



Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT
(Hansard)

**Briefing on Provision to Allow the Public
Prosecution Service to Commence
Proceedings Without Recourse to a Lay
Magistrate**

27 May 2010

NORTHERN IRELAND ASSEMBLY

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Commence Proceedings Without Recourse to a Lay Magistrate**

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Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Jonathan Bell
Mr Conall McDevitt
Ms Carál Ní Chuilín
Mr Alastair Ross

Witnesses:

Ms Geraldine Fee) Northern Ireland Courts and Tribunals Service
Mr Graham Walker)

Mr John Rea) Public Prosecution Service

The Chairperson (Lord Morrow):

We will now receive a departmental briefing on the provision to allow the Public Prosecution Service (PPS) to commence proceedings without recourse to a lay magistrate. I understand that Geraldine Fee will be giving the presentation, and will be joined by Graham Walker, policy adviser in the criminal policy and legislation division, and John Rea, assistant director of policy and information in the PPS. I welcome you here today. I remind those who have just joined us that proceedings are being recorded for the Hansard report.

Ms Geraldine Fee (Northern Ireland Courts and Tribunals Service):

As the Committee is aware, earlier this year, the Northern Ireland Courts and Tribunals Service published a consultation document on a proposal to allow Public Prosecution Service prosecutors to issue a summons to a defendant without recourse to a lay magistrate. The consultation was launched with a view to including related provision in the planned justice miscellaneous provisions Bill. The consultation period is due to close tomorrow.

I will provide some background. The proposal's genesis lies in the Criminal Justice Inspection's (CJI) report 'Avoidable Delay', which was published in 2006. That report followed the CJI's thematic review of the causes of avoidable delay in the system. The CJI noted that a degree of delay in the system resulted from the summons issuing process itself, essentially because the current arrangements require the PPS to present a summons to a lay magistrate for signature before it issues.

At this point it might be helpful to outline to the Committee the practicalities that underpin the current arrangements. At present, when a prosecutor makes a complaint to a lay magistrate that a person has committed an offence, the lay magistrate may issue a summons requiring the defendant to appear to answer the complaint. Proceedings are commenced when the complaint is laid before the lay magistrate, and the summons is essentially the means of ensuring the attendance of the defendant at court to answer the complaint.

What happens in practice is that a member of PPS staff will bring a number of summonses to the local courthouse, each setting out the nature of individual complaints made against defendants. That happens daily in Belfast and weekly elsewhere. They are placed before a lay magistrate, who considers the complaint and decides whether to authorise the issue of a summons. In coming to that decision, the lay magistrate must satisfy himself that the complaint meets certain criteria; specifically, that the complaint has been properly made within the relevant time limit and that it is appropriate that a summons should be issued. In deciding that, the lay magistrate must consider whether the complaint alleges an offence known to law and whether the relevant law is in force.

Once a summons is signed, it is given back to the PPS and arrangements are made to serve it on the defendant. As noted in the Committee's briefing paper, if the summons is subsequently

returned to the court unserved, it must be given a new date and taken back to the lay magistrate to be resigned before it can be reissued. The CJI felt that, if the PPS could issue its own summonses under its own signature, it could produce savings in the overall time taken from when a decision to prosecute is made and when the defendant first appears in court. As a result, the CJI recommended that the issue should be reviewed and alternative arrangements for signing the summonses should be implemented.

In response to the report, the Criminal Justice Board developed a strategy to address avoidable delay and, as part of that strategy, recommended that legislation should be introduced giving the prosecutor the power to issue a summons on the strength of his or her own signature so long as a complaint had been laid before the court. That is the proposal before the Committee today.

This might be a useful juncture to highlight that a few respondents to our consultation queried our interpretation of the CJI's recommendation and said that it was not proposed that the lay magistrate should be removed from the process but simply that alternative arrangements should be made, such as the use of electronic signatures by lay magistrates. However, I can confirm to the Committee that the CJI has confirmed that prosecutors should be able to issue summonses on their own authority without recourse to a lay magistrate, which is our understanding of the recommendation.

