



Northern Ireland Audit Office

# Speeding up justice: avoidable delay in the criminal justice system



REPORT BY THE COMPTROLLER AND AUDITOR GENERAL  
27 March 2018





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Northern Ireland Audit Office  
27 March 2018

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## Key Terms and Abbreviations

<b>CJB</b>	Criminal Justice Board
<b>CJINI</b>	Criminal Justice Inspection Northern Ireland
<b>CJPDG</b>	Criminal Justice Programme Delivery Group
<b>Committal</b>	The process used to admit criminal cases for trial in the Crown Court
<b>Court disposal</b>	The issue of a final ruling in a case by a judge
<b>CPS</b>	Crown Prosecution Service
<b>DEL</b>	Delegated Expenditure Limit
<b>DIR</b>	Decision Information Request
<b>DOJ</b>	Department of Justice
<b>HMCTS</b>	Her Majesty's Courts and Tribunals Service
<b>ICP</b>	Indictable Cases Pilot
<b>Indictable offence</b>	A serious criminal offence for which a defendant is tried in the Crown Court
<b>MOJ</b>	Ministry of Justice
<b>NICTS</b>	Northern Ireland Courts and Tribunals Service
<b>OLCJ</b>	Office of Lord Chief Justice
<b>Plea</b>	The response a defendant gives after criminal charges have been put to them in court
<b>PPS</b>	Public Prosecution Service
<b>PSNI</b>	Police Service of Northern Ireland

# Key Facts

£819 million

Total expenditure by the criminal justice organisations under review in 2016-17

-12%

Total reduction in adjusted expenditure by the criminal justice organisations under review between 2011-12 and 2016-17

2,025

Number of defendants disposed of in the Crown Court in 2016

515

Average number of days taken from the date a crime is reported to police until the completion of the related trial in the Crown Court in 2015-16

12%

The proportion of Crown Court cases which took over 1,000 days to complete between 2011-12 and 2015-16

6.5

The average number of adjournments experienced by victims, defendants and witnesses in Crown Court cases

46%

Proportion of victims and witnesses surveyed by the Department of Justice who felt the justice system was effective



# Executive Summary

## Introduction

1. The purpose of the criminal justice system is to reduce crime, bring offenders to justice, protect the public, provide the victims of crime with justice, and to ensure justice is administered in a fair and just way. The effective delivery of these objectives depends upon the organisations involved in the system working collaboratively. Our review focuses on how effectively the four main justice organisations in Northern Ireland have worked together to deliver criminal justice, namely: the Police Service of Northern Ireland, the Public Prosecution Service, the Northern Ireland Courts and Tribunals Service and the Department of Justice.
2. When criminal justice does not perform effectively it can have a significant impact upon the lives of those involved: victims, defendants, witnesses and their families. A key feature of how the system in Northern Ireland has operated has been a failure to complete cases within reasonable timescales. Crown Court cases in Northern Ireland typically take more than 500 days from the date an offence is reported until a verdict is delivered in court, twice as long as in England and Wales. Around 12 per cent of Crown Court cases in Northern Ireland take in excess of 1,000 days to complete.

## Key findings

3. Since 2006 there have been several independent reports (particularly by the Criminal Justice Inspection Northern Ireland) which have been critical of overall performance and identified a number of issues. The key causes of delay are weaknesses in the early stages of investigations. The progress of cases through the system is punctuated by practices and processes that are not efficient and work against timely delivery of justice. This has a significant impact upon the quality of service to citizens and impacts upon the confidence of the public in the system's effectiveness.
  4. The inability of justice organisations to commit fully to a collaborative model of delivery underlies this situation. These organisations have not been able to overcome the undeniably difficult challenges which prevent true collaboration. The justice system has lacked key components of the infrastructure necessary to support collaborative working, in particular, a common performance framework.
  5. In addition to the impact upon victims, defendants and witnesses, there is a significant financial cost of avoidable delay. However, justice organisations are not currently able to quantify the financial cost of delay. Attempts to improve performance are not supported by detailed financial analysis to quantify the expected costs and benefits.
  6. This report comes at a time of significant opportunity for the justice system. The key performance issues affecting justice have been known for at least a decade and are not insurmountable. In the last two years, there have been renewed efforts to tackle avoidable
-

delay and improve performance. The Indictable Cases Pilot delivered improvements in investigation and prosecution performance and its principles are currently being tested on a wider scale. Successful reform would contribute to:

- faster end-to-end times for the completion of cases;
- higher quality investigation and prosecution files;
- stronger arrangements governing working practices at key interfaces between organisations;
- fewer adjourned hearings and trials at court; and
- earlier guilty pleas by defendants.

7. Reform is being pursued in a public service environment which places an emphasis upon working in partnership to transform how services are delivered. Individually, the various reform initiatives appear logical and likely to improve performance; however, more work is needed to develop a fully functioning partnership throughout the justice system. In parallel with specific reform projects, leaders and managers in the justice system must work together to implement a truly collaborative model of service delivery. Failure to do so risks undermining the future potential of current reforms and will leave the justice system ill-equipped to deal with the challenges ahead.

## Value for Money conclusion

8. Currently the criminal justice system in Northern Ireland does not deliver value for money. The cost of criminal justice in Northern Ireland is significantly higher than in England and Wales, with no additional benefit arising. Cases take considerably longer to complete than in England and Wales.
9. These performance issues have arisen in an administrative environment which has lacked key components of the infrastructure which criminal justice organisations need to operate collaboratively as a whole system. Until these are introduced, it is unlikely that the criminal justice system will deliver improved performance and value for money.
10. It is widely accepted that the criminal justice system cannot function effectively until the various justice organisations work more closely together. This will require behavioural change, supported by effective collaboration within the Criminal Justice Board (CJB) and the Criminal
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## Executive Summary

Justice Programme Delivery Group (CJPDG)<sup>1</sup>. This includes establishing clear lines of accountability; quality information systems; and a transparent reporting framework. The system needs to demonstrate substantial improvement in the matter of avoidable delay, which should be subject to continuous review.

### Recommendations

#### **Recommendation 1:**

The Department, in consultation with the Lord Chief Justice, should ensure that adequate administrative support is provided to the judiciary to facilitate more effective management of cases and case progression in the Crown Court. Both the PSNI and the PPS should ensure that any corresponding arrangements which are required to improve case management are also implemented.

#### **Recommendation 2:**

The CJINI plays an important role in holding the criminal justice system to account. The Department should establish an effective system for monitoring the implementation of the CJINI's recommendations to support improvement.

#### **Recommendation 3:**

The Department should establish an action plan and timetable for the eradication of the committal process.

#### **Recommendation 4:**

The Criminal Justice Board (CJB), working with the Criminal Justice Programme Delivery Group (CJPDG), should establish a clear and shared understanding of the end-to-end criminal justice process, with a focus on securing effective collaborative working to reduce avoidable delay in the management of cases.

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<sup>1</sup> The Criminal Justice Board is a group comprising the most senior leadership of criminal justice organisations which provides strategic oversight to the system. The Criminal Justice Programme Delivery Group reports to the Criminal Justice Board and consists of senior officials from the various organisations. Its purpose is to oversee the delivery of objectives set by the Criminal Justice Board.

**Recommendation 5:**

The CJB, working with the CJPDG, should take a lead in developing and implementing protocols around the sharing of performance and financial management information between justice organisations.

**Recommendation 6:**

The CJB, working with the CJPDG, should establish processes which ensure that performance is analysed consistently, and that lessons which can deliver performance improvements are learned and shared across the system.





