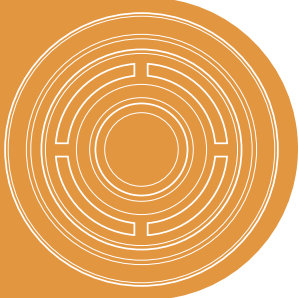


REVIEW OF THE PUBLIC PROSECUTION
SERVICE'S RESPONSE TO THE INDEPENDENT
REVIEW OF THE PROSECUTION OF RELATED
SEXUAL ABUSE AND TERRORISM CASES
(THE STARMER REVIEW)

A REVIEW OF THE IMPLEMENTATION OF THE RECOMMENDATIONS

October 2017





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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.

October 2017



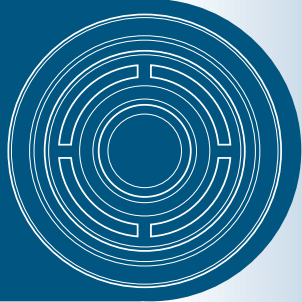
Contents

List of abbreviations	4
Chief Inspector's Foreword	5
Follow-Up Review	
Chapter 1: Introduction	7
Chapter 2: Progress against recommendations	10
Chapter 3: Conclusion	20



List of abbreviations

CJI	Criminal Justice Inspection Northern Ireland
CMS	Case Management System
DPP	Director of Public Prosecutions
HMCPSI	Her Majesty's Crown Prosecution Service Inspectorate
PPS	Public Prosecution Service for Northern Ireland
PSD	Prosecution Strategy Document
SPP(s)	Senior Public Prosecutor(s)



Chief Inspector's Foreword

The Public Prosecution Service for Northern Ireland (PPS) has undergone extensive organisational and structural changes since the Independent Review of the prosecution of related sexual abuse and terrorism cases (The Starmer Review) was published in May 2015. I was invited by the Director of Public Prosecutions (DPP) to assess the progress that has been made in response to the recommendations in the Starmer Review.

I do not underestimate the scale of the challenge facing the PPS at this time and the considerable efforts of the senior management team to implement the necessary changes identified internally and by the Starmer Review.

This report confirms that substantial progress has been made by the PPS in addressing the detail of the recommendations, however the Service needs to continually quality assure the new processes to ensure both compliance and consistency.

This inspection was led by Rachel Lindsay and David MacAnulty with the valuable support of Inspectors from Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI). I would like to thank all those who supported their work.

Brendan McGuigan
Chief Inspector of Criminal Justice
in Northern Ireland

October 2017

Criminal Justice Inspection
Northern Ireland
a better justice system for all





Follow-Up Review



Introduction

Background to the Starmer Review

The Starmer Review was commissioned to review the handling and conduct of two cases by the PPS:

- (1) *R v Morris* ("the sexual abuse case"); and
- (2) *R v Morris, Wilson, Wright, Finucane and McCrory* ("the membership case").

The cases were instigated by three complainants, who in early 2010 made reports of alleged sexual abuse which occurred between 1997 and 2000. Charges were laid between 2010 and 2012. The cases were eventually split into three trials. Owing to various matters, as outlined in the Starmer report¹, none of the trials had been heard by the start of 2014. Ultimately, all three complainants withdrew their evidence, citing frustrations with the court process and the prosecution. Verdicts of not guilty were entered in respect of all charges².

In October 2014 the Director of Public Prosecutions (DPP) announced an independent review into how the Public Prosecution Service for Northern Ireland (PPS) dealt with two linked prosecutions involving sexual abuse and terrorist-related charges. This review was led by Sir Keir Starmer KCB, QC and Katherine O'Byrne BL.

The Starmer Review

The terms of reference for the Starmer Review were:

- consideration of all aspects of the handling and conduct of the prosecutions by the PPS;
- consideration of all relevant files relating to the prosecutions;
- conduct of all relevant interviews with whomsoever the Reviewer requires; and
- identification of any recommendations to improve the services of the PPS.

