

**The
Independent
Assessor**

The Independent Assessor of Complaints for the Public Prosecution Service

Annual Report 2021/22

Delivering an Independent and Confidential Service

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About the Independent Assessor

Sarah Havlin was appointed to the role of Independent Assessor of Complaints for the Public Prosecution Service in June 2019.

Wholly independent from the PPS, Sarah is a solicitor by profession, but she has never been employed by the PPS. As the Independent Assessor she is not under the employment of the PPS and provides an independent service through a procured services contract.

Sarah's role is to investigate and report on complaints once they have been responded to fully under the internal stages of the PPS Complaints Process.

In this report, the Independent Assessor has summarised her activities during the reporting period and set out summaries of all complaints investigated by her and their outcomes. She has also conducted an evaluation of the complaint process and a performance audit of PPS complaint handling.

The formal terms of the role and the remit of the Independent Assessor can be accessed [here](#).



*Sarah Havlin
Independent Assessor*

Chapter 1: Complaints as an Integral Part of Quality Assurance

Observations of the Independent Assessor

In my third year as Independent Assessor, I am using the matrix and measures outlined in the Guide to Good Complaint Handling as issued by the Ombudsman Association. I previously used this assessment matrix two years ago in my audit of PPS complaints for the year of 2019/20. It is a matrix which is focused on measuring processes and the efficiency of complaint systems.

In my reporting on the year of 2020/21, I used a different approach and concentrated on the assessment of complaint handling through the focused theme of 'leadership', using the measures contained in the 'Dare to Lead' system devised by Dr Brene Brown at the University of Houston. This was because I felt that it was too soon after the 2019/20 audit to conduct the same type of process focused audit and therefore the value of a repeat audit in such quick succession would be limited. This year, I have once again used the matrix under the Ombudsman Association Guide to Good Complaint Handling because I was very interested to test the developments in PPS complaint handling since 2019/20 and to look at implementation of my recommendations since the last time I reviewed the complaint system in this context.

I have found that the PPS continues to demonstrate an honest and positive institutional attitude to complaints. It is encouraging to find that the organisation has improved even further year on year in its culture and practice for receiving and managing complaints, and actively demonstrates a willingness to learn from the intelligence contained in each complaint as an indicator of scope for improvements, not just in the context of its complaint scheme, but across its entire operational policy, processes and approach and interaction with its stakeholders. This demonstrates that the organisation uses its complaint scheme as a driver of organisational learning and as part of a quality assurance process of evaluating performance across all of its business delivery.

It must also be remembered that this audit concerns a period when the organisation was in the middle of lockdowns and only just starting the recovery process from the impacts of Covid-19 disruption. The previous two years had been hugely challenging for all public services. Justice agencies, including PPS, were required to perform statutory functions all the way through lockdowns and the challenges of achieving the disposal of cases when in-person gatherings were restricted cannot be overstated. I personally commend the staff of PPS for their dedication and commitment to the administration of justice as well as dealing efficiently with service complaints during a time of extreme pressure.

Many who come into contact with PPS will be going through the worst experience of their lives and I have found that complaints about PPS are often rooted in the distress caused by the intimidating and highly emotional experience of going through the criminal justice system. Some complaints made have a wider focus on the structure and culture of the entire justice system – from police to courts to sentencing outcomes. Much of this is not within the gift of PPS to change or within my remit to assess. However, I have also found that many of the PPS complaints received are focused on how PPS has interacted with people. These have been very constructive, insightful and motivated by people with inquiring minds and those who wish to use their own negative experience in order to improve user experience for others.

In all cases assessed by me this year, I have found that PPS actively listens to all complaints equally, provides a complaint system that is well structured and enables the voice of the complainant to be heard. I have also found an open and confident organisation in which its people are open and courageous in accepting error and conceding where things could have been done differently.

In this reporting period I have noted many instances where complaints have directly resulted in a change to PPS policy and it is my assessment that complaints are taken very seriously at the top of the organisation. This is not done in a 'blame or shame' manner which seeks to place accountability for error on individual staff, but in a constructive way that is reflective and collective in its acknowledgement of organisational accountability, which is an integral part of a quest for corporate improvement, and always respecting the perspectives of both service users and PPS staff.

The Director of Public Prosecutions has always demonstrated an openness to direct engagement with me in cases where complaints have been upheld and where opportunities for learning can be found. The Senior Assistant Director with responsibility for Corporate Services has implemented several changes to policy and process as a direct result of learning from complaints and improvement recommendations which I have put forward over the last 3 years. This year, for the first time, I have not upheld any Stage 3 complaints.

This year I was struck by how much the PPS approach to complaints is embedded within corporate structures and reporting mechanisms which demonstrates an even stronger commitment to learning from complaints and treating the intelligence gained from complaints as a call to action for process improvements.

I have observed a consistent open and curious attitude to learning from complaints across the organisation. This is compatible with the organisation's stated values:

- Independence and Integrity
- Openness and Honesty

- Respect
- Excellence
- Partnership

I have encountered managers, individual prosecutors and the most senior leaders in the PPS who have conceded points quickly, where it was appropriate. I admire the professionalism of staff who are brave and open to recognising that something could have been done better, where an opportunity was missed, where conduct should have been better or when a communication was flippant or poorly executed.

It is often the sign of a dysfunctional organisational culture when staff are afraid to admit mistakes. In the course of my investigations, I have never found any staff at PPS who have been reluctant to admit mistakes or to offer an apology when one is due. I have found that staff, right up to the most senior level, are curious about how their work is perceived by others, especially those who are not used to the legal system and who may find it to be complex and intimidating. PPS staff are always open to reflecting on how their written and verbal communication style is perceived and how it can be improved. I have also found that officials are keen to learn from different perspectives and they look for areas of common ground in a complaint, that they concede points where they can, and show willingness to do this at the earliest stages of dealing with a grievance. Considering the combative and adversarial nature of the criminal justice system in which they are working, this candour is even more admirable.

My evaluation of the PPS complaint process contained in the following chapters of this report is not simply limited to measuring the system according to the efficient processing of the number of complaints received, in a purely quantitative transactional manner. It is more important, in my view, to conduct a quality assessment of:

- How people feel and experience the complaint process (this can be difficult to measure as feedback questionnaires have historically shown a very low response rate but I have picked up on some anecdotal feedback contained in communications with complainants).
- Whether the process is principled, consistent and fair (as benchmarked against the 'Guide to Principles of Good Complaint Handling' by the British and Irish Ombudsman Association).
- How PPS responds to upheld complaints in terms of being a reflective organisation, one which can honestly evaluate the feedback from a complaint as a tool for continuous improvement (as measured against organisational responses to upheld complaints).

In my view, complaints are an extremely valuable tool in the overall analysis of quality assurance and the information contained within complaints can help PPS gain insight into how successful it has been in terms of 'living its values' and to inform its

continuous improvement agenda as a 'learning organisation'. Instead of limiting the use of complaints as a warning to management about how things can go wrong, a strong organisation understands that complaints contain rich intelligence which enable the organisation to 'stress test' the strength of its culture and values and to gain insight into how willing its people are to embrace a culture of candour and accountability.

I have noted that PPS has a dedicated complaints team who not only handle and manage complaints, but who also record and analyse the data of complaints in terms of themes, business locations where complaint arise and the overall numbers of complaints over a five year period for comparative analysis. This is an excellent management method to use complaints effectively as part of an overall quality assurance audit, because it enables leaders to identify any concerning trends in numbers of complaints and repeat problems in certain contexts; for example delay, communication and case handling. Further the complaints are tracked across business areas which may be experiencing unusual numbers of complaints. This use of data analytics allows the senior leadership of the organisation to immediately see any areas of concern and to respond accordingly.

It is also very encouraging for the public to see that the PPS has developed comprehensive Prosecution Quality Standards in which it is stated that complaints enable the PPS to continually strive in providing high standards of service. The Director states within the Quality Standards:

'Your comments are important as the information you provide helps us to put things right if they have gone wrong and to improve the overall standard of our service over time.'

In my experience of auditing PPS complaint handling and, in particular, the management response to upheld complaints, this statement from the Director is genuine in practice as well as being a stated position. It is not merely a statement which has been declared without intention.

I have compared the user experience within the complaints I have investigated this year and my wider audit of complaints received, in order to test whether the PPS does indeed hold true to these stated standards in the context of listening to complaints and using the learning that comes from them as a lever of change and improvement to service delivery. This will be demonstrated in the following chapters which will provide a detailed account of the PPS complaint system.

Victims of Crime

It is also important to assess the work done by the PPS to improve victim experience, particularly against its commitment to the Victim Charter – a wider policy of the Department of Justice - and the PPS's internal policies on victim and witness care.

Many victims of crime look to the PPS as being their personal advocate or having the role of the victim's own legal team. This is not the case, because PPS is a strictly impartial organisation acting on behalf of society, not just the individual victim. In bare legal terms, the victim is a witness for the prosecution.

Thus a prosecutor is always balancing a range of factors and different interests, which does of course include victim care, but also includes the need to provide a value for money service to the taxpayer, a service which is absolutely impartial, one which upholds the operation of the rule of law and which respects the rights of accused persons to defend the charges against them as person presumed innocent until proven otherwise.

These are often very difficult interests to balance at the same time and these complexities in the role of the prosecutor will not be obvious to those coming into the justice system for the first time. The PPS is not a victim's champion, but this can be a common misperception across society, which often leads to a situation where victims feel 'let down' by the prosecution, and this is not always a view that is justified.

I have found that this misperception is a very common theme of complaints against the PPS and often the expectation that some people hold as to what the role of a Public Prosecution Service should be, does not always correspond with its actual legal role within the system. Many of the victims I have engaged with, both this year and in previous years, have struggled to understand the difference between prosecution and victim representation.

It is also in this area of victim grievance where I find that people struggle the most with understanding the two distinct pathways of raising a complaint with PPS. Thus, I want to set out as clearly as possible the two different and separate routes of internal challenge to the PPS available to victims, witnesses and indeed to other service users.