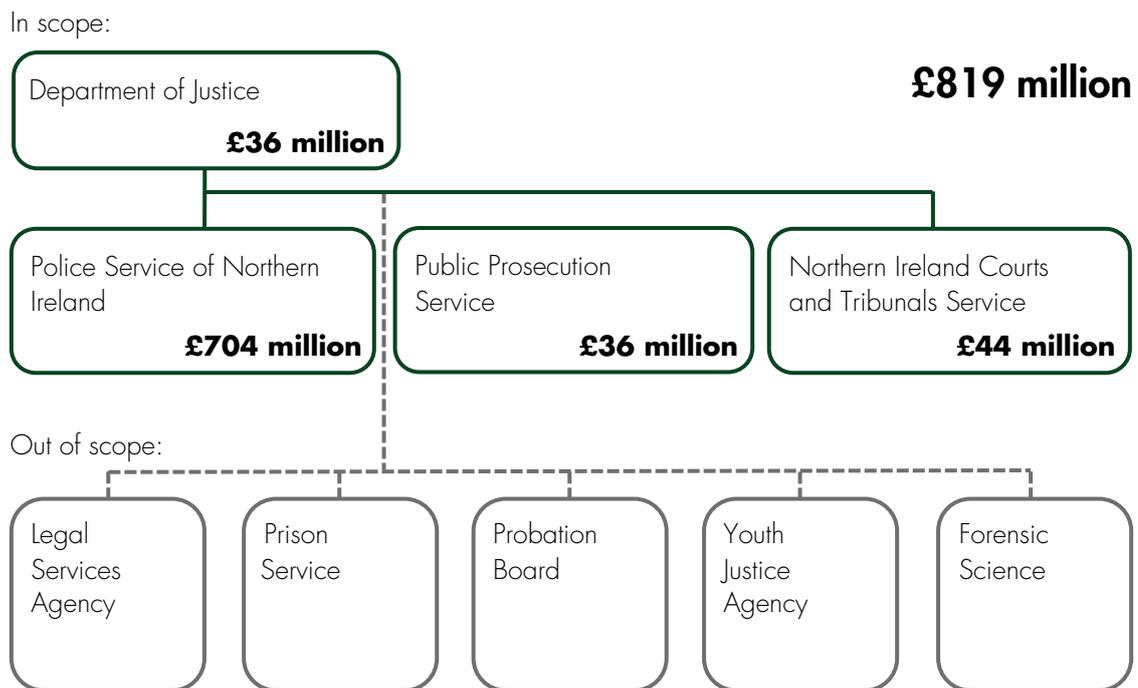
## Part One: Introduction

### The criminal justice system

- 1.1 The purpose of the criminal justice system is to reduce crime, bring offenders to justice, protect the public, provide the victims of crime with justice and to ensure justice is administered in a fair and just way. The system is complex and involves a range of independent criminal justice organisations. While each of these organisations has its own individual responsibilities and objectives, criminal justice can only be delivered effectively when the various organisations work collaboratively.
- 1.2 When the criminal justice system does not perform effectively it can have a significant impact upon the lives of victims, defendants, witnesses and their families. Participating in a trial can place an enormous burden upon a person: numerous stakeholders described to us how involvement in a serious criminal case can effectively put a person's life on hold until its completion. It is critical for these people that cases do not take an excessive amount of time to progress through the justice system and do not have their progress punctuated by administrative delays and adjournments at court. These issues are generally referred to collectively as "avoidable delay". Alongside the human cost of these delays, there is also a waste of public money resulting from inefficiencies.
- 1.3 Our review focuses on the collective performance of the four main justice organisations. These include the Police Service of Northern Ireland (PSNI), the Public Prosecution Service (PPS), the Northern Ireland Courts and Tribunals Service (NICTS), and the Department of Justice (the Department) in their role of providing oversight of the entire system. In 2016-17, the total expenditure of these organisations was £819 million (see **Figure 1**). In addition to the four main organisations, a number of others contribute to the delivery of criminal justice but are outside the scope of this study.
- 1.4 Individually, justice organisations are responsible for different parts of the system. The Department is responsible for maintaining the legislative framework overarching the day-to-day delivery of justice. The PSNI is responsible for the investigation of crimes and the identification of suspects. When an individual is identified as a suspect, the PSNI will prepare an evidence file and submit it to the PPS<sup>2</sup>, which in turn is responsible for considering the evidence and taking a decision as to prosecution.
- 1.5 Cases are heard in courts operated by the NICTS. The management of cases themselves rests solely with the judiciary, who are independent of the NICTS and the other justice organisations. Most cases are heard in the Magistrates' Court; however a small proportion of more serious offences are heard in the Crown Court. The volume of cases disposed of in the courts has been decreasing in recent years, driven primarily by consistent reductions in the volume of cases in the Magistrates' Court. In 2016, 40,000 defendants were dealt with in the Magistrates' Court, 26,000 of whom were prosecuted as a result of cases taken by the PSNI and the PPS. This compares to 2,000 defendants in the Crown Court<sup>3</sup>.

2 There are two ways for the PSNI to submit a case to the PPS – by reporting the case to the PPS without charging the suspect or by charging the suspect, followed by a report to PPS. Where the PSNI charge a suspect, the charges will be reviewed before the first court appearance by a PPS prosecutor, who may confirm, add to or withdraw any or all of the charges.

3 Judicial Statistics, NICTS, 2016

**Figure 1: Criminal justice resource expenditure 2016-17**

Source: Department of Justice and Public Prosecution Service

- 1.6 Whilst the organisations under review are independent, there are collective groups which play a role in co-ordinating their work. The Criminal Justice Board (CJB) brings together senior leadership of the justice system – i.e. the Lord Chief Justice, the Director of Public Prosecutions and the Chief Constable – under the chairmanship of the Minister of Justice. The purpose of the CJB is to provide strategic oversight to the workings of the criminal justice system. The Criminal Justice Programme Delivery Group (CJPDG), which reports to the CJB and comprises senior officials of the criminal justice organisations and the Department, is responsible for overseeing the delivery of the objectives of the justice system by the various organisations.

## Background

- 1.7 This report comes at an opportune time for the criminal justice system in Northern Ireland. The report reflects on the performance of the justice system in recent years, and on the various criticisms of it. The same persistent issues have impaired the delivery of justice and the quality of service delivered to those who use the justice system. Over a long period, effective action has not been taken to address these issues.
- 1.8 This report is a strategic overview of the most important performance issues. The intention in producing this report is to support the justice system in its drive to improve performance. At the heart of this is identifying and overcoming the key obstacles to justice organisations working collaboratively.

## Part One: Introduction

- 1.9 This focus is consistent with trends in the wider public sector environment. In 2016, as a result of recommendations made by the Organisation for Economic Cooperation and Development (OECD)<sup>4</sup>, the Northern Ireland Executive began developing an outcomes-based Programme for Government (PfG). This represented a fundamental shift in how public service delivery is planned in Northern Ireland. It places a stronger emphasis on the outcomes of services for the public, and less emphasis on organisational inputs, processes and outputs. A critical aspect of this new model of service delivery is the concept of collaborative working by public bodies.
- 1.10 Within this wider context, the justice system has started to address the issues of delay and inefficiency. In 2010 the Minister for Justice announced his intention to tackle the issue of avoidable delay in criminal justice by launching a programme of legislative and procedural reform. Since 2015 there has been a number of substantial initiatives implemented with the intention of tackling various aspects of the justice process and system. A major theme of this programme has been a focus on improving collaborative working.
- 1.11 This is therefore a time of opportunity for the justice system. However, this should not disguise the fact that collaborative working can be extremely difficult and challenging to do well. By focusing on the key issues and reiterating the lessons learned from previous reviews, this report is intended to add impetus to the efforts to overcome these barriers.

### Structure

- 1.12 We have focused our commentary on the issues affecting Crown Court cases. The Crown Court deals with the most serious offences, which have the biggest impact upon those involved and take the longest time to complete. The performance issues identified provide a context for the consideration of why the justice system has not, so far, addressed them effectively, and what can be done to remedy this. Consequently, the report is structured in the following way:

**Part Two** provides a summary of the key performance issues which have affected criminal justice.

**Part Three** considers the main factors which have hindered the system acting collaboratively to improve performance over a long period of time.

**Part Four** describes the most significant of the reform initiatives implemented by the system since 2015.

**Part Five** examines some of the key challenges which may hinder the ability of these reforms to deliver a true transformation in service quality.

## Methodology

- 1.13 Our investigation has used a combination of quantitative and qualitative methods to gather evidence. Our understanding of the workings of the criminal justice system has been informed by discussions with key staff at a range of organisations: the Department; the PSNI; the PPS; the NICTS; the Office of the Lord Chief Justice; the Law Society, the Bar Library and the CJINI. We have reviewed documents from a range of sources and analysed published and unpublished performance data held by criminal justice organisations.
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## Part Two: Past performance

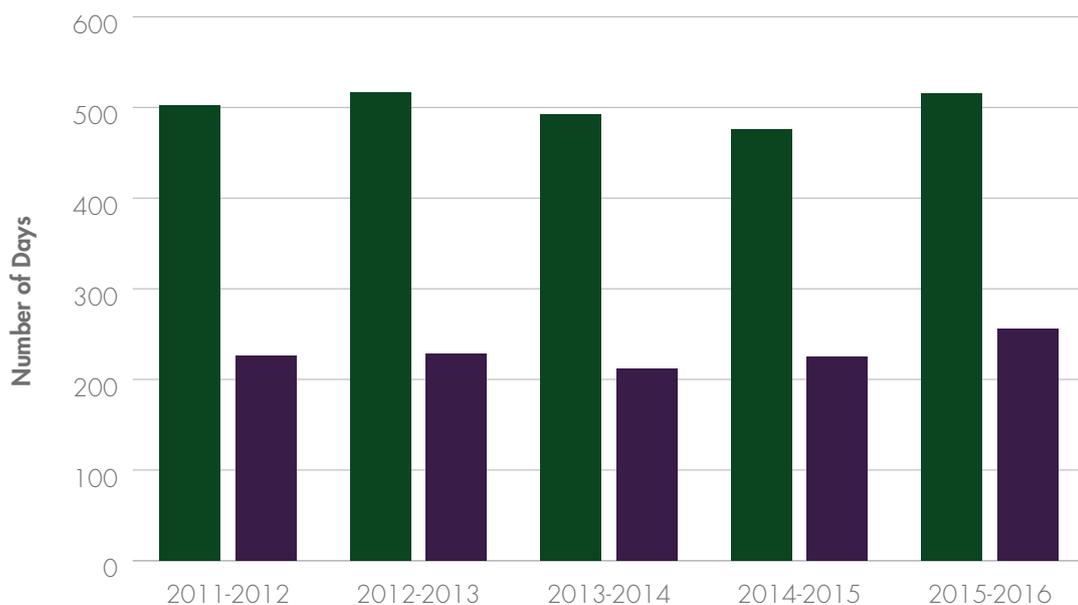
- 2.1 This part of the report provides an overview of the performance of the justice system in recent years. There are two dimensions to this assessment. Firstly, the main quantitative measurement of the system’s performance is the length of time taken to complete cases. This timeframe measures the elapsed time from the reporting of an offence to the police until the completion of the related trial.
- 2.2 Alongside this quantitative measure there are also qualitative factors to be considered. The most important and visible of these is the quality of the court process. This primarily involves assessing the prevalence of adjournments that cases endure whilst at court.

