Northern Ireland Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Briefing by Public Prosecution Service for Northern Ireland

13 June 2024

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Ms Joanne Bunting (Chairperson)
Miss Deirdre Hargey (Deputy Chairperson)
Mr Doug Beattie
Mr Maurice Bradley
Mr Stewart Dickson
Mrs Sinéad Ennis
Mrs Ciara Ferguson
Mr Justin McNulty

Witnesses:

Mr Michael Agnew	Public Prosecution Service
Mr Stephen Herron	Public Prosecution Service
Mr Peter Luney	Public Prosecution Service
Ms Marianne O'Kane	Public Prosecution Service

The Chairperson (Ms Bunting): We are joined, from the Public Prosecution Service (PPS), by Stephen Herron, the Director of Public Prosecutions (DPP); Michael Agnew, the deputy director; Marianne O'Kane, the senior assistant director of serious crimes and regions; and Peter Luney, the senior assistant director of resources and change. You are very welcome. Thank you very much for taking the time to join us today and give us a briefing. We look forward to hearing what you have to say. I will hand over to you to give your presentation, and there will be some questions at the end.

Mr Stephen Herron (Public Prosecution Service): Thank you very much, Chair, and thank you to the Committee for the opportunity to speak to you today. We always appreciate an interest being taken in the work of the PPS to help inform an understanding of our complex and sometimes misunderstood role as prosecutors.

I have a brief presentation to make. I thought that it might be helpful to briefly address some key issues under the headings of "Constitution", "Conduct", "Capacity" and "Challenge". You have kindly done the introductions for the rest of the team for me. This is the entire top team of the PPS, although we have leaders in many areas of the organisation. I thought that I would bring everybody here today to share my pain *[Laughter]* and meet you all. Hopefully, they will be good contact points if you have ongoing engagement with our organisation.

The first heading is "Constitution". I will not dwell on a history lesson. The office of the DPP was established in 1972. At that stage, we discharged our functions under the superintendence of the Attorney General, who was not a local attorney general then but the Attorney General for England and Wales. All of that changed following the signing of the Good Friday/Belfast Agreement and the criminal

justice review that followed in 2000. The review recommended the formation of a new public prosecution service to replace the DPP. The PPS became operational in June 2005, so it will be 20 years old this time next year. The PPS took over the prosecution of all less serious offences from the police. In keeping with the criminal justice review recommendation that it was critical for the PPS to be completely independent of the Executive, the relationship with the Attorney General was put on a consultative footing rather than one of superintendence, as it had been previously.

Our system here is, perhaps, mostly like that in England and Wales, yet there are some key differences. The Crown Prosecution Service (CPS), established in 1985, never took over the prosecution of all offences from the police; responsibility for some minor offences always remained with the police. Offences that can be prosecuted by the police without reference to the CPS have increased significantly over recent years and are known as "police-led prosecutions". Unlike the CPS, the PPS receives all files from the police that contain a "No prosecution" recommendation. The PSNI has operated on the basis that it submits a file to us where evidence exists, however weak, that an identifiable person has committed a criminal offence. However, the CPS guidance makes it clear that the police can decide not to submit a file if the evidence is not considered to meet the test for prosecution and cannot be strengthened by further investigation. That explains why there are more "No prosecution" decisions taken by the PPS when compared with the CPS; the evidentially weak cases are not submitted to the CPS for a prosecution decision.

I take decisions here that are exercised by the Attorney General in England and Wales. Most notable, perhaps, is the power to decide whether to refer a sentence to the Court of Appeal on the grounds that it may be unduly lenient. Uniquely to this jurisdiction, I can also issue a certificate for a non-jury trial if I consider that the statutory criteria for doing so have been met.

When comparing the PPS with the DPP's office in the Republic of Ireland, the primary distinctions are that, in Ireland, the majority of decisions to initiate summary criminal proceedings are made by an Garda Síochána without reference to the DPP and that the police then present those cases at court. In February this year, a high-level review group was commissioned to look at whether the DPP should take over the conduct of those prosecutions from the police. It recommended against that, and the cost of doing so was cited as a significant factor. We might return to that issue when we talk about a proportionate approach and about reducing demand on the criminal justice system.

As DPP, I perform a quasi-judicial function in deciding whether to prosecute. In that regard, I may have more in common with a judicial appointment than a political one. That explains why Michael and I are not civil servants but public appointments made directly by the Attorney General. She can also decide to remove us from office, so I keep in good favour with her. On that note, I am constrained, as the judiciary are, in not being able to discuss individual cases, for reasons that I set out to the Committee in correspondence prior to my last appearance in June 2021. As I indicated then, I am more than happy to appear twice a year, if that would be of benefit to the Committee, to discuss policy, practice and general performance issues. My staff and I are always amenable to assisting the Committee in deliberations on legislation where that is appropriate.

On conduct, I recognise that it can sometimes be suggested that the PPS applies different rules to different cases, perhaps depending on who the victim or, indeed, the reported suspect is. Sometimes, such criticism can be contradictory, depending on the political or social viewpoint of the parties concerned. Legacy cases are one example, where some voices have suggested that the PPS is involved in a concerted effort to pursue former veterans for prosecution, while others, on the other hand, have suggested that the PPS is reluctant to prosecute current or former state actors. I assure you categorically that neither proposition is true. The PPS approaches legacy matters and all other offence types entirely impartially and objectively. All decisions are taken in accordance with the test for prosecution set out in the PPS code for prosecutors. In fact, prosecutors are duty-bound to act independently. That is enshrined in the legislation that underpins the PPS.

An often misunderstood aspect of the prosecutor's role is that we must act in the interests of justice and that we are not the personal legal representative of a victim. That independence and impartiality does not mean that we do not feel compassion for victims and, indeed, on occasion, the defendants who come before us, who are often from troubled and difficult backgrounds. However, we must ensure that we leave any emotion or personal feelings out of decision-making and apply the principles set out in the code and prosecutorial guidance without fear or favour in every case. To do otherwise would simply lead to inconsistency and legally unsound decisions, which would greatly erode public confidence. That can be challenging for us when there is a deep desire by individuals, political groupings or even large sections of society to prosecute a particular case, and our decision is that the test for prosecution is not met. Obviously, in such cases, we will carefully consider all of the evidence

and advice from senior counsel, but, ultimately, it falls to us to make a call based not on whether it will be a popular decision but, rather, on whether it is the legally correct decision. As director, I have had it suggested to me on more than one occasion that it would just be easier to prosecute evidentially weak cases and let someone have their day in court, and, if a case was unsuccessful, it would be a better outcome to deal with than not prosecuting at all. In short, that would be a complete dereliction of any prosecutor's duty and something that we would not countenance.

On capacity, PPS is demand-led, but, typically, we take around 50,000 prosecution decisions a year. Thanks to the hard work and commitment of PPS staff and the counsel we engage, inspections of our work have generally found the quality of decision-making to be very high. In the Crown Court, we usually have a conviction rate of around 86%, and, in the Magistrates' Court, it is about 80%. However, where we and other criminal justice organisations undoubtedly need to improve is in the timeliness of case progression from investigation through to disposal at court.

Over the past 10 years or so, a number of pressures have stretched the capacity of the PPS, and our resourcing has not kept pace with demand. While I appreciate that there are significant financial pressures across the Civil Service on many public services, demands on the justice system here have perhaps not received as much attention as they should have done and, indeed, as they have done in other jurisdictions, where additional funding has been allocated.

On capacity pressures on the PPS in particular, I will outline a few key factors. First, overall, the number of more serious files being referred to the PPS, which usually result in Crown Court prosecution, has increased by around 30% in the past 10 years. Within that increase in caseload, the number of serious sexual offences coming to us has increased by over 50%. There has been around the same increase in domestic violence cases, although they are more often prosecuted in the Magistrates' Court — the lower court.

The Chairperson (Ms Bunting): Did you say 50%?

Mr Herron: Yes. It is around 50% for sexual offences and domestic violence cases. In fact, I think that the latest stats that we have, which Marianne might touch on later, are that about a fifth of our caseload now involves potential domestic violence offences, which is largely due to the new legislation that has come into effect. That is an upward trend that has steadily been rising year-on-year and shows little sign of reversing.

