



Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT
(Hansard)

**Briefing on Criminal Justice Inspection
Northern Ireland's Follow-up Report
'Avoidable Delay'**

16 September 2010

NORTHERN IRELAND ASSEMBLY

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Follow-up Report ‘Avoidable Delay’**

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Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Thomas Buchanan
Mr Tom Elliott
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt
Mr David McNarry
Ms Carál Ní Chuilín
Mr John O’Dowd

Witnesses:

Dr Michael Maguire)
Mr Brendan McGuigan) Criminal Justice Inspection Northern Ireland
Mr James Corrigan)

The Chairperson (Lord Morrow):

We will receive a briefing on the follow-up report ‘Avoidable Delay’ by the Criminal Justice Inspection (CJI). I welcome the officials from CJI: Dr Michael Maguire, who is the chief inspector; Brendan McGuigan, who is the deputy chief inspector; and James Corrigan, who is the lead inspector on the report.

Dr Michael Maguire (Criminal Justice Inspection Northern Ireland):

I thank the Committee for inviting us here to give an overview of our findings. As we mentioned last time, this is the final piece of the accountability jigsaw fitting into place. We are keen to have the opportunity to talk you through the findings of our reports as they emerge, if you think that that will be valuable.

This piece of work was a follow-up to an inspection that we did in May 2006, which looked at the processing of criminal justice cases in Northern Ireland. The overall finding of the inspection was that, despite the best efforts of many who work in the justice agencies, delays in the justice system are still too long. The initial response in the criminal justice system was positive in that an avoidable delay strategy was developed and range of actions to improve performance were identified, including the setting up of a delay action team to support the work of the Criminal Justice Board on targets and so on.

That piece of work was an attempt to come back after the 2006 report and take a view on what progress had been made in overall performance, looking specifically at the recommendations as we have implemented them. The Committee has a copy of our report, which gives the detail of each of the different stages, and at the back it looks specifically at the action plan and whether the action has been achieved.

The inspection was carried out by us in association with other inspectorates, such as the Inspectorate of Constabulary and the Crown Prosecution Service Inspectorate. The overall finding was that, despite the major efforts to deal with the problem of delay, there have been limited improvements in the time taken to process criminal cases, and avoidable delay remains a significant challenge for criminal justice agencies. At the time of the inspection, performance against standards had flatlined, and performance data indicated that just one of the five standards would be achieved by the public service agreement deadline of April 2011.

We highlighted a number of issues. For example, the length of time it takes to deal with youth defendants was a concern. It took an average of 148 days to process a charge case and 283 days for a summons case in 2009-2010. If we consider defendants in adult Magistrates' Courts who have been given a summons, which is around 70% of all defendants who go through a such a court, we see that in 2007-08 it took 223 days and in 2009-2010 it took 226, which is a slight

worsening of the overall performance. Although comparisons with England and Wales do not always exactly compare like with like, there is a significant difference between the amount of time it takes to progress a case here and what happens in the nearest jurisdictions.

The report highlights a number of areas around the impact of delay, including the impact on victims and witnesses. We found intense frustration among victims and witnesses about the length of time it takes to progress the cases and the number of adjournments that take place. There were also problems with the number of defendants on remand and the time it takes to progress their cases. As we state in the report, around 35% of the prison population, or 506 prisoners, were on remand, which is nearly two thirds of prisoners in Maghaberry. Therefore, delay has a significant impact on victims, witnesses, defendants and prisoners.

As we also say in the report, it has an impact on cost. We refer to police overtime in one particular district and, if that is multiplied, it amounts to hundreds of thousands of hours of overtime, which is a cost incurred to the system for attending a court. We identified delay as an issue in 2006, and it continues to be an issue. The question that we wanted to address in the report is why the position has not really changed significantly. There have been some improvements in some areas and less in others. We wanted to understand why that was the case.

The view of the inspection team was that significant change is required — I think the term used is a “step change” — in the performance of organisations to meet the challenges of reducing avoidable delay. We identified three areas that we think are important in trying to progress that through the system. The first relates to the improvement of joined-up working. The report concludes that there is a need to improve the working relationship, or interface, between the PSNI and the Public Prosecution Service (PPS). Those two organisations are core to the justice system, and the way they work together has significant implications for the overall working of that system. We recommend that both organisations should come together to agree a common vision about what they want to do on issues such as pre-prosecution advice, police discretion on disposals and streamlining the process for the submission of criminal cases to the PPS. That is one of those areas in which the devil is in the detail. Although a lot of the work is not incredibly sexy to those outside the criminal justice area, it is, nonetheless, important in getting at the core of what we are trying to address, which is the way in which justice organisations deal with cases as they progress through the system.

It is important to deal with the problem of adjournments before they get to court. The inspection found that there were roughly 130,500 adjournments in Northern Ireland in 2008, which is an average of 4.7 for youth defendants and 2.2 for adult defendants. In Magistrates' Courts in England and Wales, the average is 1.35 for youth and adult defendants. Therefore, we have a significant number and of adjournments, and we were interested in trying to understand what factors influence an adjournment before it gets to court. We are excluded from looking at the judiciary; therefore, judicial decisions on adjournments were not what we looked at. However, we did want to try to understand the issues that lead to cases being adjourned by the courts. That work picked up on issues to do with the nature of inter-agency collaboration and how cases were progressed within different agencies. The report refers to some initiatives around case progression.

The report also looks at the need to undertake a review of performance targets in the context of the justice system. Whatever changes are made to the way in which targets are put forward and to the measurement system, as a Committee, and for those with oversight of the progression of cases, it is very important that you retain a sense of comparability, because you will want to know about changes over time. Whatever changes are made to the performance targets and whatever changes are made to the data, you will want to be able to see what was happening in 2009, 2010, 2011, 2012, and so on. As the data becomes available to you over time, you should keep in mind that you want to make sure that you are comparing like with like.

