

## Reducing Avoidable Delay in the Processing of Criminal Cases in Northern Ireland

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**Summary:** This paper draws upon the inspection fieldwork and reports of The Criminal Justice Inspection Northern Ireland on the problem of excessive and avoidable delays in the processing of criminal cases. Much of the delay is caused by the inherent ineffectiveness and inefficiencies of a 'system' that lacks a whole-systems approach to the delivery of its core services. This is demonstrated by the lack of joint accountability structures, competing targets, an over-reliance on models of operational independence, inadequate performance management systems, and cultural and administrative resistance to fundamental change. The main recommendations of the single integrated criminal justice inspectorate are focused on promoting and facilitating a shared and collaborative approach.

**Keywords:** Delay, inspection, Northern Ireland, justice, performance, partnership, criminal cases, police, prosecution, probation, courts.

### Introduction

Criminal Justice Inspection Northern Ireland (CJI) was established in 2004 following a recommendation by the Criminal Justice Review Group (2000), which called for a single unified inspectorate. This was the first such integrated body in a common law jurisdiction. The prevailing model, as it operates in England and Wales, Scotland and the Republic of Ireland is of stand-alone inspection bodies, focused on one justice agency or part of the justice system.

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The objectives of CJI are to:

- promote effectiveness and efficiency towards performance improvement
- provide an objective and independent assessment on the working of the justice system
- provide independent scrutiny of the conditions for, and treatments of, users of the justice system
- aim to work in partnership with all justice agencies.

The model of a stand-alone inspection body is most evident in England and Wales, where separate inspection bodies were responsible for policing, prisons, prosecution, probation and courts administration (the last of these has recently been abolished). The previous Labour Government did attempt a merger of the existing criminal justice inspection bodies, but this did not receive the required support in parliament and was strongly opposed by those who believed in a separate inspection body and regime for the prisons and for those detained in custody. The current focus of the UK government has been on a greater requirement to undertake more joint thematic and co-ordinated inspections.

The history of inspection in the Republic of Ireland is more recent, and modelled on the inspection model and structures in England and Wales rather than Northern Ireland. For example, the remit of the Office of the Inspector of Prisons is set out in Part 5 of the Prisons Act 2007 which has the objectives to demand that prisoners are treated in accordance with international norms, and that prisons are operated to best standards. The Garda Síochána Inspectorate, which was established by the Garda Síochána Act of 2005, has the purpose to ensure that the resources available to the Garda Síochána are used to achieve and maintain the highest levels of efficiency and effectiveness in its operation and administration, as measured by reference to the best standards of comparable police services.

While the benefits of inspections for policing, prisons and other parts of the justice system are readily apparent, the scope for system-wide improvements is limited by the remit of any stand-alone inspectorate. The focus is invariably on the service delivered by that organisation, while the skills and experience of inspectors are generally drawn from the respective areas of specialism. On the other hand, many of the more problematic issues concerning performance and service delivery may transcend, or exist at the interface between, the justice bodies.

The focus of this paper is on one such issue: the prevalence of excessive and avoidable delays in the processing of criminal cases in Northern Ireland. The issues are explored from the perspective and inspection findings of an integrated criminal justice inspectorate. This is also linked to the existing academic literature on system inefficiencies (Dandurand, 2009) and the ‘whole-systems’ (Kemp, 2008) approach to the processing of criminal cases.

### **Why delay?**

The focus of the inspectorate’s work on case processing times over the past six years has not been on delay *per se* – instead it is about reducing the negative consequences of avoidable delay for those who are users of the justice system, whether they be victims, witnesses or defendants. Indeed, some types of orderly and rational delay can enhance the justice system and provide better outcomes for those affected by crime. The focus has therefore been on avoidable or unnecessary delay, when cases are stalled by bureaucratic inefficiencies, outdated practices and wasted effort. The end result or outcome is not speed; it is improved justice.

The negative impacts of avoidable delay can be substantial – as time passes, certain legitimate interests may be adversely affected, evidence disappears and new evidence has to be adduced, witnesses disperse and lose credibility, further costs are incurred and public confidence in justice is eroded. At the same time, defendants may be remanded in custody and actions designed to address offending behaviour are delayed, most negatively for young and first-time offenders.

