case theory and the tactical approach to the prosecution. The PPS told Inspectors that they provided written instructions in more complex cases. In all cases, Prosecutors are available to discuss case presentation with prosecution Counsel where required.

### Magistrates' Court

4.95 The provision of clear guidance or instructions recorded on files by Directing Officers for the purpose of assisting Advocates at court, is an

area that could be improved in the larger courts. In the smaller regional offices there was more scope for discussion and seeking clarification should this be required.

4.96 The quality of written legal applications that Inspectors examined on files at court could be improved. Some had the briefest outlines of the grounds for the application without fleshing out the submissions. Ideally an application should contain sufficient information, not only to inform the court and defence of the grounds, but also to assist the Prosecution Advocate.

### Case example

In an assault trial the prosecution had served an application to adduce hearsay. The hearsay in question was the PSNI command and control serial which recorded a potentially evidentially important call from a taxi driver whose details the PSNI had not been able to verify and who had not made a statement. The application was not sufficiently detailed and was incorrect as it stated that the document was admissible as a business document, even though in the absence of validated identification it did not qualify as such.

## Planning and preparation - Advocate preparation

*'Performance expectation: The Advocate is sufficiently prepared to progress the case taking account of the desired outcome and dealing confidently with all key issues raised by the court or by defence.'*

### Crown Court

4.97 **The PPS should ensure that written legal applications properly outline in sufficient detail the legal and factual submissions upon which any application is based. Guidelines with quality assurance of these applications by SPPs should be introduced.**

4.98 Our inspection found that Counsel and Crown Advocates were instructed sufficiently well in





advance of any substantive hearing to allow proper consideration of the case. A number of prosecuting Counsel that Inspectors observed had demonstrably prepared thoroughly for trial, often drafting an opening note to assist with presentation.

### Case example

In resisting a defence application for further disclosure of unused material, prosecuting Counsel had clearly prepared arguments, submissions and authorities in support of the Crown's position that the defence statement was inadequate. This resulted in the defence drafting a new statement and so exposed the likely issues for trial.

### Magistrates' Court

- 4.99 Prosecutors appearing in the Magistrates' Court tended to be allocated a period of time in the office for the purposes of preparation. Anecdotally, this usually amounted to one day. In Belfast, which tends to have the busiest court, the Advocates reported that they would have one week of covering two days in court, followed by a second week covering three days in court. The evidence was that Prosecutors followed the decision of the Directing Officer and were unwilling to alter the decision either at pre-trial review or during the case if matters developed.

## Advocacy in court - trial

*'Performance expectation: The Advocate prosecutes in a fair, firm and robust manner, presenting the case in a clear, and engaging manner and questioning witnesses effectively.'*

### Crown Court

- 4.100 The quality of trial advocacy observed was good across the board with one or two examples of impressive cross-examination. Inspectors also observed examples of opening speeches which were well structured and presented, maintained the interest of the jury

and achieved a good balance between explaining the roles and burden, addressing the main legal issues and the factual basis of the case.

- 4.101 In the Crown Court the vast majority of trials were conducted by independent Counsel from the PPS's approved list. It is important that a proper method of assessment by the PPS is used to ensure that the Counsel meet the agreed advocacy standards.

### Magistrates' Court

- 4.102 In the Magistrates' Court most contests were prosecuted by PPs. A team of Inspectors spent three weeks observing advocacy in 32 separate court venues covering both Magistrates' and Crown Courts. The number of contests varied by venue, but in total around 60 Advocates were observed. The Prosecutors observed by Inspectors were reasonably confident in examination-in-chief and properly sought to lead uncontroversial elements of the evidence thus reducing the length of trials. A small number (less than five) of Prosecutors did not impress when it came to making submissions either in respect of particular legal applications or in relation to the cases as a whole.

- 4.103 In the sample of contests observed by Inspectors cross-examination was an area that could be improved, especially when compared to the skills demonstrated by many of the defence opponents, the majority of whom were from the independent bar. Inspectors observed poorly structured cross-examination that involved a lot of putting the case to the defendant. Challenging defendants on inconsistencies in their accounts was often perfunctory and ineffective. Again this was often brought into sharp contrast by the more effective use of such challenges by defence.

## Advocacy in court - pleas and sentencing

*'Performance expectation: The Advocate presents all relevant information to the court in a clear and concise manner, providing assistance when required and seeking appropriate ancillary orders.'*



## Crown Court

4.104 In the Crown Court Inspectors did encounter instances of prosecution Counsel assisting the court in respect of statutory provisions and sentencing guidelines. This supported our findings that Counsel instructed by the PPS were competent and well prepared.

### Case example

In the sentencing of a defendant for two serious, historic sexual offences, the sentencing hearing was conducted in front of the trial Judge by the Advocates who conducted the trial. This was a relatively high profile case with press interest. Clearly, as the Judge had sat for the course of the trial, the prosecuting Counsel outlined the facts in a suitably concise fashion. She did however address the Judge on the aggravating factors, referred the Judge to relevant Court of Appeal decisions, highlighted sentencing guidelines from England and Wales and finally briefly referred to a recent article in Archbold update, a copy of which was provided to the Judge.

## Magistrates' Court

4.105 The majority of the PPs, who Inspectors observed, presented the facts of the case from the summary provided by the PSNI, but out of the 60 PPS Advocates observed around 10 were deemed to be lacklustre. Whilst our file review found the summaries provided by the PSNI to generally be of a reasonable quality, there was still a need to properly present the case to a court rather than simply read from a document prepared by someone else. Inspectors observed no examples of any reference to an actual statement of a victim, including no reference to any impact of offending on a victim – other than a basic description of injuries.

<sup>61</sup> The PPS made it clear to Inspectors that this was an isolated incident and that the Prosecutor was a temporary member of staff.

<sup>62</sup> 'Telling Them Why: A thematic inspection of the Public Prosecution Service giving of reasons for its decisions', CJI, May 2012: 'The care and treatment of victims and witnesses in the criminal justice system in Northern Ireland: a thematic inspection', CJI, December 2011: Securing Attendance at Court, CJI, March 2011.

### Case example

In the sentencing of a defendant for careless driving the Prosecutor began to outline the facts to the Judge, however was so faltering in her explanation of what occurred in this three car collision that the defence stood up, offered to explain the circumstances and then took over the description of the facts. This occurred in the presence of the three victims.