We talked about the nature of inter-agency collaboration. The second issue was for organisations to deal with some of the blockages that are leading to delays in the justice system. We identified a number of areas, including, for example, file quality with regards to the PSNI, by which I mean the quality of the files as they progress to the prosecution system and whether all the information is there. If the information is not there, the prosecutor quite often cannot make a decision and the case will be passed back to the PSNI, which causes further delays.

We also looked at case progression issues in the PPS. An unallocated case can sit for a while before an individual prosecutor would take it out and make a decision, and that could lead to delays. We felt that better case management in that organisation may be helpful.

I am conscious that members will want to ask questions, so I do not want to give too much of a monologue. However, the third area that we want to talk about relates to the need for more

focused oversight, in which the work of the Committee will be extremely important, but also for ministerial oversight, how that works with the Criminal Justice Board and how that engages with the agency. We recommend that inter-agency project groups be established at an operational level. There is a need for this to be brought front and centre of any oversight mechanism for the performance of the justice system.

The report makes a series of recommendations, such as the need for the PSNI and PPS to include joint criminal justice performance standards in their respective plans. That is important because different agencies cannot address different targets; there needs to be a commonality of approach. Therefore, we would decide what it is that we want to do, and then the individual organisations would sign up to that and work more collaboratively to try to deliver on it. We made recommendations around some specific things that, for example, the PSNI and the PPS could do, such as issues around pre-charge advice from the PPS to facilitate decision-making in the police as they are preparing files, which would speed the process up. We make particular recommendations for the PSNI concerning file quality and what that means in the context of quality assurance. A file on its own moving from a constable to the PPS does not necessarily mean that the right checks and balances are in place to make sure that the file is of sufficient quality to allow people to make a decision. However, technical things can be done to ensure that the file is correct at the source.

As I said, there are recommendations around strengthening accountability and leadership post-devolution at the Criminal Justice Board, and a body that sits above that with regard to the Minister and Attorney General, for which a proposal is in place.

We are happy to answer questions on any detail. James is the lead inspector and Brendan has many years' experience in this area. So, do not be offended if I do not feel the need to answer all your questions. Thank you very much.

The Chairperson:

Thank you very much, Dr Maguire. Members have indicated that they do want to ask questions. You say in your report, and mentioned it today, that you see a necessity for step change. Step change can mean different things to different people. Some would interpret it as a complete about-turn. Do you see it as strongly as that? Do you think that things just must be done

completely differently because the organisation is simply not fit for purpose and is not passing the mustard test?

Dr Maguire:

I used the term to suggest that the way we are doing things has not delivered the sort of performance that we wanted to see, relative to the previous inspection that we undertook. That does not mean that we start with a blank page and rewrite everything. It does mean that we reflect, in an honest and serious way, about what we have done well, for example, the development of performance information. We would not be having this conversation if the performance data were not there. Therefore, the development of that, and the role of a body such as the delay action team in pulling together information that can then be used to take a view about what is happening, is important. There should be a continuation of those things.

The issue for me, though, is recognition that, if we accept the premise that it takes too long from when someone is informed that they will be charged through to disposal by a court — that has not really changed in the past four years — there are things that we need to do differently at an operational level. That has to do with issues that I have identified, such as file quality, case management, and the extent to which organisations can collaborate more effectively to deliver a speedier justice system.

So, to answer your question directly, by step change I mean that there needs to be a significant and sustained effort to improve the performance and the speed with which cases go through the justice system. However, it does not mean that we start with a blank page, because many good things are there.

The Chairperson:

Dr Maguire, I think that I detect a note of disappointment from you that so little has moved forward since your last report. Is that a fair interpretation?

Dr Maguire:

I am in this job two years. I was not the chief inspector when the previous inspection was carried out. In any inspection that I am involved with, I want to give credit where efforts have been made and performance improved. At the same time, it is the role of an independent, objective and impartial inspectorate to take a view on what is happening. So, am I disappointed that

progress has not been made to the extent that it could have been? I think that the answer is yes. That is why I have called for significant change in the way that the organisations do their business. However, that is in the context of an overall desire to improve the speed of justice for individuals, victims and witnesses in the system. So, I suppose that yes is the answer to your question.

The Chairperson:

Dr Maguire, you say that more than 130,000 cases were adjourned. I suspect that those who were responsible for asking and getting those adjournments would probably say that that was always in the interest of their clients and the administration of justice. This seems to be like trying to turn a tanker at sea. It will not happen very quickly.

Dr Maguire:

It will not happen very quickly. We are talking about a three-year to five-year period to build in the sort of change that is required. I would separate two aspects: the defence, including its role in asking for adjournments, whether for the benefit of the client or otherwise, and the nature of the criminal justice process, which is what I looked at.

The term that we use in the report is “avoidable delay”. If we did something differently, would we get a speedier outcome? However, it is not just about justice agencies. For example, my colleagues and I have seen cases being adjourned because a medical report has not been available. That was because the doctor involved, who had other priorities, had not sat down to write the report that then goes into the system. Furthermore, a case will be adjourned if witnesses are not in court. One witness not turning up is an unfortunate occurrence; however, five witnesses not turning up suggests a more systemic problem and raises questions about why those individuals did not go to court on that date. Delays will always occur in the justice system, but the report focuses on the reasons that lead to avoidable delays.

If we did something slightly differently or managed our cases more effectively, could we progress them more quickly through the system? That does not mean that people go to work to do a bad job. That is clearly not the case. However, it is about trying to challenge and offer alternatives to some of the ways in which business is done in order to get a different outcome.

