Northern Ireland Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Criminal Justice (Committal Reform) Bill: Public Prosecution Service

11 February 2021

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Paul Givan (Chairperson)
Ms Linda Dillon (Deputy Chairperson)
Mr Doug Beattie
Ms Sinéad Bradley
Ms Jemma Dolan
Mr Gordon Dunne
Mr Paul Frew
Ms Emma Rogan
Miss Rachel Woods

Witnesses:

Mr Michael Agnew	Public Prosecution Service
Ms Francesca Keaney	Public Prosecution Service

The Chairperson (Mr Givan): From the Public Prosecution Service (PPS), I welcome Michael Agnew, the deputy director, and Francesca Keaney, the head of the strategic improvement team. The session will be reported by Hansard, and a transcript will be published on the Committee web page. I will hand over to you to outline some of the key issues, and then we will move into questions from members.

Mr Michael Agnew (Public Prosecution Service): Thank you, Chair. May I check that you can hear us loud and clear?

The Chairperson (Mr Givan): Yes, you are coming through no problem.

Mr Agnew: Great. Chair and Committee, thank you for the invitation to give evidence today on the Criminal Justice (Committal Reform) Bill. We hope to be able to provide a PPS perspective on the important changes that the Bill is designed to implement.

In our opening statement, we want to focus on two key issues. I will address the Committee on the first issue, which relates to whether the right to require prosecution witnesses to attend a committal and give oral evidence should be retained. My colleague Francesca will address you on the second issue, which relates to the expansion of the range of offences that will be subject to the new direct committal procedures.

The PPS supports the abolition of oral evidence at any hearing intended to address the sufficiency of evidence available to place a defendant on trial. We will make the following three key points on the current right to require prosecution witnesses to attend and give evidence at a committal hearing. First, the calling of witnesses and, in particular, victims undoubtedly adds stress and often trauma to

their experience of the criminal justice system. It is recognised that having to give evidence twice — once at committal and again at trial — places an unnecessary and unfair burden on victims. It is also of note that cases in which witnesses are cross-examined at committal often resolve subsequently by way of a guilty plea in the Crown Court. It is our view that many of those cases would have resulted in a guilty plea even if there had been no contested committal proceedings. In such cases, the proposed reforms will prevent a victim from having to give evidence at all, and the resolution of cases without victims giving evidence, where that is possible and consistent with a defendant's fair trial, is something that the PPS welcomes.

Secondly, it is our experience that mixed committals can also lead to very significant delay. While the focus has quite properly been on the impact on victims, often in cases involving sexual offences, it is important to be alive to the benefits of the proposed reforms in other types of cases. An obvious example is prosecutions for terrorist offences, and we are aware of many examples of mixed committals that have added up to a year — in some cases, more than a year — of avoidable delay. They have also generated significant additional costs.

Thirdly, there are already significant checks and balances in the system that ensure that the defendant's fair trial rights are adequately protected. There is the opportunity to challenge the sufficiency of evidence on the papers in the Crown Court. The seriousness of providing a truthful witness statement is brought to bear on a witness by the declaration that the witness must sign, which advises them of the potential for prosecution if the statement contains a declaration about anything that they know to be false or do not believe to be true.

Finally, there is the fact that the test for prosecution has been applied to the case by the PPS before anyone is sent for trial under the current procedures. The calling of oral evidence at committal does not, in our view, make any significant contribution to the filtering of weak cases. While the figures taken from the court database indicate that 75 out of 1,765 defendants were not committed for trial, our enquiries have not identified any case in which the undermining of oral evidence by cross-examination has resulted in the case being dismissed. I should say that we were looking at figures specifically for 2019.

I can provide the Committee with further details in due course in relation to some potential questions that will follow, but the reasons, in these cases, for defendants not being returned for trial include cases in which defendants did not appear, defendants had died in the intervening period and, in a significant number of cases, witness difficulties such as a failure to attend or a withdrawal statement being made. In those cases, the prosecution proactively withdrew the case rather than the case being dismissed by the judge. In a significant number of the cases identified, proceedings were, in fact, subsequently recommenced — for example, because an arrest warrant was subsequently executed.

If oral evidence at committal is to be abolished, it follows that there should be no oral evidence at an application to dismiss, otherwise the policy objectives of the Bill will be undermined and a defendant will have different rights, depending on the procedure by which they are sent to the Crown Court. An application involving oral evidence in the Crown Court would also generate significant additional costs. While the relevant English provisions originally provided for oral evidence at an application to dismiss with leave of the court, a subsequent partial repeal means that the defence, similar to the proposal for this jurisdiction, can no longer require prosecution witnesses to give oral evidence at such a hearing.

Finally, in relation to the proposal to apply an interest-of-justice test to the requirement for witnesses to be called at a pretrial hearing, we accept that that would afford better protection to victims and witnesses than presently exists and would also reduce the number of lengthy and costly committals. However, the PPS view is that the Department's proposal provides better protection, without compromising a defendant's fair trial rights. Furthermore, it provides the victim or witness with certainty from the outset of the proceedings that, in the event of a contested case, they will be required to give evidence only once at trial. The alternative is that they are left with the possibility of giving pretrial evidence hanging over them until and unless there is a ruling from the judge that it is not in the interests of justice for them to do so.

