Northern Ireland Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Victims and Witnesses Five-year Strategy

25 April 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Alex Easton
Mr Tom Elliott
Mr William Humphrey
Mr Seán Lynch
Ms Rosaleen McCorley
Mr Jim Wells

Witnesses:

Ms Maura Campbell	Department of Justice
Ms Veronica Holland	Department of Justice
Mr Graham Walker	Department of Justice
Mr Peter Luney	Northern Ireland Courts and Tribunal Service

The Chairperson: I welcome Maura Campbell, Veronica Holland and Graham Walker from the criminal justice development division, and Peter Luney, head of court operations at the Northern Ireland Courts and Tribunal Service. This session will be recorded by Hansard and published. Maura, I hand over to you.

Ms Maura Campbell (Department of Justice): Thank you very much, Mr Chairman, and good afternoon. We have been looking very carefully at the issue of maximum waiting times for witnesses in light of the recent feedback from Committee members. As you said yourself last week, Mr Chairman, it would be unfortunate if the Committee found itself unable to support the new strategy for victims and witnesses because we were unable to resolve this issue. For our part, we would be loath to press ahead with launching the strategy without the Committee's support.

Therefore, we are here in the spirit of wanting to find a way through that we would regard as workable but that would also give you the assurance you need that the issue of witness waiting times in court is being taken seriously.

I am grateful to Peter from the Northern Ireland Courts and Tribunals Service for joining us this afternoon. Court Service colleagues had already agreed to take the lead on work to reduce waiting times in the draft action plan, although I should note that there are a number of interests and it is not within the gift of solely the Court Service or the Department to deliver the required changes. I will clarify the respective responsibilities. Securing the attendance of prosecution witnesses at court is the responsibility of the Public Prosecution Service (PPS). Defence witnesses are a matter for the

solicitors representing the defendant. Case listing is a judicial function — the judge runs their own court and decides the order of cases. There are also the adult and young witness services, which are delivered by Victim Support Northern Ireland and the NSPCC respectively, and which provide support to prosecution witnesses on the day.

Turning to your specific recommendation, the first thing I want to say is that we fully acknowledge that there is a problem there. Witnesses are routinely being asked to go to court first thing, even though their case may not be heard until later in the day. They are waiting around, sometimes for lengthy periods, and feeling that they do not get information about what is happening in their case. They are also apprehensive about coming into contact with the defendant. Very often, witnesses are eventually sent away without giving evidence at all. According to the latest Northern Ireland victim and witness survey (NIVAWS), 64% of witnesses attending court did not give evidence, and, of those, 64% — so 64% of the 64% — had to wait for over an hour before being told that they would not be needed. The most common reason given was that the defendant had pleaded guilty.

The Minister's letter to you of 12 April recognised that waiting times in courts are a real issue for witnesses, but highlighted that we have certain concerns about introducing a maximum waiting time. Our concerns are centred on what would happen if the maximum waiting time was breached; in other words, what the sanction would be. Halting a case because a witness waiting time had elapsed would, in our view, be harmful to witnesses and, in particular, to the victim. We think that people would prefer to stay a bit longer in court to have the case dealt with than have it adjourned. Adjournments also run the risk of witnesses not coming back, and cases could potentially collapse as a result. In an ideal world, of course, we would want to put measures in place to ensure that targets for maximum times were always met, but we do not have control over certain aspects. As I mentioned earlier, for instance, the management of defence witnesses sits outside the responsibility of the statutory agencies.

We note that, at your last session, members drew parallels with our intention to introduce statutory time limits. Although we understand the point that is being made, in practice we would see a big difference in the impact. If a statutory time limit was not going to be met, proceedings would most likely be stayed before the case got to the door of the court, whereas a maximum waiting time for witnesses would mean halting the proceedings on the day, when everyone is there in court and ready, because the maximum time had been reached for a particular witness. In our view, the latter scenario would create more inconvenience for witnesses and could be distressing for the victim. There would, of course, also be implications for the defendant, especially if the defendant was on remand.

If someone wanted to delay proceedings, for example, by calling a large number of witnesses or keeping them in the stand for as long as possible, that could cause the maximum time to be breached. I am not necessarily suggesting that that would happen, but we have to recognise that it is a possibility.