The Chairperson:

Does the report drill down into the 130,000 cases that were adjourned? If so, how many were subject to avoidable delay?

Dr Maguire:

I will say a few words about the overall approach, and then James will talk about some of the work on adjournments. The simple answer to your question is no. We did not take those 130,000 cases and drill down into them. Management information on the reasons for adjournments in court is very weak. Therefore, it is difficult to come to a definitive view on whether x percentage of that 130,000 was the result of y. However, through observing court proceedings and looking at files and the pilot work, some views and issues have emerged about the factors that lead to adjournments.

Mr James Corrigan (Criminal Justice Inspection Northern Ireland):

We visited eight Magistrate's Courts as part of the fieldwork. We sat in and witnessed what was happening in those courts. From that sense, we got a good understanding of the types of reasons behind the adjournments. However, it was not a scientific exercise but an observational one. The scientific exercise is a pilot project that is recording the reasons for every adjournment in a Magistrate's Court. It is envisaged that the court will roll-out that pilot project to a lot of the other court centres in Northern Ireland. We hope that, by the time we come to do the next review, there will be a much more statistical body of evidence that actually gives the reasons behind adjournments. The second stage of the project will look at whether, for example, 60% of adjournments are due to the prosecution and 40% are due to the defence, and will then drill down to find out why the prosecution or the defence is behind that. At this stage, we are reasonably assured that the Courts and Tribunals Service and other agencies are taking tangible action to determine the reasons behind adjournments.

Dr Maguire:

For your information, Chairperson, pages 50 to 54 of the report deal specifically with the issue of adjournments and with what we have found out from the review.

The Chairperson:

You said that management is very weak. Did I pick that up right?

Dr Maguire:

I think that I said that management case progression is weak.

The Chairperson:

Does that have to change?

Dr Maguire:

Yes.

The Chairperson:

Can that happen quickly?

Dr Maguire:

It is like everything else: some of those issues are on a continuum. The first thing that struck us about case progression is ownership. We have a series of discrete, independent bodies. A case starts with the Police Service, passes to the Public Prosecution Service, and then goes into the court system. Therefore, who owns the case? First, the reality is that no one owns the case, because it tends to move between organisations. We have an architecture that does not automatically lend itself to strong case progression. Secondly, it is about looking at the degree of ownership that organisations themselves have over individual cases and the remit that they have for progressing them. For example, how long does it take the Public Prosecution Service to access an unallocated case and move that through the system?

Some of that is individual, and some of it is more a management exercise about how we organise ourselves. If we know that there will be a peak in the number of cases coming towards us, do we allocate resources to try to do something about that, or is it more of a management issue of what information we have to check as cases progress through the organisation? There is not a simple answer to your question. There are a number of issues at different levels. Some can be done quite quickly, but others will require a more concerted effort by management in each of the organisations.

Mr McNarry:

Welcome, gentlemen. Michael, you said to the Chairman that this is a three-year to five-year programme. How many of the recommendations in this report were made back in 2006 but have

not been delivered? I ask you that because the Committee is interested to know whether you are content that your recommendations will be acted on to your satisfaction. Are there still outstanding areas that require further negotiation?

There are bound to be grey areas. Is there a question about resources or cost factors? Will the recommendations being acted on result in more or less resources being required and mean more or less extra costs being required to implement the recommendations?

Dr Maguire:

I can address the first point specifically. Pages 74 to 89 of our report go through each of the 2006 recommendations and outline whether they have been achieved. Therefore, the report answers that question.

We have had previous conversations about frustrations with recommendations not being delivered. The issue for me is not so much that they were not delivered — many of them were — but whether the recommendations led to the change in performance that we expected. That is the challenge. One of the recommendations concerned the establishment of a delay action team or performance monitor, which was there and did some very good work to throw up performance information —

Mr McNarry:

OK. In percentage terms, how many of the 2006 recommendations were not implemented and are carried forward into the new recommendations? I just want to find out whether attention is being paid to you, although I think that it is.

Dr Maguire:

Perhaps James will do a quick calculation on that. I will say a bit more, because the information is there.

In the 2006 report, we outlined six things that needed to happen: Ministers and officials need to ensure that all the agencies are working together on the issues of delay, with a common strategy and shared targets; the PSNI needs to improve the quality and timeliness of the files it submits to the Public Prosecution Service; the Public Prosecution Service needs to improve its processes and the management of those processes; cases need to be managed actively through

joint, inter-agency co-operation; there needs to be a proper analysis of the reasons for court adjournments; and there should be a specific target for reducing delay in youth cases. All of those remain as issues.

Mr McNarry:

The Minister that you referred to in your opening comment was a direct rule Minister.

Dr Maguire:

Yes.

Mr McNarry:

It would be unfair to expect the new Justice Minister to absorb that, but are you confident that he will?

Dr Maguire:

I am absolutely confident that the direct rule Minister knows —

Mr McNarry:

Why do you think that the direct rule Minister failed there?

Dr Maguire:

Do not get me wrong, I am not saying that nothing happened. The officials will tell you that lots happened. Lots did happen, and lots of it made a difference. The benefit of what we have now relative to what we had before — this is where the Committee can play a significant role — is that we have performance information, which gives us a real sense of what happens on the ground. That was not, and has not, been the case in the past. That was a clear recommendation that came out of the last piece of work, and it has been implemented. Therefore, we are seeing an evolving picture. However, it is disappointing that the change has not occurred to the extent that was recommended. Things need to be done, but when we look at the action plan and at the efforts made by agencies, we can say with a degree of confidence that the issue is being taken seriously, but what we have differently this time is whether it is making a difference. If it is not, we need to reflect on the reason for that. It does not mean that the agencies were not making their best efforts. It may have been that it was not directly making a difference to get the kind of change that we wanted.