I will now hand over to Francesca, who will explain the second key aspect of the Bill, which relates to how it will expand the range of offences that will be subject to the new direct committal procedures.

Ms Francesca Keaney (Public Prosecution Service): It was originally intended that direct committal would apply only to cases in which an accused was charged with murder or manslaughter. The Bill broadens the scope of offences that will be brought within the provisions to those where an accused has been charged with any indictable-only offence. Given the PPS commitment to reducing avoidable

delay and the time that has elapsed since the 2015 Act was passed, we are supportive of a more ambitious approach to the initial roll-out, which will also assist in the delivery of various recommendations made by Sir John Gillen, the Criminal Justice Inspection Northern Ireland (CJINI), the Independent Reporting Commission (IRC) and others. To assess the impact of this change, it is important to understand fully how direct committal is intended to operate. When the defendant appears before a Magistrates' Court charged with an indictable-only offence, section 11 of the 2015 Act requires the court to commit the accused to the Crown Court forthwith. The nature of the offence charged requires the court to act then and there without consideration of the sufficiency of the evidence. The significant impact of this change will be felt in respect of charged cases. Currently, charged cases are remanded in the Magistrates' Court until a decision is taken and preliminary inquiry (PE) papers are served. Cases are then sent to the Crown Court when, from the prosecution's perspective, they are essentially trial-ready. Under the new provisions, any defendant who appears before a Magistrates' Court charged with an indictable-only offence will be transferred immediately to the Crown Court. It has not yet been determined when the first appearance in the Crown Court will be, but, in England and Wales, under analogous provisions, it takes place between 28 and 35 days later. That is a very significant change to Northern Ireland's criminal justice system. It is also what has led to some people expressing concerns about the Crown Court becoming an expensive remand court. There is undoubtedly that risk, but the opportunity provided by the proposed reforms is that it will allow the Crown Court judge to actively manage serious cases from the outset. That may result in the early identification and disposal of the cases that can be resolved by way of a guilty plea. In cases that are not suitable for an early guilty plea, the judge can ensure that parties focus on the key issues, agree on witnesses where possible, take other steps intended to reduce the time taken to get to trial and the duration of the trial itself. That approach has been adopted in England and Wales and is known as better case management. It was recommended by Sir John Gillen in his report on serious sexual offences, and we strongly advocate it.

The PPS considers that the Bill represents a very important first step towards transforming how the criminal justice system in Northern Ireland deals with serious criminal cases. Our view is that a number of further measures will be required to create the cultural change necessary to maximise the opportunities presented by the new processes. Those include mandatory duties of direct engagement between the parties, proportionate file building and robust case management by the judges. It also requires a revised legal aid framework that supports a front-loading of work and incentivises the efficient conduct of cases.

The PPS looks forward to engaging with our criminal justice partners once the final shape of the Bill is ascertained in order to work on the detailed arrangements that will support the Bill's objectives of tackling avoidable delay for the benefit of victims, witnesses and the wider public.

Mr Agnew: That concludes our opening remarks. We hope that they are of assistance to the Committee. We will, of course, do our best to answer any questions that the Committee may have.

The Chairperson (Mr Givan): Thank you. That is very helpful. I will start with a couple of questions. The Law Society and the Bar have both made their cases very articulately in highlighting how the abolition of mixed committals would not speed up the process, given that it is the investigatory work that takes time. On what basis would the abolition of mixed committals speed up the process if you still have the main stumbling blocks around the work that needs to take place? Are you just moving the problem into the Crown Court?

Mr Agnew: There are a couple of aspects to that. First, for PEs that go through on the papers, there is little additional delay. However, if there is a contested committal, that can add significant delay. As I said in my opening remarks, we have many examples of terrorist cases taking six to twelve months more. Recently, I looked at a sexual offence case that took three years from the first date for committal and the actual return for trial. In those cases, it will automatically make a difference.

The more important point, potentially, is what is required to go along with the direct transfer proceedings. As we have tried to explain, and there has been some confusion, our understanding of the legislation is that, if the defendant is charged with an indictable only offence at their first appearance in the Magistrates' Court, that case will automatically be transferred to the Crown Court. Therefore, his second appearance will be in the Crown Court, and that provides an opportunity to manage the case in a way that just does not happen under the current systems. As was explained previously, the current system is based on a committal process where there is no mandatory engagement between the prosecution and the defence. The police and the prosecution build their case in a way that covers every base. It is a belt and braces, gold standard approach that gets all the

evidence on the papers. After that evidence is served on the defence, there is a committal and an appearance in the Crown Court.s

This Bill will get the cases into the Crown Court much earlier, and there are a number of potential advantages to that. First, the Crown Court judge can put pressure on the parties to identify cases that might be resolved early by way of a guilty plea. Cases that cannot be resolved early by way of a guilty plea can be actively managed to ensure that the key issues are focused on, and anything that can be agreed is agreed. That, we think, is missing from the current system. An indictable cases pilot is trying to apply some of those principles in certain serious cases, but it is all done on a voluntary basis, and there is no judicial oversight of the process as the case is not in the Crown Court. The idea is that, if the cases can be taken to the Crown Court, we can have a new level of case management whereby not only are the prosecution and defence present but the defence will have instructed counsel by that stage. That last point can be important because, sometimes, until counsel is instructed and advice is given, the defence may be reluctant to make concessions. The idea is that all the parties are there under the close scrutiny of a senior judge, which would give us the opportunity to narrow the issues, thereby tackling delay.