Secondly, it is widely recognised that prosecutions involving domestic and sexual violence are often evidentially difficult and have higher attrition rates than other offence types. There is a low rate of guilty pleas being entered in those offences either at an early stage or at all. The PPS collaborates with many partner agencies who do crucial work to support victims, but there is an additional cost to prosecuting those increased numbers of sexual and domestic violence cases through to a contested trial. Thirdly, those cases are also more resource-intensive to deal with due to the type of material that has to be processed either for evidential use or for disclosure to the defence. There are often large amounts of what is called "third-party material", like medical records and counselling notes, that have to be considered. There has also been an exponential increase in the amount of digital material requiring review, including CCTV and body-worn camera footage, mobile phone data and material from social media activity.

We are working with the police on a joint strategy for investigating and prosecuting serious sexual offences, with assistance from the joint lead of the Ministry of Justice end-to-end rape review that was conducted in England and Wales a couple of years ago. However, my concern is that the strategy will achieve nothing if it is not suitably resourced. Funding has been made available in other jurisdictions that have implemented similar strategies. When Sir John Gillen completed his review of serious sexual offending here in 2018, he recognised the need for additional criminal justice funding to implement his recommendations. Simply put, that additional funding has not been made available in recent years, and the PPS budget has not kept up with increased demand and the impact of new legislation to tackle coercive and controlling behaviour, stalking and non-fatal strangulation. That has resulted in increased delay. That is unfair to victims, as it has increased their trauma, and it is having a significant detrimental impact on PPS staff, for whom workloads have become intolerable. Due to the lack of a sustainable multi-year budget, we have been reliant on monitoring rounds to make ends meet and have not been able to staff up to full capacity, with reliance on agency staff to make up, at times, about 20% of our workforce.

This year, through close working with our funders in the Department of Finance and direct engagement with the Finance Minister, which has been of great benefit, we have a settlement that has

narrowed the budget deficit that we face annually. However, further funding in recognition of the increase in demand that I have outlined is crucial if we are to begin to tackle long-standing issues around delay and be in a position to modernise our service. I am passionate about that, and I am sure that we will come on to discuss that in the course of today's session.

Finally, on the issue of challenge, I have to say that I am dismayed when I hear accusations that the PPS is not accountable and that perhaps there needs to be some review of our independence. It is true that the PPS is, by deliberate design, independent from political and Executive oversight. I am not directly operationally accountable to the Minister of Justice, any other Minister or the Attorney General, and the PPS is a non-ministerial department and is not part of the Department of Justice, which is sometimes not fully appreciated. However, I am fully accountable to the rule of law, due process and, ultimately, the public, and decisions to prosecute are robustly tested in court. When we decide not to prosecute, we provide reasons to the complainant and sometimes do so publicly if it is a high-profile case of wider public interest. Those decisions can, first, be reviewed internally and then, of course, by judicial review.

I am always conscious that our independence can result in unintended isolation, and I am keen to address that, particularly in how we are viewed by politicians. I have written to the Executive Office and all the main political parties, inviting them to engage with us to see what we can do together to improve outcomes and maximise public confidence in our criminal justice system. All of that can be done in a way that does not impinge on our statutory independence. I realise that there is an election coming up, which might be why I have not yet heard from all parties regarding my invitation to meet them, but the offer is genuine and remains open. We are not an organisation that thinks it is immune from criticism, and we will always seek to respond appropriately to legitimate concerns. However, I sincerely hope that we can use today to start conversations about how we can balance the political challenge of our independence with perhaps finding some political champions for it.

Thank you, Chair, for the opportunity to make those remarks. We are happy to take questions.

The Chairperson (Ms Bunting): That is great, Stephen. Thank you very much. As usual, I will open the floor to members first.

Mr Dickson: Thank you for that. That is useful background information and is a help to us. I very much appreciate your comments about how you act impartially in your approach to the evidence that is brought to you and in the way in which you make your prosecution decisions. You referred to the code of practice for prosecutors: does the code of practice in Northern Ireland mirror that for the Crown Prosecution Service in the rest of the UK?

Mr Herron: Yes, it is similar. The test for prosecution is slightly different. We look for evidence that provides a reasonable prospect of conviction, whereas their test would say "realistic" prospect of conviction. Many articles have probably been written on whether there is a practical difference between the two tests, but in reality there is not. We are, however, very similar to England and Wales in how we operate. There are many common features between their code and ours. It is very different, though, from the code in Scotland, and the next closest resemblance is to the code in the Republic of Ireland.

Mr Dickson: You also mentioned the public view of the Public Prosecution Service. Many victims, in particular, will see the Public Prosecution Service — wrongly, I appreciate — as their legal representative in court. That causes a lot of distress and concern for people in respect of the lack of what might be seen as engagement with lawyers and others in presenting a case. Of course, people who have been a victim often want to be involved in the minutiae of their cases: yet, sometimes — this is not a criticism, and I understand where it is comes from — barristers and others will see them as a bit of a nuisance. Once they have the evidence, they do not feel that they need to take matters further. How do you see your relationship with those people and with the organisations that provide support to victims?

Mr Herron: Certainly, I can appreciate the perspective that a victim would expect to have a close working relationship with the PPS and the counsel, if there is one, who is involved in a case when it comes to court. As I said, we try to balance the need to be independent and impartial with ensuring that we do not lack compassion. In the past, I have dealt with complaints where the complainant has said, "The barrister met me and told me basically that I was a prosecution witness". That is not how we view victims. They have rights and entitlements that are set out in the Victim Charter, but that is very much the minimum standard, as we see it. We want to treat victims with compassion and empathy.

There are certain legal roles, and it is sometimes difficult to explain that we are not there to argue for them. The justice system, however, has sought to intervene in other ways. Legal representatives are often involved in cases where they represent the victim's personal interests. There are sexual offence legal advisers, for example, and, when applications are made for third-party material to be revealed to the defence, a person can have representation at that stage.

The justice system has improved, but there is a lot more to do to create a victim-centred approach. Unfortunately, because it is an adversarial system, it is difficult for a victim to understand that from day 1. We do work with that, and we train counsel to show empathy. Recently, we had a counsel training event at which we all spoke about the need to treat victims in a way that is in accordance with the Victim Charter. Victim Support made a presentation at that event so that those in attendance would understand how our job is about trying to reduce the trauma that victims feel as they go through the criminal justice system and how it is important to not add to it by being aloof or not available to meet them.

Mr Dickson: I appreciate the totality of your independence. I think particularly about the case of the murder of Thomas Devlin, which was more than 15 years ago and has been prosecuted. In that case, you had to review — rightly, in the end, because of the final judgement — the decision-making processes that you took to get to the point of the final prosecution. How open are you to the concerns, pressures and, ultimately, legal requirements that are placed on you to review your decision-making processes for prosecutions?

Mr Herron: We take those requirements very seriously. They are an integral part of our accountability, and we seek to be transparent. The Thomas Devlin case was probably a seminal moment for us. That case came to trial around 2009 or 2010. Things look very different now in terms of how the service operates. Where there is no prosecution, victims are given detailed reasons for that, and they are offered a meeting. At that stage, they are offered a review, which is an internal process. That is what happened in the Devlin case. There was an ongoing prosecution in the Devlin case, but the internal review led to a further prosecution for other offences. It does not happen that often. Of the 169 cases that we reviewed last year, we changed the decision in 10. I think that that was the figure.

When we review cases, we look at them with fresh eyes. If there is new material, the case goes back to the same prosecutor, who may decide that it impacts on the test for prosecution. If there is no new material, it goes to someone who was not involved in the case, and there is a genuine look at the reasons for the decision not to prosecute. Where the evidence is considered to meet the test for prosecution, we will change the decision. As I said, there are not huge numbers of such cases, but we are certainly open to doing it. After that process has been exhausted, there is the potential for a victim to bring a judicial review of a "No prosecution" decision.

Mr Dickson: You said that that case was a seminal moment for your organisation: what were the learning outcomes from that? We need to remember that it happened only because of the resource and tenacity of the individuals involved, particularly Thomas's mother — I declare an interest as a family friend and former colleague — and their ability to understand what they were trying to achieve. This question is a bit like asking, "How long is a piece of string?", but how many others out there have been failed because of their inability to do what Thomas's family did?

Mr Herron: Even from then, there have been big changes. I was involved in that case, and I know Jim and Penny fairly well. I stayed in touch with them until fairly recently. When the new Director of Public Prosecutions came into post at that time, one of the first things that he wanted to do was meet them to see exactly what the learning points were. Whilst I totally agree that they pushed for it, a lot of victims in cases like that would probably have legal representatives now. We would now have a lot more engagement with them even before making the decision to prosecute in those cases.