The case had in fact been listed as a contest but a plea to careless driving had been accepted on the day. Having prepared the case for contest the Advocate should have no excuse for being unable to succinctly summarise the facts of the case.<sup>61</sup>

## Advocacy in court - victims and witnesses

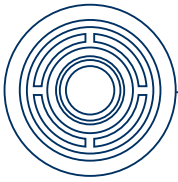
*'Performance expectation: The Advocate complies with all PPS obligations in respect of victims and witnesses, particularly: the Victims and Witnesses Policy and all other relevant policies.'*

## Crown Court

4.106 The treatment of victims and witnesses was the subject of a number of recent CJI reports which made various recommendations.<sup>62</sup> During the fieldwork for this inspection, CJI noted that victims and witnesses were generally well looked after at court by a combination of the PPS and Police and Witness Service staff. Inspectors observed prosecuting Counsel taking time to talk directly to victims more than once which was commendable.

### Case example

A bereaved family were in court to hear the sentencing of a driver convicted of causing death by careless driving. Counsel presented the case in such a way that addressed the concerns of the family and the public, while at the same time being fair to the defendant whose appeal against conviction for causing death by dangerous driving had been successful resulting in his release from a custodial sentence.



### *Magistrates' Court*

4.107 It was commendable that in the Magistrates' Court the Prosecutors conducting contests made considerable efforts to speak with witnesses who had attended to give evidence. This was so, even when the Prosecutors were conducting a number of contests, or a combination of contests and other hearings. In addition to speaking with witnesses prior to a contest, Inspectors also noted a number of instances when Prosecutors would speak to a complainant after the verdict in order to explain the outcome.

Section



# Appendices



## Appendix 1: Terms of reference

### An inspection of the Public Prosecution Service Corporate Governance

#### Introduction

Criminal Justice Inspection Northern Ireland (CJI) proposes to undertake an inspection of corporate governance in the Public Prosecution Service for Northern Ireland (PPS).

The PPS was formally established in June 2005, although work had been underway on developing the organisation since 2002 when the Justice (Northern Ireland) Act 2002 ratified the recommendations of the Criminal Justice Review.

#### Context

A baseline inspection of the PPS was undertaken in 2007 by CJI and Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI). The inspection report made 17 recommendations and raised a series of issues designed to assist with the overall performance of the organisation. At the time of the inspection, the PPS was still a comparatively new organisation that had yet to be fully rolled out across Northern Ireland. Since then the PPS has been fully rolled out and handles all prosecutions from the Police Service of Northern Ireland (PSNI).

A follow-up inspection was carried out by HMCPSI on behalf of CJI in January 2009, pursuant to a delegation under the 2002 Act. Its primary purpose was to establish the progress made against the recommendations and areas of improvement raised in the original inspection in 2007.

#### Aims of the inspection

##### *Corporate governance*

Drawing on previous inspections the aims of this inspection are to examine a broad set of issues around the governance, performance and accountability in the PPS, including:

- a clear sense of corporate leadership and direction to develop the organisation and its people, improve performance and manage risk taking into account the needs of stakeholders/service users;
- that the PPS has clearly defined its role and its desired outcomes within a suitable corporate and business plan, with evidence of consistent communication of corporate standards throughout the PPS;
- the promotion of values for the whole organisation and demonstrating good governance through behaviour;
- management of resources to provide value for money outcomes, reflect changes in the operational environment and improve the efficiency and effectiveness of the PPS; and
- a management structure with clear lines of accountability, providing transparency of decision making and contributing to improvement in personal and corporate performance.

##### *Quality of advocacy*

In order to reduce the burden of inspection an assessment of advocacy standards will be incorporated into this inspection. This element of the inspection will examine the quality of Public Prosecutor performance and the quality of performance of independent Counsel acting on behalf of the PPS.



As part of the inspection CJI will assess:

- progress in the development and delivery of performance assessment measures of PPS advocacy staff;
- progress in developing and implementing the monitoring and assessment of the PPS and independent Counsel in the higher courts;
- progress in developing and implementing standards governing appointment to the panel of independent Counsel;
- evidence of performance management of Counsel using advocacy standards; and
- that the quality of advocacy and case presentation in the Magistrates' and Crown Courts is of the requisite quality for the proper and fair administration of justice.

#### *Quality of casework*

- The timeliness and quality of decisions, the efficiency and effectiveness of case management and the appropriateness of the 'giving of reasons' (where no prosecution takes place) will be assessed.
- The assessment of advocacy will be informed both by preparation and presentation of prosecution cases.
- The existing quality assurance process of casework quality will be assessed.

#### **Methodology**

The inspection will be based on the CJI inspection framework, as outlined below, for each inspection that it conducts. The three main elements of the inspection framework are:

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

CJI constants in each of the three framework elements and throughout each inspection are equality and fairness, together with standards and best practice.

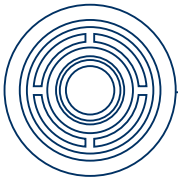
#### **Research and review**

Collection and review of relevant documentation such as corporate and business plans, external reports, internal strategies, policies, minutes of meetings, performance management, financial management and monitoring information, business statistics, risk registers, stewardship statements, and other relevant risk-related material, communications strategies, internal and external surveys and any other relevant internal reviews, papers and correspondence.

#### **Fieldwork**

- Terms of reference will be prepared and shared with the PPS prior to the initiation of inspection. A liaison person from the PPS should be nominated for the purposes of this inspection.
- The PPS will be given the opportunity to complete a self-assessment of the organisation.
- Interviews will be conducted with PPS senior management, independent board members, staff, and other criminal justice organisations and relevant stakeholders to give an insight into the organisation.
- Interviews will be held with staff to discuss issues around strategy and governance, delivery and outcomes and how these are communicated between PPS Headquarters and the regions.
- Specific focus groups will be asked to complete questionnaires to assist analysis of organisational culture, values and development. Surveys will be used to assess internal and external views.
- Progress in the development of policies, performance management data, and human resource issues will be examined.





- Evidence of planning and decision making leading to performance improvement and recognition of future changes in demand and operating environment will be gathered.
- Identification of best practice within and outside Northern Ireland which may involve meetings with relevant comparable organisations in other jurisdictions will provide some basis for standard setting and benchmarking.
- CJI Inspectors supported by HMCPSI will assess the quality of advocacy in Magistrate and Crown Courts. This will be informed by file reviews, observation in court, structured interviews with judiciary, prosecution and defence.
- HMCPSI Inspectors will identify a file sample from the PPS offices for examination and assessment. Files will include completed and 'live' files. Some of the 'live' files will be observed at court as part of the assessment of the quality of advocacy.
- Some of the files 'dip sampled' in the regional offices will be examined to assess the monitoring of the quality of files preparation and presentation.