### Criminal cases take significantly longer in Northern Ireland than in England and Wales

- 2.3 The time taken to complete cases is one of the most important aspects of the experience of those who use the justice system. Timeliness is a key issue in Northern Ireland. Crown Court cases here typically take twice as long to resolve as they do in England and Wales, and there is no evidence of a trend of improvement (**Figure 2**).<sup>5</sup>

**Figure 2. Crown Court Timeliness**

Crown Court cases take significantly longer in **Northern Ireland** than in **England and Wales**



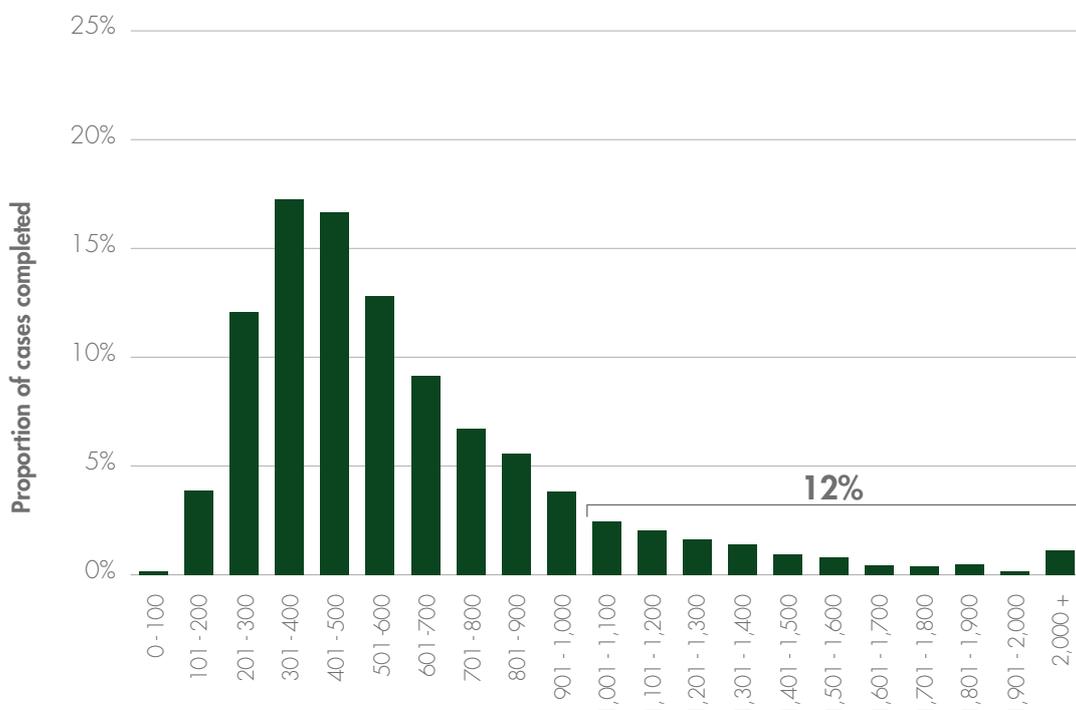
Source: Department of Justice and Ministry of Justice

<sup>5</sup> Timeliness comparison uses financial years for Northern Ireland and calendar years for England and Wales. For example, Northern Ireland data for 2015-16 has been compared to England and Wales data for 2015 calendar year.

- 2.4 The average timeliness figures disguise significant variation in the length of time taken for individual cases. An important feature of Crown Court cases is that a significant proportion of cases take far in excess of the average. **Figure 3** illustrates how twelve per cent of cases take in excess of 1,000 days.

### Figure 3. Crown Court Timeliness Distribution

One in nine Crown court cases completed between 2011-12 and 2015-2016 took more than 1,000 days to complete



Source: NIAO analysis of data provided by the Department

- 2.5 Drawing upon fieldwork carried out by the CJINI as part of a review of particularly poor Crown Court cases in 2014<sup>6</sup>, we have included an example case study illustrating the specific issues which affected these cases (**Figure 4**). Whilst the specific issues arising in these cases reflect an example of particularly poor performance, they nonetheless represent the types of issues experienced by many people involved in Crown Court cases, albeit often to a lesser degree.

## Part Two: Past performance

### Figure 4. Case Study

**Offence:** One defendant charged with one count of possession of cocaine with intent to supply and possession of criminal property

**Outcome:** Defendant pleaded guilty at arraignment to all counts

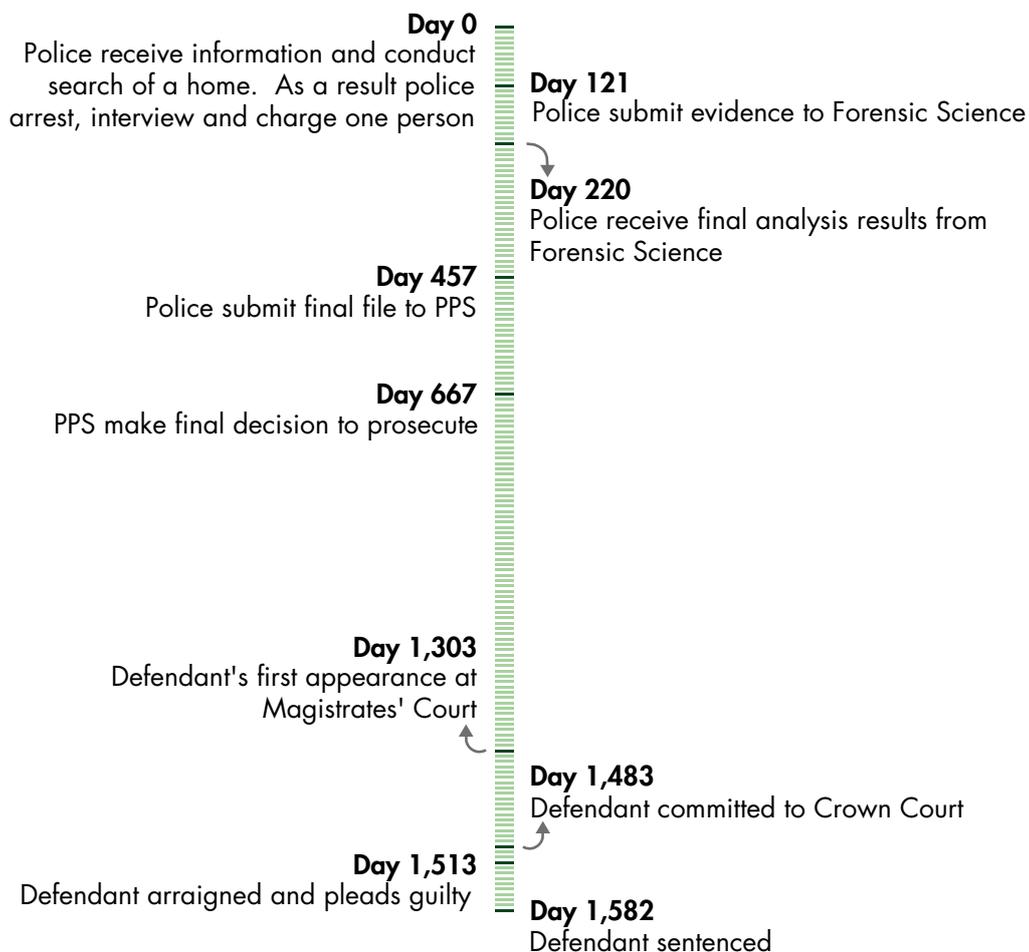
**TOTAL TIME**  
**1,582 DAYS**

#### Key failings:

Police investigation marred by "indefensible" poor management and supervision

Unexplained delays in PPS decision making

Inability to serve papers on defendant caused significant delay in getting case to court



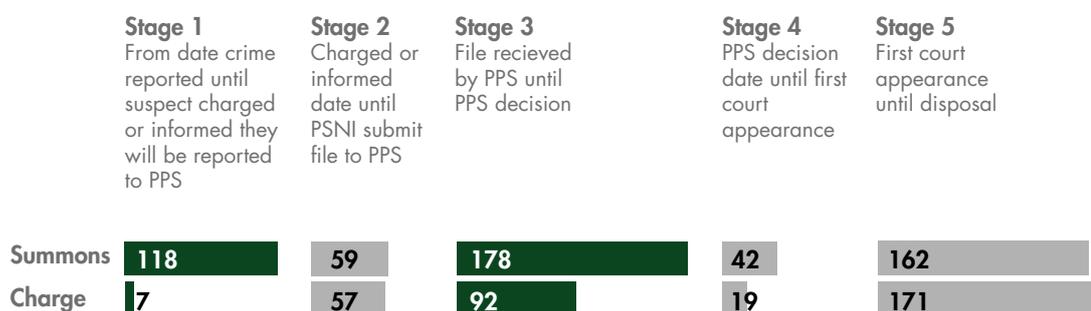
Source: CJINI

## The key causes of delay are weaknesses in the early stages of investigations

- 2.6 A key reason for the timeliness difference between Northern Ireland and England and Wales is the length of time it takes to complete the early stages of investigations in Northern Ireland. These delays are particularly evident in those cases which are brought to the Court by way of a summons, rather than the individual being charged by the PSNI (see **Figure 5**).
- 2.7 Over the last decade, the PSNI has been subject to sustained criticism over the quality of evidence files it prepares and submits to the PPS. Commonly, files lack critical evidence, meaning the PPS cannot make a prosecutorial decision until further information is requested and obtained from the PSNI. After raising this issue in 2006, the CJINI determined in 2010 that little progress had been made in improving performance, and that the main task for the PSNI remained to 'get it right first time'<sup>7</sup> when preparing investigation files. A subsequent follow-up report in 2012 found that progress towards this vision remained slow<sup>8</sup>. In 2015<sup>9</sup> a detailed investigation of police file quality found that the majority of Crown Court case files tested were either unsatisfactory (contained errors or omissions meaning the PPS were unable to make a prosecutorial decision) or poor (contained significant omissions in the core evidence provided).

### Figure 5. Charge and summons timeliness

In cases where it is not appropriate for the PSNI to charge a suspect, cases are brought before the court by way of summons, and typically take significantly longer than those where a suspect is charged directly by the PSNI



Source: Department of Justice statistics

<sup>7</sup> *Avoidable Delay*, CJINI, 2010

<sup>8</sup> *Avoidable Delay: A progress report*, CJINI, 2012

<sup>9</sup> *An inspection of the quality and timeliness of police files (incorporating disclosure) submitted to the PPS for Northern Ireland*, CJINI, 2015

## Part Two:

### Past performance

#### The quality of service to victims, witnesses and defendants in the court is frequently poor

2.8 The ideal process for cases reaching the Crown Court is set out in **Figure 6**. In reality few cases demonstrate such smooth progress when at court. Cases frequently have numerous preparatory hearings before trial, where little progress is made; a number of stakeholders referred to a *culture of adjournment*. Research by the Department in 2012 found that the average Crown Court case was adjourned 6.5 times during its lifespan<sup>10</sup>. Our review of a sample of 60 Crown Court cases identified a similar average number of adjournments. A recent strategic report<sup>11</sup> noted:

*When observing both criminal and civil courts in Belfast, it is striking how many hearings are ineffective. I would estimate that over half the cases I saw resulted in adjournments, often accompanied by a limited exchange of information over matters such as the number of witnesses that would be needed at the next hearing. This could have been dealt with by a quick email exchange. Having clients and lawyers for all parties attend court and wait around, often for several hours, is a grossly inefficient way to do business.*

2.9 Quantifying the overall impact of adjournments is difficult, but it does have a significant impact upon court users. Critically, it imposes heightened stress and inconvenience upon victims, defendants and witnesses. A survey carried out by the Department in 2017<sup>12</sup> found that two thirds of victims and witnesses who attended court were ultimately not required to present their evidence. More than one third of these victims and witnesses were at court for at least two hours before being told their evidence was not required.