I do not like using terms such as “failure to achieve”, because it is not the case that efforts were not put in place. I am interested in the outcomes. When we look at the length of time that it takes, we see that the outcomes have not really changed. We need to revisit some of the reasons for that.

Mr McNarry:

I take it from what you said that you are reasonably confident and content that what you are asking for in the report will be acted on in the three-year to five-year programme?

Dr Maguire:

As I said in answer to a previous question, I am confident that the efforts that are put in place are addressing the right areas. Provided that we can compare the information over time, we will be able to tell whether those changes are making a difference. That is the critical answer for me.

Mr McNarry:

That is the continued monitoring situation, which you will be advising us as you go along.

Dr Maguire:

I said in the report that I will produce an annual report to the Minister, and I will share that with the Committee. I do not see why you cannot ask for quarterly performance reports on performance data, for example.

Mr McNarry:

Are you saying that, if you spotted something, you might let us know?

Dr Maguire:

I will look at it on an ongoing basis, and I have spoken to the Department about how we can help to move it to the next stage. One of my staff will engage with the Department on a quarterly basis as part of their overall annual performance review. Therefore, we should know on an ongoing basis whether we are making the changes that we want to see. The role of the Committee can be extremely important in copper-fastening that.

Mr McNarry:

There are a couple of questions that you did not answer about costs, but I think I may need a smoke.

Mr McCartney:

There seems to be an issue around file preparation. There is a suggestion that collocation of investigator and prosecutor would be of benefit, but there seems to be some resistance to that. Why do you think there is resistance, and how do we best offset it?

Dr Maguire:

Part of the answer is the architecture of the justice agencies that we have coming out of the criminal justice review, so that, rightly, we have the independence of the police operationally, and an independent Public Prosecution Service was set up in 2005. One of the reasons for that was that the nature of the decision-making and prosecution would be separate from policing. Therefore, there is a reason for the architecture. It was there 10 years ago.

Resistance has come out of the design that was created. There is nothing surprising about that. In England and Wales, they went through a similar kind of exercise, and there was resistance initially because of the independence issue around that kind of engagement. However, what you see now is a closer working relationship. Therefore, for example, if police need advice on file preparation, they could ring a prosecutor and ask them what they think about it. In that way, it strengthens what is in the file, so that when the prosecutor comes to making an independent decision, they have all the information in front of them to do so. We are moving to that situation here.

I do not have a strong view about collocation. I think that you can get round it in other ways by strengthening the nature of the relationship between prosecutor and police, and, in some areas, it works very well. To say that everything does not work very well is to make a blanket statement. In some areas, it does work very well.

We want to see that good practice rolled out across all areas. To answer your question, part of the reason for our current situation is the architecture of where we are, but we are moving into a different set of relationships. I said in the report that it is important that we accept that there are consequences because of the way in which we have done things. One consequence is extra delay, and that can be addressed without fundamentally attacking the principles of why the system was

set up like that in the first place.

Mr McCartney:

One of the reasons why I asked that question was that one of the recommendations in the 2006 report states:

“An urgent review of training on file preparation should be undertaken and appropriate training should be implemented as soon as possible.”

It adds that the PPS should have a role to play in that. Recommendation 12 of that report states that:

“The PSNI should urgently address its problems with file preparation”.

Your comment on that recommendation in the 2010 report does not give any confidence that file preparation has advanced to the level that it should have, and I wonder why that is the case. From a layperson’s point of view, it would seem that, if the files are properly prepared, delay could be avoided at that stage. From my reading of both reports, there does not seem to be any sense that good file preparation addresses avoidable delay.

Dr Maguire:

I agree with you; in both the 2006 report and my report, file quality is an issue. I do not think that we need to wait three years to address file quality. There are things that can be done now. We can talk about the big strategic issues, such as the nature of the interrelationship between the police and the PSNI, but we also say specifically that there are things that organisations can do now to address the problem of avoidable delay. File preparation is one of the things that should be addressed.

Mr McCartney:

The latter part of recommendation 12 in the 2006 report states that:

“Individual performance should be linked to individual assessment reviews and ultimately to overall remuneration”.

How do you envisage that working? If targets are not met in Scotland, there are sanctions for non-compliance. What are the sanctions for non-compliance there, and are there equivalent sanctions here?

Dr Maguire:

I will make a few comments, and Brendan may have some thoughts, too. What gets measured gets done in many cases. Quality of file preparation, from a justice perspective, is not something that necessarily gets measured. What we found when preparing the report was that an individual

police officer has many conflicting priorities. Would file preparation and quality of file preparation be at the top of that list? I am not sure. Therefore, we would like to see something stronger on file quality built into performance management as a way of improving what is done at an operational level. Are there sanctions for that? I am not sure that there are. Brendan will know the details. However, it is a case of strengthening some of the measures involved.

Mr Brendan McGuigan (Criminal Justice Inspection Northern Ireland):

It is clear from our work that we were insistent that the police needed to give file preparation higher priority, and that includes the use of sanction and reward. If an officer is not investigating a case or is not investigating it adequately, sanctions must be imposed. When an incident occurs, the very minimum that one expects is an adequate police investigation with a full file being presented to prosecutors. Therefore, a sanction must be imposed if an individual officer is not doing that. Alternatively, training needs could perhaps be identified to ensure that the officer's performance improves in that area. One of the issues raised in the report is that file preparation must be regarded as a higher priority within the police.