### **Feedback and writing**

Following completion of the fieldwork and analysis of data, a draft report will be shared with the PPS for factual accuracy check. The Chief Inspector will invite the PPS to complete an action plan within six weeks to address the recommendations and if possible this will be published as part of the final report. The final report will be shared, under embargo, in advance of the publication date with the Director of the PPS.

### **Inspection publication and closure**

- The final report is scheduled to be completed by Autumn 2012;
- report sent to Minister for permission to publish;
- when permission received, report finalised for publication;
- press release prepared and shared with agency;
- publication date agreed and report issued; and
- wider communication identified and communication plan completed.



## Appendix 2: Department of Justice consultation on governance and accountability of the Public Prosecution Service

### *Option 1: Minimal change, but relocation of responsibility for referring cases under the provisions on unduly lenient sentences*

This option envisages no substantial change to the current arrangements. It has been noted - eg in Professor Jackson's address to the CAJ - that similar arrangements work effectively in the Republic of Ireland, and that there has still been limited time for them to bed down here. As was noted by the Northern Ireland Office in the run-up to devolution, a consultative arrangement between the Attorney and the PPS can still be a challenging arrangement. One small but important change would however be made. Since devolution of justice, responsibility for referring sentences which may be unduly lenient to the Court of Appeal has been vested in the Director; it previously lay with the Attorney General. The provisions on unduly lenient sentences allow for the Court of Appeal, on such a reference, to increase a sentence if it fell outside the range of reasonable sentences. The provisions apply to certain more serious offences and applications to the Court must be made by the Director within 28 days of the sentence being handed down.

While the power has been used on seven occasions since devolution of justice, the location of responsibility with the Director is not widely supported. It has been pointed out that the fact that prosecution Counsel will be present where a judge is requested by the defence to give an indication of the sentence he or she is considering may represent a conflict with the current location of the power. Accordingly, even under this limited option, it is proposed that the power to refer sentences which may be unduly lenient to the Court of Appeal should move to the Attorney General. This would be accompanied by the related, though separate, discretion where a person has been tried on indictment but acquitted, for the Attorney to seek the opinion of the Court of Appeal on a point of law which has arisen in the case. In this instance there is no impact on the outcome of the individual case; indeed, the identity of the defendant is not disclosed.

### *Option 2: The Director becomes responsible to the Attorney General for the exercise of his functions*

This model would make the Director responsible/accountable to the Attorney General for the due performance of his or her functions. An explicit power for the Attorney to answer in the Assembly on these matters would also be created - subject to Assembly standing orders, as in all cases for those speaking in the Assembly, and accompanied by the safeguards that are already in place so that he or she was not obliged to answer on matters which might prejudice criminal proceedings or otherwise be against the public interest. Legislation would need to provide a concomitant duty for the Director to keep the Attorney informed, so that the latter could effectively deal with matters raised in the Assembly. This option would however stop short of the power of superintendence, i.e. the power for the Attorney to *direct* the PPS. The accountability created in this way would be wide-ranging. It would reflect models elsewhere (eg between the Chief Constable and Policing Board) where someone with independence and the responsibility for taking operational decisions can nevertheless be responsible for those decisions to the other agency. As well as covering prosecutorial decisions, such accountability/responsibility would embrace such areas as efficiency and effectiveness, contribution to the wider justice system, and progress on addressing Criminal Justice Inspectorate recommendations. In the New South Wales model, the Director's Annual Report, reporting on performance across all areas of the Office's corporate plan, is addressed to the Attorney General (rather than simply published by him, as in Northern Ireland).



Ultimately, while the Attorney could not tell the Director what to do nor to refrain from doing something, as a backstop any significant concern that could not be resolved through discussion could be reported to the Assembly by the Attorney. This model would of course mean that the person answering in the Assembly would not be the actual decision-maker, but this is not in itself unusual and indeed in a sensitive area it could be argued that there is advantage in having some distance between political opprobrium and a quasi-judicial decision-maker.

### ***Option 3: Responsibility and a back-stop power***

Option 3 is a further step up from the Director's responsibility to the Attorney for the exercise of his functions in Option 2. It includes that responsibility – the effect again being to make the Attorney answerable in the Assembly for the performance of these functions – but provides a means of external review of prosecutorial decisions by the Attorney without the full panoply of superintendence and direction in Option 4.

If the Director decided not to bring proceedings in a case, the Attorney General could do so by means of his own prosecution. Likewise, if the PPS had begun a prosecution, and the Attorney considered that it should not have done so, the Attorney could enter a “nolle prosequi” and thereby discontinue the prosecution. In practice these latter aspects of Option 3 would be for use only in exceptional circumstances. The norm would be that any issues could be resolved through consultation between the Director and Attorney. The Option is similar to that proposed in 1972 in the Prosecution of Offences Bill, following the Hunt and MacDermott reports, before the prorogation of the Parliament of Northern Ireland. It has been pointed out that a review of a Director's decision in these circumstances could put a Director in a very difficult position, though the decision would be clearly and publicly one that had been taken by the Attorney and he or she would be answerable to the Assembly in respect of it. The practical implications for the Attorney's Office in mounting complex prosecutions normally dealt with in the much larger PPS are also relevant. “Nolle prosequi” has in the past applied to Crown Court cases only.

### ***Option 4: Superintendence and the power of direction***

Option 4 involves reverting to the pre-devolution arrangements, those in the prosecution of Offenders (Northern Ireland) Order 1972, which provide for the Attorney General's superintendence of the Director and for an explicit power to direct, whether on policy or on individual decisions. International examples show that such a power should be treated as for use in exceptional circumstances. There would again be an explicit power for the Attorney to answer questions in or make statements to the Assembly (subject to Assembly standing orders and to the overriding criteria of prejudice to criminal proceedings and the public interest) and a duty on the PPS to keep the Attorney informed so as to enable that. This option would combine accountability across the whole range of areas identified in option 2 with power on the part of the Attorney to substitute a different decision where he or she believed that a different course from that adopted by the PPS was appropriate. It thereby provides a ‘revising chamber’, in the person of the Attorney, for the most sensitive or complex PPS decisions. The Protocol adopted by the Attorney General and the prosecuting departments in England and Wales limiting the power to direct to national security issues could not be directly read across to Northern Ireland since national security matters are not devolved. Respondents may however wish to consider whether, if this option were adopted, the power to direct is best left open or whether there should be statutory criteria for its use: for example requiring the issue to be fully discussed before a direction was made (this might be framed in terms of ensuring the Director was aware of any proposed Direction and giving him or her the right to make representations). There is an argument that any formal directions given under this option should be made public, by being reported in the Attorney's or Director's annual report.