One option would be to set a maximum high number of hours within which witnesses would have to be called that we could be confident of achieving in all cases, but we feel that that would not provide much of an incentive to reduce the existing waiting times.

What the Minister's letter was proposing instead was that we should create new standards. Those standards would set out the maximum amount of time that witnesses should, on average, expect to have to wait. They would be measured, and performance against them would be monitored. In support of the introduction of new standards, we would also need to take forward a piece of work to explore possible ways of reducing the waiting times. That could, for instance, include how we might achieve greater clarity around when contested cases will start. At the moment, some courts run contests only in the afternoon, and if we were able to apply that universally, it would make planning witness attendance much easier. We could also look at whether opportunities could be created for consultation with prosecution counsel to happen later in the day. At the moment, the practice is for consultations to happen early in the morning, regardless of what time the case may eventually be heard.

Also, through our work on statutory case management, encouraging earlier guilty pleas and reform of committal, we want to ensure that witnesses are called only in the first place if they are actually going to be needed. Alongside that, we also need to look at improving waiting facilities for witnesses, where that is possible, and improving the communication flow with witnesses on the day. The issue of communication came through again in the consultation on the draft strategy and has been a consistent theme in NIVAWS. Incidentally, none of the consultation responses mentioned maximum waiting

times specifically. The feedback that we got was that people wanted to see a reduction in waiting times.

I think that it is possible that we may have been taking a more literal interpretation of a maximum waiting time than the Committee may have intended, in which case our positions may not be as far apart as they previously seemed. We interpreted that as an absolute guillotine on proceedings, and we would welcome some discussion with you on whether that was your underlying intent.

We are also aware that the Committee expressed concerns about the timing of when the proposed standards would be introduced. We have looked at this again and concluded that it should be possible to introduce the standards on an administrative basis through the first action plan, which would cover the first two years of the strategy. We would then seek to formalise those in the statutory witness charter that is planned for years 3 to 5.

We would welcome the Committee's views on this amended proposal. We are happy to take questions.

The Chairperson: Thank you. Certainly, the maximum notion was not about trying to guillotine a case and creating that type of problem. It was to try to drive change and make things happen a little quicker. In that respect, there may have been crossed wires around what we are trying to achieve. Our suggestion was to try to put something in there that would effect change and, hopefully, people who are having to wait an hour would also have a reduction in their waiting time. That was the thinking behind that and, in that respect, we are not a million miles away in what we were trying to achieve.

You indicated that you may be able to highlight that a witness should expect these standards with waiting times. Elaborate a little on what those standards would be.

Ms M Campbell: We would be talking about standards that are similar to the type of standards that exist in England and Wales. That is probably what you heard about when you visited Bradford and were talking to staff. They talked about witnesses not waiting for more than two hours, and that sounded to us like they were echoing the standard that they have in place there. The wording of that standard is:

> *"Everyone involved in your case will seek to ensure that, from the time you are asked to attend court and give evidence, you do not have to wait more than two hours in the Crown Court or more than one hour in a magistrates' court."*

It then goes on to state:

> *"there are sometimes delays which will be unavoidable."*

I think that the intention would be that there would be communication with the witness so that, if there is a genuine reason why it is going to take a bit longer, at least people would be informed of that and that information flow would be happening. It is that type of standard that we are talking about.

We would need to look at the timescales. We understand that England and Wales are struggling to meet those standards, and we need to look more in-depth at current performance. We certainly want to create a standard that is going to be challenging and that drives the types of work that we outlined so that we start to do things differently. A lot of the problems are that, because of custom and practice, everyone is brought in at the start of the day regardless. If we can find a way of being a bit more sophisticated about witness handling, that should make a significant difference. It may be that we will start with a standard of maybe a few hours and aim, in years 3 to 5, to tighten that up.

The Chairperson: Do you think that you could bring forward that initial standard of what is expected during the years of the strategy? I think that you mentioned years 3 to 4.

Ms M Campbell: We talked about doing it in years 3 to 5 as part of the development of a witness charter. We wanted to do that in the charter in any event. In light of the feedback from the Committee, we are now proposing to start that work sooner and bring forward standards in the first action plan.