2.10 There is also a significant impact upon criminal justice organisations. For example, in 2012 the PSNI estimated that, on average, officers were required to attend court on more than 23,000 occasions, with an average attendance time of 5 hours. The PSNI estimated that on around 75 per cent of these occasions, officers who had attended court were not required to give evidence. This equated to a waste of 11,000 front line shifts<sup>13</sup>.

2.11 During our fieldwork, the various justice organisations we engaged with have pointed to a number of factors which contribute to this poor performance. These include:

- issues which have not been fully resolved during **the investigative and prosecutorial stages**; and
- **judicial management** of cases.

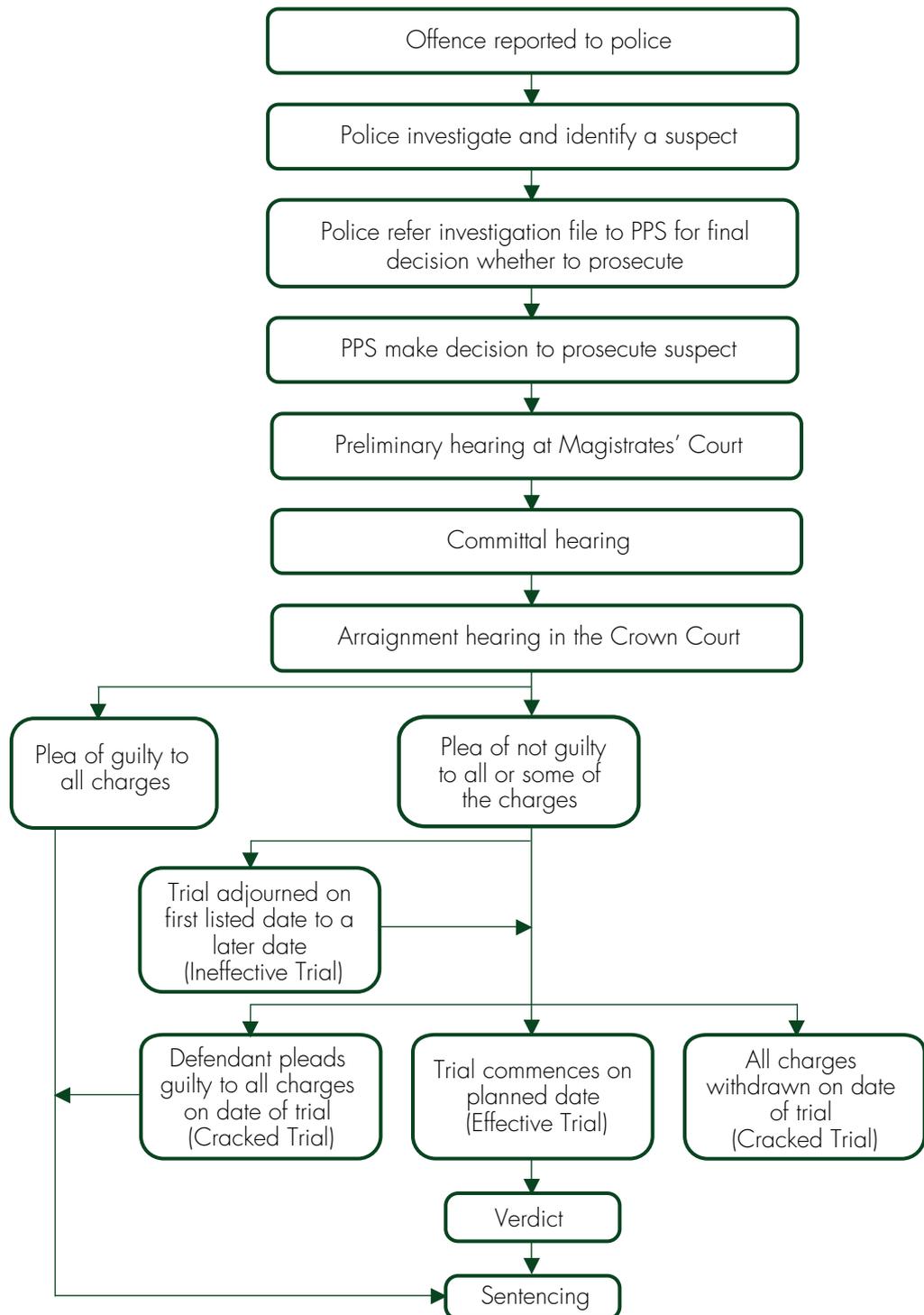
10 *Managing criminal cases: Department of Justice consultation, DoJ, 2012*

11 *A strategy for access to justice: the report of access to justice II, DoJ, 2015*

12 *Victim and witness experience of the Northern Ireland criminal justice system: 2008/09 – 2016/17, DoJ, 2017*

13 *Managing criminal cases: Department of Justice consultation, DoJ, 2012*

Figure 6. Criminal justice system process map



Source: NIAO

## Part Two: Past performance

### **Delays and adjournments in court can reflect deficiencies in the early stages of investigations**

- 2.12 Delays and adjournments in court can be as much a symptom as a cause of poor performance. Adjournments may directly result from deficiencies arising from early stages of the justice process. Any failure by the PSNI and the PPS to work together effectively can have a negative impact upon the later stages of cases. Poor evidence file quality; failing to ensure key evidence and witnesses are available; and failing to share evidence with the defence, can all result in a need to adjourn hearings and trials at court.
- 2.13 The initial investigation and evidence gathering by the PSNI is a critical stage of the criminal justice process and there is a need to 'get it right first time' to support a smooth overall process. The CJINI has also identified issues within the PPS's own processes which can impact upon overall case efficiency.
- 2.14 In 2013, the CJINI identified<sup>14</sup> a number of obstacles within the overall justice system which impaired the ability of the justice system to secure guilty pleas as early as possible in criminal cases. These included case readiness issues; case file quality issues; and failures to serve the defence with evidence early on in cases. There were also issues regarding over-charging<sup>15</sup> and reduced/withdrawn charges<sup>16</sup>, although performance in the Crown Court in these areas drew favorable comparisons with England and Wales and with Magistrates' Court cases in Northern Ireland. All of these issues do not only affect the achievement of a high rate of early guilty pleas. Where they exist, they affect all types of cases and contribute to delays in the system.
- 2.15 At a strategic level, there is a lack of comprehensive management information which enables the relative prevalence and impact of these landscape issues to be accurately measured and managed. In our view, the collection and analysis of data is an essential part of any strategy to improve overall performance across the justice system.

### **The justice system has generally become less effective at facilitating early guilty pleas**

- 2.16 Where a defendant intends to plead guilty, it is clearly desirable that the justice system facilitates this as early as possible. Earlier entry of guilty pleas means quicker end-to-end times, fewer court hearings, less stress for victims and witnesses and reduced financial costs.
- 2.17 Since 2011 the justice system has generally become less effective at securing early guilty pleas. Overall, the number of defendants who plead guilty had remained generally the same,

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14 *The use of early guilty pleas in the criminal justice system in Northern Ireland*, CJINI, 2013

15 'Over-charging' refers to instances where a defendant is either charged with too many offences, or with more serious offences than they should have been charged.

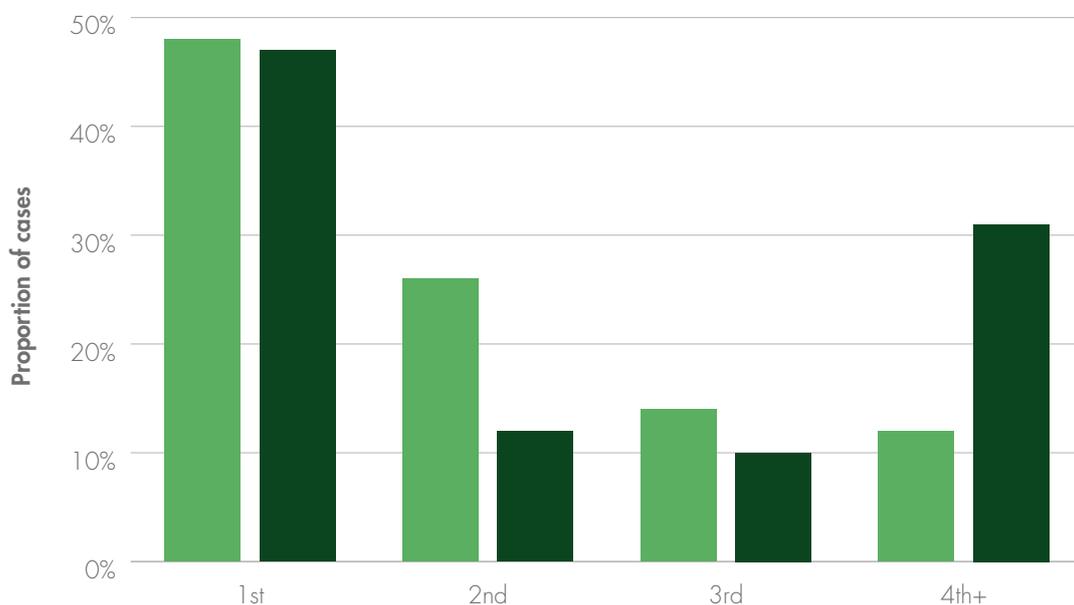
16 Reduced-withdrawn charges refers to occasions where a case is concluded through the defendant pleading guilty to some of the charges they face with the remainder left unresolved, or by pleading guilty to alternative less serious charges.

albeit the rates had fallen slightly in 2016. In 2010-11, the CJINI reported<sup>17</sup> that 21 per cent of Crown Court defendants plead guilty at the outset of their case, and a further 22 per cent entered a guilty plea at a later point – a total of 43 per cent. In 2016, the total rate of guilty pleas had fallen to 38 per cent – 18 per cent of defendants pleading guilty at the outset and a further 20 per cent pleading guilty at a later point.