Complaint or prosecutorial matter?

There are two distinct routes for bringing a grievance within the PPS internal system and these are:

- By submitting a complaint; and / or
- By raising a prosecutorial matter (for example where a victim requests the review of a prosecutorial decision, as set out in the Code for Prosecutors).

There are important legal reasons for the distinctions between them and they are two very different mechanisms:

A '**complaint**' is limited to issues of quality of service and the operation of PPS systems but it does not relate to matters of 'prosecutorial' decision making. A

complaint is ultimately escalated to me as the Independent Assessor of Complaints if it cannot be resolved at the earlier stages of the internal procedures of the PPS Complaint Policy.

It should be noted that a 'prosecutorial' decision is a legal issue that has been decided by the prosecutor according to his or her professional judgement during the course of the prosecution.

Prosecutorial matters may be raised by either victims or persons accused / prosecuted for an offence. These are not treated in the same way as a complaint.

A '**request for review**' is the PPS internal mechanism which enables a victim (or their representative) to challenge a decision of PPS not to prosecute. Where a review is to be conducted, the approach will depend on whether or not new information has been made available in connection with the request to review the decision.

If no new evidence or information is provided, the case will be considered by a prosecutor other than the individual who took the original decision. Having considered the available evidence and information the reviewing prosecutor will apply the Test for Prosecution and take a new decision, the reasons for which must be recorded in writing. That decision may be to allow the original no prosecution decision to stand or to direct that a prosecution should now be taken.

Alternatively, the prosecutor may decide that the matter is to be dealt with by way of a diversionary disposal. Where new evidence or information is provided, the review will be carried out by the prosecutor who took the original decision. The prosecutor will consider all the evidence and information now available and will apply the Test for Prosecution and take a new decision.

There are two possible outcomes of such a review:

- It is concluded that the Test for Prosecution is now met and criminal proceedings are commenced (or the matter is dealt with by way of a diversionary disposal); or
- It is concluded that the Test for Prosecution remains not met. In this situation the case will be referred to another prosecutor who will apply the Test for Prosecution and take a new decision.

Full details of the review process can be found [here](#).

It should be noted that this review process does not apply to decisions to prosecute. A defendant who is being prosecuted can ask that the PPS give consideration to stopping a case or dealing with the offence by way of a diversionary disposal. However, any such request will be considered as part of the duty of the PPS to keep all decisions to prosecute under continuing review.

Prosecutorial matters of this kind, whether being raised by a victim or defendant, are distinct from a complaint investigation. The Independent Assessor is **never** able to investigate complaints about the professional decisions and judgements of prosecutors on legal issues as these are purely prosecutorial issues.

Whilst I do not deal with or report on the prosecutorial process, it is important to highlight that many complaints present a 'blended' complaint. This is when a complaint has been made which crosses both these methods of challenge. So, for example, someone might complain after an incident in which they were an injured party because the PPS decided not to prosecute the accused person. In the letter of complaint, the person might say that the decision was wrong because there was evidence that was overlooked and they might also say that the prosecutor was rude, abrupt or patronising to them.

In a *blended* grievance like this, PPS will often refer the whole complaint to a separate senior prosecutor, usually an Assistant Director, who was not involved in the case and who will respond to both the prosecutorial challenge (the decision not to prosecute) by way of a **review** (under the Code for Prosecutors), AND also evaluate the quality of service complaint (the manner and style of prosecutor's communication) as a **complaint** (under the Complaint Policy of PPS).

The matter will be responded to in its entirety by the PPS via its internal stages, but **only the quality of service complaint can be escalated to the Independent Assessor for Complaints** if it remains unresolved.

The prosecutorial challenge has no further stages of escalation within PPS structures and victims or defendants must take their own legal advice if they wish to bring an external challenge to prosecutorial decision making.

If a *blended grievance* like this comes to myself as Independent Assessor of Complaints, I must separate out the prosecutorial matters from the service-related complaints and I will only investigate the service related matters which are within my remit.

Helping People Understand the Difference Between Prosecutorial Matters and Service Complaints

There are legal and policy reasons why the IAC does not have a role in assessing complaints about prosecutorial matters. This is because the decision making of a prosecution authority is highly specialised and legally complex. Only another experienced prosecutor has the required skills and experience to make assessments about prosecutorial decision-making, so it is extremely difficult for others without that experience to make a fully informed and credible assessment. For this reason, the Code for Prosecutors creates a professional peer review mechanism to give additional

assurance to the prosecutorial decision making process. Other than an application for Judicial Review of PPS decision making, there is no other available method of external and independent assessment of PPS prosecutorial decision making. It is specifically excluded from my remit and further, The Northern Ireland Public Services Ombudsman does **not** have any remit over PPS.

I have found that complainants and their legal representatives do not always understand this distinction fully and so I always ensure that this is fully outlined and explained to complainants prior to the commencement of my investigation.

In this reporting year, PPS has done quite extensive work on simplifying this issue for complainants and I commend the Information Management Team for its work on the official PPS communications and the resources now available on the PPS website, which can be provided to each complainant at the outset to help them understand this complex situation. In particular, a separate one page diagram/process map as well as a new and improved guidance to PPS complaints procedures has been produced, which makes the separation of service complaints and reviews of prosecutorial decisions much easier to understand. This guidance can be accessed [here](#).

Whilst there are some limitations on my remit, what I **can** look at on behalf of complainants are important matters of service experience including matters impacting on personal feelings and issues of human dignity which can include:

- How complainants have been communicated with.
- How they have been treated by the PPS.
- How they have been kept informed of the progress of a case.
- How promptly requests have been dealt with.
- How well decisions have been explained, especially to lay people not familiar with the justice system and those who are vulnerable.
- Whether staff have acted in accordance with PPS stated policy and corporate values including the Code for Prosecutors and the Victim and Witness Policy.

Common Themes

In many of the cases which have been referred to me this year, I have found some excellent practice on the part of PPS staff. I have also audited random samples of complaints resolved at Stage 1 and Stage 2 as well as looking into the internal Complaints Action and Recommendations Log.

The most common themes for unresolved distress felt by people such as victims, witnesses and defendants are mainly rooted in difficulties with:

- Communication/Information/Misunderstanding.
- Conduct of the prosecution team including independent counsel.
- Delays / Case Handling.

I have found that it is never the case that complaints are caused by intentional disrespect, under-performance or lack of professionalism on the part of PPS staff. Communication once again is the central theme to most of the learning that emerged in the complaints investigated this year.

I have made a general observation that there are more complaints this year featuring accuracy and correspondence coming from the Victim and Witness Care Unit as well as the conduct of some independent counsel. A number of these complaints were upheld and dealt with without the need for the complainants to refer these complaints to the IAC. Whilst these complaints may highlight an issue of concern in terms of organisational standards and a rise in this type of complaint, I think it is reassuring to see PPS admitting these errors and concerns around standards and taking visible action both to correct the situation by giving a candid admission and considering methods to minimise the potential for similar problems arising in future.

Complaints may begin with a negative experience but in most cases within PPS, they have been positive drivers for awareness raising of the part of PPS staff, particularly in terms of recognising the importance of kindness, empathy and fully embracing the dignity of all people with whom they are engaging and corresponding.

The Carnegie Trust 2018 publication 'Kindness, Emotions and Human Relationships: The Blind Spot in Public Policy' by Julia Unwin identifies these issues very sharply:

'As our society becomes more transactional and we communicate with our smart phones at least as much as we do with real people, it is tempting to use a technical or technological response. But we are all frail and complex people, and our actions and responses are shaped by our emotions – our history, our expectations, our sense of power – as much as they are by a rational assessment of the issue. And at times of vulnerability and weakness, just the time at which most of us experience public services, our need for a kind, human and emotionally astute response is the greatest.'

I am very pleased to see a trend towards resolving complaints as early as possible, a genuine care and human touch in the communication and approach of complaint assessors and it is very notable that the need for correction by the IAC has not been required this year. I also noted that more complaints were resolved informally this year than ever before and that over 25% of complaints were upheld at Stage 1.

My sense is that the greatest learning for the staff of PPS through the intelligence I have gathered from auditing both the complaint system and complaint management practice, has been the need for kindness and understanding in the handling of people who are emotional and stressed. Whilst PPS interaction with its users must be professionally capable, it must also be shaped and managed by an understanding of the human condition, by emotional intelligence, by the values of empathy and solidarity and an understanding of full humanity.

This kind of rich organisational learning demonstrates that the value of complaints cannot be underestimated as part of an overall quality assurance audit of an organisation in terms of improving culture and making change happen. I therefore wish to thank all the complainants who came forward this year to enable honest reflection on the part of the PPS. Whether a complaint is upheld or not, all feedback contained within user communications is useful to an organisation. I also wish to commend the attitude of the staff of PPS to the complaints made which has been consistently positive and always with a desire to find lessons to be learned in every complaint.

I wish to particularly thank Dr Richard Scullion (Head of Policy and Information) and the Information Management Team within the PPS Policy and Information Unit. Whilst I am independent of the PPS, their support is invaluable to the support of my investigations and written reports.

Sarah Havlin
Independent Assessor of Complaints
March 2023

Chapter 2: Evaluation of How the PPS Complaint Process Works

Background

The PPS has a 3 tier complaints process which is detailed within the complaints policy. PPS staff endeavour to resolve complaints at the earliest possible stage. Complaints are escalated to the Independent Assessor of Complaints, who can review a complaint at the request of a complainant and report their findings to Senior Management. Guidance on the PPS Complaint Policy can be found [here](#).

By the time it comes to my attention, a complaint will have been investigated by two different PPS senior managers at Stage 1 and at Stage 2. The role of the Independent Assessor is to try and resolve cases that get beyond this stage, where, after the PPS has given a properly considered view, differences remain between PPS and the complainant.