The Chairperson: That would be years 1 to 2.

Ms M Campbell: Yes. That is recognition of the fact that the Committee has signalled to us that that is a priority issue.

The Chairperson: OK. That has certainly helped me.

Mr Wells: Obviously, you will monitor performance.

Ms M Campbell: Yes.

Mr Wells: Right. Let us take Newry and Londonderry; two extremes of the country. What would happen if the good folk in Londonderry were incredibly good at this and everybody was called within the one-hour time span and those in Newry were waiting three and four hours?

Ms M Campbell: We would have to look at what was happening locally in those courts. We obviously have to look at the timing of when contests start. At the moment, that varies across different areas; I think that Peter can confirm that. We would want to see whether the practice that we would like to see rolled out across all areas could be followed in all court areas so that there is certainty around what time of day contests would start. At the moment, if proceedings could start earlier, the prosecution services could bring witnesses in earlier, so that they would be available for that. If they were to know with certainty that the proceedings were going to start at a particular time, they could work the witness attendance around that better. That should be supported by the roll-out of the victim and witness care unit and the improved communication that there will be with witnesses and victims in advance of proceedings.

Mr Wells: Do you envisage that the results will be published online so that users of the court services could find out which courts are more efficient and which would involve having to bring a camper van to put outside?

Ms M Campbell: We can look at the publication of figures.

Mr Wells: Over the past 31 years, I have spent so much time in court waiting to be a witness about something — some of it civil, and some of it criminal — particularly in Downpatrick. It has the most appalling waiting facilities. There is just one big hall and two benches. Everybody sits together, regardless of whether you are the witness, the prosecution, the defence or whatever. At times, there is not even room to sit, so you can end up standing outside. It is intolerable that people are asked to spend more than two hours in those conditions. Some of this will be resolved by your closing of some courts. In some areas, there are particularly poor facilities. Even in Lisburn courthouse, which is not that old, it can be absolutely packed to the rafters. There should be a stick as well as a carrot to have some way of embarrassing officials to make absolutely certain that they at least try to come up to target. You have not told me about any sanctions if they do not do so.

Ms M Campbell: The monitoring and measuring of this will be important. We will have to look at doing that across all locations and see what is happening in different areas. Where standards are not being met, we would have to explore the reasons for that and see what further remedial action is necessary.

Mr Peter Luney (Northern Ireland Courts and Tribunal Service): That is right. If there is a disparity between different areas, we would need to analyse it to find out what the root causes are. Some of the causes may be valid, but if there are underlying difficulties with the processes that the agencies are applying, we would need to adjust to make sure that those were addressed.

Mr Wells: Would that include an end to the practice where everybody is called at the same time in the same way as a GP surgery or consultant's office where everybody arrives at 10.00 am, regardless of whether the consultation is at 3.00 pm or 11.00 am. At the minute, I am regularly called in at 10.00 am, and it is quite clear that the thing is that is on is going to run until after lunchtime. Surely that practice has to stop.

Ms M Campbell: That is the sort of thing that we intend to look at. If British Airways was saying that you have to show up at the airport at 9.00 am, regardless of what time your flight is leaving, you would

not accept that. We think that there must be a better way of matching witness attendance with what they are needed to do.

Mr Luney: As Maura indicated in her opening remarks, there are courts where witnesses are called later in the day because we know that is when the contests are heard. There are other court venues where we have specific days set aside just for contests to try to minimise the time that witnesses and victims have to sit while normal pleas and adjournments are dealt with. So, there are good practices, and we will want to work with the criminal justice agencies to try to see whether those good practices can be built upon to try to make it a bit more consistent.

Mr Wells: I was in court in Malta in February, and everybody apart from the judge stood throughout. It was amazing how quickly the cases were processed. Everybody stood, there were no seats, and it was amazing how quickly the QCs got their case presented in that time.

Ms M Campbell: We did not have that on our list, but maybe we should put it on.

The Chairperson: I do not know whether that is a bid for the Committee to go out and look at the courts in Malta. *[Laughter.]*

Mr Dickson: I am just speculating that Mr Wells must have a hobby of court sitting.