## Appendix 3: 2007 inspection report recommendations

Recommendation	Progress 2009 follow- up
The PPS should become a department in its own right, responsible for its own budget and recruitment.	Substantial progress.
<p>The Management Board should take action to improve the quality of instructions to Counsel by ensuring Prosecutors:</p> <ul style="list-style-type: none"> <li>• include an accurate summary of the case (<i>substantial progress</i>);</li> <li>• identify and address the issues (including outstanding matters) (<i>substantial progress</i>);</li> <li>• where applicable, address the acceptability of pleas (<i>a considered decision not to progress</i>); and</li> <li>• summarise for Counsel the steps already taken in relation to disclosure and identify any disclosure issues remaining to be addressed (<i>some progress</i>).</li> </ul>	Overall substantial progress.
The Management Board should ensure compliance with the PPS policy on domestic violence in all relevant cases.	Substantial progress.
<p>The Management Board should ensure that all Prosecutors:</p> <ul style="list-style-type: none"> <li>• are trained appropriately in the disclosure provisions (<i>achieved</i>);</li> <li>• endorse fully and sign all schedules to indicate they have reviewed all sensitive and non-sensitive unused material (<i>some progress</i>);</li> <li>• maintain a comprehensive record of disclosure decisions on the file (<i>substantial progress</i>);</li> <li>• keep separately on the file, all disclosure material (<i>substantial progress</i>); and</li> <li>• challenge inadequate defence statements (<i>some progress</i>).</li> </ul>	Overall substantial progress.
<p>The Management Board should:</p> <ul style="list-style-type: none"> <li>• take urgent steps to increase the use of PPS Prosecutors in the Magistrates' Courts, and reduce reliance on Counsel (<i>achieved</i>); and</li> <li>• keep the policy of deploying administrative staff to court under ongoing review (<i>substantial progress</i>).</li> </ul>	Overall achieved.

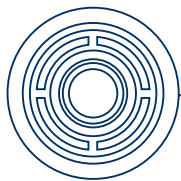


Recommendation	Progress 2009 follow- up
<p>The Management Board should ensure that:</p> <ul style="list-style-type: none"> <li>• there is a significant improvement in the understanding of outstanding fees (<i>substantial progress</i>);</li> <li>• a much higher proportion of fees are negotiated in advance of hearing/trials (<i>some progress</i>);</li> <li>• establish criteria for cases which should be remunerated as a special fee case (<i>substantial progress</i>);</li> <li>• the costs attached to specific cases can be easily identified (<i>substantial progress</i>);</li> <li>• senior Counsel are only instructed where appropriate; and</li> <li>• payment of fees is timely (<i>substantial progress</i>).</li> </ul>	Overall substantial progress.
<p>The Management Board should initiate a fundamental review of the manner in which fees are calculated and paid for sessional work in the Magistrates' Court.</p>	Achieved.
<p>The Management Board develops a comprehensive quality assurance programme that defines clearly the roles of Regional Assistant Directors (RADs), Senior Public Prosecutors (SPPs) and the Quality Assurance section of the Policy Branch, to assure itself about the quality of work that is being undertaken and enable staff to learn from experience.</p>	Substantial progress.
<p>Directing lawyers should, save in exceptional circumstances set out clearly to the victim or personal representative, their reasoning for directing no prosecution or withdrawing proceedings.</p>	Some progress.
<p>Directing lawyers should explain fully their reasoning to the agency in cases where they direct no prosecution, or where their decision is different from that recommended by the investigator.</p>	Some progress.
<p>The Management Board should:</p> <ul style="list-style-type: none"> <li>• review the case management processes and administrative support systems to reduce delays, improve efficiency and eliminate duplication (from receipt of the file to allocation, decision-making and issuing of the decision) (<i>some progress</i>); and</li> <li>• monitor jointly with investigating agencies the use of the Request for Further Information (RFI) system and collate data to drive up performance in relation to timeliness (<i>some progress</i>).</li> </ul>	Overall some progress.





Recommendation	Progress 2009 follow- up
<p>The Management Board should conduct a fundamental review of its processes to ensure that:</p> <ul style="list-style-type: none"><li>• wherever practical, there is consistency across the regions (<i>some progress</i>);</li><li>• there is an effective means of identifying and implementing good practice (<i>some progress</i>);</li><li>• staff are properly trained in agreed processes (<i>some progress</i>);</li><li>• duplication and re-work is minimised (<i>some progress</i>); and</li><li>• backlogs are cleared as a matter of urgency and that appropriate systems are in place to prevent recurrence (<i>substantial progress</i>).</li></ul>	Overall some progress.
<p>The Management Board should ensure that:</p> <ul style="list-style-type: none"><li>• they regularly receive details of staff breakdown by community background, gender and other relevant equality categories (<i>no progress</i>); and</li><li>• all managers lead by example and take steps to reinforce the principles of equality throughout the organisation (<i>some progress</i>).</li></ul>	Overall some progress.
<p>The PPS should review its regional operational structures to deliver:</p> <ul style="list-style-type: none"><li>• a greater sense of case ownership (<i>some progress</i>);</li><li>• more efficient processing of cases with a reduction in duplication of work (<i>some progress</i>);</li><li>• a more flexible, multi-skilled work force in a less compartmentalised environment (<i>substantial progress</i>);</li><li>• an evaluation of the number and responsibilities of administrative managers to assure their deployment is optimised (<i>no progress</i>); and</li><li>• improved communication channels (<i>some progress</i>).</li></ul>	Overall some progress.
<p>The Management Board should review management structures to ensure that:</p> <ul style="list-style-type: none"><li>• there is an appropriate balance of legal and business management skills among senior managers (<i>some progress</i>);</li><li>• support is made available to Assistant Directors (ADs) to assist with management of people, processes, performance, finance and planning (<i>some progress</i>); and</li><li>• the work of the Business Managers' Forum (BMF) is reviewed to ensure that it becomes an effective group, focusing on the right issues (<i>some progress</i>).</li></ul>	Overall some progress.