Again, it might be helpful to outline to the Committee how the proposal might work in practice. As is presently the case, and in accordance with the code for prosecutors, a PPS prosecutor would make a complaint commencing a prosecution only when he was satisfied that the test for prosecution had been met. Essentially, there are two aspects to that test: the evidential test, which asks whether there is sufficient evidence to provide a reasonable prospect of conviction, and the public-interest test, which asks whether the prosecution is in the public interest. Both aspects must be separately considered and passed before a decision to prosecute is taken.

In applying that test, the prosecutor is required to consider the same range of factors that a lay magistrate is required to consider before issuing a summons. The prosecutor must ask whether a prosecution is within the time limit, whether it is the law in force and whether it is an offence known to law. When the prosecutor is satisfied that the test for prosecution has been met, he will lay a complaint before the court. We envisage that that would be done by the prosecutor sending

a copy of the complaint electronically to the court through Causeway, which, as Committee members know, is the joint information-sharing system between criminal justice agencies. That is the point at which the complaint would be laid and proceedings instigated.

An electronic receipt for the complaint would then be returned to the PPS, which would enable the prosecutor to prepare, sign and issue a summons to the defendant, requiring him to attend court to answer the complaint. The prosecutor would also be required to provide the court with a copy of the summons in advance of the hearing. Therefore, the complaint would be open to judicial scrutiny at its first appearance by a district judge at a Magistrate's Court.

It is estimated that that reform would save up to two days in the process from the decision to prosecute to the issuing of a summons. Although the effect is modest in an individual case, the cumulative effect of that time saving could be expected to have a positive effect in addressing avoidable delay in the processing of criminal cases. The PPS has indicated that the reform would also create a saving of around £10,000 per annum in direct expenses and would lead to a modest saving of administrative time, as staff would no longer have to attend courthouses to have summonses signed.

I should also highlight that, in developing the policy to give effect to the recommendation, we have looked at practice in other jurisdictions. In our consultation paper, we mentioned the work in train in England and Wales on the foot of Lord Justice Auld's review of the criminal courts. Although that work is yet to be fully implemented, it does highlight that the direction of travel in that jurisdiction is to allow summonses to be issued without the involvement of the judicial office-holder.

Similarly, as some members of the Committee know, a summons in Scotland is the responsibility of the prosecutor — the procurator fiscal — who signs the complaint against the individual and also issues the summons, which is known in Scots law as the citation. In the Republic of Ireland, the vast majority of summonses are issued by the clerk of the district court without judicial involvement.

As I said, our consultation closes tomorrow. To date, we have received 20 responses, and we have held meetings with several consultees, including Women's Aid and the Northern Ireland Human Rights Commission. The Northern Ireland Human Rights Commission raised no

concerns.

Many of the responses have been supportive of the proposal, recognising that it has the potential to address the delay. However, some consultees raised concerns that removing the lay magistrate from the process undermines the checks and balances in the system and places too much responsibility on the PPS rather than with the judicial office-holder. Against that background, it might be helpful to highlight the number safeguards in the process.

First, it is important to note that the summons is the method by which the defendant is secured at court. Prosecutors already take the decision on whether to instigate proceedings by laying the complaint. There would still be a requirement for the complaint to be sent to the court, and any irregularity in the complaint or the decision to prosecute would, therefore, be capable of review by the district judge at a Magistrate's Court on its first appearance.

I also already highlighted the code for prosecutors and the test for prosecution, and I explained how the test for prosecution effectively requires a prosecutor to consider the same range of factors before commencing a prosecution as the lay magistrate does before issuing a summons.

As Committee members are aware, the PPS is also subject to independent inspection by Criminal Justice Inspection Northern Ireland.

Some consultees also suggested that the proposal is contrary to the recommendation that laypeople had an important role to play in hearing complaints with a view to issuing summonses and warrants.

First, it is accepted that laypeople have an important role in the criminal justice system, and I stress that it is not proposed to otherwise alter the current role of lay magistrates. The recommendation was, however, framed in the context that most prosecutions in Magistrate's Courts at that time were investigated and prosecuted by the police.

Arrangements are different now. Arguably, the establishment of an independent prosecution service means that there is less of a need for continued judicial involvement in the issue of a summons. Again, I stress that the summons is merely the means of securing attendance at court to answer a complaint. Lay magistrates will continue to hear complaints for the issue of

summonses in non-PPS cases and for the issue of arrest warrants. We will continue to analyse the responses to our consultation and will take those, and any views expressed by the Committee, fully into account before deciding the way forward.