The views and concerns of the Committee are not to place artificial barriers in the way of the court processes. We want to endeavour, having listened to the difficult and harrowing stories of victims and witnesses, to set the highest standards for them about what they can expect. The submission states:

"The new standards would set out for witnesses how long they should expect to have to wait".

That is important. It goes back to the holistic approach that we are trying to take in the report. Victims and witnesses would be able to identify an individual who would be able to keep them apprised of how the time frame or the day was progressing. People would be able be told immediately that the case will start at 10.00 am, and that they should be called at 10.15 am or 10.20 am or thereabouts, provided that there is no legal argument that cannot be foreseen. If that time comes and passes and the person has not been called, there should be a trigger on an official's sheet to go back to Mrs Bloggs and tell her at 10.25 am that this will now take another half hour or whatever. We are looking to see you take those sorts of measures rather than being prescriptive about the amount of time.

Mr Elliott: Thanks for the presentation. I am bit concerned that not enough is being done to reduce the times. You have noted three points in the submission, one of which is to tell witnesses as quickly as possible that the case cannot be heard on the day. Surely, those things should be happening anyway. If that level of communication is not taking place, there is something badly wrong anyway. Maura, you said that a number of agencies and organisations are involved in the process, including the PPS and the judiciary, but, at that level, there is co-operation on everything else, so, surely, there should be much better co-operation on these aspects. In the discussion about the timings for hearings, you said that you will look at Mr Wells's suggestion. I am concerned that there is a very relaxed attitude about all this. Why have you not looked at it before now? Why has it not been on the agenda? If you are not going to bring in the statutory time limits, surely those issues should have been looked at as a priority. I believe that there is much too relaxed an attitude to it all.

Ms M Campbell: Possibly, one of the issues is that there are a number of people with different roles, and we need to be clearer about ensuring that one individual has responsibility. In the most recent NIVAWS, witnesses were asked whether they knew who to ask for information and an explanation about what was happening in court. Seventy-six per cent of people said no, which is why we wanted to focus on communication. We think that there is an issue there. Some efforts have been made in the past to improve this, but those obviously have not been sufficient. That is why we had indicated in the action plan that this was an area that we wanted to focus on early on the strategy.

Mr Elliott: So, when can we expect improvements?

Ms M Campbell: We will be taking forward the work that I outlined in the first action plan under the new strategy.

Mr Elliott: When can we see improvements in people being informed so that, as Mr Wells said, if the sitting is at 2.00 pm, they will not required to be there at 10.00 am?

Mr Luney: We will work with the criminal justice agencies and the judiciary to try to implement or broaden out some of the best practice that exists. The Committee is very aware of the establishment of the victim and witness care unit, which deals with the management of and communication with witnesses up to the point of court. A natural extension of that would be to broaden it out so that the facility is extended to looking after them while they are in the court. We will want to explore that in the early part of the strategy.

Mr Elliott: Surely, Peter, it is not rocket science to know that a hearing will not be until 2.00 pm, as opposed to 10.00 am. Surely, it should not take a massive time frame to implement what, logically, seems to be a reasonably simple exercise.

Mr Luney: No, and as I said, that practice exists in a number of court venues. We will work with the judiciary to see whether that can be built upon. It is listed as a judicial function, so, to some extent, it is outside of our control, but it is clear that that practice works in some venues and can be rolled out further.

There are other issues. Even in some venues where contests are listed for later in the day, there is still a practice of the prosecution calling them early to allow them to consult before court starts, because, once court starts, it basically keeps on going. Those are small issues that, hopefully, we will be able to address quite quickly to allow us to make some quick wins. If we can cut off some of the time at the front end, it goes some way to addressing the wider problem.

Mr Elliott: I still believe that there is not great enough urgency being put into it.

Mr Lynch: I concur with you, Chair, and, I think, Stewart. Maura, you will see where we were coming from. Waiting times was one of the biggest issues that came up in the inquiry. If your amended proposals can assist in that process, we would support it. We were not talking about guillotining cases or anything like that.

Ms M Campbell: I think it is very helpful for us to have got that clarification because that indicates that we are more in line with what the Committee had expected.