¹ *Independent Review of the prosecution of related sexual abuse and terrorism cases*, Sir Keir Starmer KCB QC & Katherine O'Byrne, May 2015. Available online at <http://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/PPS%20Press%20Office/StarmerReview.pdf>.

² Starmer Review, paragraph 1.3.

The Starmer Review made 14 findings in relation to the handling and conduct of the cases and 10 recommendations, nine of which focused on improvement. These recommendations included improvements to policy, management processes, training for staff and working practices. The DPP accepted all the recommendations and confirmed that a programme of changes had been put in place to address these³. The report of this review, 'The Starmer Review', was published in May 2015.

Recommendation 10 was that *"Between six and 12 months from the date of this Report, the DPP should commission a review of the implementation of these recommendations"*. In January 2016 the PPS requested that Criminal Justice Inspection Northern Ireland (CJI) undertake this review.

Changes to the PPS since the Starmer Review

Since the publication of the Starmer Review the PPS had rolled out its Transformation Programme in 2015-16 to develop a new model which aimed to *'increase the flexibility of the Service, streamlining operations so as to improve resilience and maintain a high level of effectiveness'*⁴. This led to a number of significant changes across the organisation. These changes were outlined in the 2015-16 Annual Report and can be summarised as follows:

- there was a significant reduction in staffing levels from a full time equivalent staffing figure of 521.5 as at 31 March 2015 to an overall full time equivalent of 457.9 as at 31 March 2016;
- a total of 91 staff left the organisation under a Voluntary Exit Scheme, including 11 staff who accepted while on a career break;
- the consolidation of the PPS operational teams which were brought together in three main locations, in Belfast, Foyle and Newry;
- the centralisation of a range of the most serious indictable cases, including murder, manslaughter and sexual offences, within a new Serious Crime Unit;
- introduction of new case management arrangements and new Prosecution Quality Standards; and
- a revised victim and witness policy, which was published for consultation in June 2016.

In addition the PPS Annual Report highlighted changes to the PPS caseload in 2015-16. The report highlights that: *'A total of 43,914 files were received in 2015-16 compared with 45,383 in 2014-15. Over recent years, there has been a steady decline in file numbers, the current volume representing a decrease of 17.6% on the 53,271 cases received in 2011-12. This trend is largely the result of a fall in less complex summary cases, for example involving motoring offences, minor disorder and lower value retail theft.'*

3 PPS News Release, Publication of Starmer Review, 22 May 2015, available at <http://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/PPS%20Press%20Office/NEWS%20RELEASE%20PUBLICATION%20OF%20STARMER%20REVIEW%2022%20May%202015.pdf>

4 Public Prosecution Service for Northern Ireland, Annual Report & Resource Accounts 2015-16, June 2016 available online at <http://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Publications/PPS%20Annual%20Report%20and%20Resource%20Accounts%202015-16.pdf>

Many such offences are now being dealt with directly by the PSNI (Police Service of Northern Ireland) by way of Penalty Notices for Disorder (PND) or police discretionary disposals. While there has been a reduction in the overall number of files received compared with 2011-12, numbers in the most serious case categories have been sustained’.

Inspectors were aware that some of these changes to the ways of working were already in development prior to the publication of the Starmer Review as the PPS had already identified areas in which improvements could be made. Some of the structural changes, for example the centralisation of the most serious indictable cases in the Serious Crime Unit, had the potential benefit of enabling a greater focus on the cases most likely to be difficult and complicated but were not implemented as the result of a direct recommendation by Starmer.

Review by CJI

The review by CJI focused on the implementation of the nine specific recommendations for improvement since the publication of the Starmer Review. Inspectors reviewed policies and procedures provided by the PPS which related to the specific areas raised in the recommendations. A series of interviews and focus groups were held with PPS senior managers, Senior Public Prosecutors from Belfast and Foyle Regions, the Serious Case Unit, Fraud and Departmental and the Central Casework Section as well as staff from the Victim and Witness Care Units in Belfast and Foyle Chambers.