When I say that it led to changes, I mean that it raised a lot of awareness. A lot of people probably think that it shows that, if you get a decision from the PPS that you do not agree with, you can fight it and it will be overturned. That is not always the case. It has to be the right decision legally, but, certainly, we appreciate how individual and personal the decisions are to people. We want to meet them and explain the decisions. Where the evidence is forthcoming and can change the decision on whether to prosecute, we will do that, if it is the appropriate thing to do.

Ms Marianne O'Kane (Public Prosecution Service): I am the victims' champion for the PPS. The right of a victim to seek a review is fairly well understood, certainly in the victim sector. I chair our stakeholder engagement forum, which has a diverse membership from about 15-plus cross-sectoral

organisations. Speaking about the right of review is very much a feature of the engagement that we have. Certainly, those who advise victims ought to be well informed.

In fairness, most victims do not need specialist or expert help to access the right of review. It is explained in clear terms, we hope, in our correspondence, and we are absolutely open to review requests. We never resist them. When a review request comes in, however it is formed and even if it is not well articulated, we interpret and treat it as something to be reviewed. It is then dealt with at a senior level. Usually, senior prosecutor is the lowest level, if you like, at which a request is reviewed. I can certainly reassure the Committee that it is part and parcel of our work.

That comprises only 0·8% of the decisions that we take. There may be victims who still do not know how to access the opportunity, but we are doing our utmost to promote it and make it understood.

Mr Bradley: I picked up on something from the discussions. Thank you very much for the presentation, folks; it was enlightening. The time that it takes to bring a case to court needs massive improvement, particularly for the sake of victims. You need to work on that in order to reduce the time that it takes, because it has a massive effect on victims in particular.

The other thing that I have noticed is that the difference between the time spent on a case by the PSNI and the Public Prosecution Service's ruling on the validity of a prosecution before the courts that there is a lack of evidence does not stack up. I know victims who have been left distraught and police officers who have put in hours and hours of work to bring a case before the courts only for it to be dropped at the final stage. How do you plan to reverse the trend of there being so much expectation and so much work on a case, only for it to be dropped through — in the PPS's view — lack of evidence? I know of one case — I will not mention names — of a man who was assaulted by four people. He identified his assailants and the police did an awful lot of background work, yet you dropped the case through lack of evidence. Sometimes, in the public perception, the decision makes no sense. Your thoughts, please.

Mr Herron: Yes, certainly. Those are valid questions. Others should feel free to join in, but I will give my thoughts on them. There were two parts, the first of which was delay. As I said in my introduction, all parts of the criminal justice system accept that addressing delay is a priority. For us, it is directly linked to the more serious cases that have come to us, because we have not had the budget uplift to deal with them, unlike other jurisdictions, where there has been investment. In particular, historical sexual offence allegations have been on the increase across the UK and Ireland. It is to be welcomed that victims have greater confidence in coming forward, but the rest of the UK and Ireland have responded by investing more in police and prosecutors, and we have not done that here. There are backlogs of cases here either sitting with the police, who are investigating them, or with us, awaiting decision. Other than starting to get the resourcing to bring in greater numbers, there is no way of cutting the delay.

To give a general outline, if I may, we work as part of the Criminal Justice Board to speed up justice. There are a number of work streams that, I know, the Committee will be interested in. The one that I lead on is early engagement, which partly leads into your second question, Maurice. One of the ways in which we can try to get involved with the police earlier is by providing advice. We have a statutory obligation to provide prosecutorial advice to police when asked, but maybe they do not ask us often enough or at the right time.

I am working, with Criminal Justice Board oversight, on an early engagement piece with three elements. The first is to see what more can be done to ensure that there is effective early engagement between police and prosecutors. The second is to ensure that there is effective communication between prosecution and defence. Often, we — police and prosecution — take time to build the case, thinking that it needs to be of a certain standard to withstand robust defence examination. In other jurisdictions, notably England and Wales, there is a lot more focus on, if possible, narrowing through engagement the issues in contention between the prosecution and defence. One of the things that we will do is see that in action at Leeds Crown Court and, hopefully, speak to some practitioners about how that works. A third aspect of that work will be case management. That is really about making sure that we have the best, most consistent case management practice, which is, basically, the judges ensuring that, when cases come to court, the prosecution and the defence have done everything that they are meant to have done by that stage, rather than the case still being built or issues being dealt with while the case is in court.

When you talk about tackling delay, that means tackling it end to end. It starts with the police investigation and ends with the case at court. There is probably room for improvement at every stage

of proceedings, including the investigation, the prosecution decision and what happens at court, but, unless we start to reduce demand and increase funding — we need to do both — what we have here is an expensive justice system for dealing with less serious offences. As I outlined, some cases would not get to a prosecutor in the CPS or, indeed, in the Republic of Ireland. We need discussion among politicians and, perhaps, consultation on whether there are more proportionate ways of dealing with lower-level crime. Could we take some of the offences that are tried in the Crown Court, perhaps at the less serious end, and put them into the Magistrates' Court? Maybe that would free up resources for us to push through the cases that have to go to the Crown Court. It is about a better level of service to victims and doing things more quickly. We have to be realistic about the need for a resource investment and for some modernisation and transformation of the current system.

Mr Bradley: Thanks very much for that detailed and interesting response. I wish you well with that, because you have hit on something there.

Mr Beattie: I have just a quick question. Public confidence has recently been rocked because of unduly lenient sentences. I think that you have the ability to call in unduly lenient sentences: are you seeing an increase in that? I have written to the office on a number of occasions about that very problem. The unduly lenient sentences seem particularly to be for sexual offences.

Mr Herron: There is certainly a perception that there is an increase, but I am not seeing that increase. We take only about six cases a year, but I would probably look at about three times that number of cases in a year as potentially being unduly lenient sentences. We look at those carefully.

There is a high threshold for challenging an unduly lenient sentence. Last year, there was the case of Sharyar Ali, which really said that there has to have been something that the judge fell well short on and probably some procedural error involved such that it is not just a lenient sentence but a sentence that no reasonable judge could have imposed, given all the facts and circumstances. Sentencing is a difficult exercise, and I understand why people often are disappointed with the sentence.

If I may say so, one area where I might take a slightly different view from other practitioners is the discount given for guilty pleas. In England and Wales, there is a statutory scheme that does not afford as much flexibility as we have here. I am not exactly comparing like with like, but, in England and Wales, if you plead guilty at the earliest opportunity — over there, that would be at a sending hearing to the Crown Court; it is a slightly different system — you are entitled to a full one third credit. Then, after you have been arraigned in the Crown Court, it is a sliding scale. That is usually between 25% and 20%, going down, and, if you plead guilty on the day of the court hearing, it is expected that you get only about 10% credit. It is fairly clear what you can expect. There is a bit more flexibility here. We have challenged unduly lenient sentences because we felt that the discount was too generous. One such instance was in a recent terrorist case against Gavin Coyle for which the sentence was increased from six years to eight years. Full credit of 33% was given at a very late stage in the proceedings, and we argued that that was too generous in the circumstances. I see an increase in the trend of being requested to look at cases in that area.

Judges here do an excellent job with sentencing. I understand that a sentencing Bill is to be introduced later in the Assembly mandate, and I know that we will further discuss some of the issues around early guilty pleas at the Criminal Justice Board. There may also be further debate about whether it is better to have a system that gives greater clarity and consistency or a system that affords greater flexibility, such as we have.

Mr Beattie: A lot of people are looking at that issue of sentence credit, particularly in cases in which somebody goes right up to the last moment, putting people through the rigour of a case, and admits guilt just as it is sitting. That is a problem.

Can I just ask you another quick one, Stephen? I will ask you about the dreaded legacy issue. I know for a fact that you are under serious pressure. You would nearly need to have two branches: a PPS legacy branch and a general PPS branch. I get that; we have had those discussions. Your predecessor used section 35(5) a lot to bring cases: does that still happen? Do you still have to bring many cases under section 35(5)?

Mr Herron: Actually, since the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 was passed, there has been no section 35(5) provision. I am not one of the people who can refer a case to the Independent Commission for Reconciliation and Information Recovery (ICRIR). I do not know

whether that was a deliberate construct in the legislation. I will not stray on the subject too long, but I know that there is the potential for the legacy Act to be revisited.