Mr Humphrey: Thank you very much for your presentation. Given that a number of courts will close, the resources needed to manage and administer them will not be needed. Can you assure the Committee that the resources, financial and human, will be redeployed? Can you assure us that the people will be redeployed to address the issue of administration, which Mr Wells and Mr Elliott raised, and that the money saved will go into ensuring that the Courts and Tribunals Service and the sittings of courts will be much more efficient?

Ms M Campbell: I will answer part of that, and see if Peter wants to add to it. I think that the types of changes we are proposing here should be cost-neutral, for the most part. We are talking about the same thing happening, but, maybe, in a different sequence or in a different way. It is about tackling a custom and practice that has evolved over time.

Peter might want to comment on the closure of hearing centres.

Mr Luney: Two have closed, and it is proposed that two more will close late next year. The Committee will recall that, despite those closures, there was no reduction in the number of court sittings. There was no suggestion that court sittings would be amalgamated, so the amount of resources required to staff the various court sittings should remain unchanged. We have looked at the court venues that we are transferring business to in order to make sure that the facilities still meet the needs of the additional work that has been transferred, and we hope that they will. It is also the case that the venues to which the hearing centre business has been transferred generally offer a better standard of facilities for victims and witnesses and will, in fact, address some of the concerns around waiting facilities.

The disparity between where they are moving from and where they are moving to differs between one and another, but, by and large, there is a better standard of accommodation facilities for victims and

witnesses. That in itself does not address the waiting time issue, but it does address the waiting facilities.

Mr Humphrey: Not having spent as much time in courts as Mr Wells, I have to accept that facilities are bad in some regional courts. Surely, the consolidation of sites that you talked about, and about which officials talked to us a number of months ago, will provide economies of scale and should give extra resources to address the issues that members have raised here. Otherwise, apart from facilities, why do it?

Mr Luney: The hearing centre closures offered some small savings in resources. I know the Committee had a view on that. The main financial benefits were that they addressed a reasonably large, unmet capital need, which, obviously, does not lead to resources to provide additional services. So, the financial savings were primarily around capital, rather than resource.

The Chairperson: Finally, it is curious how the Courts and Tribunals Service tell us that nearly 93% of people wait for less than two hours, from when they arrive at court, but the victim and witness survey indicates only 34% are waiting for less than two hours. That is a pretty significant disparity. Is the survey wrong? Or, are the people at the Courts and Tribunals Service asking the wrong people?

Ms M Campbell: We said earlier that we would need to look at current practice to establish what the standards should be. Part of that is to look at what is going on with those surveys. There are a couple of differences between them, which, to some extent, may account for the different outcomes. First, there is a much bigger sample size with the Northern Ireland victims and witness survey. Also, the timing of when the questions were asked was different. There is a greater time lag before people are asked about their experiences. There is also a mix of civil and criminal cases in the Courts and Tribunals Service figures. I would be more inclined to look at the Northern Ireland victims and witness survey as our starting point for assessing current performance, to be honest, because it canvasses about 1,000 victims, as opposed to a much smaller number with the Courts and Tribunals Service survey.

Mr Luney: There has been some puzzlement as to the discrepancy between the figures, but I can say that the exit survey will be run again this year and, in preparing for that, we will try to read across to the NIVAWS to try to identify how that came about and try to get accurate data that will —

Ms M Campbell: It is possible that the people exiting court who are prepared to fill out the survey have had a slightly more positive experience. Those who have had a negative experience may have declined to complete it. That could be a reason.

The Chairperson: I am sure that there is no deliberate strategy on the part of the Courts and Tribunals Service to ask only people who they see have just gone in and are on their way out. I would not suggest that.

I will accept the two year period and what you outlined as the standard practice that we will aim for. So, I am prepared to take what you have offered the Committee as the way forward, with further work to be included to drive that down further in years 3 to 5. It is important that your monitoring systems record an accurate picture. If you accept the official Courts and Tribunals Service survey at face value, you would think that we are not listening to people or that people are exaggerating. The disparity between the two survey figures is stark. You need to be satisfied that the monitoring of this is accurate.

Ms M Campbell: We are going to have to develop a bespoke monitoring system for this, and it will have to give us reliable information.

The Chairperson: OK. There are no further questions. Thank you very much.