In addition CJI was supported in this inspection by Her Majesty’s Crown Prosecution Service Inspectorate (HMCPPI) who, along with a legal Inspector from CJI, conducted a case file review of 84 prosecution case files. The files had all either been received by the PPS since 1 January 2016 when the new procedures had been implemented or had been subject to the case management procedures retrospectively (i.e. at a date post-January 2016). These files related to serious cases, to which the Starmer Review recommendations were most relevant. Broadly speaking these cases were in the areas of homicide, sexual offences and road traffic offences leading to death or seriously bodily injury. A question set was developed by HMCPPI to review the quality of the files against key areas such as the risk registers; casework meetings; Prosecution Strategy Document (PSD); case management panel; communication with victims; counsel strategy meetings and case handling; and roles and responsibilities. Some of the questions were assessed as ‘yes’, ‘no’ or ‘too soon/not applicable’ whilst others were assessed as ‘fully met’, ‘partially met’ or ‘not met’.

Overall when considering whether the recommendations had been achieved or not, Inspectors used a four category assessment scale of ‘achieved’, ‘substantial progress’, ‘limited progress’ and ‘not achieved’.



Progress against recommendations

Recommendation 1

The PPS should introduce policy and/or guidance to improve case planning and strategic thinking in difficult and complicated cases.

Status: Substantial progress.

Inspectors' assessment

Since the report of the Starmer Review the PPS had introduced new case management procedures which were set out in a Staff Instruction. These procedures have been developed by one of the Assistant Directors and there had been training road-shows held to raise staff awareness of the new procedures and how to implement them. There had also been an information seminar held for PPS panel counsel on the new procedures and how they would be expected to engage in them.

The procedures included the following:

- 1 Regular casework meetings between Assistant Directors and each of their Senior Public Prosecutors (SPPs).
- 2 The production and maintenance of regional/sectional casework risk registers.
- 3 The production and maintenance of a PSD in appropriate cases.
- 4 Case strategy meeting(s) with counsel.
- 5 The establishment of case management panels to brief senior management to enable support in relation to specific cases.

Inspectors found the Staff Instruction to be clear and effective in setting out the new procedures. There was a general view amongst SPPs that most of the learning about using the case management procedures was done on the job. Inspectors were of the view that there was not yet a full understanding across the PPS as to why the processes were necessary and what value they added.

As a result, there was inconsistency across the organisation as to how they were implemented. This was evidenced by the fact that there were differing approaches to the frequency of use of PSDs and of casework meetings.

A total of 14 PSDs had been developed and were reviewed in the case file review. Just over a quarter were of good quality, adequately covering all relevant aspects of the case with a further 60% at least partially doing so. SPPs and counsel acknowledged the usefulness of the PSD as a plan for the case. However many PSDs focused on evidential risks in the case and actions to address these, rather than considering strategic risks. This may be because the initial training did not adequately cover the rationale for and purpose of the PSD nor provide SPPs with some examples of completed PSDs to use as a reference point. In addition, some PSDs were not always initialled and dated properly in accordance with the template instructions.

Inspectors heard that there was a greater level of involvement by counsel with cases as they proceeded than in the past, which had partly been facilitated by the requirement to hold case strategy meetings with counsel and the police investigating officer. Both PPS staff and counsel reported that they found these beneficial although in some cases, it was felt that they could be more useful at a later stage in the process rather than immediately after arraignment or that they could just be used in more serious and complex cases. Inspectors would be of a view that, as outlined in the policy, early engagement is important for effective case planning at the onset of the case. The logistics of arranging a suitable time and venue for a case strategy meeting was often challenging, but Inspectors were told arrangements were made for them to take place by telephone if a physical meeting was not possible.