Focusing on legacy in particular, I recognise the right of victims to ask for cases to be looked at, even though a murder might have occurred 50 years ago, as if it happened today. There has been a lack of appreciation of what that has involved or maybe a lack of consensus on the finer detail. For example, whenever I hear that there may be the potential to go back to the Stormont House Agreement arrangements, I think that there needs to be a lot more discussion about what that means. As you touched on, we would need to have a separate legacy prosecution unit, because a lot of resource is put into investigations into legacy, and that resource is not matched on our side. It frustrates us, as, I am sure, it frustrates families who are waiting for decisions, that we cannot prioritise those cases because we do not have the resources to do so. If anything, we have had to prioritise the 30% increase in the more serious cases — 50% in serious sexual offences. We have put additional resources into our serious crime unit, but we have not been in a position to do that with legacy. If the legacy arrangements are to change, I will certainly advocate again for a separate legacy prosecution function in the PPS, rather than it going into a unit that deals with all the current-day terrorist cases and the likes of Muckamore Abbey Hospital. I think that, on the last occasion that I was here, I outlined my concern that it would lead to frustration and delay if we did not have a separate unit, and it never came to pass; we never got the funding for it.

Miss Hargey: Thanks very much for your updates. I have a couple of things about the broader public understanding of the office regarding the decision to prosecute, the evidential test and the public interest. I know that you have released more detail in public statements to explain some recent decisions that were taken. Will that be an ongoing practice? Do you feel that there is a need for that? Is there more that the office could do, notwithstanding some of the resource pressures that you have talked about, just to allow the public to understand those things? We hope that the next legislation to look at sentencing will come next year. Obviously, that will be of public interest. We want to make sure that it is not the historical bit and that there is a proper informed conversation. I just want to get your view of where you see those tests and how that sits with the broader public, if there is more work, in terms of lessons learned from previous cases, that the office could do and how that sits with the test for the prosecution and the code of practice for prosecutors that you touched on.

I suppose that the other issue is resourcing, case progression and investigating the files from PSNI. You mentioned that you are doing a bit of work, but does more need to be done to front-load all that to ensure that there is as much of the evidence there as possible and to see what more can be done with the PSNI to look at that? I know that, back in April, you commented publicly on the crime unit in the PPS regarding 200 cases that were still waiting for assessment. Is that still the level with regard to cases where there has not been enough evidence? Is that particularly around the historic sexual offences? Is that where some of that comes from? We are concerned that we have heard about the time that it has taken those sexual offences cases — around nine months. What work can be done to speed that up? Is it a resourcing issue, or is it to do with evidence from PSNI and other agencies? Access to justice and delay in the system are a big cause of concern for the Committee, and we want to look at that. After this session, we will get a briefing on the budget from the Department. We will probe those things in a bit more detail. I just want to get a sense of those issues from you.

I am interested in your last point about modernisation and offences. I was looking at NISRA stats from 2020-21. Around 30% of offences were violence against the person. Another 30% were motoring offences. Is the breakdown still similar? There were just under 600 files, with a good percentage of that — over 50% — coming from the Driver and Vehicle Agency (DVA). Could there be modernisation in those areas? Would approaching them differently allow you to focus on more serious offences? I just want to get your sense of that modernisation piece. Are active discussions going on with the Department to speed that up or look at that differently?

Mr Herron: I tried to be clever there and did not take a note *[Laughter.]* I will work backwards, because I will remember what you said most recently.

On modernisation, it is really about reducing demand. There are a lot of aspects to it. Obviously, we all want to speed up cases. We want to spend the money where we will maximise the benefit of prosecutorial input. I am not persuaded that there needs to be prosecutorial input in every case. It might be a strange thing for a lawyer to say, but lawyers are expensive and they do not always speed things up. We are looking proactively at the Criminal Justice Board to see what we can do at that lower end piece.

There are options. I am not sure whether the Committee has heard this to date, but we have a pilot running with the police around the idea that there will be a "No further decision" file. As I outlined, the police do not send the CPS every case. If they think that it is evidentially weak, they do not send it to the CPS, which is why we have more "No prosecution" decisions and why, going back to the first part of your question, Deirdre, we are probably having to explain more "No prosecutions". We have more of them in this jurisdiction than elsewhere. We have reached a pilot arrangement with the police whereby, in certain categories of cases — lower-level offences — they do not send us the file. Instead, they have cases referred to inspector level within the police, and they take a decision that that case is not going anywhere and they do not think that it will meet the PPS test for prosecution so they do not need to send the file. They still provide a review mechanism in that. As we said and as Marianne said, there is a right to review. Part of the work that we did with the police was ensuring that they had a right to review, as is the case in England and Wales. If the police take the decision not to send a file, the CPS has a right to review.

That is one way in which we might reduce demand in the number of cases coming in to us. However, you also mentioned — you are spot on — that about 30% of the prosecutions that we have in the Magistrates' Court are for road traffic cases. There is scope for looking to see whether we can do those in a way that does not always involve the police sending a file to the PPS, the PPS taking a decision, decision documentation going from our office and getting the courts involved, which all seems to me to be a lot of layers for what can sometimes be fairly low-level crime. As DPP, I will obviously say that all crime is important; I am not saying that there are some crimes that should be ignored.

The other area in which there needs to be a lot more collaboration is in looking at the root causes of offending. You talked about the offence times that are on the up: violence against the person, acquisitive crimes like theft and retail crime. There is an issue there around drug use and mental health. The easiest thing to do, if you look at that end-to-end approach, is to put your resources into preventing crime in the first place. Often we see a lot of people come before us who are recidivist offenders, and often it is because of their drug use or their addiction to prescription medication on some occasions. There has to be more joined-up working about how we take cases out at the front end, and that involves not just Justice, but Health and Education and other Departments.

When cases have to come to us, prosecution is a last resort. Obviously, for more serious offences, it will be fairly natural that, if you have done something, you will end up in court, but there are a lot of other areas where there are alternatives to prosecution. You do not always have to prosecute somebody for that case to be dealt with appropriately. That is where there needs to be, in this Assembly mandate, a lot more discussion about ways we can do it. It is something we are actively looking at on the Criminal Justice Board.

Miss Hargey: Thank you.

Mr Peter Luney (Public Prosecution Service): Deirdre, just to build on what Stephen was saying there, he talked about the "No file" decision pilot so that cases do not need to come to us in the first instance, and that is one small part of a wider modernisation strategy that we have developed for the PPS. It is perhaps not the most creatively named — "PPS 2030" — but there it is.

There are four themes in that strategy. The first one, of which that "No file" decision is part, is about proportionate processes. It is about dealing with cases in the most appropriate way. Not everything needs to go through a really detailed process. You mentioned the number of road traffic cases that are still in the Magistrates' Courts. A lot of them go through the prosecution decision process, go to court and get in front of a judge, only to have the same penalty as would have been imposed had they got a fixed penalty notice. There are structural reasons for that. Currently, if you get a fixed penalty, you get 28 days to pay it, and there is no flexibility with that. It is not like a fine where you can get an instalment order. There is not the same range of payment options. One of the work streams that brings together the DOJ, the police and us is looking to see whether some of those barriers can be taken away so that those really low-level cases do not need to be there, if the only reason they are there is that offenders needed more time to pay.

We are also looking at ways to be more creative about how existing out-of-court disposals are used. There may be certain criteria that prevent things like fixed penalty notices or penalty notices for disorder from being used in an individual case. There is just a general view to see whether those criteria can be loosened, without having an adverse effect, to allow them to be used more flexibly.

Stephen talked about the remit of the Magistrates' Courts. That is a longer-term piece of work that requires legislation. We have backlogs in the Crown Court. We have delay in dealing with the most serious cases. It is almost a linear process. If we can take out some of the road traffic cases by dealing with them in different ways and clear up capacity in the Magistrates' Courts, there may be scope to increase the sentencing jurisdiction of the Magistrates' Courts and allow some of the Crown Court cases to come down to the Magistrates' Courts. Again, we are working with DOJ to review all the cases that were in the Crown Court in 2002 that had either a non-custodial sentence or a relatively low custodial sentence imposed. We are looking at those cases and asking, "Had the Magistrates' Court had the jurisdiction to impose a higher sentence of, say, 18 months or two years, would you have been happy for the decision to be made to try them summarily?". That is that.

You talked about the working relationship with the police. The second big work stream in the 2030 strategy is about effective processes. A lot of that is about early engagement, which Stephen talked about — how we engage with and give advice to the police at an early stage. A big bit of it is about file quality. We need more of the files that arrive with us to be almost decision-ready. We need to minimise the time that we spend going backwards and forwards to the police and building that file. One of the pilots that we are looking at is a gateway model, which involves dedicated teams on both sides — in the police and the PPS — trying to be clear about what the file build standards are and trying to make sure that more cases meet those standards before they arrive with us.