### **Research**

In view of the correlation between avoidable delay and ineffective/inefficient criminal justice systems, it is surprising that the issue has not received more attention in scholarly and academic research. The main body of scholarly research and publication has been from a legal perspective, with a strong focus in the United States of America on the implementation of various judicial initiatives around case management.

European legal publications have looked at the issue from the perspective of human rights, mainly those of the defendant(s), and assessed performance against Article 6(1) of the European Convention on Human Rights, which states that ‘everyone is entitled to a fair and

public hearing within a reasonable time by an independent tribunal established by law'. The United Nations Convention on the Rights of the Child guarantees the right 'to have the matter determined without delay'. Much of this academic research is based on case law and the interpretation of judicial judgments.

A broader academic interest from disciplines such as political science, sociology, public administration, economics and even criminal justice is notable by its absence. Perhaps a silo-based approach, which has guided the delivery and inspection of criminal justice systems, has also manifested itself within academia, where an examination of cross-cutting thematic issues such as delay or the treatment of victims and witnesses has remained the preserve of the few.

The purpose of this paper is two-fold: to outline the nature and impact of avoidable delay in the Northern Ireland criminal justice system, including proposals for change; and to present a challenge to those with an interest in the delivery and outcomes of criminal justice, to consider the merits of a whole-systems approach.

## **Northern Ireland**

The first CJI inspection on avoidable delay was published in 2006. A second inspection report was published in 2010, which led to a ministerial request for an annual progress report – that report was published in 2012 and forms the basis of the data used in this paper.

The methodology of the inspectorate is based on the 'whole-systems' approach in that the problems and recommended counter-measures/solutions are examined and challenged from the perspective of the users of the justice system rather than just those who deliver their part of the criminal justice service.

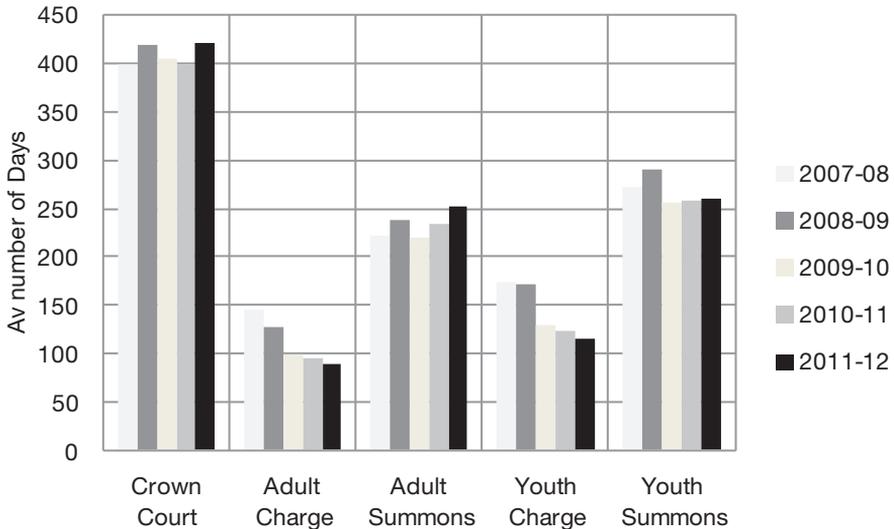
The fieldwork reflected the holistic approach:

- a review of documentation and case-processing data across the various justice agencies
- interviews and focus groups with staff in all justice agencies
- interviews with external stakeholders and users of the justice system
- review of case files (including comparisons of corresponding police and prosecution files)
- comparative analysis on the performance and best practices of neighbouring jurisdictions.

## Nature of the problem

The body of evidence from the case-processing data has been disappointing in that performance on the most serious cases, i.e. indictable cases that go to the Crown Court, has flat-lined over the five-year period of the inspections (Figure 1). It has taken on average about 400 days to process the most serious cases from charge to completion in the Crown Court since 2007 (421 days in 2011–12).