There had been four cases which had been subject to a case management panel with the Director, Senior Assistant Director, directing officer (the SPP) and the relevant Assistant Director in attendance. In all four cases the briefing material was satisfactory, there was an agreed record of decisions and the overall process was effective. Some staff highlighted the benefits of the additional structure this process delivered and there was evidence that the decision to hold a case management panel in all four cases was appropriate. Inspectors were of the view that these panels were well run and of a high quality and they could bring benefits to other cases which met the threshold for referral to a panel.

There was a lack of evidence from the case files as to whether feedback had been given by Assistant Directors regarding case planning and what actions had resulted from any feedback given. This is related to a wider issue around recording, which is discussed under Recommendation 5.

In summary, Inspectors believe the procedures that the PPS had implemented had the potential to realise the improvements intended by the recommendation. However, there needs to be a greater level of consistency in their application and in the oversight and accountability of senior management to ensure they are being utilised appropriately to ensure effective case planning and strategic thinking in difficult and complicated cases.

Recommendation 2

A flagging system for difficult and complicated cases should be introduced to highlight risks and ensure proper lines of accountability to senior management, including the Deputy Director and Director where necessary.

Status: Limited progress.

Inspectors' assessment

The development of the risk register process, as included in the case management procedures discussed in Recommendation 1, was intended to deliver a flagging system as required by this recommendation. This had been developed and introduced as part of the case management procedures as previously outlined, with flexibility for Assistant Directors to develop their own working practices as to how the registers were structured, monitored and updated. As a result there had been differing practices developed in terms of how risks were reviewed, updated and 'closed' (i.e. that the risk was no longer considered to be live). Without a consistent template and guidance for completion, Inspectors were concerned that it would be difficult for senior management to have an effective overview of casework risks being managed by the PPS at any given time and an ability to ensure consistency of application of the policy in practice.

Of the 84 cases in the case file sample there were 16 which were listed on the risk registers. These were all appropriate but there were some that did not appear which could have benefited from inclusion. Inspectors assessed the extent to which these cases on the register had been adequately identified; four-fifths of these cases had at least partially met the standard. In cases where the risks had not been adequately identified they were not described properly, for example with the focus being on what the risk was rather than the consequences of it. In around half the cases the mitigating actions had not been identified adequately, focusing more on process rather than outcomes, which again suggested that the training as to how risks should be managed had not been well disseminated and consistently applied across the PPS. There was evidence in most cases that the risk register had been updated regularly.

As was found to be the situation with the case management procedures more generally above, Inspectors have concluded that there was not yet a clear understanding by staff of what the use of the risk registers added to their previous practice. A greater consistency in practice is required before this recommendation can be considered to be fully achieved.

Recommendation 3

When deviating from usual management structures, senior team members should take the lead in defining roles clearly.

Status: Substantial progress.

Inspectors' assessment

This recommendation arose from Finding Four of the Starmer Review which stated,

'The roles of some members of the prosecution team were not defined with sufficient clarity, particularly where they differed from usual management structures. The respective Regional Prosecutors failed to provide active management and oversight of the cases.'

This partly originated in deviating from the usual practice in the Belfast Region at the time whereby the Directing Officer passed the case to the Lead Disclosure Lawyer in the Crown Room once it was committed to Crown Court. There were also difficulties arising from the fact that during the period of the cases there was management involvement from three consecutive Regional Prosecutors for Belfast, the Senior Assistant Director (Central) (later Deputy Director) and the Senior Assistant Director (Regions).

As an overall change to working practices in the PPS, Inspectors were advised that the practice of dividing the management of the case between the Directing Officer and the Lead Disclosure Lawyer in the Crown Room had ceased. The current practice was that the SPP responsible for directing on the case was also responsible for the management of the case once it was committed for trial in the Crown Court and therefore dealt with disclosure issues, the instruction of counsel and ongoing communication with victims and witnesses.