The last big chunk in the strategy, which, again, the director alluded to, is the growth in technology. We now have shedloads of files coming in with body-worn video or CCTV footage attached to them. That makes them inherently more time-consuming for prosecutors. We also get loads of body-worn video footage that does not meet the standards that we have set out: either the clips are too long or there is lots of stuff in them that is not evidentially relevant to the case. It is about trying to use that gateway to get more compliance with the standards so that, again, we are not wasting a lot of time watching video that we do not need to watch.

Quickly, on digital processes, we want to build on what we have already done. The justice system as a whole is still quite a paper-heavy, manual process-based system. Recently, we started sharing multimedia evidence using Box, which is a cloud-based system, and using that to serve on the defence. That has worked really well and reduced a lot of manual handling. It has the potential to be used much more broadly. If we got to the point where we were able to start digitising paper evidence, we could serve that in that way as well. That should, hopefully, be a precursor to — again, this would need to be led from the centre by the Department — moving to fully electronic bundles, using the CaseLines solution that is used in the Crown Court in England. You can see a lot of the themes. We are starting off with fairly baby steps, but they have the potential to radically reform the system.

Miss Hargey: That is all in the 2030 strategy?

Mr Luney: That is all in the strategy. I am happy to share that with you.

Miss Hargey: That would be great.

Mr Luney: May I finish with one more piece?

Miss Hargey: Yes.

Mr Luney: One thing that we are working on and that we hope will be in place by the autumn — it sounds very narrow when you look at it, but, for us, it will have a really big impact — is digital signatures. Instead of having to have summonses with wet signatures, we are developing the IT system so that it will apply a digital signature and allow all the papers to be compiled, reviewed and approved digitally. That will save admin staff and our prosecutors a phenomenal amount of time. We are still at the stage where a summons will go out the door in paper form, but, hopefully, it will lead on to better things.

Mr Michael Agnew (Public Prosecution Service): I will pick up quickly on your first question about the use of public statements. I take your question as welcoming the fact that we have done that. We have done it over a period of time, and it is not proportionate to do it in every case. We have a fair sense of the cases the public is interested in and where we see the benefit of doing that. We have received positive feedback from a range of sources about that. It is fundamental to public confidence in the PPS and the public's understanding of what we do. The director's opening comments referred to our often being misunderstood. Understanding the test for prosecution is a great starting point for

understanding what we do. Do we anticipate continuing to do that? Absolutely. Where the right cases arise, we will continue to do it.

Obviously, in more serious cases, we give detailed reasons letters to the victims. Even though the public might not see detailed reasons, victims will see an explanation of the test for prosecution on a case-by-case basis, particularly in more serious cases. When the statements are drafted, we try to make them as easy to understand as possible. It is not always that easy. Some cases are easily understood, and others are based on legal rules around the admissibility of evidence that are difficult for a non-lawyer to read and digest. We will keep trying. Public statements are just one means of communication and explaining decisions. The face-to-face meetings with those directly involved are usually a better, more personal and detailed way of explaining decisions. We are fully committed to our decisions being understood, because public confidence in the PPS will be higher when they are understood, and it is unhelpful for us as an organisation if they are misunderstood.

Ms O'Kane: Chair, can I pick up on the final aspect that Ms Hargey raised about sexual offences and delay?

The Chairperson (Ms Bunting): Yes.

Mr Herron: I am glad you were taking notes.

Ms O'Kane: I oversee the serious crime unit. It does not deal with all sexual offences. We get about 1,600 a year on average, but it deals with about 1,200 per annum. I have oversight of the unit, and the regions deal with the remainder of the cases. Briefly, over the last year, we have seen a 23% increase in the sexual offences reported to us. The serious crime unit, which deals with about 1,200 per annum, is a small unit, and I am keen to convey that. The capacity assigned to the unit is only 10·3 senior prosecutors. It is a very expert team, and, when I say they are passionate about their work, I truly mean it. We could not have survived without the commitment and expertise of that group. We now have a cadre of 13 prosecutors, which is still not enough or even close to meeting the demand, and they are supported by six public prosecutors.

Last year, we received a total baseline of 1,858 cases, and in 2022, during the pandemic, we really reached a crisis point. I think that is what you were referring to, maybe from a previous Committee meeting. We had got to the point where that unit was handling almost 600 cases pending decisions. Those are all significant cases, and it was reaching a point where it would be out of control. We borrowed resource from other parts of the organisation, and over 12 to 15 months — I checked today — we have gone from almost 600 to 259 cases pending a decision, which is a remarkable improvement. However, to get to that point, we boosted the resource by 18 senior prosecutors at one stage.

On the delay point and its effect on the volume of cases and the timeliness, the Committee might be pleased to hear that our median timeliness has been reduced — the end-to-end time while we have the file — from 232 days to 135 days, from the point of receipt to a decision, and that includes cases where we have had to go back to the police for clarification or further information. If it is a "No prosecution" decision, our median timeliness has been reduced from 71 days to 27 days. The direct correlation between timeliness and having close to the right resource is no surprise.

With the statistics for cases involving children, there are specific arrangements. Of the cases we have dealt with in the last six months, all were decided in two months, and, in one instance, a case was decided on the day of receipt. I would love to reach a point where the work is demand-led, with enough prosecutors to receive the file within a day or two of us receiving it. We are very much assisted in that unit in that we have a gateway team. It is the only business area that has a gateway team, so we have a quality assurance check on police side, we have an agreed file build with police, and then there is a second check when it comes to us. It is not entirely 100% but is close to right first time in the majority of cases.

Yesterday, I met senior police from the public protection branch. We want to devise a joint strategy for the investigation, prosecution and management of sexual offences to set really ambitious goals. We have more or less halved the time in a year, but we want to go well beyond that. However, we do not have complete control. There are police resourcing issues, and we have no handle on what the court will do with the cases. That is why the ambition will be system-wide. However, it is exciting and seeks to really push down the time for those cases.

Mr McNulty: Folks, how are you? Stephen, you spoke of more proportionate ways to deal with lower-level crime and your resource, investment and modernisation. Give me more information on what you mean by low-level crime. What possibilities are there, please?

Mr Herron: It is all about reducing demand. We have a model, because of the contested political and criminal justice history here, whereby we receive every file from the police. The first thing that we are trying to do is say, "Look, what about if we didn't?". We have high correlation rates between police sending us a file saying, "We recommend no prosecution", or their thought was no prosecution, and us deciding not to prosecute. The correlation was regularly between 96% and 97%. It is always up for debate, but we think that there is greater confidence in policing than at the time of the Good Friday Agreement and when the PPS was set up, so times have changed in that regard. There is certainly a lot of accountability around the conduct of police. If people had concerns about police bias or anything like that, I do not think that that really impinges on low-level offences. They do not have those concerns in other jurisdictions, and those offences are dealt with routinely by police.

We are testing the water to see if that will work and reduce demand. That is just cases coming to us. When a case comes to us, there are other options for how we deal with it. If you are having to have every road traffic case — about 30% of our prosecutions in Magistrates' Courts are road traffic offences — there is great scope for doing those differently: maybe streamline how they are done, group them together or the possibility of prosecutorial fines that do not involve a judge. In England and Wales they have what is called a "single justice procedure". There are a lot of options that do not necessarily involve a high level of prosecutorial input. I suggest that we would be better off. Either you send them to us and they do not go to court or you do not send them to us at all. Those are the two areas that we should look at when I talk about more proportionate processes in lower-level offences.

Mr McNulty: Where are workload, resource investment and morale in the PPS? Obviously, there is a great rapport between all of you — a great team ethic, it appears. What is the esprit de corps like in the PPS, and what is the outcome of the legacy legislation, which has been described by Amnesty International as a "cliff edge" for truth, justice and accountability? What are the outworkings of that in terms of the demand on you and your workload with that cliff edge having passed? The legacy investigation bureau was obviously up to high doh trying to get those prosecutory statuses progressed in advance of that cliff edge. How did the bureau dovetail with the PPS, or did that happen, and where are resources now?

Mr Herron: With regard to resource and morale, we have a funding settlement this year that allows us at least to try to bridge that gap. We were always starting at between £1 million and £2 million short of what we needed even to pay the cost of staff. We had a lot of agency staff, without whom we could not run the business. However, if you are a line manager in the PPS and you get an agency staff member starting on Monday who gets a permanent job a couple of weeks later and you have just trained them — that is the constant cycle that we have had for years — that can impact on morale. Obviously, the rising workloads, without increased resource, that we have talked about have impacted on morale, and those workloads have to be fair. Staff would probably say that, on the issues around file quality that Peter touched on and in working together with police, there has been a lot of goodwill and a good working relationship with the police, but maybe the end product on that —.