- 2.18 Even where a plea is considered to be entered at the outset, this does not necessarily mean the plea was entered at the first court hearing. Cases can have a number of preparatory hearings in court before a plea is entered, and still be considered as a plea at the outset. Comparison of the 2010-11 and 2016 figures show that in 2016, cases required significantly more hearings to get guilty pleas than in 2010-11, indicating deteriorating efficiency (**Figure 7**).

### Figure 7. Guilty pleas at outset

A far greater proportion of guilty pleas entered at outset in Crown Court cases require four or more court hearings in **2016** compared to **2011**



Source: Statistics provided by NICTS

17 The use of early guilty pleas in the criminal justice system in Northern Ireland, CJINI, 2013

## Part Two: Past performance

### **Administrative arrangements do not support effective judicial management of cases**

- 2.19 It is incumbent upon all parties to process cases efficiently: the PSNI, the PPS, the NICTS and the judiciary. Whilst the PSNI and the PPS accept the need to improve aspects of their own performance, the pace at which cases progress would be assisted by greater proactive case management. The judiciary is entirely independent and once cases reach court the trial judge is responsible for the management of the cases. The PSNI and the PPS argue that the way cases are managed does not consistently ensure that only essential matters are subject to contest at court. The PSNI and the PPS share a view that the standard of evidence required in court in Northern Ireland is in excess of the standard required in England and Wales, contributing to the performance gap between the jurisdictions. Both point to the waste of resources in providing evidence about certain features of cases which have no bearing on their resolution.
- 2.20 Whether the courts narrow the scope of cases appropriately has been a matter of debate for some time. The Lord Chief Justice released a Crown Court Practice Note in 2011<sup>18</sup> which made clear the responsibilities of all parties involved in Crown Court cases (judges, prosecution and defence). The Practice Note emphasised that the overriding objective of the justice system to deal with cases justly encompassed a responsibility on all parties to deal with cases efficiently and expeditiously. However, unlike similar Rules in England and Wales, the Practice Note placed no duty on judges to enforce compliance with this principle during Crown Court cases.
- 2.21 It is the view of the the PSNI and the PPS that whilst the Practice Note has led to improvements, inconsistent application has limited its impact in terms of narrowing the scope of cases. Our review supports this opinion. There is little evidence, from the data we have reviewed, of any significant change in outcomes.
- 2.22 There are two key reasons why the Practice Note may not have had a greater impact. Firstly, the directions lacked an enforcement mechanism to ensure they were adhered to. As such, whilst the Note articulates the aspirations of the justice system, it has not been effectively translated into new operational practices. Secondly, the Office of the Lord Chief Justice (OLCJ) argues that the judiciary does not receive sufficient administrative support to enable effective case management.
- 2.23 The absence of administrative support means judges are entirely responsible for the listing of cases and ensuring they are ready to proceed in advance of listed dates. This involves performing a range of administrative tasks for which they are neither an appropriate nor cost-effective option. The OLCJ believes that the provision of an adequate system of administrative support for Crown Court judges would result in more efficient and effective case management.

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18 *Practice Direction No 5/2011*, OLCJ, 2011

2.24 In our view, this is an area where additional staff resources could have a significant impact. Potential benefits include:

- better liaison with all parties in advance of hearings, to ensure all necessary processes have been completed;
- identifying listed cases which should be vacated<sup>19</sup> due to unavailability of critical evidence, avoiding the unnecessary attendance of parties at hearings which are adjourned; and
- recording accurately the reasons for adjournments at hearings and trials (widespread scepticism of the performance indicators which currently exist undermines the use of that information).

All of these outcomes would deliver benefits to the users of the justice system and to criminal justice organisations. However, these benefits will only be maximised if adequate administrative arrangements are in place in other criminal justice organisations to facilitate the judiciary's engagement with these organisations. The NICTS contends that support arrangements put in place for judges in the past could have been more successful if corresponding resources had been made available at other justice organisations.

### **Recommendation 1:**

The Department, in consultation with the Lord Chief Justice, should ensure that adequate administrative support is provided to the judiciary to facilitate more effective management of cases and case progression in the Crown Court. Both the PSNI and the PPS should ensure that any corresponding arrangements which are required to improve case management are also implemented.

## **Inefficiency and ineffectiveness contribute to low public confidence and higher costs**

- 2.25 Two key consequences of the way the system operates are that public confidence in the system is affected and it is more expensive than it should be. Recent research by the Department found that only 63 per cent of those surveyed felt the justice system was fair, and only 46 per cent felt the system was effective<sup>20</sup>.
- 2.26 Inefficient and ineffective practices contribute to this low confidence rating. They also contribute to financial waste. However, criminal justice organisations currently have no means of assessing the level of financial loss arising from poor performance. The system lacks an activity based costing system which would enable full analysis of the costs of particular processes.

<sup>19</sup> A vacated case occurs when a case which is listed for hearing but not ready to proceed is removed from the lists in advance of the listing date. This avoids the need for the various parties to attend court for an ineffective and wasteful hearing.

<sup>20</sup> *Perceptions of Policing, Justice and Anti-Social Behaviour: Findings from the 2016/17 Northern Ireland Crime Survey*, DoJ, December 2017

## Part Two:

### Past performance

It is also not currently possible to reliably disaggregate expenditure within criminal justice organisations to identify the proportion of expenditure incurred in the specific areas reviewed in this study. The absence of any reliable estimate of costs means we were unable to quantify the financial cost of delay.

- 2.27 As a result, we have restricted our financial analysis to a high level consideration of annual expenditure trends, and compared these trends to England and Wales:
- the criminal justice system in Northern Ireland is significantly more expensive per head of population than the system in England and Wales (**Figure 8**); and
  - the criminal justice system in Northern Ireland has not experienced such severe reductions in expenditure<sup>21</sup> as justice organisations in England and Wales (**Figure 9**).
- 2.28 Due to differences in population and the structures and systems operating in Northern Ireland to those in England and Wales, these assertions are not underpinned by direct and precise supporting calculations. The limitations affecting our comparisons are detailed at **Appendix 1**. The most significant of these issues include the economies of scale available to the much larger equivalent organisations in England and Wales, differences in the division of responsibilities between organisations in the jurisdictions, and the different justice environments.
- 2.29 Finally, concerns have also been raised over the severity of expenditure cuts in England and Wales in the context of delivering a criminal justice system that can operate effectively over the long-term. We have not made any assessment of whether this is the case or not, but are mindful of these wider debates. For example, the most recent Police Funding Settlement for England and Wales, announced in December 2017, provided a real terms funding increase to police forces between 2017-18 and 2018-19.
- 2.30 Given all these issues, the intention of our analysis is not to establish English and Welsh expenditure figures as a benchmark. Instead it is to provide a basic comparison of the regions using the data currently available to provide some financial context. It is uncertain whether Northern Ireland could achieve similar financial performance to England and Wales whilst delivering an overall effective justice service. Costs associated with transformation can be significant and reform is challenging in the context of reducing budgets. However, given the scale of the inefficiency which exists in Northern Ireland it is fair to conclude that effective reform would help reduce the excessive costs currently incurred in Northern Ireland.

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21 For all organisations, except police forces in England and Wales, our analysis is based upon actual expenditure. For police forces in England and Wales we have based our analysis on changes in the central government grant to all forces. For organisations in Northern Ireland we have made some adjustments to eliminate uncomparable items. We were not able to do the same for English and Welsh organisations. Full details of our methodology are provided in Appendix 1.

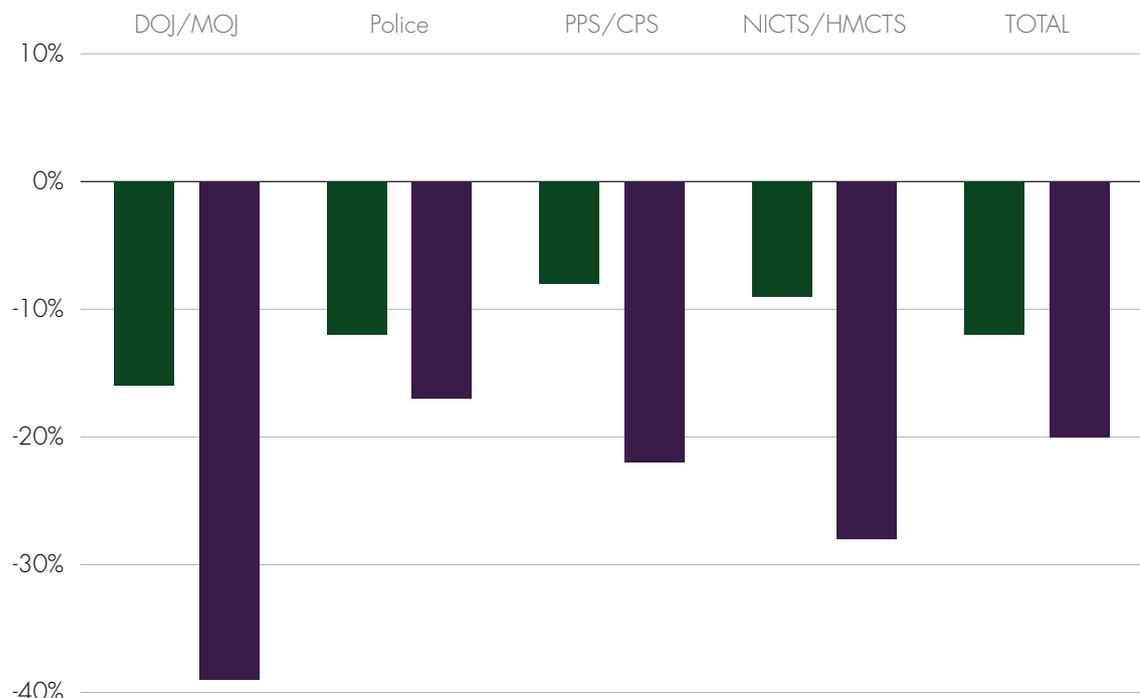
**Figure 8: Cost of key criminal justice organisations 2015-16**

Justice Organisation	Northern Ireland £ per head	England and Wales £ per head	Variance (%) NI v E&W
Department of Justice	20	11	82%
Policing	367	140	161%
Prosecution	17	10	70%
Courts	21	14	50%
<b>Total</b>	<b>425</b>	<b>175</b>	<b>141%</b>

Source: Northern Ireland figures provided by the Department and PPS. Figures for England and Wales based upon budgeted expenditure for English and Welsh police forces, and resource expenditure reported in the financial statements of other organisations. Population figures based upon ONS estimates.