Inspectors were advised of arrangements that existed to cover annual leave or sickness absence by Assistant Directors or SPPs. In each section Inspectors were told there was a senior prosecutor who could deputise for the Assistant Director on these occasions or that another Assistant Director could either cover the section themselves or be available as a point of contact for any queries by the senior prosecutor. The Senior Assistant Director was also named by staff as being available to deal with appropriate queries or issues that arose when necessary. Inspectors heard examples of how this had operated in practice.

There were some inconsistencies in how these structures operated, which was hampered by a lack of recording on the files as to the input into key decisions by senior management. On some occasions noted by Inspectors, there was evidence that the prosecutor deviated from usual management structures to seek specific advice relating to a particular case. Overall there was limited recording of the decision to depart from usual management structures (for example, why a SPP had sought the advice of the Senior Assistant Director rather than the Assistant Director) and of when usual management structures would resume. Inspectors would therefore consider there is still work to be done to ensure decisions are noted on case files to explain such deviations, before the recommendation can be assessed as achieved.

The establishment of the Serious Crime Unit had led to a more effective management structure for the most serious types of crime (for example homicides and sexual offences) as one Assistant Director was directly responsible for the work of the Unit. In addition a 'buddy' system had been set up in the Serious Crime Unit whereby two SPPs were paired together and therefore had a knowledge of each others cases, in order to deal with queries that arose when the allocated SPP was not available.

Recommendation 4

The PPS should introduce standard clauses in all instructions to prosecuting counsel making clear what is expected of them, what responsibilities they have and their role in decision-making.

Status: Achieved.

Inspectors' assessment

The PPS provided Inspectors with copies of the terms of engagement documents that panel and senior counsel were expected to adhere to. These were thorough and detailed documents which included the various requirements on counsel to comply with guidance issued by the Director of the PPS. The requirements on counsel regarding attendance at case strategy meetings and need to seek instructions from the PPS regarding changes to the directed charges, assistance for witnesses, making significant decisions and listing cases were set out clearly. The terms of engagement also included the PPS Advocacy Standards. These covered topics such as professional ethics, victims and witnesses, planning and preparation, court etiquette, bail, pleas, youth court, trial, prosecution appeals, sentencing, confiscation and applying PPS policies.

An information seminar had been held for prosecuting counsel in May 2016 which included a session on the new approach to case strategy and the role of counsel (with specific reference to recommendations 1, 2 and 4 of the Starmer Review, the staff instruction issued in December 2015 regarding case management procedures and the relevant paragraphs of the terms of engagement). The seminar also included an input on the PPS focus on victims including an overview of the Victim Charter, the Victim and Witness Care Unit, PPS Victims and Witnesses Policy and the victim journey.

Most prosecuting counsel advised Inspectors that the seminar had been useful and had emphasised the requirements on counsel as well as their roles and responsibilities. They also confirmed that PPS staff expected counsel to incorporate these responsibilities in their practice. For example, Inspectors were told that when counsel contacted the PPS to ask about accepting a plea to a lesser offence, the first question they would be asked by the SPP or Assistant Director was what the views of the victim or their family was. The case file review also showed that, in the three relevant cases, counsel had consulted with the PPS regarding a plea or a decision to drop the charges.

Inspectors found evidence that this recommendation had been achieved in that the PPS had clearly set out the expectations on prosecuting counsel in written format and emphasised this during the information seminar. However there is a continuing onus on the PPS to enforce these expectations during their interactions with counsel, to review counsel performance on a regular basis and to address any instances where individuals fall short of their responsibilities through the performance management system. This will be considered as part of CJI's Follow-Up Review of PPS Corporate Governance.

Recommendation 5

Measures should be introduced to improve the recording of decisions and consultations by the PPS and counsel.

Status: Substantial progress.

Inspectors' assessment

The issues that led to this recommendation in the Starmer Review were that records of decisions made and consultations held, particularly by PPS senior management and counsel, during the course of the prosecution were not properly recorded by those involved in the case.