You asked about Scotland. The situation there is different. There are legislative time limits. The police are given a certain amount of time to investigate a case and present it to the procurator fiscal so that it can be brought before the court. Those time limits are challenging. There is no doubt that there are opportunities for the police to ask for an extension where the nature of the investigation is complex or they are having difficulty in interviewing individuals or whatever — there can be a multitude of reasons for needing an extension. Essentially, the court is aware of the case and maintains a pressure to ensure that the police and the prosecutors bring the case to hearing as quickly as possible. Does that answer your question?

Mr McCartney:

Yes.

Finally, to go back to the issue of sanctions, would performance in that area be one of the criteria in an assessment for promotion, for example? In other words, if an officer has a good record, it would be a plus, but if an officer has a bad record, it might be felt that there would be no point in moving him or her up a rank to continue a bad habit.

Mr McGuigan:

My personal experience is that it was never really a factor for promotion. Some officers were particularly good and could look forensically at a particular incident and start to gather the necessary evidence. However, many others need the help and support of first-line supervisors to ensure that they are reaching quality standards and to ensure not only that the investigation is being carried out thoroughly but that the case is being built in such a way that a prosecutor can look at it, see quickly that all the necessary evidence is assembled and make an informed decision as to whether or not to prosecute. To me, that is the key.

There is no doubt that we can then look at what happens in the court process. When we were doing the fieldwork for the report, we went to some court areas where the system was working very well. We could ask why it worked so well there in comparison with other areas. It was largely down to personalities. There was a district judge who knew the area, the prosecutors and the defence solicitors and who was right on top of everything that happened in the court. There were court progression officers appointed by the Court Service who worked diligently to keep the police and the prosecution feeding the system. They ensured that cases did not have to go to court for a discussion to be held in the courtroom about what the problem was; instead, they ensured that all the information was there in advance so that the whole process was speeded up and worked very well. That was not happening in every area. It was happening in some areas, and it was a joy to watch. Nobody wants to do a bad job; they want their system to work well, especially for victims and witnesses, and, for the sake of justice, for people who have been charged with offences but not convicted. It limits the effectiveness of good justice to have an offence hanging over a person's head with no decision yet made.

Dr Maguire:

Your question is in the right space. When thinking about how to take the system to the next stage, we must ask what is going to make a difference. It is about the individual officer ensuring that the file that has been put before the PPS is complete. It is about the case officers in the prosecution service and how they manage their cases and get to the stage where they can make a decision, perhaps by lifting the phone to get further information from the police — or vice versa — rather than just putting the case back on a list. It is about work at that level. That is the challenge for us; we can have all the architecture and oversight and management systems in the world, but we must provide the framework within which those kinds of decisions are taken. What we have now is better information about what is happening, and that allows us to start to drill

down to find out what some of the particular issues are. Those are the kinds of issues that need to be addressed.

Mr McDevitt:

Thank you, gentlemen. I note that you draw attention yet again to the very high number of prisoners on remand. In fact, you found that 59% of prisoners in Maghaberry Prison — over half the prison — were on remand in 2009. Dr Maguire, do you think that the problem is just that we have a high number of prisoners on remand or is it that we have a high number of prisoners on remand and they are on remand for too long?

Dr Maguire:

That is an interesting question. James will know the detail, but, from memory, I do not think that a significant number of prisoners have been on remand for two years.

Mr Corrigan:

Most of them are on remand for less than one year.

Dr Maguire:

We have a high number on remand. Therefore, the issue is the speed with which decisions are taken on whether a prisoner is to be moved into custody or released.

Mr McDevitt:

You identify that that is a particular whammy for young offenders.

Dr Maguire:

The delays are a particular problem for young offenders.

Mr McDevitt:

I am interested that you note in your summary of the previous report's recommendations that recommendation 30 — that the practice of combining youth cases with longer-running adult or youth cases should be restricted to exceptional circumstances — has not been achieved. The report goes on to tell us in some detail about a debate that is taking place in the PPS and the Courts and Tribunals Service as to why one would not want to decouple those cases. Why do you think that it is acceptable for that debate to go on in perpetuity and for no one to take the bull by

the horns and prioritise young offenders? That would stop young men who are already vulnerable being held in remand for unnecessarily long periods.

Dr Maguire:

The report is quite simple. Delay has been shown to impact on young people to a greater extent, and incidence of delay is higher with youth cases. Therefore, that needs to be addressed.

Mr Corrigan:

Most people working in the justice system accept that delay has a much more detrimental impact on young offenders than on any other group of offenders. Indeed, the impact on victims and witnesses, who also tend to be young people, tends to be much more detrimental. That is why it is totally unacceptable that it takes 10 months on average to deal with a summons for a young person. That is the average. Remember that, although a lot of cases are going through quite quickly, a lot of reasonably straightforward summons cases are taking over one year. The impact that that has on defendants, especially those in custody, and on victims, witnesses and the general population is massive. What we are saying in the report and what we said very, very strongly in the previous report is that, if we are going to focus on any group in the system, young people are the ones who need specific attention. Let us face it, if you want to be effective you need to target your resources at the areas of most need.

I know that there has been a coming together of organisations such as the Youth Justice Agency, the probation service and the Courts and Tribunals Service to deal with the issue of young people and to address the most important issue of how many young people could be diverted from entering the justice system. That is crucial. If more young people could be diverted from going through the formal system, there would be a smaller number in the system, which, hopefully, we would be able to deal with more effectively. There are important things happening in that regard. However, going back to what Michael said, if you are asking whether we are disappointed, the answer is that one of the things that we are most disappointed about is that the length of time it takes to deal with young people has increased.

Mr McDevitt:

In recommendation 28 of the first report from four years ago, you highlighted that issue in a separate context when you talked about periods of remand. That report asked the criminal justice agencies to develop procedures and to implement them to minimise the time spent in remand.