**Figure 1.** Case processing times in Northern Ireland 2007–2012



Magistrates' Court cases, which commence through a court summons process, have shown significant deterioration in terms of delay for adult and youth defendants. The area of most concern has been Youth Court cases, which were taking about nine months on average to process through the justice system in 2011–12. There was evidence of avoidable delays throughout the process, though this was most pronounced at the stage of the issue and service of a summons on a defendant up to their first appearance in court. This is the stage where ownership of the process has to be shared between the three main justice bodies – the police, prosecution and the courts.

The only positive development has been the incremental improvement in the processing of charge cases, which account for about one-third of criminal cases in the Magistrates' Courts. The average charge to disposal

time in 2011–12 for adult defendants was 89 days, while it was about 116 days for youth defendants. Yet again, the problem of delay was more apparent in the Youth Court.

A comparison of performance with neighbouring jurisdictions is complicated by the differences between the respective justice systems (for example, committal proceedings for Crown Court cases are no longer used in England and Wales) and the different counting rules on what cases are included in any performance/target. Inspectors did examine end-to-end processing times – which can minimise the impact of different processes, though not counting rules – and found that cases were significantly longer in Northern Ireland compared to England and Wales. Indicators such as the number and length of court adjournments also provided an insight to relatively poor performance.

### **What needs to happen?**

The big question considered by the Inspectorate was: what needs to be done differently to reduce the amount of time people spend in the justice system? While the justice agencies had developed a strategy and delivery programme as a response to the first CJI inspection report, performance had continued to deteriorate (with the exception of the less numerous charge cases).

A starting point was the need for justice organisations to work more closely together in the delivery of a joined-up approach to criminal justice. In particular, there is a need to develop a stronger working relationship between the police and prosecution services, which recognises the independence of the two organisations while also promoting a more collaborative and partnership approach to the delivery of justice services. It also means addressing directly the causes of adjournments before they get to the Court process. This requires the focus of not only justice organisations (police, prosecution and forensic science) but also linkages with other departments such as health with the provision of timely and quality medical evidence.

A second major point relates to the need for organisations, at an operational level, to deal immediately with those issues directly contributing to the causes of delay within the system. In relation to the police this means, for example, improving the quality and timeliness of their files submitted to the prosecution. The prosecution needs to be able to take decisions on prosecution more quickly. The negative impact of

court adjournments requires more effective case management. Delays at the post-verdict stage can be reduced by the greater use of shorter Specific Sentence Reports (SSRs), which constituted just 7% of all reports prepared for the courts in 2010–11. CJI has recommended that Probation and sentencers should increase the use of SSRs – their use has increased to 13% of all reports in 2011–12 and a target of 20% is envisaged for 2012–13.

Finally, at a strategic level there is a need for improved Ministerial oversight of performance. The capacity to hold a group of organisations directly to account for the delivery of a common service is an important element of public administration. This should be supported by the appropriate governance structures and timely management information.

### **Statutory time limits**

The inspectorate, in its first report, considered that end-to-end statutory time limits should be considered if performance did not improve. This became the key recommendation of the most recent report in 2012. It was based on the premise that only a fundamental change in approach could deliver the required performance improvement.

The introduction of statutory time limits is controversial in that it is opposed by those who believe that the ‘interests of justice’ (i.e. the prosecution of a defendant in court) and the interests of victims outweigh any negative impact of excessive delay. While some of these concerns can be allayed by the application of safeguards (e.g. time extensions, reinstated proceedings), a meaningful sanction is required to change behaviours and practices.

Statutory time limits are also opposed by some in the criminal justice system who are reluctant to take ownership and responsibility for the performance of other criminal justice organisations. This concern goes to the heart of a whole-systems approach in that accountability and the measurement of performance currently rests with individual and separate organisations rather than being shared across the bodies responsible for the delivery of the common service.

The introduction of statutory time limits, as recommended by the CJI, is intended to provide the catalyst for change (i.e. necessary legislative changes) as well as challenging the cultures and practices that impede a joint and holistic approach to a problem that has plagued many criminal justice systems. The evidence from Scotland, where time limits have

existed for many years, is that performance improvement can be delivered and sustained.

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