Inspectors, in assessing this recommendation in the Starmer Review therefore focused on the recording of decisions and consultations in the case file after the initial decision to prosecute was made through to decisions about the case at trial. This issue of recording decisions and consultations in relation to the decision to prosecute is one which CJI will return to in its forthcoming thematic inspections relating to domestic and sexual violence and abuse.

There appeared to be some confusion amongst prosecutors as to where decisions and consultations should be recorded on the file; with some issues recorded in the area in the Case Management System (CMS) for instructions to police (although more so in cases where there was a decision not to prosecute and this was used to explain the reasoning for this to police), some in paper format on the hard copy file, some in the instructions to counsel and some in the consultation tab on the CMS. The consultation tab was a more recent addition to the CMS and some prosecutors were unaware of it.

There were some good examples in the case files of records of consultations with counsel and of consultations with victims. In the 42 files where there was communication with the victim there was evidence of an adequate written record fully in 71% of cases and partially in 19%. In six of the eight case files where a prosecution strategy meeting had been held, there was a minute of the meeting with a clear decision making audit trail. In the three case files where a consultation had been held between counsel and the PPS regarding the acceptance of or basis of pleas or decisions to drop the charges, there was a record of the meeting. Counsel advised that they were expected by the PPS to provide written notes of advice given or consultations with prosecutors. In cases where there was a consultation at court with a victim or witness, they said they would usually ask a court clerk or the police investigating officer to take a note of the meeting, although availability could be an issue.

The 'buddy system' adopted in the Serious Crime Unit, whereby two SPPs were paired together and undertook peer reviews of each others cases in no prosecution decisions, appeared to be working well and there was good record keeping and endorsement of decision making on the CMS.

There was evidence of improvement in this area since the Starmer Review and previous CJI inspections, but Inspectors would still urge the PPS to ensure consistency of practice in the location where decisions and consultations are recorded.

Recommendation 6

The PPS *Victims and Witnesses Policy* should be reviewed in light of this report, in particular with a view to improving communications and consultations with victims on major decisions.

Status: Substantial progress.

Inspectors' assessment

Inspectors considered this recommendation both in terms of whether such a review of the *Victims and Witnesses Policy* had occurred, as well as considering whether it had led to the desired outcome of improved communications and consultations with victims on major decisions.

Inspectors found that the *Victims and Witnesses Policy* had been reviewed by a SPP in the Legal Advice and Guidance Section. In doing so, the SPP had consulted with the Victim and Witness Care Unit to incorporate their role more fully in the Policy. The policy aimed to achieve the following:

- to describe the services the PPS provides to victims and witnesses in cases received by the Department from appropriate investigative authorities;
- to ensure compliance with the Victim Charter; and
- provide guidance to PPS staff and external agencies on best practice in the provision of those services.

The updated Policy therefore sets out what the victim could expect in terms of the services afforded to them by the PPS as well as details of the responsibilities of the Victim and Witness Care Unit. In addition, the requirements of the PPS under the Victim Charter had been incorporated into the Policy.

The draft Policy was published for consultation on the PPS website between June and August 2016.

In considering the communications and consultations with victims, Inspectors reviewed the records made by prosecutors contained in the case files and on the CMS as well as copies of letters sent to victims in both cases where a decision had been made to prosecute as well as in no prosecution decisions. Inspectors also spoke to prosecutors, Assistant Directors and counsel about communication and consultations with victims.

In the cases reviewed an initial letter was sent by the Assistant Director to the victim(s) or family to confirm that the PPS were in receipt of a file from the PSNI regarding the case and giving the SPP as the named point of contact. These letters were sent directly from the Assistant Director and therefore were outside of the processes employed by the Victim and Witness Care Unit, who handled the subsequent correspondence and communication with the victim(s)/family. It would be helpful if there was a joining up of these two processes, to avoid the possibility of duplication or a victim/family member being overlooked.