That was a simple recommendation, but it was not achieved. Have you an opinion as to where the buck stops? With regard to recommendation 30, which we have talked about, the system seems to point responsibility at the judiciary. However, in recommendation 28, it is not so clear. In your opinion, is there a particular barrier to reform in the criminal justice system, and, if so, where is it?

Dr Maguire:

That is a very big question, Conall. Part of the problem lies — this is not a criticism, it is an observation — with the fact that we have a fractured set of accountability structures in the justice system overall. For example, we have the operational independence of the police and we have the Policing Board, which is the accountability mechanism; we have the judiciary, which we are forbidden to look at but which reports to the Lord Chief Justice; we have the Public Prosecution Service, which was set up as a non-ministerial department; and we have the Youth Justice Agency, which reports to the Minister of Justice. Therefore, those four areas all have different lines of accountability. Where does the buck fundamentally stop? That is an interesting question. That said, part of this approach is about the Criminal Justice Board and the heads of the agencies using the information that they have on performance to ensure that operational decisions are taken within their respective organisations. So, the heads of agencies are accountable for what happens within their agencies.

The Criminal Justice Board has a fundamental role to play in looking across the justice system overall, which is why we recommend greater oversight and the bringing together of agencies. For example, I was talking to a Chief Constable in England yesterday, and he told me that he regularly met his chief prosecutor, who is part of his Criminal Justice Board. The meetings were in two parts: in one part, they looked at broader strategic issues to do with the operation of justice in his area, and, in the other, they looked at performance statistics. They had conversations around the table about how things could be progressed differently, and that is the kind of dialogue that is important if we are to get the traction needed to move this process forward.

Ms Ní Chuilín:

I picked up on a sense of disappointment when I read the comments on progress on the recommendations from the 2006 report, and I share in that disappointment. There are marginal differences and some things have been partly achieved, but you still get the sense that not much has really been achieved and that the changes have not gone far enough. It seems that there is a

problem with leadership and accountability. You described the accountability process as being fractured. Before 2007, there was almost a stand-alone arrangement, but we are now dealing with devolved institutions, so surely the buck must stop with the Minister of Justice.

Dr Maguire:

No, because the Minister of Justice is not responsible for the judiciary or the Public Prosecution Service, and the police have operational independence and are accountable to the Policing Board. That is why the recommendation for better oversight talks about bringing the Minister, the Attorney General, the Chief Constable and the Director of Public Prosecutions together to have a conversation about performance and to take decisions together on how to progress the justice system to the next stage. That is what I mean when I talk about clearer oversight, and that kind of mechanism would be very effective. My understanding is that that is part of the action plan that is being proposed to move the issue forward. Again, that is a positive step.

Ms Ní Chuílin:

The different agencies may be independent and separate. However, I can make a complaint against a PSNI officer, for example, if I feel that he or she did not progress a case, yet I cannot make a complaint against the judiciary.

Dr Maguire:

To be honest, I am not sure what the mechanism is for complaints against the judiciary.

Ms Ní Chuílin:

Well, the process is very slow. I will give you some examples. I know of situations where a PSNI officer has objected to bail for repeat offenders — they were young people, but they were repeat offenders. In one instance, four cases were pending against one person. Attempts were made to progress the paperwork for the first charge, but dealing with the PPS in the system was like being on a merry-go-round. The PPS is not accountable to anybody. Unless oversight mechanisms are strong, robust and accountable, we will have one link in the chain that is accountable while the others are accountable to no one. That will not work. If we do not address that issue, we will be back here in another couple of years with a greater sense of *déjà vu*.

I would like to explore the links to the comprehensive spending review (CSR). The public service agreement on standards was mentioned. Does that mean that standards are set down

rather than targets with sanctions that will apply if the targets are not met? Unless sanctions are attached to targets, the targets become just window dressing. I do not mean to be cynical, but the situation will not improve unless there are sanctions and a sense that, if targets are not achieved, there will be an impact on people's job or the Department's job. We may be dealing with people who have good will, but we are also dealing with a culture where things get put back just because that is the way things are. Unless we change that culture and set targets, we will be back here again. Are there targets that are linked to the CSR or is meeting the standards just something that is desirable?

Mr Corrigan:

The five performance standards that we used to measure performance over the past three years were part of the public service agreements under the CSR, which expires in April 2011. It is our view that at least three of those standards, possibly four, will not be achieved.

Ms Ní Chuilín:

From a total of five?

Mr Corrigan:

From a total of five, yes. As to possible sanctions, that is perhaps a question for the Department of Justice. I am not sure what the status of the CSR is under devolution. You need to be aware of what type of standards and targets will be set from next April and what accountability mechanisms will be put in place to ensure that those standards are delivered. As Dr Maguire said, we have to have targets that can measure performance not just from next April but over a three- or four-year period, measuring backwards. That is the crucial aspect.

Dr Maguire:

I always know that there is a problem when James calls me Dr Maguire instead of Michael.
[Laughter.]

You raised very important questions about target setting, accountability, oversight and the nature of how we bring those together. It is not unusual for justice bodies and agencies in other jurisdictions to place great reliance on concepts of independence and on the separation of policing. I am not saying that that is wrong. However, we do not want that to become dysfunctional or to create so many barriers that we do not have the conversations that would

allow for a speedier justice process.