**Figure 9. Reductions in expenditure: 2011-12 to 2015-16**

Across the justice system, organisations in **Northern Ireland** have been subject to less severe expenditure reductions than similar organisations in **England and Wales**







## Part Three: Managing performance

- 3.1 The performance of the justice system in Northern Ireland has been poor for a long time. This section of the report looks at the key structural factors which have hindered the ability of the justice system to act more efficiently and improve performance.

### The key performance issues affecting justice have been known for at least a decade

- 3.2 In **Part Two** of this report, we assessed the performance of the justice system against two key criteria: the end-to-end timeliness of cases, and the quality of the experience that those involved in cases were subjected to once those cases reached court. Against both of these criteria the performance of the justice system in Northern Ireland has been poor. In several reports since 2006 the CJINI has identified the same underlying issue: the lack of effective collaborative working. **Figure 10** provides a short overview of CJINI reporting, with key extracts.
- 3.3 In the face of the prolonged failure to properly address this key issue, the CJINI began to advocate the introduction of statutory time limits as the only means by which the justice system would truly face up to the issue of delay. Statutory time limits would impose an obligation upon the justice system to complete cases within a specific period of time. Failure could result in cases being thrown out, or having to go through a transparent system of applying for extensions to the limit, to ensure cases were prosecuted.

#### **Recommendation 2:**

CJINI plays an important role in holding the criminal justice system to account. The Department should establish an effective system for monitoring the implementation of CJINI's recommendations to support improvement.

- 3.4 The Department did begin a process of considering how to best introduce statutory time limits, however it ultimately decided that the best way to improve performance was through the multi-faceted reform programme which had been developed since 2010. This programme is discussed in more detail in **Part Four**.
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Figure 10: CJINI reports on delay and inefficiency

Report Title	Date	Key Comment(s)
Avoidable Delay	May 2006	<b>Reducing the extent of avoidable delay in the processing of criminal cases in Northern Ireland can only be achieved by joint action by all the key criminal justice agencies.</b> Greater accountability at an inter-agency and local level should ensure that problems and priorities can be agreed and issues channelled to respective senior management.
Avoidable Delay	June 2010	Tackling the problem of avoidable delay goes to the heart of the justice system as it involves all the major justice organisations. My overall conclusion is that a step change is required in the performance of justice organisations if they are to meet the challenge of reducing avoidable delay. <b>A starting point is the need for justice organisations to work more closely together in the delivery of a joined-up approach to criminal justice.</b>
Securing attendance at court	May 2011	The attendance at court of the various parties to a criminal case is essential for the effective and efficient operation of the courts, and this has been highlighted in a number of previous Criminal Justice Inspection Northern Ireland (CJINI) reports. The Northern Ireland Courts and Tribunals Service (NICTS), the Public Prosecution Service (PPS) and the Police Service of Northern Ireland (PSNI) all have a vital role to play and, <b>for the system to operate effectively, it is important that the three organisations work in a collaborative manner.</b>
Avoidable Delay: A Progress Report	January 2012	A significant reduction in the end-to-end times for case progression requires a number of successful building blocks to be in place. Put simply, it requires in the first instance a real desire and commitment to make it happen. It necessitates having the right people taking decisions on the basis of common real time information and implementing these changes at an operational level across a range of organisations. It requires on-going monitoring and review to ensure that progress is maintained and embedded into operational practice. It requires changes in behaviours at the front line and a shared desire among all those involved to make a difference. <b>It requires many different people often working to different agendas and against their own self-interest to engage collaboratively on the issue.</b>

## Part Three:

### Managing performance

The use of early guilty pleas in the criminal justice system in Northern Ireland	February 2013	Achieving the benefits of early guilty pleas requires a number of inter-dependent factors to be considered. These <b>inter-dependencies are significant and exist across a range of areas. First, in the range of agencies involved (from police, prosecution, defence practitioners and the courts).</b> Secondly, in terms of the range of factors influencing and creating the landscape in which early guilty pleas operate.
The Crown Court Project	April 2014	Many of the processes of the criminal justice system intersect one another and this makes it difficult to explicitly define individual or agency responsibility. <b>The important overarching principle is that the criminal justice system as a whole must tackle unnecessary delay at every stage.</b>
An inspection of the quality and timeliness of police files	November 2015	The inspection findings in respect of quality and timeliness were unsurprising and these concerns have been highlighted in previous Criminal Justice Inspection Northern Ireland reports. <b>The key to changing this situation lies in a more collaborative approach between Police Officers and Prosecutors.</b>

### Effective partnership working depends upon the presence of key components

- 3.5 The current drive to increase collaborative and partnership working between public bodies should not disguise that this is often a very challenging task. Creating true partnership working will impose additional costs and burdens on the organisations involved. It also involves surrendering a certain amount of decision-making power and flexibility, and creating new lines of accountability, in addition to those in which the individual organisations already operate. Finally, it may mean sharing the blame when things go wrong, even when an organisation feels it may not bear individual responsibility.
- 3.6 All of these ideas can be deeply problematic within the context of public sector governance arrangements, and can conflict with long-standing public sector conventions and behaviours. The benefit of successfully navigating these barriers and adopting new, innovative working practices can be the delivery of vastly enhanced quality services, more coherently aligned to the needs and expectations of service users.
- 3.7 To achieve these results, any joint working relationship must be underpinned by three key principles: the shared acceptance of a common goal; a commitment to sharing; and a focus on service users' experience.

## The justice system has lacked critical components necessary to support effective partnership working

- 3.8 Some of the necessary components of effective partnership working are already present, to varying degrees, within the justice system. The drive to reform initiated by the Minister in 2010, and the substantial actions taken since 2015 (see **Part Four**) indicate a general acceptance that there is a need to improve, and a recognition of the need to work together to do this. The extent to which this permeates through all layers of the various organisations' operations is more debatable. Similarly, there is evidence that the justice system has sought to embed the views of service users in its management of the system, as part of the development of performance indicators to support the Programme for Government.
- 3.9 The key weaknesses within the current arrangements are in relation to the principle of sharing. This principle affects various dimensions of the partnership between justice organisations. Most importantly, its absence undermines transparency and accountability within the criminal justice system.
- 3.10 For example, while justice organisations share a desire to improve end-to-end times for criminal cases, this ambition has not historically translated into a shared performance framework. In 2011-12, the CJB established time-based targets for various types of criminal justice case. However, these targets were not effectively cascaded into the performance management frameworks of the various criminal justice organisations. The time-based targets used by individual organisations were not consistent with the CJB's system-wide target.
- 3.11 Ineffective performance recording and reporting has also been a key issue, and has affected the two most important performance issues: poor quality investigation files and adjournments at court (discussed in **Part Two**). Consequently, it is not surprising that the system is unable to reach a consensus as to where the balance of responsibility lies for these issues. While all organisations acknowledge failings within their own performance, collectively the system is still some way away from a true consensus on what each party needs to do to improve. Without this, a significant barrier exists to achieving an optimal working relationship between the various partners. The lack of objective performance information makes it even more difficult for external stakeholders to make fair judgements as to where the balance of responsibility rests between organisations.
- 3.12 There are systems in place which should contribute to transparency and accountability. However, the way systems have been implemented in practice means that the information produced currently is not accepted by the various parties as providing a basis for understanding and questioning performance. In the two performance areas identified above (investigation file quality and court process quality), systems are fatally undermined by weaknesses originating at the point when the data is being recorded. Consequently the measures lack credibility and are not useful to justice organisations. Accountability is not being served by these arrangements.
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## Part Three:

### Managing performance

3.13 The CJINI's work has consistently identified the absence of an agreed framework for both recording and managing the quality of police investigation files which are submitted to the PPS. For example, there remains no means of identifying how many requests for more information submitted by prosecutors to investigating police officers related to critical information missing from police files. This is a key example of an instance where information collected at one point of the criminal justice process which would be useful to another organisation is not collected. Such instances highlight key areas where individual organisations must alter their own arrangements and gather information which may not be immediately useful to their own organisational management to serve the interests of the system.

3.14 The main measure of the quality of the court process is affected by the same fundamental issue. These statistics are published annually in the Judicial Statistics publication. This report measures the outcome of all trials on the first day they are listed against three possible outcomes:

**Effective:** the trial proceeds on the date listed as planned.

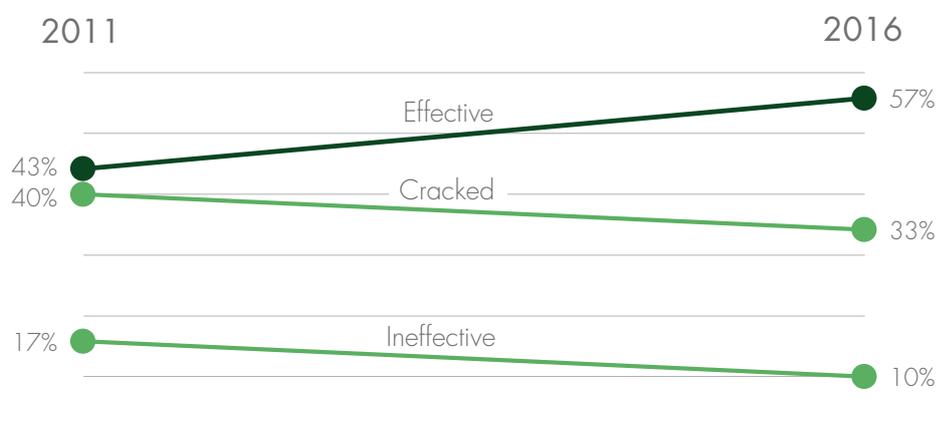
**Ineffective:** the trial is unable to proceed on the date listed and is adjourned to another date.

**Cracked:** the trial is withdrawn from court on the same date it is listed, and there is no need for a further trial.

3.15 Overall, the statistics display some improvement in recent years. The rate of effective trials has risen to just over half (**Figure 11**). Consequently, the rates of ineffective and cracked trials have fallen over the same period.