Those are the three major factors impacting on morale. I hope that it is improving slightly. We had a staff engagement event last week, and the questions that the staff asked us show that we have a very committed and dedicated workforce, but also that the staff are under pressure. We have had increased sickness levels, but, hopefully, we will be able to spend the budget settlement in a way that starts to fill the gaps in our staffing levels this year, and, next year, I hope, we will be arguing for more funding to start to grow the organisation and get more people in. That will start to turn staff morale.

On the legacy front, we have not been involved in any close way with any policy implementation. Like everybody else, we had been thinking that the Stormont House Agreement was going to happen, until the turn of events that led to the Legacy Act. Obviously, we got through any case that was with us for a prosecution decision before the 1 May deadline. It was not that we rushed them all at the end. I know that it probably seemed like that because a lot of decisions went out between Christmas and May, but a lot of those cases had already been with us for quite a long time and were under consideration. Obviously, we did our best to do that. We worked on an amendment with the NIO that allowed the cliff edge, as you have put it, Justin, to be softened slightly. Anybody who wanted to review a decision taken before 1 May could do so, and we have reviews ongoing. Michael, could you expand on that?

Mr Agnew: We have at least 10 reviews. In terms of the continuing demand, it is not as though, from 1 May, legacy is no longer on the plate of the PPS. We have a number of cases at court, some of which still have a considerable period to run. They take up a lot of time and energy of some of our senior prosecutors. You mentioned the legacy investigation branch (LIB). It has a caseload that does not stop at 1998; it goes on to 2004. There may be around 150 cases. I am not necessarily expecting the flow of cases from LIB to PPS to stop. I am just expecting the profile of those cases to change, because it will no longer deal with the ones up until 1998. LIB's attention and focus is already on some of the later ones in that work queue, and I am not aware of any real change in the resourcing of that unit. We will continue to receive a workload from LIB. We have, as I say, at least 10 reviews that we will have to resource, and some of those are in complex cases. All of that is ongoing.

Obviously, we have the ongoing litigation around the ICRIR, and we will potentially receive files if that organisation conducts criminal investigations and submits files to us. That is probably the biggest unknown of all the demands at the minute, because nobody is really able to project with any accuracy how much engagement there will be with that body and how many of the cases that it will look at will result in files coming to the PPS.

Mr McNulty: On legacy, you mentioned veterans and state actors. The majority of my community — republicans and nationalists — were killed by terrorists, namely the IRA. Why was there no emphasis on terrorists? Why is it just state actors and veterans who are mentioned?

Mr Herron: Sorry, Justin, I was just saying that that shows how some of the criticism of us is, in fact, contradictory because you have some people saying that we are on a witch-hunt or a pursuit of veterans and others saying that we are reluctant to prosecute them. I was only using that as an example of how criticism of us sometimes comes through whatever lens you look through.

Mr McNulty: As an organisation, can you give a view on the Legacy Act?

Mr Herron: They have gone to great lengths to keep me out of the political arena through the setting-up of the PPS. As I say, I do not think that I am treading into inappropriate territory to say that I recognise that what was —. As I said last time, nothing had really happened from the Stormont House Agreement. It was not happening at a pace that was delivering for victims, and it was coming at a huge emotional cost. We could see that. On one hand, the ICRIR has the ability to provide answers. There is a difference between what is needed to put a file to the PPS for a possible criminal justice outcome and getting answers and information. The process of getting answers and information should not stall while we debate what happens in the criminal justice arena. Because those cases are 40 or 50 years old, people have been waiting for a long time to get answers. The prospects of criminal prosecutions and convictions are getting vanishingly small in those cases, and time is of the essence.

My only concern about the cycle of having a process with the Stormont House Agreement, then that was abandoned, then we went to the Legacy Act and then there was the possibility of going back to the Stormont House Agreement is that they are not time-bound, they are not funded, and nobody addresses or minds what it takes to prosecute legacy cases. That is why we have never been given the separate funding for a legacy unit that we asked for in 2018 and again in 2021.

Mr McNulty: You mentioned digitisation of files. To what extent would AI be of assistance in moving cases forward? Has that been explored? Why has there been a 23% increase in reported sexual offences in the last year?

Mr Luney: AI has the potential to help us. AI is being used to deal with redactions in the context of disclosure. We will look to see whether that can be of benefit because it is an area that takes up considerable staff resource in our organisation and in the PSNI. It has potential. We have not embraced it to any great extent yet, but it is part of the strategy.

Ms O'Kane: I will take the query about the 23%. It was an increase between 2021-22 and then 2022-23. We have spoken to police at various intervals. Sometimes, you will see an annual fluctuation like that, and, sometimes, you will see a peculiar spike in an individual month. There is no individual trend or explanation for why that has happened.

We hope that part of it is due to the increase in public confidence. We are much more publicly visible. I do my piece, as do all the senior team and our prosecutors, to build confidence among victims but also through the stakeholder sector to see if we can influence behaviours that way. I hope that provides at least part of the explanation. Also, the timings coincided with all the pandemic restrictions

being released and perhaps a return to more normal social patterns. That is purely speculation on my part, but I think that it coincides, interestingly, in time with people returning to normal socialising and so on. I cannot give you a specific answer, but that is my best guess.

Mr McNulty: Is it trust in the system as well?

Ms O'Kane: Yes. As I said, there is public confidence and, perhaps, trust. I hope that is the case.

The Chairperson (Ms Bunting): Before I get to my questions, I thank you for being extremely generous with your time. It has been really helpful to have your briefing. We understand completely that you are not accountable to us. However, it is important that we understand the nature of your work and are able to ask you questions because we see that your decisions, one way or another, impact on public confidence in the system, its partners and you as well. I acknowledge that initially.

I also acknowledge that you do not want to speak about specific cases, and I respect that. There are a couple things that you raised that I would like to touch on, and I will speak in generalities, but I think that I should touch on them because they are issues that touch on public confidence. However, first, I want to thank you because it has been really helpful. We will speak about your generous offer to come every six months to help us with legislation. Six months might be a bit often for all concerned, but I am sure that we can work our way through that.

I have a few questions. In respect of the decision to prosecute or not, you mentioned delays in the system, and you mentioned public confidence, political viewpoints and all those things. I accept your independence entirely, but we are all part of wider society, and we hear things and have our own thoughts. We recently witnessed a high-profile report where the police felt that they had met significant threshold levels, but some of the files that were given to the PPS took two, three or four years to come to a decision. That has a significant impact on public confidence. Then, the outcome is, "No, we are not going to proceed", when the police think that the thresholds have been met. That damages confidence somewhere for somebody. Likewise, we have seen prosecutions — high-profile cases — in which the defendant was clearly dying and died in the midst of the trial. In those cases, you are left thinking, "I am not sure where the public interest was in that and in the money spent on legal aid". How do you find the balance? As you said, people looking on will start to see political expedience to an extent. The public statements help massively for people to understand the distinctions between the roles of the PPS and the PSNI and so on, but how do you find the balance?

Mr Herron: Chair, I am happy to take those questions. You mentioned political expedience: I recognise why people sometimes think that that is a factor in decision-making, but it is never a factor in PPS decision-making. It is all about legal process. We are accountable through the law, so everything is rooted in that. It is an offence to try to influence the director improperly: I have to remind these folk about that sometimes.

You were talking about Operation Kenova. When I was here in 2021, I said that I was concerned about the resources that we had available to deal with that case. It is not that the files came into the PPS and sat for years with nobody working on them. There was back-and-forth between prosecutors and investigators. Not all files were complete when they came in. We were certainly working as hard as we could. They are complex cases, but that is the nature of the evidence in them. A lot of them refer to documents from years ago that are incomplete; you are not able to tell who the author is, so there are issues around provenance and about multiple hearsay that all feed into admissibility.

There was a lot of optimism and enthusiasm around that investigation, which was welcome, because it gave and, hopefully, will continue to give victims a lot of answers, but it is our role to take an objective view of the evidence. In those cases, we did that by engaging very experienced counsel based in England and Wales, so it is not as though a Northern Ireland slant was brought to it in the sense that the case might have been prosecuted in England and Wales but was not prosecuted here because the PPS and local counsel took a view. We used experienced counsel — former senior Treasury counsel from England and Wales — who prosecute a lot for the CPS. The issues were around the evidential threshold not being met.