In the case file review Inspectors saw some examples of excellent practice in the letters sent to victims from the SPP either to advise that a decision had been made not to prosecute or as a follow-up to a face to face consultation with a victim/family. In the best cases the letters were empathetic, explained the issues sensitively and avoided complex legal jargon. Unfortunately there were also inconsistencies in the quality of letters sent with just under half the cases assessed not to be sufficiently empathetic. In 73% of the 70 cases where there was written communication, this was assessed as partly or fully setting out any prosecutorial decision clearly. PPS staff spoken to acknowledged that not all staff were equally skilled in drafting letters which were sufficiently empathetic and that there were still improvements to be made. CJI has previously raised concerns about the quality of written communications with victims by the PPS⁵ and this review suggests there is still work to be done to ensure a common standard.

Inspectors heard that there had been improvements in the willingness and availability of prosecutors to meet with victims and victim's families. Case files showed that there had been communication with the victim(s)/family of the victim in 83% of cases, mainly by letter but also by face to face meeting or a mixture of both. The Victim and Witness Care Unit staff confirmed that most requests by them for a prosecutor to telephone or meet with a victim were met with agreement, although there were still some inconsistencies in approach. Some prosecutors still believed that some messages, in cases of serious crime, were best communicated by the PSNI Family Liaison Officer or Investigating Officer, with an offer of a follow-up discussion with the PPS.

Recommendation 7

Once the PPS *Victims and Witnesses Policy* has been reviewed as recommended above, all staff should be required to undergo training on the requirements of the reviewed policy.

Status: Achieved.

Inspectors' assessment

PPS prosecutors and Victim and Witness Care Unit staff advised that they had received training on the new Policy and the responsibilities placed on them in relation to victims and under the Victim Charter. Prosecutors said this formalised what they understood they were required to do and that it helped them to understand in greater depth, the role of the Victim and Witness Care Unit. Some interviewees commented that it would have been more useful to have joint training rather than separate training for lawyers and Victim and Witness Care Unit staff.

In addition counsel had received a similar input on the Victims and Witness Policy during the information seminar they attended. As mentioned above counsel recognised that there was a greater focus on communicating and consulting with victims from the PPS and stated that this was emphasised in the training.

⁵ CJI, *Telling Them Why: An inspection of the Public Prosecution Service for Northern Ireland giving of reasons*, May 2012 available at www.cjini.org.

Recommendation 8

All PPS staff and counsel working on rape and serious sexual abuse cases should be required to undergo training on the PPS Policy for Prosecuting Cases of Rape.

Status: Achieved.

Inspectors' assessment

On 1 January 2016 the Serious Crime Unit of the PPS became operational, to deal with a range of the most serious offences including murder/manslaughter, rape and serious sexual offences, human trafficking, prostitution and related offences. The intention of its introduction was that the section would *'enable greater resilience and consistency of approach as well as increasing the scope for specialisation and sharing of best practice in relation to the management of these cases'*⁶. The introduction of the 'buddy' system in the Unit, where prosecutors worked in teams of two was intended to provide continuity and to ensure that cases progressed without delay.

Staff within the Unit had been brought in from the Regional offices and therefore some had experience in dealing with serious sexual offence cases previously. Training was led by the SCU Assistant Director, assisted by former Regional Sexual Offences Specialists who had joined the Unit. This training included the relevant legislation, particularly the Sexual Offences (Northern Ireland) Order 2008, the role and responsibilities of the team, the approach to victims and witnesses, special measures, hearsay and bad character. The training also covered the PPS Policy for Prosecuting Cases of Rape.

Training for counsel was delivered in May 2017 (after the fieldwork for this review had concluded). This was led by a Judge (co-author of the leading text on sexual offences and a leading trainer and academic) and a QC with expertise in prosecuting serious sexual offences and delivering training to the legal profession.

In this review CJI Inspectors were focused on establishing whether training had been delivered, as per the recommendation, and it was not part of the Terms of Reference to assess the application of the policy into practice. This is something CJI will return to in its forthcoming thematic inspection on how the criminal justice system deals with sexual violence and abuse in Northern Ireland. This recommendation can therefore be considered to be achieved.