Sometimes there are new heads of complaints at this point which are rooted in perceived shortcomings in how the complaint itself was handled. Sometimes a complainant may have an unrealistic expectation or an incomplete understanding of his or her rights and responsibilities and may wish to persist against all the evidence.

Whatever the individual circumstances in each complaint, it is vital that complainants have confidence that issues will be considered impartially, on their merits and that independent judgement will be brought to bear. In this regard the creation of the role of the Independent Assessor by the PPS as a final stage in their complaint process is to be commended. It is by no means a common feature in public sector bodies.

According to the '**Guide to Principles of Good Complaint Handling**' by the British and Irish Ombudsman Association, the best complaint schemes are '**firm on principles, flexible on process**'. This guide is a key measuring matrix in my assessment of the effective operation of a scheme of complaint handling. The needs of people and resolving differences should be the core focus of building a good scheme, rather than building a scheme which is overly formulaic and a slave to processes.

The success of a scheme is not measured merely on how well it is structured, but primarily on the quality of the underpinning values and principles which enable those managing the scheme to evaluate and solve problems. Complaint handling takes a common shape in most organisations. Most schemes follow familiar basic stages:

- Receipt of complaint.
- Providing an initial response.

- Trying to resolve a complaint as quickly as possible.
- Carry out an investigation which makes conclusions.
- Feeding the outcome of systemic findings into improving practice.

However, the process of itself cannot deal with complaints efficiently without underpinning key principles to support the scheme and it is these principles and standards which I have used to test the quality of the PPS scheme.

According to the Ombudsman Association these principles are:

- Clarity of purpose.
- Accessibility.
- Flexibility.
- Openness and Transparency.
- Proportionality.
- Efficiency.
- Quality outcomes.

I will examine each of these principles in turn as they apply to the PPS complaints framework.

Clarity of Purpose

I have benchmarked the PPS scheme for clarity of purpose against the following criteria:

- Leadership
- Clear Objectives
- Clear Communication
- Clear and consistent processes

Findings:

Leadership

The PPS complaint scheme is very well led by the Information Management Team within the Policy and Information Unit.

There is also very clear leadership and ownership of complaints at the very top of the organisation including the Director, Deputy Director and the two Senior Assistant Directors.

The Divisional Heads/Assistant Directors of PPS promote the vision and values of the scheme in their approach to written responses at Stage 1 and Stage 2 which I would describe as being detailed, comprehensive and fully explanatory in all cases.

It is evident that the Director of Public Prosecutions and senior leadership team promote an organisational culture which facilitates a positive and enabling role for managers in the settlement of complaints.

Clear Objectives

The scheme's principal aim is to secure a fair and proportionate result which brings closure for the complainant and the organisation. I find the complaint scheme itself to be a sound and strong self-contained policy and process at PPS.

There is an added complication with PPS complaints which can sometimes cause public confusion in terms of its purpose. This is not the fault of the scheme itself but the confusion on the part of service users between the complaint scheme and matters that are purely prosecutorial in nature (such as a review of a prosecutorial decision pursuant to the Code for Prosecutors).

This is a more complex situation in complaint handling which is unique to the PPS. I have outlined in Chapter 1 why there are valid and important legal reasons for the separation of the two schemes. However, this is not always well understood by those outside the PPS.

I made this observation of the scheme in the audit of 2019/20 to stress to those responding to complainants that it is vitally important to take the time to explain the difference between the two schemes to complainants who are bringing a grievance which straddles the two schemes, or is a 'blended' grievance. This happens quite frequently and I previously observed that it is a source of confusion for many complainants.

I would highly commend the PPS action that has been taken in this regard and the work done by the Information Management Team on simplifying the PPS messaging and information about this.

New resources have been developed and an excellent 'one page' process map which is very easy to understand has now been published. This is as a direct result of learning from both my own observations and the feedback coming from complainants.

Clear Communication

I have carried out a random sample audit of Stage 1 and Stage 2 complaint handling and responses demonstrate strong examples of very good communication in written responses. Responses can be lengthy and detailed but they are well explained in language that is easy to understand.

It is my assessment that public facing information is readily available on the PPS website where there is a dedicated portal for complaints and it has very clear stated objectives and service standards.

The website has been further improved since the last process audit.

Public facing information is easy to read and uses plain language and avoids technical jargon which is not always common in legal organisations.

Engagement with complainants on the part of the complaints staff team is well designed to avoid doubt and misunderstanding about the nature of the complaint.

My earlier observation on clarity of objectives is also relevant here – there is improved communication and improved resources and materials to give clarity to lay people around the distinctions between a complaint and other prosecutorial matters, especially when dealing with a blended complaint.

It is important to recognise that my recommendation in the 2019/20 audit that either the two policy documents need to be amended to include cross reference to each scheme to bring clarity to the issue and/or to make the distinction of the two types of complaint clearer in written responses to blended complaints **has been implemented.**

Following a Complaints Workshop in March 2021 at which there was discussion about blended complaints and scenarios this learning was taken forward and applied in this reporting period. In March 2022 there were new procedures produced and issued which gives clarity about key information and guidance. There has been improved messaging about how to provide feedback to PPS without making a complaint. This is commendable in managing expectations and improving understanding of the complaint scheme in the wider context of PPS operational activity.

The Information Management Team take an active role to share good examples of responses with Divisional Heads for consistency of approach and for sharing of language, format and suggested strategies for resolution and de-escalation.

Clear and Consistent Processes

The PPS scheme has standard processes for responding to complaint referrals that are strongly complied with.

My recommendation of developing and *publishing a simple leaflet or one page diagram as a 'step by step guide' to the service provided and the way the matter will progress e.g. what they can expect in terms of each stage, timelines, the seniority of the staff involved (which is usually very senior officials in the PPS) and the time and attention that will be given* **has been fully implemented and is a significant improvement.**

Clarity about what can be achieved and what is not possible is vital to helping complainants understand from the earliest stages. **All of my feedback about this problem has been fully embraced by PPS.**

If the scheme cannot help someone then information should be given about alternatives. I have seen evidence of PPS staff signposting complainants to the Police Ombudsman and the Information Commissioner. I also give complainants full sign posting to other avenues of possible redress in cases which are outside remit.

Final letters at Stage 1 and Stage 2 are well drafted and set out a synopsis of the facts taken into account, describe the outcome and the reasons for the decision reached. Directions are always given about next steps.

Practice is actively reviewed by PPS in light of experience and feedback from complaints via the Management Board.

PPS consistently seeks to improve service provision and to learn from complaints and there is tangible evidence of several changes to internal policy and process as a result of learning from complaints and of the observations and recommendations for process improvement made by the IAC.

Most notably the development of a Complaints Action and Recommendations Log openly shows all complaints and documents changes which have been made as a result of responses to complaints, lessons learned and improvements made. This information is disseminated on a quarterly basis and Senior Management and Divisional Heads are asked to report back as to any learning as a result and to monitor improvements. I regard this as being exemplary practice.

Accessibility

I have benchmarked the PPS Scheme for Accessibility against the following criteria:

- Awareness
- General Accessibility
- Special Accessibility Needs

Findings:

Awareness

There is a strong means of promoting the scheme evident on the PPS website. I have also found evidence of Corporate Services staff advising members of the public and giving helpful information about the complaint scheme.

PPS could do more to ensure that it takes all reasonable measures to make the general public aware of its complaint scheme. I have not seen any evidence that promotional material is made available at places where potential complainants are likely to be and where they are able to easily seek the information. This should include all courthouses, through police liaison officers, victim support organisations and so on.

General Accessibility

It is very easy to access the PPS complaint scheme and contacts come in by email, via the dedicated online portal, by letter and by telephone which have all been processed efficiently.

Special Accessibility Needs

PPS shows awareness of the need to identify potential barriers for people in bringing a complaint. The practice of the scheme should be aware of special circumstances. For example, signposting the use of advocates for vulnerable complainants such as Victim Support NI. I have seen evidence of a very proactive relationship between PPS and Victim Support NI.

Practical assistance and guidance are always provided by the Information Management team.

Consideration should be given to publishing a specific help sheet offering specific services should they be required such as language and literacy support, disability considerations and other diversity considerations (religious observances, transgender considerations and so on).

A true commitment to accessibility is more than just meeting minimum legal requirements. It is about proactively 'opening up' – widening access for all kinds of people who might not otherwise have the knowledge, confidence or ability to complain.

Flexibility

I have benchmarked the PPS scheme for Flexibility against the following criteria:

- Initial Contact and Expressing the Complaint
- Options for Resolution
- Options for Investigation
- Implementation of Recommendations

Findings:

Initial Contact and Expressing the Complaint

There is a flexible range of methods of initial contact from a phone call to contact by the complainant's political representative.

It is very straightforward for unrepresented lay people to express their complaint and there is no prescribed format.

Dedicated staff in the Information Management Team ensure that complainants are supported with information and guidance on first contact.

Options for Resolution

Informal dialogue and early resolution methods are provided for under the PPS scheme but not often utilised. However, **it is noted and commended that this year saw an increase in complaints resolved informally.**

Consideration should be given to capturing data on invitations issued, attempts to offer meetings and other informal methods of resolution because some evidence I have seen suggests that at times this is being attempted by staff but refused by complainants. The openness and intention of PPS complaint assessors to these more informal methods is therefore not being captured within the statistics.

There is a range of options for resolution: apology, explanation, a change of PPS policy, recognition of distress - but not financial redress (*see Chapter 4, under 'Should Complainants Have Access to Other Internal Remedies?' for further discussion*).

Options for Investigation

PPS can offer a face to face meeting in complaints under the scheme but a written response approach is often preferred.

Sufficient information is gathered to enable the reaching of clear and reasoned conclusions.

The scheme is flexible to allow for fast tracking certain cases, for example before a court hearing.

The scheme allows for complainant driven requests which are accommodated if appropriate.