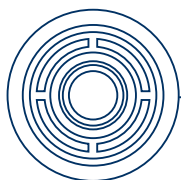


Recommendation	Progress 2009 follow- up
<p>The Management Board should ensure that the effectiveness of Community Liaison Teams (CLTs) is improved, in particular that:</p> <ul style="list-style-type: none"><li>• the roles and responsibilities of the CLTs are clarified, including their role in the handling of general telephone calls (<i>some progress</i>);</li><li>• CLT processes are set out clearly (<i>substantial progress</i>);</li><li>• all CLT staff are trained in all aspects of their role (<i>some progress</i>);</li><li>• standard form letters should be amended to ensure defendant queries are dealt with by the relevant casework team (<i>some progress</i>); and</li><li>• the provision of poor quality police witness information should be addressed through Criminal Justice Unit (CJU) liaison meetings (<i>no progress</i>).</li></ul>	<p>Overall some progress.</p>
<p>The Management Board should strengthen arrangements for performance management by:</p> <ul style="list-style-type: none"><li>• identifying the most appropriate measures to assess the performance of the PPS (<i>some progress</i>);</li><li>• analysing and evaluating data to determine performance levels and any aspects requiring remedial action (<i>some progress</i>); and</li><li>• ensuring performance information is disseminated widely to staff and other relevant criminal justice (CJ) agencies (<i>some progress</i>).</li></ul>	<p>Overall some progress.</p>



## Appendix 4: Initial Public Prosecution Service Business Plans with emphasis on capacity building

Year	Strategic priority	Objectives	Milestone
2005-06	<b>To improve service delivery.</b>	To ensure correct decisions are reached in accordance with the test for Prosecution.	To establish a legal Quality Assurance Team by December 2005.
		To prosecute in a fair and effective manner, fully complying with the duties of disclosure.	To establish an Operational Policy Team by September 2005.
			To design and implement a PPS manual for disclosure by March 2006.
		To deal with prosecution cases in a timely and efficient manner in partnership with other agencies.	To meet agreed 2005-06 targets for issue of decisions.
			To meet 2005-06 targets for preparation of committal papers.
			To implement agreed recommendations of the 2004 Delays Research by March 2006.
		To promote public confidence in the prosecution service and to meet the needs of victims and witnesses, whilst respecting the rights of defendants.	Achieve 70% public confidence in the provision of a fair and impartial prosecution service by 2006.
			Implement the community Outreach Strategy by 2006.
		Fully implement the agreed recommendations of CJI.	To implement agreed recommendations by 2006.
2005-06	<b>To enhance the value for money achieved through modernisation and the better use of resources.</b>	To operate within our resource budget and demonstrate we provide value for money.	To secure efficiency savings of 2.5% year on year.
		To develop corporate governance and promote a risk management culture.	Establish a PPS Management Board by December 2005.
			Have an ARC by end March 2006.
			Ensure all Fol requests dealt within deadline.
		To deliver e-business and give effect to modernisation targets.	To produce an e-business strategy by end of December 2005.
		To maintain and develop the CMS to meet needs of new PPS.	To implement the Causeway enabled CMS by end November 2005.

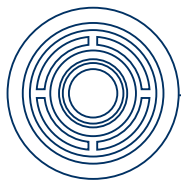


Year	Strategic priority	Objectives	Milestone
2005-06	<b>To value, empower, develop and recognise our staff.</b>	To create an environment in which the skills and knowledge of all staff are developed and valued so that they are equipped with the relevant competences to meet individual and business objectives.	Implement internal Communications Strategy by end March 2006.
			To achieve IIP re-accreditation by end December 2005.
			Implement 2005-06 Workforce Plan in accordance with capacity model.
			Reduce sickness and absenteeism by 5%.
		To achieve a workforce that is reflective of people from a range of diverse backgrounds and from all parts of the community.	To prepare a draft Equality Scheme in line with Equality Commission requirements by end March 2006.
2005-06	<b>To establish a new independent, fair and effective prosecution service as required by legislation and in accordance with the criminal justice implementation plan.</b>	To meet the requirements of the Criminal Justice Review and relevant legislation under the supervision of the oversight commissioners.	To complete evaluation of the Fermanagh and Tyrone PPS pilot by end of December 2005.
		To deliver all objectives in accordance with the Service Delivery Model agreed by the Project Board to establish the new PPS.	Deliver all 2005-06 objectives for PPS accommodation by end March 2006.
			To establish the PPS Eastern Region office by end of March 2006.
2006-07	<b>To improve service delivery.</b>	To ensure correct decisions are reached in accordance with the test for Prosecution.	Quality Assurance Team in place by June 2006.
		To prosecute in a fair and effective manner, fully complying with the duties of disclosure.	Implement PPS Manual for Disclosure by end September 2006.
		To process prosecution cases in a timely and efficient manner in partnership with other agencies.	Implement priority recommendations of the PPS output and Quality Improvement Project by end September 2006.
		To promote public confidence in the prosecution service and to meet the needs of victims and witnesses, whilst respecting the rights of defendants.	Deliver Community Outreach Programme by end March 2007.
			Carry out agreed 2006-07 PPS stakeholder surveys by end December 2006.
			Publish PPS Victims and Witness Policy by end August 2006.
		To implement the agreed recommendations of CJI.	Implement the agreed recommendations for 2006-07.



Year	Strategic priority	Objectives	Milestone
2006-07	<b>To enhance the value for money achieved through modernisation and the better use of resources.</b>	To operate within our resource budget and demonstrate we provide value for money.	Implement revised procedures for the selection of Counsel and for paying Counsel fees by end December 2006.
		To develop corporate governance and promote a risk management culture.	Agree 2006-07 Internal Audit Programme by end June 2006.
			Publish 2005-06 Annual Report by July 2006.
		To deliver e-business and give effect to modernisation targets.	Meet e-business strategy objectives by end of March 2007.
		To maintain and develop the CMS to meet needs of new PPS.	Meet target dates for build and test of 'Causeway-enabled' CMS by March 2007.
2006-07	<b>To value, empower, develop and recognise our staff</b>	To create an environment in which the skills and knowledge of all staff are developed and valued so that they are equipped with the relevant competences to meet individual and business objectives.	Implement the 2006-07 Workforce Plan by end March 2007.
			Implement the 2006-07 Corporate Training Plan by March 2006.
			Carry out a staff satisfaction survey by September 2006.
		To achieve a workforce that is reflective of people from a range of diverse backgrounds and from all parts of the community.	Publish PPS Equality Scheme by end July 2006.
2006-07	<b>To develop and maintain an independent, fair and effective prosecution service.</b>	Meet the requirements of the Criminal Justice Review and relevant legislation.	Implement agreed recommendations from the evaluation of the Fermanagh and Tyrone PPS pilot project by end March 2007.
		To deliver all objectives in accordance with the Service Delivery Model agreed by the Project Board to fully implement the new PPS.	Fully implement the PPS Eastern Region by end October 2006.
			Fully implement the PPS Northern Region by end January 2007.
			Deliver all 2006-07 objectives for the PPS accommodation project by March 2007.