The Chairperson (Mr Givan): Do only Crown Court judges have the influence to drive a case forward? Do they have different powers from district judges?

Mr Agnew: It is different because the district judge is looking to get a case to committal. When a case appears before a district judge, as was explained by the Law Society, it can be a matter of seeking updates and wondering how long it will take to get the evidence and how long it will be before the prosecution will be in a position to serve its evidence so that there can be a committal hearing. That engagement does not involve trying to identify whether a case might plead guilty or what issues can be agreed; it is based solely on getting to committal and getting through committal. It is not based on setting up the case for trial, getting to trial quickly or reducing the length of time that the trial might take. It is a very different type of supervision.

The Chairperson (Mr Givan): The Law Society suggested that magistrate-level committal proceedings could be retained on the basis that the district judge only reviewed papers and did not have witnesses coming forward to give oral evidence, bearing in mind the additional stress of giving evidence twice. Is that worth considering? What view do you take on that?

Mr Agnew: That, effectively, retains the status quo. As I have tried to indicate, we have safeguards in the system. The safeguards involve a senior prosecutor applying the tests for prosecution in indictable only offences. The evidence indicates that it is in the most exceptional cases that a district judge will disagree on whether there is a case to answer. In fact, the test that the prosecutor applies is arguably a higher test than that which a district judge is applying.

The other point is that, if we continue to have a process by which the district judge reviews all of the papers, time is required to build the case and the papers, and then to serve them on the defence and on the court. That is what we are trying to move away from. We want to try to get the case into the Crown Court much earlier so that we can build cases, identify the guilty pleas and narrow the issues on the not guilty pleas. In your earlier session, evidence was given about the time that it takes to prepare cases, and there is no doubt that there are issues around resources and delays. Therefore, the other benefit is that, if we can ensure that when we get an expert report, it will be one that goes to an issue that will be in dispute at the trial, that is much better than having gone through the nugatory work or obtaining a report that relates to something on which, ultimately, a concession is made. We are trying to focus the resources. The idea is that we will have a much more efficient system where cases are built proportionately. Where there are contested issues, absolutely, those might require the most detailed forensic examinations. However, where issues can be agreed, that is done and recorded, and the parties can move on to the other issues.

The Chairperson (Mr Givan): OK, thank you. That has been helpful. I will bring in other members.

Ms Dillon: Thank you very much for the presentation. It certainly has been helpful. From one presentation to the next, we are hearing entirely different things. That is fair enough. You are coming at this from different angles, and I accept that.

I have a technical question. You raised the issue of a potential risk as the result of the removal of section 10 of the Justice Act (Northern Ireland) 2015. You said that guidance would be sufficient to

address that. Are you sure that guidance would be sufficient or is there a need to amend the legislation?

Mr Agnew: We think that guidance would be sufficient. The risk that we referred to in our written submission was that there is still an application to dismiss. Under section 10, when a case went up, because somebody was indicating that they were going to accept their guilt, they could not have it both ways. They could not say, "We accept our guilt, but when you serve evidence on us, we will say that there is insufficient evidence". That was built into the legislation, but we think that that can be accommodated under any regulations, Crown Court rules or practice direction that might support the direct transfer legislation. So, if somebody gives an early indication of a guilty plea and comes before the Crown Court, it would be a brave defence representative who might try to make an application to dismiss having indicated a guilty plea. The defendant would be entitled to change his mind before entering his not guilty plea, but there are ways of managing that. We think that adjournments to allow the prosecution to build its case would be sufficient to address any risk.

Ms Dillon: The Chair has already spoken about this, but I would like to get a bit more detail. With direct committal, how can we be certain that, without additional resources for the PPS and the PSNI, we are not just moving the delay from one part of the system to another?

Mr Agnew: If we just transfer a case to the Crown Court and then do exactly the same as we do currently, which is a series of remands without defence engagement while we build our case, there is that risk. However, the way to avoid that is to ensure that there is active case management so that the cases that can be resolved quickly, by way of a guilty plea, can be addressed in the Crown Court. Under the current processes, before a guilty plea can be entered, we have to build committal papers, have a committal hearing and get the defendant into the Crown Court. Potentially, we can get those guilty pleas a lot earlier in the process.

On the contested cases, if we can narrow the issues between the parties, we can, hopefully, get to the core of the issue much more quickly than we can under the current system.

Ms Dillon: OK —.

Mr Agnew: I am sorry; may I add to that? Our point is that, for that to be effective, we do not want to have lots of hearings in the Crown Court, which is a way to rack up expense. One of the principles that is applied under the arrangements that work in England is to have fewer and more effective hearings. We want to have early engagement between the parties to resolve as much as possible without the need for judicial hearings. However, we need that first judicial hearing to be one that really focuses the minds of the parties and sets out a clear pathway either to disposal by way of a guilty plea or the case being prepared for trial. Then, we need the parties to comply with the detailed directions that, we hope, the judges will set out at those hearings.