Implementation of Recommendations

There is clear evidence of changes to practice or the introduction of new protocols based on learning from complaints.

Response from senior management to upheld complaints and recommendations is always positive and with 100% acceptance rate.

Openness and Transparency

I have benchmarked the PPS scheme for Openness and Transparency against the following criteria:

- Governance
- Open Communication
- Stakeholder Relationships

Findings:

Governance

Internal governance of the complaint scheme is visible and very well understood throughout the organisation including the circulation of up to date policies and procedures which are continually monitored and reviewed. Communication between the Information Management Team and Divisional Heads is strong.

The PPS has an Information Management Team who are responsible for collating details of complaints from each region and preparing quarterly reports for the Management Board. This has improved even further since the previous audit with new reporting mechanisms on all complaints in a complaint log and activity report.

The Independent Assessor has a clear independent role, there is a published statement of its role and remit together with a clear purpose of the role.

Open Communication

Subject to the requirements of confidentiality and legal issues, there is a presumption in favour of making information freely available on request.

For reasons of confidentiality and sensitivity in many cases, it is appropriate that PPS do not publish complaint investigation reports.

The PPS leadership team receives regular reports on complaints and responds appropriately.

The organisational culture around the sharing of learning from complaints is one of organisational learning and development and reflective practice and not of 'blame and shame' or individual accountabilities

Stakeholder Relationships

In the 2019/20 audit I observed that other agencies within the criminal justice system have formal internal complaint systems and it would be beneficial to exchange ideas, complaint themes, learning and best practice with other bodies such as Youth Justice Agency, Courts and Tribunals Service, Office of the Police Ombudsman and Probation Service.

This year I have benchmarked the scheme by engaging with the Office of the Police Ombudsman (OPONI). In 2020/21 OPONI reformed its entire customer complaint scheme and has devised a new complaint management scheme which entirely follows the model of the PPS scheme. OPONI remarked that PPS scheme was an exemplar of best practice and it has followed the lead of PPS in implementing the same scheme.

This is tangible evidence that PPS is leading the way for other justice agencies in terms of the standards of its complaint handling scheme.

Consideration should be given, in order to secure wider public understanding of the complaint scheme, to increasing relationships with consumer/victim representative bodies and other statutory and voluntary sector organisations. This is particularly relevant with the upcoming appointment of a new Victims of Crime Commissioner by the Justice Minister who will be an important partner in terms of continuous improvement, learning and development.

Proportionality

I have benchmarked the PPS Scheme for Proportionality against the following criteria:

- Proportionality Of Approach

- Proportionality Of Redress
- Unacceptable behaviour by complainants
- Proportionality of Approach

Four out of 49 complaints received were pursued to Stage 3 at the level of the Independent Assessor, which demonstrates that the earlier stages of the process are effective and proportionate for the purpose of resolving complaints.

Improvements in attempts to explore very early resolution and dialogue is notable in this year's complaints management statistics with an increase in cases resolved by informal resolution.

Proportionality of Redress

Redress should be proportional to the degree and nature of the service failure identified.

Under the PPS scheme redress is limited to admission and apology with potential for remedial action via implementation of reform and improvement.

There is no power to award financial payment either by PPS management or the Independent Assessor. This is a matter of judgement for PPS and it is not a criticism of the scheme.

Unacceptable behaviour by complainants

Accessibility is a key principle but the behaviour of some complainants may require restriction of access. This is particularly true for the PPS where staff can be subject to targeting and abuse.

A very positive policy development was initiated in 2020 to protect staff and to empower and enable staff to deal with unacceptable behaviour. This is now an embedded practice which is very beneficial to help staff manage people fairly and with respect but to deploy firm management strategies when required.

Efficiency

I have benchmarked the PPS Scheme for Efficiency against the following criteria:

- Effectiveness
- Process Considerations
- Consistency
- Quality Assurance

- Staff Management of the Scheme

Findings:

Effectiveness

The PPS scheme has a good internal planning process and management processes.

The process of each stage is clear and published in a public facing document.

The scheme has adequate resourcing and is very well managed.

Principles of natural justice and fair procedures are observed.

Conclusions are always evidence-based and decisions and recommendations flow from analysis.

Process Considerations

Each case is considered on its own merits under the scheme

Responses are tailored to the issues and adopt an appropriate response.

The process is capable to reaching resolutions either by dialogue or by formal investigation.

The process is even handed and contact with complainant and staff complained about is proportionate.

Time limits and response targets are obvious, communicated and well understood.

Consistency

Complaint Reviewers are consistently drawn from senior heads of divisions.

Stage 2 Reviewers are consistently drawn from another separate division to avoid perception of bias.

Template letters are provided to help staff adapt a consistent approach and style.

A recommendation from 2019/20 that decisions and written responses to complaints should be shared regularly between managers for peer review and learning and development has been followed.

A recommendation from 2019/20 that consideration should be given to quarterly reports of complaint decision letters across division heads to promote consistency of approach and peer to peer learning has been implemented through use of a Complaint Activity and Action Log. There is significant improvement in the sharing of activity reports on complaints assessed and recommendations and actions which have resulted.

Quality Assurance

All complaints were dealt with within a reasonable time frame and monitored for compliance with targets.

Information Technology systems are able to produce reports for analysis of performance against stated objectives.

Surveys of customer satisfaction have been attempted but with very low response rates.

Benchmarking with other schemes and the standards of good complaint handling is carried out by the Independent Assessor annually.

Consideration should be given to the strategic collating of comments, feedback and other anecdotal evidence across complaint intelligence as this can cumulatively tell a story of customer experience in the complaint system. For example, as part of my audit of only a sample of complaints I was able to find the following feedback about complaint responses which may otherwise have been missed by the scheme managers:

- Letter to Prosecutor dated 12 November 2021 following an excellent complaint response and explanation letter from the Prosecutor to a complainant:

‘Thank you for your reply and taking the time to look into my concerns. This is clear and I understand your response. I have no further concerns to raise...’

‘You have provided a very good and detailed account of events. My lack of awareness of the processes undertaken has clearly caused me to over generalise and I apologise for that.’

- Letter of Complaint 10 September 2021:

*‘K**** in VWCU has been amazing and I cannot fault her attention to my concerns.’*

Staff Management of the Scheme

The PPS scheme is managed by a dedicated team experienced in complaint handling.

Staff have been given training and development opportunity in the field of complaint handling and it is noted that they attended the Complaint Handling in the Public Sector Digital Conference in April 2021.

Clear guidance has been issued to staff to help them deal with unacceptable behaviour.

It is recognised that staff who manage the scheme are extremely capable at the job, they are professional, they handle people with respect and politeness, and they uphold excellent complaint handling practices which are continually reviewed.

Quality Outcomes

I have benchmarked the PPS Scheme for Quality Outcomes against the following criteria:

- Complaint resolution leading to positive change
- Quality Outcomes For complainants
- Quality Outcomes For the PPS
- Quality Outcomes For the Scheme
- Quality Outcomes For the Public and Stakeholders

Findings:

Complaint resolution leading to positive change

Specific examples of positive change are set out in Chapter 4.

It is my assessment that senior leadership view complaints as an extension to the organisation's quality assurance processes.

Feedback from complaints is responded to at the highest level of the organisation.

For complainants

Upheld complaints are made with graciousness, assessors can give complainants a sense of closure, assurance and restoration of good relations and faith in the service.

Complainants' expectations are managed, including when it is necessary to end abusive and difficult exchanges.

Gathering of feedback from all complainants has proved difficult.

For the PPS

Several improvements in processes have been implemented directly as a result of complaint outcomes and I have verified this by inspecting the full internal log of complaint activity.

There is a visible and effective mechanism for passing back lessons from complaints at Management Board level.

For the Scheme

Lessons are learned by staff from the complaints they handle with a view to improving future complaint handling.

Priority 3 Recommendations from internal audit in 2019/20 on improving achievement of targets on response was taken forward by PPS.

It is recognised that it is not easy to measure all outcomes of the PPS complaint scheme quantifiably but thought could be given to stakeholder outreach if customer satisfaction surveys are not working as a measure.

Frequent users or stakeholders of the prosecution service could be used as focus group on understanding more about the frequent themes of complaints e.g. Women's Aid, Victim Support, Court staff, police liaison officers, Defence solicitors, Judiciary, Youth Justice workers, court translators and so on.

For the Public and Stakeholders

Consideration should be given to the wider public benefit which comes from such good quality complaint handling by the PPS to highlight the added value that PPS can contribute to the system through its strong scheme and its reflective practice approach. This is particularly borne out by the evidence of OPONI adopting the same scheme having taken its lead from PPS.

This sharing of best practice can include role modelling for other public bodies with problematic or less effective complaints systems, developing complaint related training programmes, engagement with training bodies for legal professionals, police and other justice workers on the value of complaints and the benefits obtained, not just for complainants but also for organisational development, through a culture of

candour and openness to learning from your own mistakes and the different perspectives and perceptions of others.

Chapter 3: Complaints Investigated by the Independent Assessor

During the reporting period a total of 4 complaints were investigated by the Independent Assessor. The outcomes were as follows:

- Upheld/Partially - 0
- Not Upheld - 3
- Withdrawn - 1

Case 1 – Not Upheld

A complaint by a victim of crime in an ongoing case about delay, case handling, communication and conduct.

The complainant told me that she was largely satisfied with the PPS response to most of the issues raised. She accepted the Stage 1 and 2 findings and most of the stage 2 response. The one issue that the complainant was still very unhappy about was a telephone call which she had with an Assistant Director (AD) and she alleged that the AD was not being truthful about the way he spoke with her on the phone.

I asked the AD if he would arrange for someone in VWCU to contact the complainant before the next court date to offer some pastoral support, as the complainant seemed anxious and told me she had never been involved in any court proceedings of any kind and was extremely stressed.