Year	Strategic priority	Objectives	Milestone
2007-08	<b>To improve service delivery.</b>	To ensure correct decisions are reached in accordance with the test for Prosecution.	Quality Assurance review programme in place by September 2007.
			Policy for prosecuting cases involving hate crime to be published for consultation by end September 2007.
		To process prosecution cases in a timely and efficient manner in partnership with other agencies.	Service delivery protocols in place with NICTS and Northern Ireland departments by March 2008.
		To promote confidence in the PPS.	Carry out agreed 2007-08 PPS stakeholder surveys by December 2007.
			Deliver Community Outreach Programme by end March 2008.
		To implement the agreed recommendations of CJI.	Implement agreed recommendations by March 2008.
2007-08	<b>To enhance the value for money achieved through modernisation and the better use of resources.</b>	To meet corporate requirements through the effective management of finance, resources and risk.	Agreed 2007-08 internal Audit Programme in place by end June 2007.
			Publish 2006-07 Annual Report by end July 2007.
		To maintain and develop the CMS to meet the needs of the new PPS.	PPS Business Continuity Strategy in place by March 2008.
			Implement revised procedures for establishing and paying Counsel fees by March 2008.

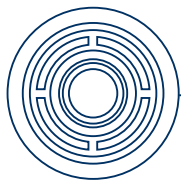
## Appendix 5: Example of data presented to the Public Prosecution Service management team

Defendants dealt with in the Crown Court by region/function, April - May 2012\*

Region/function	Convicted – Plea of guilty to all counts	Acquitted	Mixed Plea / Outcome (Convicted of at least one offence)	Other	All Defendants	Conviction Rate** (%)
<b>BELFAST REGION</b>	27	15	39	3	<b>84</b>	<b>78.6</b>
<b>EASTERN REGION</b>	37	7	40	0	<b>84</b>	<b>91.7</b>
<b>NORTHERN - BALLYMENA</b>	13	5	22	0	<b>40</b>	<b>87.5</b>
<b>NORTHERN - FOYLE</b>	17	8	15	0	<b>40</b>	<b>80.0</b>
<b>WESTERN REGION</b>	12	11	19	0	<b>42</b>	<b>73.8</b>
<b>SOUTHERN REGION</b>	6	3	13	0	<b>22</b>	<b>86.4</b>
<b>FRAUD</b>	2	0	0	0	<b>2</b>	<b>100.0</b>
<b>DEPARTMENTAL</b>	7	0	2	0	<b>9</b>	<b>100.0</b>
<b>CENTRAL CASEWORK SECTION</b>	1	4	1	0	<b>6</b>	<b>33.3</b>
<b>All Regions/functions</b>	<b>122</b>	<b>53</b>	<b>151</b>	<b>3</b>	<b>329</b>	<b>83.0</b>

\* Includes all defendants with a final result recorded during the period, based on results data supplied by the NICTS (via the Causeway Data Sharing Mechanism). The category 'acquitted' includes the following outcomes: acquittals, acquittals by direction, no bills, no evidence offered – defendant acquitted, left on books, proceedings stayed, unfit to plead – but found that he/she did not do the act, no case to answer – granted. 'Other' includes defendant deceased, withdrawal – all charges, bound over for not having shown cause, bound over where charge withdrawn, withdrawn due to diversionary route. It should be noted that if an individual is involved in more than one case which is resulted during this period, they will be counted as a separate defendant on each occasion.

\*\* Conviction rates are calculated on the basis of the number of persons convicted as a percentage of all persons dealt with during the period.



## Appendix 6: Example of Adverse Outcome Report used by Crown Prosecution Service (CPS)

The Regional Management Teams meetings held in the CPS areas include a report on adverse outcomes with lessons learned disseminated to CPS staff, police and courts staff. An example is given below.

<b>Adverse Outcomes Report</b> <i>Only report on adverse outcomes that are as a result of a poor charging decision or weak case management.</i>		
URN	Explanation	Action taken to improve performance/lessons learnt

### Discontinuances:

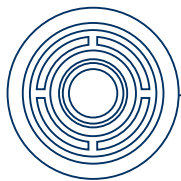
CASE	CASE DETAILS / REASON FOR OUTCOME	LESSONS TO BE LEARNED
R v x – Criminal damage 08.01.11 62HA0616811 – U27 Victim fails to attend unexpectedly	Two witnesses were due to give evidence at trial re: the damage, however they contacted the WCU advising them they believed the defendant was on a two week holiday in Tunisia and would not be at court. Both were advised the case could proceed against the defendant and the matter proved in his absence. They contacted the police further indicating they were not going to come.  There is a note on file from the OBM lawyer to the trial lawyer advising of this (information received two days before) suggesting we should wait and see if they were going to attend on the day. Neither attended and the case was dismissed.	CPS - This case should in my view have been discontinued as soon as we knew the witnesses were no longer prepared to attend court. This would have avoided the waste of court time and a cracked case outcome.  Feedback provided to lawyer.
<b>Withdrawn</b>  R v Mr J – Criminal damage 31.10.11 62GA0319611	On 31 October 2011, the complainant Mr J saw the defendant kick the wing mirror of his car causing damage. Full admissions were made in interview. The defendant is a youth. He should not have been charged as he has no previous convictions and no reprimands or warnings. The defendant was dealt with by way of final warning.	Police – Caution process not identified pre-charge by police. Feedback provided to police via DI x

### Dismissed after full trial:

CASE	CASE DETAILS / REASON FOR OUTCOME	LESSONS TO BE LEARNED
R v Mr R – No entry sign 14.06.11 62HA0826611	The defendant produced photographs showing that the sign had been turned the wrong way around. He took this photo after the incident. The officer at court could not be certain that the sign wasn't facing the wrong way when the offence was committed. He said he knew there was no entry to the street and had assumed that the sign was facing the correct way.	CPS and Police – Delays encountered in obtaining the upgraded file. This enquiry should however have been made of the officer in advance of trial. Feedback given to OBM.