Ms Dillon: That is my point: do we need to put something into the legislation to ensure that that happens? A lot of that is about relying on people to do the right thing. Do not get me wrong: I am not for one second saying that they will not. You spoke earlier about a cultural change, and that is what is needed throughout the system, from the investigating officers to the PPS, the judicial system and those who serve it, such as solicitors and lawyers. I believe that a cultural change is needed in the approach to dealing with this. How do we ensure that, in the interim, we give the greatest protection while that cultural change happens, because it will not happen overnight?

Mr Agnew: No, it certainly will not. England and Wales have criminal procedure rules that set out how Crown Court proceedings should progress after they are directly transferred. They also have a number of practice directions, and all of that is brought together under the umbrella of better case management. A handbook effectively summarises the key principles of those practice directions and criminal procedure rules, and it gives all the participants a step-by-step process to follow. As Francesca said, we would strongly support that. Sir John Gillen, who watched it in operation in England and Wales, was really impressed by it.

We see it being not so much a matter for this legislation. What we will need is a clear framework, not in the Bill but by way of practice direction or, potentially, in the Crown Court rules or some sort of statutory case management rules. We need that framework, and there is a lot of work to be done, once we know the final shape of the Bill, to achieve that. Getting a framework in place will involve very detailed conversations between all the practitioners — the defence, judges and us — so that, if those reforms come into force, everybody will know exactly what is expected of them. It will require strong

judicial leadership and a truly collaborative effort. There is no doubt that, as the prosecution, we will have to up our game, and the defence will have to engage much more than it does currently in certain types of cases. Then, the judges will have to hold us all to account.

Ms Dillon: I think that you are right. I would love to see that kind of approach. It sounds ideal, but I wonder whether it will happen.

Given that the Department seemed to have given the PPS some kind of indication of how the direct committal process would work, it would have been a good idea for the Department to have also given that information to the Bar Council and the Law Society, which have previously presented to us. That observation is not for you; it is more for the Chairperson. We need to speak to departmental officials about that. That is extremely important. It is good that the PPS has an understanding of it, but others should also have been engaged and given the same kind of understanding, Chair

I have one final question about an issue that the Bar Council raised last week. It is slightly outside this area. It relates to the disclosure process and the fact that the PSNI can now share electronically with the PPS footage from body-worn cameras, CCTV, probably mobile phones and stuff like that. There is the potential for the PPS, hopefully, sometime in the near future, to share it with the defence. Can you give me some idea of where we are with that and how quickly it can happen?

Mr Agnew: There is a project called the managing digital evidence project, which is overseen by the Department of Justice. There are three phases to it. The first phase involves the police sharing material over Box. I think that you have probably heard it mentioned quite a lot over the past few weeks. Box is a cloud-based storage system. Police upload the material to Box, a link is sent to the PPS and the PPS is able to view it. That is the first phase. It has gone live. Detailed work is being undertaken to iron out some of the teething issues that you might expect with a new process like that. It is proceeding at pace, and I know that significant improvements have been made.

The second stage of the process is our having our own cloud-based system. So, there is a second Box; a PPS Box, if you like. We can upload the digital material to that Box. The second stage involves our being able to do that and then being able to display digital evidence at court. That reduces the need for us to bring a disk to court in order to be able to display the evidence.

The third phase of the project involves sharing the digital evidence with the defence. You are quite right to focus on that; it is an important phase. Its importance has never been more true than in the current circumstances in which we are all working. There has already been engagement with the Law Society and, I believe, the Bar Council. Certainly, there have been meetings with the Law Society to try to start a conversation about that. It is quite a complicated process. These are quite significant IT changes. There are a number of data protection and General Data Protection Regulation (GDPR) considerations. There are IT issues and issues about authentications, which means making sure that, when the defence accesses a link, it is the solicitor and not somebody else who accesses it and that the access is to the right material, meaning the file on their case, and not something else. I know that it is quite a complicated project.

I am not sure that I can give you a definitive timescale for the completion of stage 3, unless you are aware of anything, Francesca?

Ms Keaney: No, there is no *[Inaudible.]*

Mr Agnew: I think that the Department's digital justice strategy talks about March 2022, but we have already been working towards, hopefully, a date that is considerably sooner than that. It is certainly something that we would like to progress with as much pace as possible, because there are undoubtedly benefits both for us and the defence.

Ms Dillon: Thank you very much. Chair, thank you for giving me a wee bit of leeway to ask that question. Maybe we need to get a written briefing on that from the Department. We could ask for that.

The Chairperson (Mr Givan): We will take a note of that point as a separate issue that we could pursue with the Department. I will bring in Gordon Dunne at this stage.

Mr Dunne: Thanks very much for your presentation, Michael and Francesca. We really appreciate your input.

You may have heard our discussion with the Bar Council. I raised the point about progressing cases and who is responsible for first, prioritising them and, secondly, progressing them on a regular basis. We heard a lot from the Bar Council about other bodies and about delays with forensics, the police, DNA evidence and all those issues, which can take up to a year. What has the PPS done to date to liaise regularly with those people to try to encourage them to put more resources into resolving those issues? I would appreciate your comments on that. Francesca, you mentioned that, as a result of the review, there would be "a robust case management by the judges". How will that impact on progressing cases through the courts?