We equality-screened proposals in accordance with our obligations under the Northern Ireland Act 1998. That indicated that the policy has no adverse effect on any of the section 75 categories, and our view is, therefore, that the policy does not need to undergo a full equality impact assessment (EQIA). Notwithstanding that, it is intended that a full equality impact assessment will be carried out on this proposal as part of the full EQIA on the draft justice Bill.

That concludes our presentation. We welcome the views and questions of the Committee.

The Chairperson:

Thank you.

The CJI published its report in 2006. This is 2010. Why has it taken so long to get it to this stage?

Ms Fee:

There are various reasons. The CJI's report was considered by the Criminal Justice Board, which set up an inter-agency subgroup — the delay action team — to consider the changes. From that point, work moved swiftly and the delay action team made a recommendation. Unfortunately, that change required primary legislation and, since that point in 2006, there has been only one other suitable legislative vehicle, namely, the Criminal Justice (Northern Ireland) Order 2008. However, so many items that dealt with the entire sentencing framework in that piece of legislation meant that this change has had to await another vehicle. We moved at this point to seek inclusion in the next available legislative vehicle.

The Chairperson:

Are you saying that there have been no opportunities over the past four years to do this?

Ms Fee:

That is my understanding. It was considered that there was no suitable vehicle. There was only one previous criminal justice Order, which, as I said, was the Criminal Justice (Northern Ireland)

Order 2008.

The Chairperson:

The Department considers that this will speed up the process in uncharged cases. What sort of time savings do you expect from it?

Ms Fee:

The estimate is that it will save one to two days in the stage between the decision to prosecute and the first appearance in court. As the Committee may be aware, a range of performance targets are set by the Criminal Justice Board for various stages in the process. Those are monitored by the board. It is hoped that it will impact on performance against those targets.

Mr McDevitt:

You said that it will save the PPS £10,000 in direct expenses. Do you anticipate any costs that will accrue?

Ms Fee:

No.

Mr McDevitt:

So, it is entirely Exchequer neutral?

Ms Fee:

Yes.

The Chairperson:

Perhaps you have already done so and I missed it, but will you outline what the respondents said? What issues concerned them?

Ms Fee:

A large number of respondents were supportive and recognised that this will help to reduce delay, and some themes emerged. Several respondents considered that we were somehow removing a layer of judicial oversight and placing too much responsibility in the hands of the PPS. As I outlined in the presentation, we compared the processes with those of other jurisdictions in these

islands, and we noticed that it is not unusual for a prosecutor to issue a summons on his or her own authority.

Additionally, the complaint will be before the court at the point of first appearance. Therefore, in many ways, what the lay magistrate does at this stage is an additional layer of scrutiny, and judicial scrutiny will still remain.

The other concern is about the criminal justice review and the fact that we are removing a function that was given to lay magistrates. However, it is only one of the many functions of lay magistrates, and the proposal is somewhat limited. We consider the context to have changed since the criminal justice review recommendation was made.

Concerns were expressed about the PPS itself. However, as I said, it is subject to independent inspection by the Criminal Justice Inspection. As the inspector from the Criminal Justice Inspection mentioned in the earlier evidence session, in the inspection's follow-up review, it considered that decision-making was sound in 93% of cases.

That is a quick snapshot of responses. However, if the Committee wants, we can provide it with a more detailed overview.

The Chairperson:

Are you entirely satisfied that there will be enough checks and balances in place? I suspect that you would not be going ahead with this unless you were.

Ms Fee:

We are satisfied. The key element is that it is up to the prosecutor to decide whether or not to instigate proceedings. Once a prosecutor brings a complaint to a lay magistrate, proceedings are instigated. The summons is simply the method of securing a person's attendance at court. In deciding whether or not the test for prosecution is met, prosecutors have to go through some of the same issues that lay magistrates go through. There is also the fact that the complaint will be before a district judge in a Magistrate's Court at first appearance. Therefore, we are content that there are sufficient safeguards.

The Chairperson:

Thank you for that presentation. The consultation period ends tomorrow, so perhaps you could

provide the Committee with a summary of responses on the key issues raised.