## Appendix 7: Analysis of Decision Information Requests (DIRs)

	Belfast	Eastern	Northern Ballymena	Northern Foyle	Western	Southern	Fraud & Dept	Central Total	2010-11 Total	2011-12	% Change
<b>Requests Issued</b>	6,285	4,015	2,792	2,683	2,866	2,070	0	59	20,770	21,517	-3.5%
Full file	1,035	802	314	504	678	635	0	30	3,998	3,880	3.0%
DIR	1,810	1,179	1,023	1,396	606	523	0	24	6,561	5,944	10.4%
of which:											
- forensic report	143	110	38	47	17	9	0	4	368	328	12.2%
- medical report	81	50	38	62	38	34	0	0	303	285	6.3%
- CCTV footage	151	113	74	119	62	32	0	1	552	568	-2.8%
- video evidence	2	0	0	1	1	0	0	0	4	16	-75.0%
- further enquires/investigation	367	282	311	279	184	191	0	3	1,617	1,429	13.2%
- further evidence	585	351	288	281	180	168	0	7	1,860	1,648	12.9%
- further statements	311	173	202	344	78	72	0	7	1,187	1,174	1.1%
- interview summaries	123	91	58	242	41	16	0	0	571	421	35.6%
- interview transcripts	47	9	14	21	5	1	0	2	99	75	32.0%
Post-DIR	3,435	2,006	1,451	783	1,567	908	0	5	10,155	11,644	-12.8%
No Decision	5	28	4	0	15	4	0	0	56	n/a	14.3%



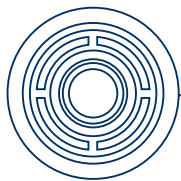
## Appendix 8: Crown Prosecution Service Wales Performance Validation Measures

Validation Measure	Weighting	Core Monitoring Standard
<b>High</b>		
Magistrates' Court attrition rate	High	Std 2 - Ch
Crown Court attrition rate	High	Std 2 - Ch
Percentage of Judges' Orders complied with on time	High	Std 5
Crown Court - percentage of guilty pleas at first hearing	High	Std 5
Proportion of prosecutions dropped after third or subsequent hearing	High	Std 5
Number of Custody Time Limit failures	High	Std 5
Witness attendance rate	High	Std 7
Prosecution costs - average cost per case	High	Efficiency
Admin costs - spend against budget	High	Efficiency
Average working days lost	High	People
Hate crime - unsuccessful outcomes	High	VAW and Hate
Violence against women (VAW) - unsuccessful outcomes	High	VAW and Hate
<b>Medium</b>		
Average time for provision of charging decision following telephone referral	Medium	Std 2
Percentage of calls answered resulting in an MG3	Medium	Std 2
Decision to charge/caution	Medium	Std 2
Magistrate's Court discontinuance rate	Medium	Std 2 - Ch
Magistrate's Court percentage of no case to answer	Medium	Std 2 - Ch
Crown Court - discontinuance rate	Medium	Std 2 - Ch
Crown Court - Judge directed acquittals	Medium	Std 2 - Ch
Proportion of PCD out of court disposals	Medium	Std 3
Magistrate's Court - percentage of guilty pleas at first hearing	Medium	Std 5
Non PCD attrition rate	Medium	Std 5
Crown Court average number of hearings per case - contested hearings	Medium	Std 5
Crown Court percentage of ineffective trials due to prosecution reasons	Medium	Std 5 - CIT
Crown Court percentage of cracked trials due to prosecution reasons	Medium	Std 5 - CIT
Magistrate's Court percentage of ineffective trials due to prosecution reasons	Medium	Std 5 - CIT
Magistrate's Court percentage of cracked trials due to prosecution reasons	Medium	Std 5 - CIT
Percentage of Direct Communication with Victims letters sent	Medium	Std 8
Timeliness of communication sent to vulnerable and intimidated victims	Medium	Std 8
Lead enforcement	Medium	Std 9
Percentage of GFS undertaken by Crown Advocates	Medium	Efficiency
Average savings per Crown Advocate	Medium	Efficiency
Average savings per session	Medium	Efficiency
Percentage of Magistrate's Court sessions covered by Associate Prosecutors	Medium	Efficiency
Magistrates' Court disposal rate	Medium	Efficiency
Percentage of available staff whose performance and development review has been completed	Medium	People
Percentage of stress related absence	Medium	People
Staff survey - employee engagement index	Medium	People
<b>Low</b>		
Magistrates' Court guilty plea rate	Low	Std 2 - Ch
Crown Court guilty plea rate	Low	Std 2 - Ch





Validation Measure	Weighting	Core Monitoring Standard
Percentage of finalisations in one day	Low	Std 5
Discharged committal rate	Low	Std 5
Magistrates' Court average number of hearings per case - guilty pleas	Low	Std 5
Magistrates' Court average number of hearings per case - contested hearings	Low	Std 5
Percentage of record hearings outcomes (on CMS) in one day	Low	Std 5
Crown Court average number of hearings per case - guilty pleas	Low	Std 5
Timeliness of communication sent to non vulnerable and intimidated victims	Low	Std 8
Value of confiscation orders	Low	Std 9
Volume of confiscation orders	Low	Std 9
Volume of restraint orders	Low	Std 9
Percentage of staff with long term sick leave	Low	People
Percentage of complaints as a proportion of finalised cases	Low	Std 11
<b>Not Weighted</b>		
Magistrates' Court caseload	Not weighted	Efficiency
Crown Court caseload	Not weighted	Efficiency
Percentage of staff with no sick absences	Not weighted	People
Telephone referrals answered by Prosecutors within three minutes	Not weighted	Std 2
Case concluded as no further action by Prosecutor following telephone referral	Not weighted	Std 2
Referred cases bailed to complete an action plan to obtain 'key evidence'	Not weighted	Std 2
Percentage of cases admin finalised	Not weighted	Std 2
Proportion of post-charge out of court disposals	Not weighted	Std 3
Magistrates' Court - percentage of intermediate guilty pleas	Not weighted	Std 5
Magistrates' Court - percentage of late and mixed guilty pleas	Not weighted	Std 5
Crown Court - percentage of intermediate guilty pleas	Not weighted	Std 5
Crown Court - percentage of late and mixed guilty pleas	Not weighted	Std 5
Crown Court percentage of ineffective trials	Not weighted	Std 5 - CIT
Crown Court percentage of cracked trials	Not weighted	Std 5 - CIT
Magistrates' Court percentage of ineffective trials	Not weighted	Std 5 - CIT
Magistrates' Court percentage of cracked trials	Not weighted	Std 5 - CIT
Number of advocates assessed	Not weighted	Std 6
Percentage of advocates reaching level 3 or above	Not weighted	Std 6
Percentage of detailed needs assessments undertaken	Not weighted	Std 7
Percentage of tasks completed on VMS	Not weighted	Std 7
Percentage of pre-trial visits accepted	Not weighted	Std 7
Percentage of vulnerable and intimidated victims identified	Not weighted	Std 8
Hidden and overseas assets - unrecoverable	Not weighted	Std 9
Percentage of cash forfeiture against confiscation order value	Not weighted	Std 9
Percentage of complaints acknowledgements sent within three working days	Not weighted	Std 11
Percentage of full complaints responses (stages 1 and 2) sent within 20 working days	Not weighted	Std 11
Percentage of full complaints responses (stage 3) sent within 40 working days	Not weighted	Std 11
Community engagement assessment	Not weighted	Std 12
Domestic violence attrition rate	Not weighted	VAW and Hate
Sexual offences attrition rate	Not weighted	VAW and Hate
Rape attrition rate	Not weighted	VAW and Hate
Rape caseload as a percentage of indictable cases only	Not weighted	VAW and Hate
Racist and religious attrition rate	Not weighted	VAW and Hate
Homophobic and transphobic attrition rate	Not weighted	VAW and Hate
Disability hate crime attrition rate	Not weighted	VAW and Hate
Disability caseload as a percentage of total caseload	Not weighted	VAW and Hate