The AD agreed that this might help. He also confirmed with me that he was keeping a close eye on the case and said that he would speak to the barrister in the case about the sensitivities and ensure that the complainant was given reassurance at the next court attendance and that they would be mindful about her anxieties.

The complaint was not upheld as most issues had been resolved prior to stage 3 and the only issue in dispute was the perceived aggressive phone call from the AD. I was unable to make any conclusive finding about behaviours during the phone call as both parties have very different versions of what happened and there is no other evidence to support the allegations made. However, **I noted a very positive empathetic and proactive attitude on the part of the AD in this case and was contacted by the complainant after the case disposal who was content following the case disposal.**

This case also demonstrated good use of Victim and Witness Care Unit to reach out to a complainant in a live prosecution by way of a pastoral support and care check-in call. There may be merit in exploring how to use this facility within PPS at an early

stage of complaints by victims and witnesses as this case may have been one that could have been resolved earlier with a conversation. With the benefit of hindsight, one could say that even if this complaint could not be resolved by early dialogue, an early exploratory phone call may have avoided the mistake made about one aspect of the complaint and relations between PPS and the complainant may not have deteriorated in the way that they did.

Case 2 – Withdrawn

A complaint brought by a victim of crime about communication and explanations given.

PPS had been in communication with the complainant as a means of addressing his questions and concerns. I was pleased to see that the complainant has been engaged in positive communications with the Principal Private Secretary for the Director of Public Prosecutions and the complainant confirmed having had a positive and helpful conversation with the prosecutor in the case.

The complaint focused on sentencing and early release of a defendant. I found that the complainant had been given quite a bit of information on the technical aspects of this by PPS but remained confused.

A complaint about the compensation order had also been addressed and I noted that the complainant was raising concerns about the Judge's decision on this with the Office of the Lord Chief Justice which deals with complaints about members of the judiciary. This would be the correct route of challenge for such a complaint because other than requesting that the Judge considers making the order, the PPS has no involvement in the ultimate decision-making of the court.

A further area of complaint concerned inaccurate information about the status of the charges contained within correspondence and notification sent by the Victim and Witness Care Unit of the PPS. This had already been acknowledged as an administrative error and an apology has been given by PPS for the error.

It therefore appeared to me that the complaints raised had been fully addressed.

However, the complainant remained unhappy about a discussion about length of sentence and potential for remission on licence which had taken place with the prosecutor. I explained that the issue of sentence structure is not a matter for the PPS. It is purely a matter of policy and regulation which applies to the Northern Ireland Prison Service and its work with the Northern Ireland Probation Board in managing and balancing a range of factors.

I gave the complainant further detailed written information on this issue, with assistance from the PPS prosecutor. Assurance was given that in respect of any risks

posed by the defendant in this case, the protection and assurance is provided by way of the restraining order requested by PPS and imposed by the court. I explained to the complainant that I would not criticise the prosecutor for the conversation which had taken place as he was explaining the fact that 50% of the sentence would be served in prison, which was correct. The second half of the defendant's sentence was ultimately subject to automatic remission without supervision, but the consideration of remission for prisoners is a matter which is subject to Prison Service and Probation Board policy and decision-making and it is not a matter for the PPS.

The complainant was reassured by the clarification and further explanation given and withdrew the complaint.

There were examples of excellent practice on the part of PPS staff in the handling of this complaint in terms of early and informal resolution strategies and the direct engagement with the complainant was honest and positive.

Case 3 – Not Upheld

A complaint by a victim of crime and a witness

The complainants were both witnesses for the prosecution in the prosecution of a former employee of their company who was charged with deception offences in relation to fraudulent use of company resources. The defendant was not convicted and the case was dismissed.

A complaint was made about certain occurrences during the conduct of the prosecution which, from their perspective, were critical errors which resulted in justice not being achieved.

In particular, concerns were expressed about:

- The inordinate delay and number of adjournments in the case.
- Being told to arrive early as the Judge wanted a full day to hear the case only to find that the barrister did not come to meet with them before the court began despite complainant's request to meet.
- After 2 hours, being told that the evidence file was 'lost' and the case was dismissed.
- The poor case handling by the barrister and the poor decision-making on the part of the District Judge.

The complaint was investigated and assessed at stage one and not upheld and further investigated and assessed at stage two and not upheld.

In terms of complaint handling by PPS, it is noted that the complaint was processed in a timely way. It is also noted that the method of initial investigation and scrutiny carried out by a direct superior to the case handler, followed by a second investigation by a superior who is not connected to the business section where the complaint arose, is recognised as best practice in the internal investigations of complaints as per the guidance of the British and Irish Ombudsman Association.

It is further best practice to refer any complaints which remain unresolved to an independent person who is not employed by the organisation for independent assessment.

The matter was first referred to me and my initial assessment of the complaint was that it raised some questions to be answered which were not within the remit of PPS. The issues raised were:

- Allegations about poor professional conduct and competence on the part of the independent barrister prosecuting the case (an opinion not supported by other evidence and not accepted by the PPS);
- The decision making of the District Judge; and
- The unexplained matter of the file of evidence which was recorded as having been served on both the defence and on the Courts and Tribunal Service, but was not on record on the day of the court hearing and therefore not considered by decision of the Judge.

It is my view that the PPS have satisfactorily addressed and answered all of the concerns and questions raised which are within the remit of the PPS. This had been done comprehensively in the written responses at Stage 1 and Stage 2.

All Case Management records had been checked and PPS gave a full and accurate account of all records of adjournment and the contacts made by PPS with witnesses throughout the lifetime of the case. I therefore had no criticism to make of PPS in this context.

I also note that the Stage 1 assessor was mistaken in her initial response when she referred to the matter of the listing the case. This error was pointed out and immediately accepted and corrected by the Stage 2 assessor with an unequivocal apology given for the misunderstanding. I have no criticism or further comment on this issue as it was rectified appropriately.

I noted a very positive comment by the complainant about the Victim and Witness Care Unit which is worth highlighting and passing on to the staff member involved:

‘K* in VWCU has been amazing and I cannot fault her attention to my concerns’***

This generosity of spirit of the part of the complainant in giving this positive feedback is to be commended given that he continued to have significant concerns about other individuals involved in the prosecution.

I had no comment to make on the perceived professional conduct and competence of the independent barrister as the evidence about this is limited to the opinion of the complainant.

It is not for PPS or me as the IAC to question or scrutinise the decision-making of the court. I advised the complainant about raising complaints about the Judiciary and the Northern Ireland Courts and Tribunal Service via its own complaint process.

My feeling in this case is that the complainants felt cheated both by the defendant and by the criminal justice process. I understood their frustration and why they felt this way. They went through an extremely difficult and damaging situation with their former employee and they looked to the criminal prosecution of the individual as the way to hold him accountable for his actions.

The criminal justice process was subject to delay and became complex, as it often can and it was not helped by the impact of the pandemic on case listing by the Court Service in 2020.

I communicated with the complainant that I recognised that it can be frustrating for people to find that the standard of proof in criminal courts is very high. This is for good reason as the finding of criminality against an individual is much more permanent and of the utmost seriousness in terms of consequences. The process of proving fraud is much more arduous than it might be to establish misconduct in an employment tribunal or to prove breach of contract in a civil action.

From the comments made by Stage 1 and Stage 2 Assessors it was made clear to the complainant that the Judge in this case was apparently not satisfied from the outset that there was a stated system of company rules which he could find to be sufficiently clear and certain as to what constitutes the misuse of a company credit card, and where any breach of such rules could reasonably be said to prove a criminal intent. In other words, there was reasonable doubt that the defendant could have been merely unaware, confused or mistaken in his approach rather than acting fraudulently. The barrister in the case seems to have been battling to overcome this view of the Judge without success.

The added complication which arose in relation to the confusion over the service of a file of evidence was certainly less than satisfactory from the point of view of a victim

of crime and I empathise entirely with the complainants who were confused by this turn of events and left asking many questions including:

- What exactly happened to this file of evidence?
- Why did the Judge not get to view it and act on it?
- Would it have made the crucial evidential difference in persuading the Judge to convict the defendant?
- Regardless of whether it was critical to outcome or not - where is the accountability for it not being admitted to the court if it was properly served?

The complainants disagreed with the PPS prosecuting team about the impact that this evidence may have had on the eventual outcome. I could make no comment on this as it is a matter of legal judgment for the prosecutors. I note that a full explanation has been given about the barrister's view on what was preventing the Judge from accepting the prosecution's case. Whether or not the complainants agree with this and whether they feel that the Judge's approach was flawed or unfair is not an assessment that I have any authority to make.

I found that the PPS had done the best they could in the circumstances to explain the difficulties which presented on the day of the hearing in relation to the problems in the case, the attempts to locate the service of the file on court records and to admit the detail of the evidence within the file to the Judge.

In my view the PPS had answered the first 3 questions posed by the complainants in full. The fourth question remains unanswered, but I do not believe it can be answered by the PPS.

In my assessment it was mainly this fourth question which was the crux of the continuing dissatisfaction. I had a degree of sympathy for the argument of the complainants on this issue. However, I was able to reassure the complainants that I had interviewed PPS staff and checked the records system at PPS. It was clear to me that the fault did not lie with PPS on the issue of why the evidence file was not on record with the Courts and Tribunal Service on the day of the court hearing.

The PPS case records clearly confirmed that the PPS served the evidence appropriately on both the Courts and Tribunal Service and also on the defendant's solicitors. The remaining question of accountability for why it was not on court records on the day in question cannot be answered by the PPS and I could only suggest to the complainants that they posed this question to the Courts and Tribunal Service to see if any further information could be obtained.

I could understand that the way this issue about the file of evidence unfolded on the day and the Judge's decision to proceed with the case without it, meant that it can

never be known for certain whether the evidence in question would have made a critical difference to the Judge's view of the case. This, understandably, continued to frustrate the complainants. I was satisfied that PPS had fully explained that in the professional legal opinion of counsel, further evidence would not have changed the outcome and the Judge's view of the prosecution case was not favourable from the outset.