Mr Agnew: I will offer some comments on the prioritisation and general progressing of cases first, and, if Francesca wants to add anything, she can do so.

A range of factors play into prioritisation. Some cases are charged and are before the court; therefore, somebody has been remanded either in custody or on bail, and that will be a relevant factor in deciding whether a case is a higher priority, particularly if somebody is in custody. There will be other factors, such as the vulnerability of any defendants or witnesses, so we seek to prioritise cases involving youths, and young defendants.

With regard to prioritising certain investigative actions, you mentioned, for example, forensic reports. If the case is prioritised for the reasons that I just mentioned, that will play into it. I am not particularly across the detail of what framework Forensic Science Northern Ireland (FSNI) or police cybercrime use to prioritise their work. I know that a Criminal Justice Inspection report dealt with cybercrime and the e-crime unit. Those bodies will no doubt prioritise work depending on the case type, whether it is a sexual offences or a national security case. So, a number of different factors can play into the prioritisation.

Progressing a case is ultimately the responsibility of the prosecuting team, which is the police and investigator, to try to ensure that evidence is made available as quickly as possible. In the cases of charged cases that are before the court, the court will seek to ensure that the case progresses towards a committal hearing, so it will also have a role in managing that. We have had an initiative for some time called proportionate forensic reporting (PFR) that we used on some work that we did in order to try to speed some of those processes up. That came out at the indictable cases pilot in 2013. Whenever we have a case that requires forensic evidence, we do not go for the full, detailed witness statement as a first step. There are a number of stages of reporting, so that allows the forensic science service to produce a much more concise report that will, hopefully, be adequate for a number of purposes. If a case is very serious or complex from the outset or if, at a later stage, it becomes clear that the evidence is going to be contested, the forensic science agency is required to invest more time on that case and to provide a more detailed report. That is one thing that we have tried to do to speed up the forensic side of the house.

The indictable cases pilot, which I mentioned, has been our main initiative to try to progress serious cases. It applies to murder, manslaughter, serious assaults and serious drugs cases. We certainly had a lot of success with that in the pilot, when cases were dealt with by small teams in a particular area, but it has been more challenging on a roll-out basis. Some of the reasons for that are due to the fact that it is voluntary. One of the big advantages to those proposed reforms is that, if we can get cases into the Crown Court, and this touches on the point about case management, we can have a Crown Court judge supervising the parties. Things like duties of direct engagement could be built into any rules. We see that as a very significant step in addressing delay. Francesca, is there anything that you would like to add?

Ms Keaney: With robust case management, we are aiming to hold the parties to account and to narrow the issues where possible.

Mr Dunne: Yes, I think that that is important. I like the point about holding parties to account. That is critical. The response that I got from Michael about that did not talk about anyone being held to account or having any estimated target dates for gathering evidence. There needs to be a focus on target dates and on trying to meet targets. Targets have not been mentioned here at all.

How do you see Crown Court judges having the resources, such as time and whatever, to progress cases through case management?

Mr Agnew: The key to that, as I mentioned a moment ago, is fewer but more effective hearings. England and Wales have been working a similar system for about 20 years. The better case management handbook that I mentioned explains briefly how they seek to achieve that.

I do not think there is any doubt that, certainly in the initial hearing, they consider that any further hearing in a Crown Court should — there is a slight IT issue on our side — take at least 20 minutes. There should be direct engagement between the parties in advance. There should also be a form completed that shows exactly the issues that have been agreed. The prosecution at that stage should also share as much evidence as they can.

The key to Crown Court judges having enough time is that we do not continually come back to court every four weeks. We have detailed directions that set out the time scales within which certain actions must be taken. You can then have administrative support — they are called case progression officers — who monitor compliance between the parties. That is only if we get into a compliance issue that cannot be resolved.

Hopefully, some issues can be resolved administratively or with even judicial involvement without having to go back to the court. However, we need to change so that we have that different way of working where we are really using the judicial time as effectively as possible.

Mr Dunne: OK, thanks very much.

Miss Woods: Thank you for your presentation. You state in your submission:

"Analysis is ongoing in relation to the impact upon resources for each of the affected agencies"

with regard to the proposed Bill, including yourselves.

Do you have any information on that, and who is conducting it? Legal aid reforms were mentioned, and in the submission, in particular in relation to clause 4. Will you elaborate on the effects that that change could have on legal aid?

Ms Keaney: I will speak about resources and leave legal aid to the deputy director. In terms of resources, we are working with the Department to look at costing and the impact that the Bill will have. One of those matters will be the expansion to the all-indictable offences that is proposed, because that will bring in other investigative agencies and the range of PPS teams. That is one aspect we are looking at.

Key to that is ensuring that we have the right people with the right skills in the right roles, and looking at redressing , where possible, if there are proposed impacts on Magistrates' Courts, and a proposed impact on the Crown Court, how that will look internally. That is something we are working on. It is still at preliminary stage. As you can imagine, it involves some modelling, by the Department and ourselves, to get a real understanding of where there may be pressure points.