David, I will come back to your question on cost. I cannot tell you that it would require, for example, another 70 officers to deliver an improved system. However, I can say that the outcomes of improved and speedier justice would be, for example, reduced costs for police overtime — they would not be attending nugatory court sessions — and an impact on the amount of time that is spent utilising court facilities. Lots of benefits, as well as costs, are associated with an improved justice system. However, part of the problem is that, unfortunately, a lot of this has to be front-ended in relation to the police. If police file quality is right first time, that impacts on the rest of the system. However, if file quality is not right and the file goes to the PPS, it would not have enough information to make a decision and would then pass it back to the police, resulting in a toing and froing. The process could be short-circuited in some cases — that would not be desirable in all cases, but it would certainly be necessary in cases in which delay is avoidable.

All that is set in the context of the architecture of the justice system that we have. My thinking was to come up with a number of levels. If we could get direct ministerial oversight and could reinvigorate the structure that was in place under direct rule and bring it into a devolved setting with the new Attorney General, the Chief Constable and even the Lord Chief Justice, we would have a justice system that would work as a totality to try to do something. That approach would then be passed down to the individual organisations. You cannot start at the middle; you have to start at the top and allow that to pass down.

Ms Ní Chuilín:

That would certainly enhance the system. No one is arguing that the judiciary should not be independent and free from political interference. However, the judiciary has used that privilege to not engage, to be unaccountable and to not deliver targets, even though another institution has had to. That institution is very operationally based and target-orientated, and there are mechanisms available for complaint and redress, but those mechanisms are not there for the rest of the system. There is an equity problem, and unless those changes are made, that situation will continue. However, if that is the only model — it is the model that has been suggested — any other solution would not be acceptable.

Dr Maguire:

We are prohibited by law from commenting on the judiciary because it is independent, which I think is right. As we have identified in the report, the bulk of the problem arises before cases get to court. In looking at the nature of the 130,000 adjournments, we can see that the bulk of the reasons for those adjournments are to do with what happens outside the courts' doors. However, those issues are then brought into the courts. If we can sort out what happens prior to cases getting to court, we can make a dent in some of the challenges that are facing us. It is about focusing on the things that are going to make a difference.

Ms Ní Chuilín:

I appreciate that you cannot comment on the judiciary, but I know from experience that there are huge delays in the judicial system. I believe that the agencies that are working on the outside are, unfairly, shouldering a lot of the blame for the fact that cases are started but not progressed and completed. That has been my experience on the ground. However, thank you for your evidence.

Mr Buchanan:

My issue may have been covered but, given the poor performance highlighted in the report and the long delays in the judicial system, it is clear that some comments bear repetition. The report identifies 13 recommendations for action and a further eight issues that need to be addressed. How long do you envisage it will take to put measures in place, and how long will it take for them to begin to bear fruit? Can you give the Committee comfort that there will be no further slippage and that performance will be inevitable? That is what we need to see. We need to see a change that will address the long delays. Are you confident that adequate resources are in place to make those changes happen?

Dr Maguire:

You raised several issues. One of the things that we need to keep sight of is what will make a difference. Based on experience elsewhere, it is clear that, if you have the information early, you can take corrective action. I am hopeful that we will see performance beginning to improve in a year, and we will come back and measure the extent to which performance has improved.

Many issues have arisen, some of which will take longer to address than others. Take resources, for example. Putting another x amount of resources into the system and continuing to do business in the way in which it is done now will not solve the problem, because providing

more resources to deal with file quality will not, in and of itself, change the behaviour that leads to bad file quality in the first place. The issue is about not only resources but decision-making at an operational level, and that is where we want to see a difference being made. For example, an individual officer can ensure that he has the right information in his file before it goes to the PPS. If he is not clear about what information should be in the file, he should be able to lift the phone and ask a prosecutor whether he has the appropriate information so that the file can go forward. It is about the individual officers and the nature of their relationship with the PPS as an institution, and it is about how cases are managed within the PPS and how decisions are arrived at. It also about how witnesses are brought to court; at times, there have been adjournments because witnesses were not present, so we can ensure that witnesses attend court together at a time when the case can be progressed. Therefore, there are operational things that can be done that do not relate solely to resources. We can change the way in which business is done.

To come back to your question, I do not think that we need to wait five years to see performance improvement; rather, we need to wait three to five years to get the kind of performance improvement you want to see before you can begin to think about legislation that would deal with statutory targets, because we are not there yet. However, given the commitment of the justice bodies, I am hopeful. I spoke to them on more than one occasion when preparing my report, and they are keen to make a difference. The action plan demonstrates clearly that things have been put in place. It is then about monitoring and ensuring that that works its way through performance to achieve an outcome.

Mr O'Dowd:

Do you cover delays in access to inquests? I am not sure whether that is within your remit, as I do not see it mentioned in the report.

Mr McGuigan:

We carried out a review of the coronial service about two and a half years ago, and there was a follow-up review about six months ago. We were not looking specifically at timelines and the timeliness of bringing cases to inquest. That is largely a decision for the coroner. When he or she feels that the cases are ready, they will be listed. Our review related more to structure and how the coronial service was delivering in Northern Ireland. We were not looking at the timelines.

Mr O'Dowd:

You say that the timelines were not investigated. It was dealing with a number of cases, one of which has been delayed for 20 years and another for 28 years. I know that avoidable delay in the access to justice is certainly a matter for concern. Although the coroner may decide when a court case comes forward, other outside agencies must provide the evidence and the materials that allow an inquiry to go ahead. That affects criminal justice cases as well. Perhaps that is more of a point than a question. There seem to be common themes for the causes of delays running through both.

Mr McNarry:

What percentage of the recommendations made in the 2006 report have not been achieved? I listened to the other questions and answers, but this issue might have been covered when I was out for a while. If you tell me that the percentage of recommendations that were achieved after the 2006 report is not great, what kind of big stick do you have to address that? You said that you hope that things will greatly improve within the first 12 months of the five-year programme. Do you have any authority to push on that? Is it a paper exercise? Are you resting your case on the goodwill of others? From a political point of view, are you asking this Committee to see that those recommendations are made, if we agree with them?