I had no further observations or any recommendations to make.

Case 4 – Not Upheld

A complaint by a defence expert witness about alleged illegal questioning of him at a trial.

I was of the view that there was nothing that I could consider in this complaint. However I did need to give the complainant guidance and information on the distinctions between service complaints and prosecutorial judgment/conduct of prosecutions and to signpost the complainant to other routes of potential remedy such as taking legal advice.

The primary substance of the complaint was one of alleged shortcomings in the standards of professional competence and professional judgement of a barrister in the way in which he conducted a prosecution on behalf of the PPS during an open court hearing. The PPS had satisfied itself that its barrister acted within the law and within its expectations of ethics and standards in the questioning of the complainant when he was an expert witness in a trial. For PPS, in my judgement, the matter ends there unless the complainant were to take formal legal action against PPS.

I found that the PPS internal process in the matter had been fully exhausted under the Code for Prosecutors. The findings were assessed and fortified by a second senior leader in the PPS who is unconnected with the case as per stated procedures. I could not add anything to this assessment as these are prosecutorial matters which are excluded from the IAC remit.

The grievance was an issue centred on the professional conduct and competence of an independent barrister. The issue for scrutiny on the part of the PPS was not service standards but was instead a legal point, in terms of the legality of the actions of its retained barrister during the conduct of a prosecution. This legal point had been reviewed to the satisfaction of the PPS Director as Head of that Division and further peer assessed by a senior Director from another Division, as per PPS protocols. I have no authority as IAC to further scrutinise the merits of this legal point, as it goes purely to decision making and judgment in the course of the prosecution.

There was an allegation of cronyism and cover up against the PPS complaint assessors, but it was vague and non-specific and there is no detail or indeed supporting evidence to suggest a personal connection between the barrister and PPS complaint assessors or any other alleged conflict of interest.

The complaint also raised an issue of potential damage which was allegedly unlawfully caused to the complainant's professional and personal reputation by the prosecution barrister's public questioning of him in court and which was based on personal information about him, information which the complainant believed to be legally protected information. This serious allegation of damage to reputation would be a matter of civil law. A complaint process is not an appropriate mechanism to adjudicate on what is essentially an allegation of defamation. The complainant was therefore signposted to consider taking independent legal advice in order to be fully informed and advised.

It was my assessment that all of the complaints were outside the remit of the IAC.

Chapter 4: Performance Audit of Complaint Process

Note: A statistical analysis of the complaints received during 2021/22 is presented in detail at Annex 1.

Complaint Numbers and Outcomes

The very clear positive statistic for PPS complaints is that during the reporting period **40,168** files were processed by the PPS and a total of 49 complaints were received which is less than 0.1% of cases resulting in a complaint.

Of those complaints received:

- 8% were resolved by means of early/informal resolution.
- A further 72% were resolved at Stage 1.
- 20% were not resolved at Stage 1 and proceeded to Stage 2.

Of those complaints which were dealt with at Stage 2, 40% were escalated to the IAC.

The IAC did not uphold any complaints at Stage 3.

Some positive findings can be drawn from these statistics:

- Only 0.1% of the total files processed by PPS gave rise to a complaint.
- The vast majority of complaints received were satisfactorily dealt with at Stage 1 or before (80%).
- Only 10 out of 49 complaints proceeded to Stage 2.
- Of those 10 complaints which were not satisfied at Stage 2, only 4 complainants pursued the matter to the IAC (note that one of those complaints was withdrawn at Stage 3 when the complainant was given more information from which he took assurance and withdrew his complaint).
- For the first time, no complaints were upheld by the IAC at Stage 3.

In respect of this evidence it is reasonable to conclude that:

- PPS continues to have an extremely low level of complaints (compared, for example, in 2017/18 when there were 90 complaints in one reporting year which is almost double the rate of complaints received over the last two consecutive years).
- PPS actively seeks to resolve and concede where possible in its approach to complaints

- The internal process is effective at resolving the majority of complaints, particularly at the early stage.
- A very low number of complaints were reported to the IAC.
- No complaints at Stage 3 resulted in a different finding from Stage 2, therefore the outcomes in all cases dealt with at Stage 2 were fortified by the investigation of the IAC.

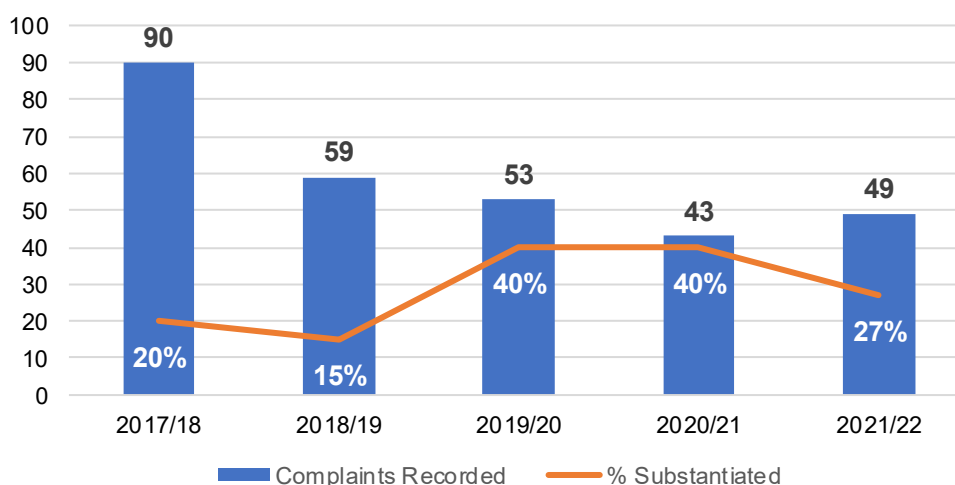
My observation of this evidence is that the PPS carries out its extensive work with an extremely low level of complaints received, and, when it does receive complaints, they are dealt with openly and honestly with concessions made as early as possible. A small number remain unresolved by the end of Stage 2. No complaints resulted in a different finding on investigation and assessment by the Independent Assessor, which is a significant and unprecedented achievement over the last five year period.

Benefits of Early Concessions and/or Dialogue

I would observe that the most positive statistic in terms of complaint outcomes is contained within the year on year comparison figures over the 5 years since 2017, showing a decreasing trend in complaints.

This year saw the second lowest number of total complaints received in the 5 year period (49 complaints this year compared to 43 in 2020/21).

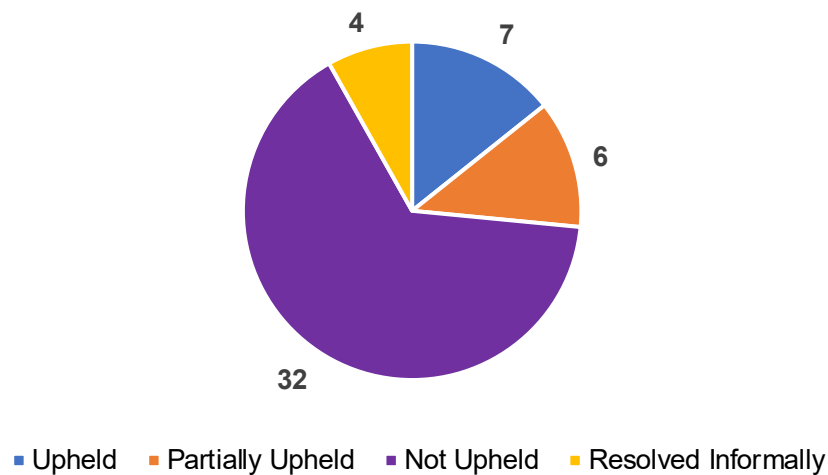
Chart 1: Complaints Logged and Percentage Substantiated 2017/18 - 2021/22



The amount of people who feel the need to complain is decreasing over the five year period, but the attitude of candour on the part of PPS in early recognition of where things could have been done better or done differently is evident in the complaints conceded at an early stage. This suggests a reassuring level of ability to concede and

compromise with complainants on the part of PPS and indicates a transition from a combative approach to a more conciliatory style.

Chart 2: Complaint Outcomes by Type 2021/22



By way of evidence, I would point to the proportion of complaints conceded by PPS either partially or fully. In 2017/18 the figure was 20%. Over the last three years, the equivalent figures have been 40% in 2019/20 and 2020/21 and 27% in 2021/22. This figure does not mean that PPS are getting more things wrong. It is quite the contrary, as the total complaint numbers have been halved over five years but the rate of finding areas to concede has doubled. This is commendable and is evidence which, in my assessment, demonstrates a changing organisational attitude to how complaints are approached and of a culture which prioritises candour and conciliation.

If I were to have one constructive criticism for the PPS to improve upon it would be that only 4 complaints were resolved by early stage resolution prior to the formality of a Stage 1 investigation **but** this is an improvement on last year which is commendable. I think this is still an area for improvement because conciliation is always preferable for resolution. That said, I noted in my sampling audit that attempts at dialogue had been offered in some complaints and I have made a recommendation for capturing data on attempts made to resolve through informal methods, even if unsuccessful and the complaint is ultimately resolved formally.

The use of informal resolution methods may be something that is outside the control of the PPS, because not all complainants may wish to participate in informal dialogue and many prefer to go straight to a formal mechanism. I also acknowledge that in a criminal justice context, complaints can touch on extremely complex legal issues and emotions are often very high and an informal discussion may not always be appropriate.