#### Figure 11. Trial Outcomes

Despite recent improvements just over half of Crown Court trials are effective



Source: NICTS Judicial Statistics 2011-16

- 3.16 The Judicial Statistics also include analysis attributing responsibility for ineffective and cracked trials between the prosecution, the defence and the judiciary. Such analysis would appear to be of fundamental importance to analysing the contribution of the PSNI and the PPS to ineffective trials. However, the usefulness of the Judicial Statistics as a tool for understanding the causes of avoidable delay at court is limited. Firstly, the trial outcome statistics are not supplemented by a more comprehensive recording of all case adjournments and ineffectiveness. Adjournments affect all stages of the court process but the measurement in the Judicial Statistics does not provide a view of this - it only reports on the outcome of the first trial date. As a result the judicial statistics are incomplete as a management information tool.
- 3.17 Secondly, as a measure of trial outcomes, the Judicial Statistics should provide information that is comparable to England and Wales. This was the original intention behind the CJINI recommendation which prompted the justice system to report publicly on trial outcomes. As a result of the CJINI's work, the NICTS was charged with gathering and reporting this data in 2013. However, no additional resources were provided by the Department, so the NICTS made use of its existing management information system. The nature of this system, and its unsuitability for statistical analysis, means that running the required reports is a cumbersome and resource intensive process, requiring a significant amount of manual intervention. It is not possible to report the data on a similar basis to England and Wales (which counts all listed trial dates, not just the first day), defeating one of the key purposes of the reporting. Updating existing organisational information systems to support collaborative working is one example of the financial costs which are incurred by implementing true partnership working.
- 3.18 Thirdly, the analysis which accompanies the main figures is subject to significant scepticism over the accuracy of the primary information it reports. Responsibility for recording the outcomes of trials rests with NICTS clerks at the trial. Clerks are required to record a potentially large amount of information at the end of a trial or hearing, some of which is of critical importance to the integrity of the overall legal process. In comparison, reporting of the reason for adjournment is arguably less important. Recording the reason for adjournments can also be made difficult as there is often no explicit confirmation of the cause in court, resulting in uncertainty as to which of the parties is responsible for the adjournment (the prosecution, the defence, or the court). The result is that the organisations who could benefit from this information do not trust the publicly produced reports.
- 3.19 The absence of robust performance information systems and information sharing protocols is illustrative of a collaborative working arrangement that was not fully developed prior to its operation. As a result of these weak foundations, the system struggles to confront the inevitable difficult and challenging issues which arise during any public sector partnership working arrangement. Until these underlying issues are fully addressed, the potential benefits of collaborative working are not likely to be achieved. We consider how far the new performance frameworks being implemented by the justice system have resolved this issue in **Parts Four** and **Five**.
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## Part Four: Reform initiatives

4.1 Since 2015 the justice system has begun to implement a multi-faceted reform programme, which has involved:

- legislation intended to impose changes which support fundamental, long-term reform;
- procedural initiatives intended to improve the operational performance of, and cooperation between, criminal justice organisations; and
- a new performance measurement and reporting framework to support the effective governance of criminal justice as a system.

This section of the report provides a short summary of the key reforms which have been implemented to date.

### The Justice Act was intended to transform the legislative environment

4.2 The Justice Act received Royal Assent in July 2015, and brought together a number of different initiatives into a single legislative programme. The most important reforms contained within the Act, particularly in the context of Crown Court offences, are those related to statutory case management, encouraging earlier guilty pleas, and reform of the committal process.

4.3 Statutory case management is the legislative response to the debate over performance issues and behaviours which affect case progression at court (see paragraphs **2.17** to **2.22**). Essentially, the Act paves the way for the standards set out in the Lord Chief Justice's Practice Note to be put on a statutory footing.

4.4 In order to facilitate earlier guilty pleas, the Act aims to improve transparency on the level of credit available to defendants for entering an early guilty plea. This requires a judge to state the reduction which would have been applied to a sentence, had a plea been entered at the earliest reasonable opportunity when sentencing a defendant.

4.5 The reform of committal is the Department's first move towards eradicating a judicial process which is widely considered as providing minimal value whilst imposing onerous demands upon victims and witnesses. Committal is the mechanism used to admit cases to the Crown Court. When a defendant is first charged with an indictable offence, a committal hearing held in a Magistrates' Court will determine whether there is sufficient evidence against a defendant to justify a trial at the Crown Court. At its worst, committal can effectively amount to a preliminary trial, with victims and witnesses required to provide testimony which they will have to deliver again at trial in the Crown Court. This is, at the least, stressful to participants and in some cases may deter them from attending for trial. The Act removes the need for committal

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hearings where a defendant intends to plead guilty, or where they are charged with murder or manslaughter. The Act also provides for the future removal of committal for other offence types.

## The Indictable Cases Pilot delivered impressive improvements in investigation and prosecution performance

- 4.6 The Indictable Cases Pilot (ICP) was the justice system's response to avoidable delay arising from issues originating at the investigative stages of cases (see paragraphs **2.6** and **2.7**, and paragraphs **2.12** to **2.15**). The pilot involved developing new protocols and processes within and between the PSNI and the PPS, based on a number of key principles:
- earlier engagement between the PSNI and the PPS to provide pre-charge advice regarding case building and case strategy;
  - earlier engagement between the PPS and defence representatives to narrow issues and, where possible, secure earlier guilty pleas; and
  - the use of proportionate evidence gathering to minimise nugatory police investigative time and costs.
- 4.7 The ICP was launched in January 2015, and included all indictable offences arising in the County Court Division of Ards. The pilot was originally intended to run for one year, but due to the effects of the Crown Court legal aid strike in 2015, was extended until June 2016. Adherence to the principles delivered significant improvements in terms of the time taken to make a prosecutorial decision and to take cases to court. The pilot reduced the time taken from the date an offence was reported until a defendant was committed to the Crown Court by 63 per cent.
- 4.8 In addition to addressing problems at the investigative stages of cases, the pilot was also intended to support more effective court proceedings and support the achievement of earlier guilty pleas. The pilot did not provide clear evidence of a positive impact in either of these aspects and as a result the potential benefits remain uncertain.

## The principles applied during the ICP are currently being tested on a larger scale

- 4.9 The ICP was a small-scale exercise which achieved impressive results. The pilot included 111 cases, although only 54 had been completed by the end of the pilot period. Consequently, analysis of the ICP's results was based on this smaller sample rather than the entire population of cases covered by the pilot. As a result of the small sample size, statistical techniques which
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## Part Four:

### Reform initiatives

normally would be applied to extrapolate the results to a larger population could not be used effectively. This leaves a question mark over whether the same results can be achieved across the Crown Court system as a whole.

- 4.10 Upon completion of the ICP, some stakeholders advocated the full roll-out of the principles across Northern Ireland. However, the PPS had staffed the scheme through the deployment of three of its most senior prosecutors to work on ICP cases only. These prosecutors operated under the direct management of a Regional Assistant Director who was also involved in assisting with case work. Based upon records maintained by the PPS during the exercise, it is estimated that ICP cases required around 30-50 per cent more prosecutor time than would typically have been spent on those cases. The PPS argued that this time investment could not be extended to cover all indictable offences in Northern Ireland.
- 4.11 One critical omission from the analysis of the pilot's performance was a detailed assessment of its financial implications. The ICP was in nature an 'invest to save' project. Whilst additional costs were created in some areas of the system, there should have been efficiency savings elsewhere which may have driven down overall costs. However, no comprehensive analysis of the full costs and benefits incurred during the pilot are available. The absence of such data meant the justice system could not build a consensus on the true balance of costs and benefits across all the various organisations. We consider that a financial evaluation is critical to a complete appraisal of the pilot's results.
- 4.12 Instead of a full roll-out across all of Northern Ireland, the justice system agreed that the ICP principles would be maintained only for murder and manslaughter cases. Meanwhile, the PPS worked on developing a realistic, larger-scale implementation of the ICP principles. In 2016 the PPS received funding under the 'Fresh Start' initiative<sup>22</sup> to implement a roll-out which would extend the application of the principles to cover all serious drugs, attempted murder, and serious assault offences across Northern Ireland. This means that around one quarter of all indictable offences will be covered by the principles, with the exercise intended to last from 2017 to 2021.

### The Department has taken a lead in developing a new system-wide performance framework

- 4.13 In order to address the absence of an effective overarching performance framework, the Department has led work on developing new monitoring and reporting arrangements. In 2016 a new reporting model was proposed and accepted, involving:

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22 The Fresh Start initiative was a series of inter-related proposals agreed by the Executive which provided funding for initiatives designed to address some of the most intractable societal issues affecting Northern Ireland. The agreement included a funding stream for initiatives designed to end paramilitarism and tackle organised crime.

- adopting true end-to-end times as a basis for measurement;
- moving from a mean to a median based measure of average performance;
- reporting performance over time to allow for comparison between suitable timeframes; and
- reporting performance at specific stages within the justice process to identify trends.

Since then, baseline datasets covering the previous five financial years were established to provide a reasonable benchmark to measure future performance.

- 4.14 As part of its Programme for Government 2016-2021 Delivery Plan, the Department has recognised the need to supplement guideline time limits with other qualitative measures to provide a more comprehensive measurement of performance. As a result, performance monitoring will include measures focused on public confidence and the experience of victims and witnesses.
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## Part Five: Challenges to reform

- 5.1 Establishing a multi-dimensional reform programme for the criminal justice system is a welcome development. Successful reform would result in a justice system with:
- faster end-to-end times for the completion of cases;
  - higher quality investigation and prosecution files;
  - stronger arrangements governing working practices at key interfaces between organisations;
  - fewer adjourned hearings and trials at court; and
  - earlier guilty pleas by defendants.
- 5.2 This section of the report assesses the degree to which the current reforms appear likely to achieve this, measured against two main criteria:
- how likely each of the individual reforms is to contribute to a more effective justice system; and
  - to what extent the reform programme in its totality reflects a more fundamental step-change in the system, and the implementation of a truly collaborative working model.