## Appendix 9: Analysis of data from examination of 50 electronic file submissions to the Public Prosecution Service by the Police Service of Northern Ireland

**Background:** During the inspection of PPS casework quality in February 2012 by HMCPSI, an issue was raised by the PSNI concerning the frequency and relevance of Decision Information Requests (DIRs) sent by the PPS lawyers to PSNI staff before prosecution decisions were made or issued. At the same time, the PPS complained that too many PSNI prosecution files were not of sufficient quality for decisions to be made without more material being submitted.

**Methodology:** Over two working days, two of the original HMCPSI team returned to the PPS in order to produce data that might support or undermine these contentions. Two PPS regions (Belfast and Western) were selected as the source of electronic file submissions by the PSNI to reflect different sizes of region and perceived different quality standards. A CMS report was commissioned showing all cases in each region where either a DIR or Post-Direction Information Request (PDIR) had been issued during a two week period between 2 April 2012 and 15 April 2012 and where the response to the request was overdue at the time of printing the report (8 May 2012). Non-imprisonable summary offences (mainly motoring) were excluded from the sample.

**Analysis:** Fifty files were identified by Inspectors from these lists at random and judgements made whether the prosecution decision (by applying the PPS Code for Public Prosecutors) could reasonably have been made based upon the material submitted or whether the PPS were correct to require further material before making their decision. Additionally, where decisions were in fact made, Inspectors considered whether the material requested was essential for the proper prosecution of the case. Finally, some analysis of the requests themselves was undertaken in order to identify the frequency of evidence such as medical, forensic and CCTV being omitted from police files.

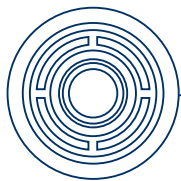
**Data:** See table below:

File examination outcome	Belfast	Western	Overall	Comment
PSNI charged cases	36%	45%	40%	
Reported for PPS decision	64%	55%	60%	
PSNI provided adequate material for Code Test	61%	86%	72%	11 Belfast and three Western cases did not contain enough evidence.
PPS directed decision	57%	68%	62%	
DIR issued	43%	32%	38%	In Western cases, only seven DIRs were issued so statistical data must be regarded with caution.
DIR deemed necessary	90%	29%	74%	Five cases overall could have yielded a PPS decision.
PDIR deemed necessary	64%	73%	57%	Nine cases generated a PDIR which did not request essential material.



### **Explanatory notes:**

- Of the 50 cases examined, 28 were from the Belfast region and 22 from the Western region.
- In 20 of the files submitted the PSNI had charged the suspect(s); and in 30 of the files submitted, the PSNI had reported the suspect(s) for a decision to be taken by the PPS. In Belfast there were 36% charge files but 45% in Western. Other data may indicate whether the Western region routinely generates a higher proportion of police charged cases than Belfast.
- In 36 cases or 72% it was considered that the PSNI had supplied adequate material for the test for prosecution in the Code to be applied. In Belfast the PSNI supplied adequate material in 61% but 86% in the Western region.
- In 31 cases or 62% the PPS directed a prosecution [57% in Belfast; 68% in Western]; in the remaining 19 or 38% a DIR was issued [43% in Belfast; 32% in Western].
- Of the 19 DIRs issued by the PPS, 74% were necessary in order to make the decision [90% in Belfast; 29% in Western]; all but one (95%) set the PSNI a realistic timescale within which to obtain the material requested.
- In the 31 cases where a prosecution was directed, a PDIR was issued in 25 or 81%; in 64% of those PDIRs, the material requested was deemed necessary for the continued prosecution of the case. A number of the PDIRs sent by the PPS were mainly or wholly administrative in nature rather than seeking important evidential material.
- Where the most common types of additional material were relevant to the prosecution, it was provided with the file by the PSNI as follows:
  - **medical:** provided in only 27% (four of 15 relevant cases);
  - **forensic:** provided in only 20% (two of 10 relevant cases);
  - **CCTV:** provided in only 17% (two of 12 relevant cases); and
  - **all key statements:** provided in 40%.



## Appendix 10: Objectives of the Advocacy Strategy

The objectives of the project are:

- To develop and implement an Advocacy Strategy for the PPS.
- Increased accountability in the delivery of advocacy by the PPS.
- To develop the quality and efficacy of PPS in-house advocacy.
- To promote staff development to meet the needs of the PPS in a changing environment including undertaking work at the lowest grade possible.
- To clarify the roles of PPS PPs and SPPs in terms of advocacy.
- To clarify the anticipated role of HCAs and Designated Case Workers/Associate Prosecutors both initially and in the longer-term.
- To provide consistency of policy and practice in the use of internal and external resources across the PPS.
- To support implementation of the new fee scheme arrangements in August 2012.<sup>63</sup>

In respect of the above the current PPS Annual Business Plan<sup>64</sup> has target dates for completion as follows:

Milestone	Target date for completion
Panel of external Counsel reconstituted (via open competition)	30 November 2012
Implementation of HCA Scheme	31 October 2012
Complete Associate Prosecutor scoping study	31 March 2013
Enhanced arrangements in place for assessment of panel Counsel and PP advocacy	31 March 2013

<sup>63</sup> 'Design and implementation of an Advocacy Strategy for the PPS: Project Initiation Document', PPS, April 2012.

<sup>64</sup> PPS Annual Business Plan 2012-13.




## **Appendix 11: Public Prosecution Service Advocacy Standards**

Access is available via undernoted web address:

<http://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Code%20for%20Prosecutors/PPS%20Advocacy%20Standards.pdf>





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