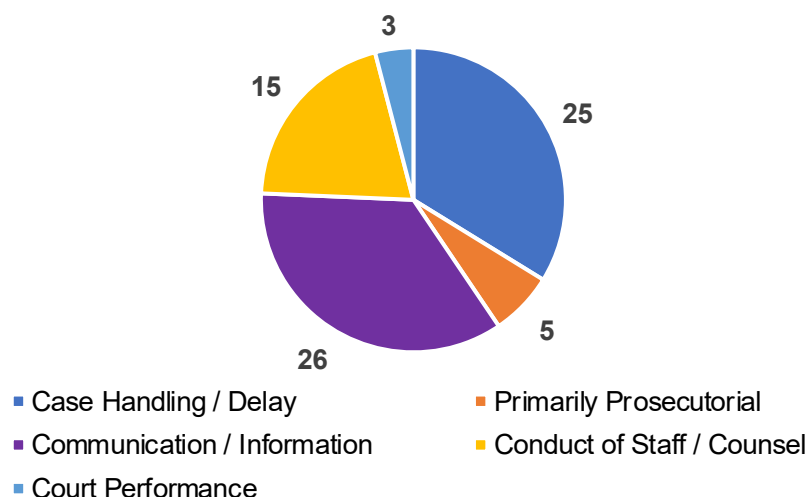
I made a recommendation to the Director of Public Prosecutions in 2019/20 that a more proactive strategy should be adopted in order to find ways of informal resolution at the earliest stages of a complaint, which can often reduce the number of complaints escalating and provide better overall rates of satisfaction in complaint handling. This was fully accepted in principle and the increase in complaints dealt with by way of early resolution is encouraging. It would be good to see further delivery in terms of outcomes and I would suggest to PPS that it records attempts at informal resolution, such as any invitations issued which may have been rejected, as this could be an uncaptured measure of the organisational openness to early resolution strategies.

Complaint Themes

In descending order, the most common themes of the complaints received were:

- Communication/Information.
- Case Handling/Delay.
- Conduct.
- Primarily Prosecutorial.
- 'Other'.
- Court Performance.

Chart 3: Complaint Themes 2021/22



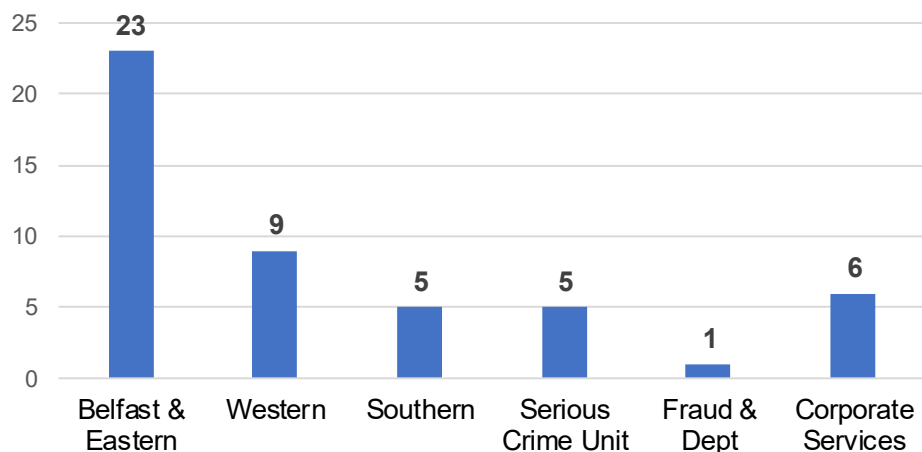
These themes are broadly consistent with the most common themes in the previous year but **there is a notable increase in conduct complaints and case handling/delay complaints.**

Complaints by Business Area

Belfast and Eastern Region is where the highest number of complaints originate and given the amount of business conducted in the region, this is not surprising.

Complaints appear to be originating evenly and proportionately across business areas. There would not seem to be any business area standing out as an area with an unusually high portion of the received complaints.

**Chart 4: Complaints Logged by Business Area
2021/22**



Timeliness

The target for Acknowledgement of Complaints is 5 working days. **This target has been fully achieved across all business areas.**

The target of Complaint Response is 20 working days. The analysis of this target highlights an area of concern in both Corporate Services and Western Region.

Complaint investigation can be significantly time-consuming. The business areas which find the 20 day response target challenging is possibly due to the complexity of some complaints and other work pressures. In my audit of 2020/21 I suggested changing this target to a staggered target which may be more realistic for those complaints which require more time to fully address. I believe this has been taken forward and was accepted. The testing of this new approach will be demonstrated in the figures for next year.

Who Is Complaining?

- The most common category of complainant were victims of crime, their relatives and their legal representatives, which accounts for 68% of complaints.

- This is followed by defendants in prosecutions, their relatives and legal representatives at 20% of complaints.
- 2% of complaints were brought by witnesses other than victims.

Of the remaining 10%:

- 2 complaints were brought by another government department/agency.
- 3 complaints were classed as 'other'.

This would seem to be a proportionate representation of service users and stakeholders of the PPS. The higher numbers of victims as complainants are not surprising given the traumatic circumstances of criminal proceedings for victims of crime.

Perspectives of Complainants

Feedback from complainants about their experience of the complaint process is difficult to gather and has low to zero response rates in past attempts to conduct surveys.

I have made a suggestion that PPS should consider stakeholder engagement forums to discuss complaints with frequent service users and victim/witness support groups as this may be an effective way of capturing feedback.

I also noted in my sampling audit that there were in fact anecdotal comments of user experience of the complaint system which were not captured in the scheme management. I have recommended consideration of methods for extracting comments and feedback from communications in individual complaints as this can have considerable value.

What Is Their Remedy?

As stated in my opening observations, there is reassurance for service users of PPS in terms of its standards, evidenced by the PPS policy around Victim and Witness Care, its adherence to the Victim Charter as well as its comprehensive policy documents – the Prosecution Quality Standards and the Code for Prosecutors.

It is also reassuring to find that in the complaints brought by victims which have been upheld or partially upheld, firm action has been taken to offer an apology, confirm that staff training will be improved or policy and procedures will be changed and developed.

Complainants therefore can achieve:

- Closure from having a complaint recognised and upheld.
- Restoration through an unequivocal apology being offered.
- Satisfaction that the complaint has changed attitudes, raised awareness, improved practice and/or changed PPS policy.

I have been impressed by actions taken at the most senior level of the PPS in response to remedying the complaints upheld at Stage 1 and Stage 2 in this reporting year.

Specific Examples of excellent practice:

- **Full acceptance by PPS senior leadership of all recommendations flowing from Stage 1 and Stage 2 upheld complaints (no upheld complaints by IAC in this reporting period)**
- **Unequivocal apologies offered in all cases upheld.**
- **A reminder issued to all pool counsel about standards and conduct as a direct result of learning from a complaint.**
- **Updated guidance was sent to all pool counsel as a direct result of learning from a complaint.**
- **A reminder has issued to all prosecutors about the need to ensure their out of office is on so that when on leave urgent matters can be redirected due to oversights highlighted in a complaint.**
- **Prosecutors and pool counsel are undergoing training as part of the roll out of Phase 2 of the MME digital evidence sharing triggered by intelligence gathered from complaints.**
- **Bespoke training course to be implemented providing VWCU managers training for dealing with sensitive cases which will ensure a more empathetic service based directly on complainant's negative experience.**
- **PIU to liaise with Police over the best way to communicate decisions to all the parties in sensitive cases, especially those involving youths or where safeguarding issues arise to ensure our approaches are as aligned as possible.**
- **Review of the process for informing suspects of decisions to prosecute to see whether it is possible to ensure that they are informed at the same time as any other party and issue staff instruction following PSNI instructions issued to officers.**

Should complainants have other internal remedies?

In some complaint policies there is provision for a remedy of financial redress. The complaint policy of the Crown Prosecution Service in England and Wales provides for the consideration of such a remedy in certain cases. In the Crown Prosecution Service, the Independent Assessor and indeed CPS lawyers may decide to make consolatory

payments to individuals 'where there is clear evidence of uninsured material loss or severe distress caused by maladministration or poor service by the CPS'.

In this jurisdiction, the only further route of remedy for a complainant is often by way of an external challenge by taking legal advice and pursuing a case in the civil court system. This route is not always known or accessible to many people and it can be costly.

Many people I have engaged with think that the limits on challenge to PPS is very unfair and that PPS has too much 'unchecked power' and 'too little operational oversight'.

An internal compensation mechanism may not be suitable for the PPS, which is operating in a small jurisdiction like Northern Ireland, whereas in the CPS the volume of complaints is significantly larger. The small number of complaints received by the PPS may not justify the resource required to establish and operate this type of financial payment system and such matters are for policy consideration.

Chapter 5: Concluding Observations

My opinion of the PPS complaint process, having thoroughly reviewed its performance this year, is that the complaint system has consistently performed to a very high standard and is a model of best practice in both complaint management and as a tool of continuous improvement. In terms of organisational performance management, PPS leadership approaches complaints as containing vital intelligence and levers for change as part of its overall quality assurance strategy.

There are some areas where practice and standards can be raised even higher as highlighted throughout this report. These are suggestions and they are not formal recommendations.

The appetite for making further improvements in the scheme and the practice of complaint management will of course have to be balanced with other considerations, such as budget, staffing, and working priorities.

PPS, like many front-line essential service organisations, has been extremely challenged by impacts of the Covid-19 Pandemic and this reporting period covers events from a critical period of both lockdown and Covid recovery. In fact, whilst reading through the complaints for this year, it struck me that the complaint themes of delay and conduct had notably increased. Having read through the detail of many of those complaints, I would suggest that this particular increase can in part be attributed to the extreme challenges placed on the justice system, the people working within it and those going through it during those times of unparalleled conditions. It is testament to the professionalism of PPS staff that the number of complaints throughout this highly challenging period remains very low.

I commend the Director and all his staff teams for their ongoing commitment to working on the front line of our Justice system and ensuring that such an important service continues to deliver as it recovers from these challenges. I am impressed by the evidence which confirms the level and scale of change and improvement to the complaint scheme, the management of complaints, and openness to feedback which I believe has been a contributing factor to a change in culture and performance throughout the organisation.