I am aware of the call on resources, particularly from, in my eyes, an almost perfect PSNI. I hear what the Chief Constable is saying. I appreciate that you could not say whether 50, 60 or 70 officers might be used. However, I am concerned about where we would get 60 or 70 officers in the current situation.

What is the percentage of recommendations from the 2006 report that we are being asked to try to again implement? You have dealt with the issue resources, but a bit more work might need to be done on that. Ultimately, is it just a paper exercise? I know that it is a nice idea to bring the Minister, the Attorney General, the Chief Constable and the Director of the Public Prosecution Service together. However, your most cogent point today is that their work is not joined up. It will take me a bit more time to analyse whether that is a flaw. I accept and appreciate the independence of the judiciary in that. However, after enduring direct rule, we politicians are now directly accountable to the Northern Ireland electorate, so perhaps we need to get a game plan together to make this place accountable. We cannot be accountable to people who are not accountable to anybody. Therefore, we might need help with that.

Dr Maguire:

In answer to your specific question about percentages, my trusted friend here tells me that 30% of the recommendations were not achieved.

Mr McNarry:

Is he calling you “Michael” or “Dr” when he is saying that?

Mr Corrigan:

It was definitely “Michael”.

Dr Maguire:

How many recommendations were partly achieved, James?

Mr Corrigan:

Seven of the 21 recommendations were partly achieved. Twelve have been fully achieved.

Dr Maguire:

I have the teeth that were provided to me by law. However, if an organisation does not want to implement one of my recommendations, it does not have to. That is the bottom line. As I said, with regard a previous example, our reports are published. Although not all matters are reported, we can publish reports. We do so deliberately both to give confidence when the system is working well and to draw attention to where improvements could be made. That is as far as I can go.

Mr McNarry:

Is that frustrating?

Dr Maguire:

It is what it is. To use a second cliché: we are where we are.

As we said at a previous meeting, the Committee’s role is part of the governance and architecture coming of age. During the 18 months that I was in post, I spoke to the Northern Ireland Affairs Committee for probably around five or 10 minutes. Here, I have been with you

for an hour previously. I will be with you for an hour now to talk specifically about a report. That can only be positive in the context of giving me and, indeed, others in the organisation confidence that there is another vehicle by which to take that forward. That is an important part of the governance architecture. That is why, as I said earlier, I am comfortable having dialogue with this Committee.

As regards specific resources issues — again, I am not sure how many clichés I can get into one paragraph — it is a matter of how long is a piece of string. It is not just a matter of resources. To throw money at it will not solve the problem. Unless certain behaviours are addressed, more people will do things in the same way. We are talking about necessarily changing the way in which some people do their business at an operational level in order to address some of the identified problems of avoidable delay.

It is not only people in justice organisations are who contribute to the problem. For example, some Health Service doctors do not give those matters high priority. There could be a waiting time of six to eight weeks, or three months, for a medical report. Those cases go to court. What option is there but to adjourn? You come back to court again, and the report is still not done. Many factors contribute to the overall problem.

We could have done a simple follow-up review. However, when we saw the performance information, I was keen to put together a much broader piece of work that got to the core of certain issues in the justice arena. In the context of devolution, the Committee is an important vehicle to take that forward, as well as having a Minister to whom I can relate the matter directly.

Mr McNarry:

I am grateful for your answer.

Mr Corrigan:

Avoidable delay actually costs money. To reduce that delay frees up resources in so many different ways. For example, if poor-quality files go to the PPS, it spends less time reviewing them. If cases were more effectively managed when they go to court, there would be less need for adjournments and, therefore, less money to be spent by the judiciary, the Courts and Tribunals Service, the Public Prosecution Service and legal services. Defendants would also spend less time on remand in the prison system and, therefore, it would free up prison spaces. To get to

grips with the problem of avoidable delay would free up resources that could be targeted towards other areas of the system.

Lord Browne:

You referred to case management and the speed at which decisions are made. Do you agree that, if we look at the caseload of many prosecutors who work for the PPS, we would see that some do not have time to handle the volume of cases that they are given? In some instances, they have up to 40 active cases at any one time. That possibly contributes to delay. Are you able to look at that?

Dr Maguire:

Certainly the number of cases that the Public Prosecution Service deals with has increased by 12%. Therefore, yes, that does have an impact.

At the same time, however, it is a matter of doing things differently. One thing that we looked at in our benchmarking review of the PPS was the way in which the case management process was delivered. When we did the follow-up review, we found that limited progress had been made in that particular area.

I reiterate the point, therefore, that the matter is not simply about resources. Resources are a problem as volume increases. However, that is a challenge not only for justice agencies but for all organisations, particularly at a time when resources will not be forthcoming. It is time to reflect on how we do things differently, because only then will we begin to see improvement. Therefore, I partly agree with you.

Lord Browne:

Have you examined how you could reduce the volume of cases and, therefore, the delays in the system? I am thinking of an extension of the ability of police to issue summary fines when the defendant does not object. That is particularly relevant to speeding fines rather than dangerous driving, when the defendant may plead guilty on his or her first appearance to keep the case out of the courts.

Dr Maguire:

I absolutely agree with you. There are things that can be done to try to reshape the number of

cases that come to the Public Prosecution Service.

The Chairperson:

We will stop there. Dr Maguire, Mr McGuigan and Mr Corrigan, thank you very much for coming today and finding the time to present on the report and taking members' questions. I have no doubt that we will meet again.

Dr Maguire:

I will know that there has been a step change when you call me Michael?

The Chairperson:

Thank you very much.