### **The key challenge for the ICP is to achieve similar results at a larger scale**

- 5.3 The current roll-out of the ICP principles is an important test of their wider-scale applicability and sustainability. Operationally, it remains to be seen to what extent the results from the pilot exercise can be replicated over an extended period of time. The large increase in the volume of cases to which the principles will be applied comes with a risk that the practices and processes which delivered the benefits in the pilot will be diluted at a larger scale. The system may find some of the offence types included in the roll-out to be resistant to the principles. The justice system will need to carefully monitor and manage such instances.
- 5.4 The results achieved during the pilot may either be amplified or muted by the impact of other reforms being implemented in parallel. For example, stakeholders highlighted the gathering of medical evidence as a consistent source of difficulty and delay. This would appear to be of direct importance to the roll-out, given the inclusion of serious assaults and attempted murder in the range of offences covered. The justice system needs to establish a better relationship with the Department of Health and the Health and Social Care Trusts to facilitate the earliest possible provision of medical evidence. We understand that work has begun in this area, but is currently hampered by the wider political context.
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- 5.5 One of the main weaknesses of the original pilot was the lack of detailed financial analysis of its costs and benefits. The justice system emerged from the pilot without a clear understanding of either, and with some amount of disagreement between justice organisations over the overall balance between the two. Whilst the current roll-out has been accompanied by a range of performance indicators against which to measure its impact, these do not include detailed financial analysis.
- 5.6 The exclusion of financial analysis is mainly a result of the absence of financial systems to provide readily available information on overall criminal justice expenditure, and expenditure on particular functions and processes. This represents a clear weakness in governance of the justice system.

### The Justice Act was unambitious in key areas where transformation is needed and its links to longer term reform are not clear

- 5.7 The Justice Act is a step in the right direction but the scale of its intervention in the areas that it seeks to reform is limited. In our view further action is necessary to deliver the transformative impact on the justice system that the Act intends. This is evident in the areas the Department has identified as being the most important immediate reforms: statutory case management and committal reform.
- 5.8 Statutory case management is about tackling the culture of adjournments. A number of stakeholders remain sceptical as to whether the Act will have a significant effect on behaviours and experiences in Court. The final regulations, while not yet complete, are not intended currently to go beyond reasserting the directions contained in the Lord Chief Justice's 2011 Practice Note (paragraph **2.20**). Consequently, the Department's plans do not appear well placed to initiate the culture change necessary to deliver a better service to victims, defendants and witnesses.
- 5.9 The Department has begun the process of eradicating the committal process. However, the Justice Act is not yet underpinned by a timetable or detailed plan for abolition. While the Department informs us that plans are being developed for the offence types to be covered in the next stages, it remains desirable that the overall process be mapped transparently for all stakeholders. However, the potential benefits resulting from the abolition of committal will only be maximised if abolition is accompanied by other reforms of the system. In particular, full implementation of the principles underlying the ICP will be critical in supporting overall improvements in timeliness and quality.
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## Part Five: Challenges to reform

### **Recommendation 3:**

The Department should establish an action plan and timetable for the eradication of the committal process.

### **Gaps remain in the performance framework necessary to support collaborative service delivery**

- 5.10 The justice system does not present itself as a coherent, integrated partnership to those outside its boundaries. There is no clear and shared understanding between organisations of how the end-to-end process operates or how it should operate. More work is required if it is to become, and be seen as, a coherent collaborative system, and not one dominated by thinking rooted in organisational independence. Efforts to improve the performance framework are welcome steps in this direction.
- 5.11 It is widely accepted the justice system cannot function effectively until the various justice organisations work more closely together. The procurement of a new Causeway management information system will be an important tool in helping agencies work more closely. However, this will still require behavioural change, supported by effective collaboration within the CJB and the CJPDG. This includes putting in place clear lines of accountability; quality information systems; and a transparent reporting framework. This framework needs to demonstrate real improvement on the current levels of avoidable delay, which should be subject to continuous review.

### **Recommendation 4:**

The CJB, working with the CJPDG, should establish a clear and shared understanding of the end-to-end criminal justice process, with a focus on securing effective collaborative working to reduce avoidable delay in the management of cases.

### **Recommendation 5:**

The CJB, working with the CJPDG, should take a lead in developing and implementing protocols around the sharing of performance and financial management information between justice organisations.

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**Recommendation 6:**

The CJB, working with the CJPDG, should establish processes which ensure that performance is analysed consistently, and that lessons which can deliver performance improvement are learned and shared across the system.

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# Appendices

## Financial Analysis

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## Appendix 1: Financial Analysis

There is currently no reliable means of establishing the cost of the criminal justice system, of individual processes within the system or of quantifying the inefficiencies resulting from poor performance. In order to provide at least some financial context to our assessment we have included a brief, high level analysis of annual expenditure trends for the organisations. This analysis has been based on the annual unringfenced resource DEL outturn of all those organisations reviewed. These figures have been adjusted for one-off uncomparable items, include cash utilisation of provisions, and exclude non-cash expenditure.

We recognise there are a number of issues affecting the strength of the conclusions drawn from this analysis. We are unable to remove expenditure from justice organisations which relates only to the areas of the justice system under review. For example, we are unable to adjust the expenditure for the NICTS to remove expenditure related to the delivery of civil justice. We have also not made any such adjustment to the figures for England and Wales.

We have, however, made some adjustments to the DEL expenditure figures for Northern Ireland organisations to try and make our analysis of the change in expenditure over time more accurate. For all organisations, we have excluded costs incurred as a result of the Voluntary Exit Scheme in 2015-16. This significant expenditure was a result of a one-off event and not related to the delivery of justice. Its removal means that the calculation of reductions in organisational expenditure between 2011-12 and 2015-16 is greater than it would have been, had we included this item.

Of the other adjustments applied, the most significant have been in respect of the PSNI. For 2011-12 and 2015-16 we made an adjustment to remove one-off high value expenditure items. The total costs associated with these were £79 million in 2011-12 and £8 million in 2015-16. The effect of this adjustment is to lower the level of reduction in expenditure we have reported. If we had not adjusted, the overall reduction for the PSNI between 2011-12 and 2015-16 would have been 21 per cent, rather than 12 per cent.

In order to calculate expenditure trends for England and Wales, we have used resource DEL outturns as reported in financial statements. However, without a process of dialogue with criminal justice organisations in England and Wales, we have not made any adjustments to these figures to address one-off uncomparable items, cash utilisation of provisions or non-cash items. We recognise that the absence of such adjustments weakens the strength of the comparison we are making.

We have also used a different basis for calculating total police expenditure in England and Wales. Unlike Northern Ireland, which has a single police service, there are 43 separate police forces across England and Wales. England and Wales also has a more complicated funding mechanism for policing. Rather than reviewing the expenditure outturns for 43 separate forces, we have instead based our analysis on budgeted central government funding of all forces.

As a result two key issues arise which impair the quality of the comparison. Firstly, what we have measured for police forces in England and Wales is the change in planned expenditure funded by central government, rather than actual expenditure. Secondly, we have been unable to measure either an overall

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or local trend for expenditure generated by police services through the precept – a mechanism by which services in England and Wales can generate funding locally, independently of central government. There is no equivalent funding mechanism for the PSNI. The precept is used to varying degrees across England and Wales, and so the actual effects are specific to each force.

Despite all these issues, the figures we have calculated for English and Welsh forces are broadly consistent with the findings of research recently published by the Institute of Fiscal Studies (IFS), which covers a slightly different period. Between 2010-11 and 2014-15, the Institute estimates that central government funding for English and Welsh forces fell by 20 per cent, but that total expenditure fell by only 14 per cent<sup>23</sup>. In our analysis, we have calculated that police 'expenditure' has fallen by 17 per cent between 2011-12 and 2015-16. One of the of the key causes of the gap between the trend we have calculated and actual expenditure trends reported by the IFS will be the effects of variances in the application of the precept which we have not measured.

In addition to these general issues, each of the criminal justice organisations has also identified a number of specific issues relating to their own position.

## PSNI

- Police forces in England and Wales have been allowed to build up cash reserves. This was particularly the case during the first decade of the century, a time when police funding increased drastically. Services which built up reserves have been able to use these during the last seven years of restricted funding to spend a greater amount than they received in funding in a particular year.
- There has been a priority placed upon collaborative working to share the costs of particular operational and administrative functions amongst English and Welsh forces. As a result English and Welsh forces have benefited from economies of scale unavailable to the PSNI.
- The PSNI points out the unique historical and political context in which it, and other justice organisations in Northern Ireland, operate. The PSNI estimates that around 30 per cent of total expenditure is driven entirely by this context, which does not affect English and Welsh forces. Whilst we accept this point in principle, we have not seen any evidence or documentation to support this quantification.

## Appendix 1: Financial Analysis

### PPS

- The PPS has fewer than 500 Full Time Equivalent (FTE) employees, compared to 6,000 in CPS. The much larger CPS is able to avail of economies of scale, particularly in terms of the provision of headquarters and specialist functions.
- The comparison takes no account of the differing profiles of case work between the jurisdictions, nor of the differences in the legislative and judicial frameworks which operate.
- The PPS figures do not reflect savings which will accrue in future from the recent closure of half its office estate. The benefits of this decision will not fully materialise until all of the buildings have been sublet.

### NICTS

- The NICTS has fewer than 664 FTE employees, compared to 16,700 in HMCTS. It also has fewer than 72 Salaried Judicial Office Holders, compared to almost 1,800 in HMCTS. The much larger HMCTS is able to avail of economies of scale.

# NIAO Reports 2017 and 2018

Title	Date Published
<b>2017</b>	
Continuous improvement arrangements in policing	04 April 2017
Management of the Transforming Your Care Reform Programme	11 April 2017
Special Educational Needs	27 June 2017
Local Government Auditor's Report	05 July 2017
Managing Children who Offend	06 July 2017
Access to Finance for Small and Medium-sized Enterprises (SME's) in Northern Ireland	26 September 2017
Managing the Risk of Bribery and Corruption: A Good Practice Guide for the Northern Ireland Public Sector	14 November 2017
Homelessness in Northern Ireland	21 November 2017
Managing the Central Government Estate	30 November 2017
<b>2018</b>	
Continuous improvement arrangements in policing	27 February 2018
Type 2 Diabetes Prevention and Care	6 March 2018
Financial Auditing and Reporting: General Report by the Comptroller and Auditor General for Northern Ireland – 2017	13 March 2018

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