Any prosecutor's view is useful, but it is only their feel for the case. Unless you have read all the evidence and taken everything in context, you cannot form a view about whether the test for prosecution is met. In those cases, there was a lot of speculation about that, and a lot of assumptions were made because the investigation was quite long, was very high-profile and talked about finding things that had not been found before. Expectation levels were raised. Certainly, we did our best to

explain those decisions. The decisions were issued over four tranches and something like 92 pages. I accept that the legal explanations can sometimes be hard for an individual to penetrate. Michael did a bit of media work around that, and I am here to say that those decisions were based purely on evidence. There were no improper considerations at all in those cases.

The Chairperson (Ms Bunting): You can see that taking two, three or four years has a massive impact on public confidence around those issues.

Mr Agnew: I understand that. I have said publicly that, if we had had more resource to do the case more quickly, I would have welcomed it unequivocally. The files came in over a number of years. There were files in 2019, 2020, 2021 — in April and November — and 2022 — in February — and a couple of late ones in December 2023. The approach to the decision-making, which was recognised by all in the team involved, was that it was not the type of case where one should look at files in isolation; you had to look at the totality of it. That was brought to bear at its absolute height. That was the approach that was taken, and the scale and complexity of it was unprecedented. It was always going to take time. The investigation had been working and gathering evidence for about three years, with a significant team of 60 or 70 staff, before it came to us. I state those facts only to provide some context.

I understand that from the public's point of view, it still feels like a long time to take decisions. The prosecutors that we had, however, worked their absolute hardest on it, whilst balancing competing considerations. We did not have a separate legacy unit that could deal with the matter in a ring-fenced way. We very much had tried to prepare the ground for those files to come in. Two of our experienced senior prosecutors were ready to deal with them, but they still had some legacy cases in a different sense — cases that they had dealt with previously that would come to court while they were working on Kenova cases — and they would have to deal with the cases that were at court before they could get back to the Kenova cases. That was not ideal, and it was not the model of how you would want to do this in order to deal with the cases as quickly as possible. However, it was the best that we could do in challenging circumstances. We have tried to explain all of that. Sometimes, the detail in the explanations does not communicate as well as the headlines, and that is a challenge that we face.

The Chairperson (Ms Bunting): That is fair enough. I am grateful to you for answering it. I want to follow on, then, to review. For example, you have cited that a victim may appeal. I imagine that some people would be financially precluded from doing that. When it comes to reviewing your own processes internally, however, do you take time to review whether a decision was the right one? For example, in circumstances where you are midway through a trial and somebody dies and it is fairly evident that they were going to die, do you review things after such cases and consider whether you made the right decision? Do you consider whether your processes are right, as well as the factors that you take into account? You mentioned flexibility, Stephen.

Mr Herron: Yes.

The Chairperson (Ms Bunting): To what extent do you look through and consider introspectively, "Where are we? Are we still on track here?"?

Mr Herron: The system takes into account that, generally speaking, if you are prosecuting somebody who, you know, is in ill-health or is in a potentially fatal condition, you would only seek to put them on trial for the most serious offences. Where other offences are concerned, there is a degree of proportionality *[Interruption.]* In every case, you get representations from the defence, such as medical reports, that we would consider. In fact, we have had cases where, before I have taken the decision to prosecute, we have had a medical report and have reviewed the case and I have invited the defence to submit a further medical report to see whether the condition had worsened. In those cases, the system builds it in that you do not put people on trial — it is a serious thing — unless you know that it is proportionate to the offence that has taken place and there is evidence to do so.

There have been occasions where we have stopped proceedings because of the medical evidence saying that a person will not be able to give evidence or that to put them on trial at all would be so detrimental to their health that it may bring on a fatality. From time to time, obviously, it happens in every jurisdiction that there are cases that are in progress where someone dies. Of course, that is sad and unfortunate because there are individuals and families involved. Nevertheless, that is not due to any sort of oppressive conduct or over-zealous approach by the prosecution.

It is right that, when a serious crime has been committed, somebody is held accountable for that. The system does, as best it can, try to cope with any medical conditions that an individual has. That could be accommodated by how the trial is run. Alternatively, on some occasions, as you said, their condition could be so bad that the trial stops. We keep all the decisions to prosecute under review, and where we have significant medical evidence, it would, of course, be taken into consideration.

Mr Agnew: It is an explicit duty on a prosecutor to keep their decision under continuing review.

The Chairperson (Ms Bunting): That is helpful, thank you. It is helpful to have that in the public domain, to be honest. Maybe it could stop some of the discussions around some of those issues.

You mentioned, a few times, the Criminal Justice Board's work. You mentioned a particular project that you lead. We are really interested in that work and the modernisation work. Will you give us an outline of any other elements on which you lead, their progress thus far and their potential time frames?

Mr Herron: We touched on a lot of them. I lead on the early engagement piece. We have not mentioned committal reform yet. Michael and I probably talked about committal reform the previous time we appeared at Committee. The work streams on the Criminal Justice Board are the committal reform work stream, which is ongoing, the digital strategy work stream, and the out-of-court disposals work stream, which Peter touched on. The police are leading on the out-of-court disposals work stream and looking at ways that they may use or extend their powers to deal with lower-level offences that will mean that they do not send files to the prosecutor. The work stream is also looking at what we might do that would mean that we do not send a file to court. There is also the early engagement work stream and the work stream on the remit of the Magistrates' Court, which, again, Peter looked at. That work stream has the longest time frame.

My vision, which I hope is shared by our criminal justice partners, is that the public expect us to focus our resources on the most serious cases. Every crime is serious, especially those in which there is a victim; they will feel very personal. When we have finite resources, however, we should prioritise resources by looking at cases where there are the most vulnerable people and where there is a current threat of risk and harm. The police and I agree on that.

Broadly speaking, I think that the Committee, politicians and society would say that the best way to spend the money is to have fewer cases in the Crown Court so that we could do those more quickly and provide better standards to victims and witnesses. That means trying to take cases out of the Crown Court and into the Magistrates' Courts. At the minute, in most cases, the maximum sentence in the Magistrates' Court is six months' imprisonment and a fine of £5,000, but some offences can go up to two years. If you were to increase the number of two-year-sentence offences going through the Magistrates' Courts, you could take a lot of cases out of the Crown Court. However, you would also then have to find a way to make capacity in the Magistrates' Courts for the additional cases that would be brought in. You do that by taking the lower-level stuff out of the system altogether. Although we may not have talked about it in a joined-up way like that, that is the joined-up system that I have in my head. We might be talking about it happening over the next number of years.

The Chairperson (Ms Bunting): Is that progressing? Are people amenable to that?

Mr Herron: All those work streams are in there. The highest priority are the work streams on out-of-court disposals and early engagement. We will have a study visit to Leeds. We are going there with some senior members of the judiciary here and a former judge who is working on legal aid reform. We have DOJ officials and police coming. We are all going to visit Leeds Crown Court to see it in action, and we will also meet police and prosecutors as part of that visit. We will not all be there at the same time. We have broken it up. For me, that is a potential workstream that will support the next stage of committal reform.

You probably already know that the first phase of committal reform was the abolition of oral evidence. That came into play on 17 October 2022, I think. That had a big impact. I think that 1,000 cases have gone through. Unfortunately, had there been the right to abolish oral evidence at committal stage, some of our long-running terrorist cases might have come to court a lot more quickly. Instead, some of those cases were in the Magistrates' Court for years. That is quite a positive development that has already taken place, but if we are going to move to the next stage of committal reform, some of the work around early engagement that I lead on would be a good way to prepare for that. We do not want, as I mentioned last time, to cut the time it takes to get into the Crown Court but to find that, all of

a sudden, the time that was spent before the case got to the Crown Court is now spent just accumulating in the Crown Court, and then it becomes like a remand court, because the costs in the Crown Court are much more expensive as you are paying everybody Crown Court rates. You would not want to try to implement committal reform before doing all the groundwork for it.

Mr Luney: The remit of the Magistrates' Courts' work stream is led by the Northern Ireland Courts and Tribunals Service. That big structural piece about whether the sentencing remit should be extended will need to be preceded by policy consultations because it requires primary legislation. It is taking that focus, but, in the meantime, it is looking at other things that may be more practical. For example, would there be a benefit in having a road traffic court, where all road traffic cases are brigaded together and dealt with quickly? Could that be used to declutter some of the court lists? A range of activities is going on in that one.