The deputy director touched on new rules, for example case progression officers, and a pilot has been conducted on the importance of that. We recognise the importance of legal compliance in any direct committal process. That work is ongoing, and I believe that the Department is modelling the impact on the courts, for example, and we will be feeding into that as it moves along.

Mr Agnew: We have a set of legal aid rules that applies to the processes as we now have them. We are going to have a completely different set of processes for indictable-only offences. Cases will arrive in the Crown Court much more quickly, counsel will be instructed much more quickly, and the types of hearings will be different. All that needs to be factored into a revised scheme. I suppose that the payments that are, ultimately, settled in relation to the different types of hearings and so on can impact on the overall cost.

Another important factor in the context of legal aid is that, as I think I said in my submission, the defence are properly remunerated for work that needs to be done upfront at an early stage of a case. It is also important that the scheme incentivise the early resolution of issues.

It is our view that the legal aid scheme does not work to our advantage in that respect. The system has a payment called the "guilty plea 1 fee" for a case that pleads guilty without a trial date being fixed, and we have a second payment called the "guilty plea 2 fee", which is payable if a trial date is fixed.

When we did some analysis a year or two ago of our payments to counsel, we found that the guilty plea 2 fee was, on average, twice what a guilty plea 1 fee was. The guilty plea 2 fee happens at a later stage in the proceedings, so, quite often, additional work has been done, but the way in which the system works means that the fee is calculated in a different way. Arguably, it is not helpful to have a system that pays twice as much when a case is resolved after a trial date has been fixed, as opposed to when a case has perhaps been resolved on arraignment, at first appearance, and a trial date has not been fixed. We think that that is an important aspect of the reforms. It is important that the fee structures are fair and reflect the work that has been done, but we have to be careful not to create an incentive that works against what we are trying to achieve.

Miss Woods: I appreciate your opening that box of legal aid reforms and issues; we could be here all day. Do you think that the Bill needs to go further by setting out the parameters of what is required for legal aid reform, or does that need to be done separately?

Mr Agnew: That is a separate, detailed piece of work. The current committal reform programme has four strands, one of which is legal aid. So, legal aid is right up there, front and centre, as part of that ongoing work. As I understand it, there will need to be detailed work and a consultation process on legal aid reform. That is probably the most significant bit of work, and it involves all that operational work on case management that I talked about earlier. The legal aid piece on committal reform is another significant bit of work that is required.

Miss Woods: Thank you. Chair, I think that, especially when we are looking at this legislation, we need to be mindful of unintended, or, indeed, intended costings. Committal reform has been in the English and Welsh model for a while, as has the abolishment of committal proceedings. Have you had any conversations with CPS about how that is working? Is that the best model for us?

Mr Agnew: We have had a number of conversations about that over a period of years. I know that some of the senior CPS figures who were involved in delivering that have presented at different times to us and to the Department. We have relationships with some counsel in England as well, and we have had an opportunity to speak to them. *[Inaudible.]* I have to say that I think that a lot of that pressure will fall upon the police and the prosecution.

As for that model being successful and getting cases to trial more quickly, it is very difficult to compare data across the jurisdictions because cases are recorded differently in some respects. It is my understanding — I have to be careful here, because I do not have any figures to back this up — that indictable-only cases that are transferred directly get to trial significantly quicker than the very serious cases that take place here. Under the current system, it can take several years for some cases to get to trial here. Obviously, that is deeply unsatisfactory for us all. In England and Wales, however — this is a little bit anecdotal — you hear about very high-profile cases in the news and then, maybe in the same calendar year, you hear about them getting to trial. That is only possible because they have abolished committal. They take those cases into the Crown Court and apply robust case management to them.

Miss Woods: Thank you. I appreciate that the whole set-up is different, as is the case management. A lot of consultees talk in their responses about the comparisons with England and Wales and with other countries. I know that we do not know or cannot say for certain whether it is the best model, but I just wanted to know what conversations you have had about it.

Lastly, in its written consultation, the Law Society brought up issues involving the Bail Act, and we teased that out a little bit in the oral briefing just before this session. It was about having time limits built into the system in preparing cases and in dealing with cases in the court system. There are two aspects of it. Gordon touched earlier on having targets. Targets and time limits are all well and good, but if they will never be met, they will become completely redundant and ineffective. I am bit unsure on this, and I do not think that it is black and white. It is not as easy as saying that if targets and time limits are met, it will meet the interests of people in the justice system, including victims, perpetrators and people who are allegedly involved. What is your opinion on the Bail Act and extending regulations that are currently available to us in Northern Ireland but which have never been operationalised? What is your view on having targets for dealing with cases in the court system, both in the Magistrates' Court and the Crown Court?

Mr Agnew: I am not particularly familiar with bail laws. I know that bail has a legislative basis in England and Wales that does not exist here, but my understanding is that, generally, the principles

that apply to bail are largely similar. If somebody is remanded in custody, the defendant can apply for bail. They can then renew their application for bail if there is a change of circumstances, and one of the most common reasons for a defendant making a second application for bail is the time that has passed. Delay in cases will feed into the bail position in that way. A defendant will be able to come before a court and say, "I have been on remand for nine months, and I do not have a trial date yet". The judge will generally be quite sympathetic to that argument and will ultimately say that it is reasonable to detain somebody in custody only for a certain time. That is all I will say about bail.