The PPS approach to complaints is a strategic enabler of conscious risk management, continuous improvement and quality assurance practice for the whole organisation. I was particularly impressed by the increased use of data analysis within the knowledge management system for complaints, which exchanges intelligence through peer to peer reporting and which also identifies patterns and trends over a five year period. This use of data allows for comparative analysis across business areas, complaint

themes and the potential for case studies to be shared which can increase consistency of practice and inform individual approaches. These patterns within the data can be studied, measured, and understood by leadership to enable specific interventions which is designed to reduce or eliminate them.

It may be difficult or impossible to eradicate service complaints, but it is the treatment of complaints which is the critical factor for the confident organisation which is courageous enough to always be open to learning and to treat that learning as a call to action and as a lever for making change. This culture produces a range of broader benefits such as establishing trust, giving citizens confidence and raising the morale of staff who are not being called to account for mistakes individually but who are being empowered to be collective change makers.

Annex 1: Complaint Handling in the PPS 2021/22

Table 1: Numbers of Complaints / Requests for Review

| Year | Complaints Logged | Requests for Review |
|---------|-------------------|---------------------|
| 2017/18 | 90 | 156 |
| 2018/19 | 59 | 186 |
| 2019/20 | 53 | 195 |
| 2020/21 | 43 | 194 |
| 2021/22 | 49 | 197 |

Table 2: Outcome of Complaints

| Year | Upheld | Partially Upheld | Not Upheld | Resolved Informally | No Further Action Required | Outstanding | Total |
|---------|--------|------------------|------------|---------------------|----------------------------|-------------|-------|
| 2017/18 | 7 | 11 | 61 | 7 | 4 | 0 | 90 |
| 2018/19 | 2 | 7 | 44 | 3 | 3 | 0 | 59 |
| 2019/20 | 7 | 14 | 28 | 3 | 1 | 0 | 53 |
| 2020/21 | 5 | 12 | 24 | 2 | 0 | 0 | 43 |
| 2021/22 | 7 | 6 | 32 | 4 | 0 | 0 | 49 |

Table 3: Complaints Substantiated (Partially or Wholly Upheld)

| Year | Number of Complaints | % Substantiated |
|-------------|-----------------------------|------------------------|
| 2017/18 | 90 | 20 |
| 2018/19 | 58 | 15 |
| 2019/20 | 53 | 40 |
| 2020/21 | 43 | 40 |
| 2021/22 | 49 | 27 |

Table 4: Reasons for Complaint

| Reason | 2020/21 | 2021/22 |
|------------------------------------|----------------|----------------|
| Case Handling / Delay | 12 | 25 |
| Primarily Prosecutorial | 8 | 5 |
| Communication / Information | 27 | 26 |
| Conduct of Staff / Counsel | 7 | 15 |
| Court Performance | 5 | 3 |
| Other | 5 | 2 |
| Total | 64 | 76 |

Note: Several reasons may be recorded for an individual complaint.

Complaints by Regional / Section

Table 5: Complaints Received

| Year | Belfast & Eastern | Western | Southern | SCU* | Fraud & Dept | Corporate Services | Total |
|---------|-------------------|---------------|---------------|---------------|--------------|--------------------|-------|
| 2021/22 | 23/49 (47%) | 9/49 (19%) | 5/49 (10%) | 5/49 (10%) | 1/49 (2%) | 6/49 (12%) | 49/49 |

Table 6: Complaints Substantiated (Partially or Wholly Upheld)

| Year | Belfast & Eastern | Western | Southern | SCU* | Fraud & Dept | Corporate Services | Total |
|---------|-------------------|--------------|--------------|--------------|--------------|--------------------|----------------|
| 2021/22 | 3/23 (13%) | 3/9 (33%) | 2/5 (40%) | 2/5 (40%) | 0/1 | 3/6 (50%) | 13/49 (27%) |

Table 7: Complaints Acknowledged within 5 days

| Year | Belfast & Eastern | Western | Southern | SCU* | Fraud & Dept | Corporate Services | Total |
|---------|-------------------|---------------|---------------|---------------|---------------|--------------------|-----------------|
| 2021/22 | 23/23 (100%) | 9/9 (100%) | 5/5 (100%) | 5/5 (100%) | 1/1 (100%) | 6/6 (100%) | 49/49 (100%) |

Table 8: Numbers of Complaints Dealt With Within 20 days

| Year | Belfast & Eastern | Western | Southern | SCU* | Fraud & Dept | Corporate Services | Total |
|---------|-------------------|--------------|--------------|--------------|---------------|--------------------|----------------|
| 2021/22 | 21/23 (92%) | 7/9 (78%) | 4/5 (80%) | 4/5 (80%) | 1/1 (100%) | 4/6 (67%) | 41/49 (84%) |

* Serious Crime Unit.

Table 9: Complainant Type

| Complainant Type | Number |
|---|---------------|
| Victim | 27 |
| Victim's Relative | 1 |
| Victim's Legal Representative | 5 |
| Defendant | 9 |
| Defendant's Legal Representative | 1 |
| Witness | 1 |
| Department / Agency | 2 |
| Other | 3 |

Table 10: Complainant Type by Region / Section

| Complainant Type | Belfast & Eastern | Western | Southern | SCU | Fraud & Dept | Corporate Services | Total |
|---|------------------------------|----------------|-----------------|------------|-------------------------|---------------------------|--------------|
| Victim | 12 | 4 | 5 | 2 | 0 | 4 | 27 |
| Victim's Relative | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Victim's Legal Representative | 2 | 2 | 0 | 1 | 0 | 0 | 5 |
| Defendant | 6 | 1 | 0 | 0 | 0 | 1 | 8 |
| Defendant's Relative | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Defendant's Legal Representative | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| Witness | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| Department / Agency | 1 | 1 | 0 | 0 | 0 | 0 | 2 |
| Other | 1 | 1 | 0 | 0 | 0 | 1 | 3 |

Table 11: Reasons for Complaint by Region / Section

| Reason | Belfast | Western | Southern | SCU | Fraud & Dept | Corporate Services | Total |
|------------------------------------|----------------|----------------|-----------------|------------|-------------------------|---------------------------|--------------|
| Communication / Information | 8 | 5 | 2 | 4 | 0 | 7 | 26 |
| Staff / Counsel | 9 | 3 | 3 | 0 | 0 | 0 | 15 |
| Court Performance | 2 | 0 | 1 | 0 | 0 | 0 | 3 |
| Delay / Handling | 12 | 4 | 3 | 5 | 0 | 1 | 25 |
| Prosecutorial | 4 | 0 | 0 | 0 | 1 | 0 | 5 |
| Other | 1 | 0 | 0 | 0 | 0 | 1 | 2 |

Table 12: Reasons for Complaint by Complainant Type

| Reasons | Victims | Victim's relatives/ | Witnesses | Defendants | Defendant's relatives/ reps | Departmental | Other | Total |
|------------------------------------|----------------|----------------------------|------------------|-------------------|------------------------------------|---------------------|--------------|--------------|
| Communication / Information | 15 | 3 | 0 | 3 | 1 | 2 | 2 | 26 |
| Staff / Counsel | 11 | 0 | 0 | 1 | 0 | 1 | 2 | 15 |
| Court Performance | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 3 |
| Delay / Handling | 13 | 6 | 0 | 4 | 1 | 0 | 1 | 25 |
| Prosecutorial | 4 | 0 | 1 | 0 | 0 | 0 | 0 | 5 |
| Other | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 2 |

Table 13: Outcomes by Complainant Type

| Outcome | Victims | Victim's relatives/ reps | Witnesses | Defendants | Defendant's relatives/ reps | Departmental | Other | Number |
|----------------------------|----------------|---------------------------------|------------------|-------------------|------------------------------------|---------------------|--------------|---------------|
| Upheld | 4 | 0 | 0 | 0 | 1 | 1 | 1 | 7 |
| Partially Upheld | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 6 |
| Not Upheld | 16 | 5 | 1 | 7 | 1 | 1 | 1 | 32 |
| Resolved Informally | 1 | 1 | 0 | 1 | 0 | 0 | 1 | 4 |
| No Further Action | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Outstanding | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

Table 14: Method of Complaint

| Means | Belfast | Western | Southern | SCU | Corporate Services | Fraud & Departmental | Total |
|-----------------------|----------------|----------------|-----------------|------------|---------------------------|---------------------------------|--------------|
| Email | 18 | 6 | 3 | 4 | 3 | 1 | 35 |
| PPS Web Portal | 1 | 1 | 0 | 0 | 2 | 0 | 4 |
| Letter | 3 | 2 | 2 | 1 | 1 | 0 | 9 |
| Phone | 1 | 0 | 0 | 0 | 0 | 0 | 1 |

Second Tier Complaints

There were 10 files escalated to the second tier. Eight of the findings at the second tier concurred with the findings of the initial complaint. One of the second tier complaints was upheld and 1 was withdrawn.

Seven of these were from Victims, 2 were from Defendants and 1 from an Expert Witness.

The complainants were from the following areas:

- **Serious Crime Unit** 1
- **Belfast & Eastern** 8
- **Fraud & Departmental** 1

Annex 2: Useful Links

- Guidance on the PPS Complaint Policy can be found [here](#)
- The Role and Remit of the Independent Assessor and Biography of Sarah Havlin can be found [here](#)
- The Code for Prosecutors can be found [here](#)
- PPS Prosecution Quality Standards can be found [here](#)
- PPS Victim and Witness Policy is [here](#)
- Complaints about the Police Service of Northern Ireland can be made to the Police Ombudsman and can be found [here](#)
- Complaints about the professional conduct of barristers acting for the PPS can be made to the professional regulatory body, the Bar Council of Northern Ireland, and can be found [here](#)
- Complaints guidance about the Northern Ireland Courts and Tribunal Service can be found [here](#)
- Complaints about Judges can be made to the Office of the Lady Chief Justice [here](#)
- Complaints about the Prison Service Northern Ireland can be made [here](#)
- Complaints about the Probation Service of Northern Ireland can be made [here](#)

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