The Chairperson (Ms Bunting): You are leading on early engagement: is that right?

Mr Luney: Yes.

The Chairperson (Ms Bunting): OK. Thank you. Just a couple more from me. You mentioned the files that people see. We have learned from other partners in the system that that can take its toll. As people watch and type out material, they see very distressing and traumatic incidents play out, and that takes a toll on them. Justin asked about morale, but I am concerned about well-being and the steps that are taken to ensure that your people's well-being is looked after. That is my first question.

Stephen, you previously articulated your view that you needed more prosecutors in order to progress things through the court. I am not saying that I disagree; I am just conscious of the system as a whole, and I am acutely aware that the Government has resources and time and that the state side is afforded resources and time that the defence side is not. The profession is, obviously, under considerable pressure, having difficulty recruiting people and so on. You could have a raft of prosecutors — you may indeed take some, because it is probably a more secure employment opportunity — but the private sector will struggle to keep pace when it comes to cases. Do you discuss among yourselves the impact on the profession and what practical things can be done? It is one thing to have a strategy but quite another if the defence side cannot keep up. How does all that come together?

Mr Herron: You are right. If it is OK, Chair, I will deal with the second part of the question, and Marianne will deal with well-being, because that was a big part of our internal staff event last week; we addressed them on well-being. On the second part, I am talking about a fairly modest uplift in prosecutor numbers, in response to the increase in demand. I regularly meet the heads of the prosecution services in Ireland, England and Scotland. They have had significant increases in their staff. I am arguing that maybe we should modernise, which is about reducing demand, and that we take that into account as well as increasing our headcount. Staff are under pressure.

I am not talking about doubling the number of prosecutors or anything like that, but we have not had any increase in headcount in years. In 2014-15, in response to the austerity measures, we took measures to shrink the organisation. We lost about 17% of our staff through a voluntary exit scheme (VES), and we closed about half of our offices. At that time, when we were shrinking, the amount of serious crime being sent to us started to go up, and that trend has been consistent over 10 years. There is a gap. We are demand-led, but the demand has gone up, and our resources have not kept pace. I am not talking about soaking up all available legal resource.

The Chairperson (Ms Bunting): I understand completely. We have a general concern about the number of people entering the profession, because we hear that the number of people going through the institute into criminal law is three. That does not help you; it does not help the defence side; it does not help anybody. If everybody follows the corporate law path, that is not going to work for society in the long term.

Mr Herron: Partly from the study visit and partly from the conversations that I have had with other DPPs, I know that, even when they had the funding to increase prosecutor headcount, they struggled to do that; the problem is not just here. One thing that we are looking at, assuming that we have additional investment, is using legal support officers. They are not always fully trained lawyers but work alongside lawyers, because, in what lawyers do, there is sometimes an element of administrative work such as preparing applications and ensuring that victims and witnesses are kept updated. That does not always have to be done by the prosecutor; it could be done by somebody who works

alongside them and is involved that way. That is something else that we are looking to do to ease the pressure.

On the early engagement piece that I am working on, again, engagement with the defence looks very different in other jurisdictions from how it looks here. I am an advocate of the defence having to be properly resourced to engage with us. Some of the other pilot initiatives, in which we have tried to get early engagement with the defence, did not work if, in a more serious case, counsel was not involved. We cannot reasonably ask a defence solicitor to engage with us about a case if they say, "Hang on. Senior counsel will be needed on that. I cannot agree things until that senior counsel is involved". You have to look at legal aid again — that is being done — to find a way of incentivising that early engagement. It is all linked to the idea that quite a lot of cases plead guilty. If we can get to those cases earlier, that is one way of freeing resources. Something else that we could do would be to identify, at an earlier stage, the cases that need to go to trial and try to narrow the issues. We cannot do that on our own; we need to do it with the defence. I am very conscious that it is not just about growing the PPS and the defence then having to keep up with that, because anything that one area of the criminal justice system does has repercussions.

The Chairperson (Ms Bunting): There is an equal and opposite reaction.

Mr Herron: Yes. If the judiciary were lucky enough to get funding for another 20 judges, it could not just expect us and the defence to turn up at every court. We realise that we have to work collaboratively with other parts of the justice system.

The Chairperson (Ms Bunting): Thank you. Marianne was going to touch on well-being.

Ms O'Kane: Yes. I hope we have a good understanding of the impact of trauma and vicarious trauma on our staff. We have now identified that formally as one of our corporate risks for the future. Think about the case types that all our staff deal with: in the serious crime unit, it is a daily diet of murder and serious sex offence cases; across the organisation, we have indecent images of children, fatal accidents and domestic violence. There is a heightened risk. Some of our staff themselves might be vulnerable through experience of crime or life issues in general. The risk attaches to every member of staff in whatever way they engage with cases.

We have a well-being strategy under development and a wealth of resources to support staff to keep well, because we have a legal duty and a moral duty to make sure that staff are well and can keep well. We have a mental health first-aider, who is a point of contact in the organisation. We have individuals called "well champions" who are available to support staff. We have had bespoke classroom sessions for staff, where we educate them about some of the indicators of trauma and how best to deal with trauma. There is a world of online resources and seminars to assist staff. However, to be honest, we have had a bit of a mixed response. It is all being offered to staff. We have had really strong uptake in some sectors and less uptake in others. We are looking at making it mandatory for staff. There is a debate about whether that is forcing people down a route that might not be beneficial to them, but we have to think about how to meet our responsibilities cohesively. The message I am trying to get out to staff is, "It is not just about the organisation presenting you with options. We need you to engage with us and let us know if your work is having an impact. If you are just not feeling quite right, you need to let us know that and be confident that you can tell us and that we will deal with it and support you". We are in a good place, but we have not yet managed to reach out to all the staff who would benefit from it.

Mr Luney: Obviously, the Civil Service publishes figures for working days lost through sick absence. In the figures for the last full published year, we were certainly at the wrong end — the top end — of the table for working days lost. That will partly be to do with the excessive caseloads. It will partly be to do with the nature of the material, and, hopefully, we are beginning to address that. However, it is a worrying figure that we want to get under control again. Similarly, people surveys are done from time to time. One of the questions asked is whether you want to leave the organisation, and the figure for those who do has also gone up. Hopefully, what we have done for the last 18 months to pull that back will begin to pay dividends, but they are challenging situations.

Ms O'Kane: On Monday, we will be speaking about staff rotation and offering staff the opportunity to leave. It is odd, in a way, that, historically, when staff in the serious crime unit have had an opportunity to leave, few have taken it. They value doing the work and are fantastic at it, and they do not particularly want to leave. Again, there are difficult discussions to be had. We now have the capacity to

offer rotation. However, you are rotating somebody into work where they will deal with indecent images of children and other troubling case types.

The Chairperson (Ms Bunting): None of it is easy.

Mr Luney: No.

Miss Hargey: This goes back to the point raised earlier: it is on staff retention, turnover and agency staff. What proportion of your staff are agency staff, and at what tiers of the organisation are they? What are the retention or turnover rates? Is there any correlation between temporary and agency staff and —?

Mr Luney: A significant proportion of our staff are agency. About 20% of our staff are agency, and probably 14% or 15% of our staff are on temporary arrangements or temporary promotions. That was partly due to a recruitment freeze being in place across the NICS for quite a long time, which impacted most at administrative grades — administrative assistant (AA) and administrative officer (AO). At that level, the turnover is probably about 5%. That is fairly high and creates an additional overhead due to the subsequent need for induction and training. Similarly, on the public prosecutor side, we have been without a supply list of substantive prosecutors for some time. That has manifested itself through agency and temporary promotion arrangements. However, we have just completed a number of recruitment schemes for all legal grades. We hope, now that we also have a slightly better funding settlement, that that will allow us to get more stability back into the process. Legal grades raise a slightly different issue, because, even when you get new staff in, there is a period before they can start to take decisions in their own right. For a while, they have reduced decision-making targets. The quicker we can get stability and get people fully trained, the better.

Miss Hargey: OK. Thank you for that.

The Chairperson (Ms Bunting): Thank you very much. You have been inordinately generous with your time. It has been a really interesting discussion. Thank you also for putting up with our trying to change dates and so on. Things were quite difficult at one stage: we did not want to have you in at the same time as the Minister and the Chief Constable; that would not have been ideal. We are eager to follow up with you on your proportionate responses to lower-level crime. That is interesting to us, and the modernisation work is also really helpful. Thank you to each of you for taking the time and for your candour.