On the statutory time limits, I agree with the sentiment that you expressed. I believe that the Northern Ireland Audit Office considered that at the time of its review. I do not know whether it is in the report, but I recall being at a briefing where representatives of the Northern Ireland Audit Office were asked whether they thought that was the way forward, and they said no. Sir John Gillen looked specifically at statutory time limits in his review of serious sexual offences and has a whole chapter dealing with delay. One of the aspects that he considered was statutory time limits. He said:

> *"research suggests that these statutory time limits have had a limited influence on reducing delays or the length of the criminal justice process. Extensions are common, and the key reason often relates to the defence requiring additional preparation time."*

Then, at paragraph 9.184, he confirmed that he did not recommend them and:

> *"they have little or no impact other than to show their impotence."*

That is the danger with placing statutory time limits. They also seem to be potentially quite an inflexible rule. I suppose that the flexibility is built in there in that you have the application to extend, but cases come in all different shapes, sizes and complexities and involve different issues. As a starting point, statutory time limits may not reflect the variety of cases that you can have.

Miss Woods: Thank you very much. That is all from me.

Ms S Bradley: Thank you for your presentation so far. In the objectives set out by the Bill, it is very clear to see the piece around victims, and there is agreement in the Gillen report. I am trying to hone in on understanding the piece where you are in agreement that there is, or will be, a realisation of a more efficient or faster process of delivery. What I am hearing from you and taking from this is that you are basically saying — please correct me if I am wrong — that the proposal to go to the Crown Court earlier ensures that, with a judge having an overseeing role, it is likely that the parties involved will work more efficiently. Are you suggesting that the delays are partially due to inefficient work being carried out at the moment? I do not want to put words in your mouth, but are we trimming back on a lot of research or building of cases that you feel might not need to be there?

Mr Agnew: As I said earlier, every case currently goes through committal proceedings, and that involves the preparation of a set of committal papers, which requires all the statements and all the exhibits. It is a very adversarial system, and a culture in Northern Ireland has developed whereby the prosecution has learned to expect, understandably, robust challenge to their cases. They are built to a very high standard, and that sometimes includes taking evidence on the continuity of exhibits, so it is a real belt and braces approach. I certainly do not mean to suggest that it is only for the judges to do; there are duties here for the prosecution and the defence, and those duties need to be mandatory. However, the judge complements that and plays an important role.

We are seeking not to waste resources and to build cases that, ultimately, will be guilty pleas. In cases that are contested, we focus resources on the issues that will arise at trial. We work to identify what the issues between the parties really are. That requires engagement and perhaps the defence showing its hand a little bit more by saying, "We are not taking issue with that, but we are taking issue with this", whereas, at present, there may not be an onus on the defence to come forward and say what their case is.

There is a statutory obligation upon the defence to serve a defence statement setting out the defence in general terms, and I will make a couple of points about that. First, it comes after the prosecution has fully built its case and got it through committal. We build our case and get it to committal. The case gets sent for trial, and we serve our initial prosecution disclosure. The defence is required to engage within 28 days of our serving our prosecution disclosure.

In practice, we rarely get that engagement. We looked at a set of cases, and I will get my figures right on this if I can. This is based on a certain area where defence statements were due to be served within the 28-day time limit that I referred to. The 28-day time limit for serving the defence statement was going to expire within this month, and we looked at two court areas. In one court area, 30 defence statements were due within that month, and, in another court area, 59 were due. In the first, one defence statement out of the 30 was received on time; in the second, we did not get any out of the 59 defence statements.

That is indicative of the cultural change required. It cannot be about the defence keeping its cards close to its chest and serving a defence statement a couple of weeks before trial. Unfortunately, that happens regularly. The defence has the right, absolutely, to contest every issue, but we want the judges to make sure that a proportionate approach is being taken to cases. That is how we dedicate our resources and how the police dedicate their investigative resources to where they need to be.

Ms S Bradley: Thank you for that. That is where I have questions. You are saying that there is currently no mandatory requirement for that level of engagement between the parties and that that is maybe the missing piece in the committal process right now and that it is not as formal a piece. However, also, it is hard to airbrush over the fact that we are hearing that some of the delays in those reports might be investigatory, so they could not, in good faith, submit a final report if the investigatory process has not completed.

I do not see how that is resolved. I do not see how that body of work can be moved to a different place if the investigatory work has not been resolved. The defence report will not come any more quickly. However, what you are saying is that it may be more refined, that that might not be an area of contention and that that report was not worth waiting for anyway in some instances. Nevertheless, there may be some instances where that report is critical. I wonder whether, even if we move into a more formal framework, the problems might just carry over with it.

Mr Agnew: The formal framework gives us opportunities that we do not have at the moment in the Magistrates' Court. We will need to maximise those opportunities. You are quite right: there will be cases where the expert report will take a long time. That is fine. We may be able to resolve certain cases earlier. We may find that in other contested cases we do not need a DNA report because we have other evidence, and the defendant accepts that they were there and concedes at an early stage. The defendant may say that they were there but that their defence is self-defence. We can then target resources better towards those cases where issues are contested. Hopefully, the idea is that you end up having less of a workload in the system. If that is the case, you could speed up the work that you do have because you can dedicate resources to those cases.