⁶ PPS website www.ppsni.gov.uk/Structure-5028.html

Recommendation 9

All PPS staff and prosecution counsel should be reminded of the continuing obligation to keep the prospects of conviction under review, particularly when there are significant developments in the case.

Status: Achieved.

Inspectors' assessment

Since the Starmer Review the PPS Code for Prosecutors had been updated and the latest version had been published in July 2016. Section 4.5 of the updated Code stated that *'prosecutors also have a general duty to keep prosecution decisions under consideration and take into account any change in circumstances that occurs as the case proceeds'*.

Prosecutors and counsel confirmed that there was an expectation on them to apply this in practice and that this was a constant consideration when discussing the evidence in the case. In the case sample there were no cases where the prosecution had been dropped post-charge. In 20 cases there was a requirement to review the evidence and/or public interest in the case. In three-quarters of these cases there was evidence of the process of continuing review. In the five cases where there was no evidence that continuing review had occurred, this may be due to a lack of recording in the case file rather than because the prosecutor has not kept the prospects of conviction under review. If so then this relates to the issues raised under Recommendation 5 in relation to recording of decisions and consultations.

It may be therefore that such considerations and discussions between PPS staff and counsel are indeed ongoing through the duration of the case, but without evidence of these being recorded in the case files, it is difficult for PPS senior management to be assured of this process of ongoing review or quality assure the work of prosecution staff. The recording of such information provides not only an evidential trail of good practice, but also provides a transparency in the process which can only benefit victims and witnesses. Whilst this recommendation is therefore assessed as achieved, it is imperative upon PPS management to ensure this continuing obligation is applied in practice.



Conclusion

The PPS was an organisation in transition at the time of the fieldwork for this review and there had been a number of significant structural and organisational changes in the period since the Starmer Review was undertaken and published. In addition the PPS workload had changed in recent years. PPS Senior Management described the process they had undertaken as 'a journey' which they acknowledged was not yet complete.

In undertaking this review CJI Inspectors were cognisant that some structural changes had been made which had not been directly recommended by Starmer, but which the PPS felt would bring about performance improvements and which therefore may address the issues indirectly. Inspectors however attempted to assess whether current PPS policy and practice addressed the spirit of the recommendations. Some of the recommendations were quite limited in scope and therefore CJI has focused on assessing the implementation of these as they were written and related to the context of the issues in the Starmer Review.

Overall CJI have seen evidence of substantial progress towards addressing the recommendations. Four were assessed as 'Achieved', four as 'Substantial Progress' and one as 'Limited Progress'. The implementation of the Case Management Procedures was a positive step in addressing how the PPS deal with serious and complex cases. There was a high level of awareness across PPS staff and prosecuting counsel of the new policy and procedures. CJI saw evidence that a sound policy was in place but that there continued to be inconsistencies in the application of practice. This will continue to be a challenge for PPS senior management to ensure the policy is fully understood and applied consistently across the organisation.

Some of the issues that are still to be fully addressed are those which CJI have raised in previous inspections, such as the approach to victims and the need for a continuing focus on the recording of decisions and consultations on case files. Whilst Inspectors saw examples of excellent practice by some prosecutors, this is still not sufficiently consistent across the organisation. Quality assurance and performance management by Assistant Directors is critical in ensuring this approach becomes the cultural norm of the organisation.

CJI will be undertaking two thematic public protection inspections regarding the approach of the criminal justice system to domestic violence and abuse and sexual violence and abuse as well as a thematic inspection on the care and treatment of victims and witnesses in the criminal justice system later in 2017. These will consider the work of the PPS in directing on and prosecuting these types of offences and, the sexual violence and abuse inspection in particular, will consider the work of the Serious Crime Unit again. Inspectors hope that this Review is helpful in identifying the areas where the PPS still needs to focus its efforts.



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