Ms S Bradley: When the PPS looks at an evidence threshold, does it have any part to play in refining where the areas of contention might be in a case?

Mr Agnew: Not under the current system. We mentioned the indictable cases pilot (ICP), which is something that we have sought to do on a voluntary basis. The idea of that is exactly that. There is engagement between us and the police and between us and the defence. However, it has been a story of mixed results as to its productivity. The environment of the Magistrates' Court is not as conducive to that as the environment in the Crown Court. One of the key reasons for that is that there is no disadvantage to the defence in the Magistrates' Court, where they can sit back and not make any concessions at an early stage. They may not be too keen to make concessions because they may not have the advice of counsel or senior counsel that they will have in the Crown Court.

They are not really disadvantaged in sentencing terms because they can wait to see the case against them and they can get advice from their counsel. They can enter a guilty plea once they get to the Crown Court, if that is what they are going to do. They can still make a powerful submission that they are entitled to their credit for their guilty plea because it is the first opportunity that they have to enter it under the current system. If they can get cases into the Crown Court much earlier, the defence can be asked to indicate their attitude to the case much earlier. There is, potentially, more of a consequence for the defence if it says, "Everything is contested here. We are putting the prosecution fully upon its proofs, and we are not conceding anything". In those circumstances if, ultimately, a plea is entered, we would hope that the judge would make it clear that greater discount would have been afforded if a plea had been entered much earlier.

Ms S Bradley: OK, thank you. I have one final point. It has always been my belief that the further you go into the judicial system, the more expensive it becomes. Is it fair to assume that a case that goes to

the Crown Court, albeit more refined and more efficiently tailored, could build up and while the time may be shortened, the costs may not?

Mr Agnew: It depends on all the issues that we mentioned earlier. We do not know, at this stage, whether it will be cheaper, more expensive or the same for our organisation. We cannot say, at this stage, that it will be cheaper or more expensive or the same for the system as a whole. It will depend on all the handling arrangements that there are in the Crown Court and the supporting framework for case management. Legal aid will be required to go along with it. All that needs to be worked through and, then, everyone will be in a better position to make a clearer assessment of the costs.

Ms S Bradley: OK, thank you.

Mr Frew: Thank you very much for your information. There was an echo and a hollowness to your sound; it must be the speaker system in the room you are in. We were able to pick up some of what you said, but it was not 100% clear. Forgive me if I go over old ground with you and you have already answered some of my questions. I am by no means expert in this. I am trying to educate myself as we go along with all these witness statements.

Several members asked what the motive of this Bill is. If it is delay, it will not work. If it is to save witnesses going through the shock and trauma of a court case, or a second evidence session, it is certainly worthy of consideration.

Let me take you to the issue of delay. With regards to the Bill, we should not miss a trick here in effecting change. Given what we have heard, there seems to be a massive issue with delays at the investigatory stage, the police and PPS stages, gathering up the file and the evidence to prosecute. Is it unfair to say that, given the procedure that comes afterwards? What are your thoughts on that? Is it unfair to heap blame on you?

Mr Agnew: *[Inaudible.]* It is important to recognise that there are issues with investigation and prosecution that can be improved. That is what we seek to work on through a number of different initiatives, and there is a lot of joint working that goes on with the police around that.

We are back to *[Inaudible]* but hopefully everything is still working. We are on speaker mode.

I risk repeating myself, but you said that you did not mind. The idea is that if we can get cases into the Crown Court, and we have a system that encourages early identification of key issues and focuses resources where they need to be, we should get only those bits of evidence that take longer to get when we need to. In cases that can be dealt with by way of a guilty plea, that should be eased out of the parties — shall we say? — a lot earlier than happens at present. That gets a case dealt with and out of the system and frees up time and resources for everybody to focus on other cases.

In those cases that are not going to be resolved by a guilty plea, we should make sure that only those lines of enquiry that are relevant to the issues between the parties are pursued and that we do not build cases unnecessarily. Proportionality is the key.

Mr Frew: Surely what you are talking about there is a leaner, meaner machine on the judicial side of things. Surely the PPS will always have to be thorough and look at every angle of a case to ensure that you are satisfied and that your evidential tests will be met.

Has the sound gone?

The Chairperson (Mr Givan): It seems like it.

Mr Frew: I can see your lips moving, Mr Agnew, but your sound has gone. I think that you can hear me, but we cannot hear you at all. I will leave one question with you, and if you can hear us, you can get back to us: what statutory time limit would be acceptable to the PPS? Within what time limit could you deliver and achieve, making sure that it does not affect the safety of prosecutions?

I will leave it there because we cannot communicate.

The Committee Clerk: The problem seems to be on their side not ours. We must hang up and reconnect.

The Chairperson (Mr Givan): We have lost the sound. Paul, we will follow that question up in writing. That was the last question that the member had anyway. We covered quite a lot of ground with the PPS. Let me thank them for their evidence. A summary of those areas will go to the Department.