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The Status of Victims in the Criminal Justice System

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This paper provides information on the role of the victim in the criminal justice system and the pathway experienced by victims in the criminal justice system. The paper also provides information on studies by the Department of Justice and other agencies which provide insights on the experiences of victims in the criminal justice system.

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Key Points

The criminal justice system (CJS) in Northern Ireland is an adversarial system which traditionally has primarily been concerned with resolving disputes between the State and the defendant. This paper highlights there has been an increasing emphasis on victims in academic literature and policy making at the domestic and international level.

In Northern Ireland there have been a number of policy and legislative developments aimed at improving the experiences of victims and witnesses in the CJS. These include a 1998 Code of Practice for victims and witnesses revised in 2010 by the Department of Justice.

This research paper shows that victims and witnesses may encounter a number of agencies at each stage of the criminal justice process. These stages include reporting and investigation, decisions to prosecute, the trial process, the sentencing process, after the trial, and compensation.

The Department of Justice and other agencies have conducted research in Northern Ireland which provide insights on the experiences of victims and witnesses in the criminal justice system. These include research conducted by Queen's University of Belfast and the National Society for Prevention of Cruelty to Children on the experiences of young witnesses in criminal proceedings.

There are International, European and EU texts relevant to victims and witnesses. Many of these international texts are not formally legally binding. The European Convention on Human Rights has been interpreted to protect some aspects of victims' rights. These convention rights are binding as a consequence of the Human Rights Act 1998.

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1 Introduction

Victims and witnesses play an important role in the criminal justice process. The Criminal Justice Inspection Northern Ireland (CJINI) highlight that the attendance of victims and witnesses in criminal cases is central to the efficient operation of the courts.¹ The Commissioner for Victims and Witnesses in England and Wales suggests that there are two important reasons for helping victims: first, there is a moral responsibility to help victims as the rule of law depends on victims not seeking revenge and allowing the state to prosecute the offence; and second, supporting the victim to come forward and give evidence is critical to preventing the offender from victimising others.²

Research indicates there has been a policy shift in the role of victims in the criminal justice system and that the interests of victims in recent years have been given greater emphasis in policy making in both domestic and international levels.³ This paper considers the status of victims in the criminal justice system. It provides information on the pathway through the criminal justice system that may be experienced by victims and witnesses. The paper provides information on the different stages from the reporting of a crime to the police to the aftermath of a trial. The paper considers the role of the victim at each stage and the information and support available to them. The research shows that victims and witnesses may encounter a number of criminal justice agencies, statutory and voluntary at each stage of the criminal justice process.

2 Victims' Status in the Criminal Justice System

CJINI highlights that "the criminal justice system is ambivalent about the status of victims of crime."⁴ This is because the United Kingdom, including Northern Ireland, has traditionally had an adversarial process in criminal proceedings. The adversarial process means that the criminal justice system serves as forum to resolve disputes between the state and the defendant.⁵ Within this historical context, there has emerged an increased interest in victims' issues. There has been a plethora of literature that highlights the increasing emphasis on victims in criminological study and policy making at both domestic and international level. It is suggested that the accommodation of victims within the criminal justice system comes from a range of sources including

¹ CJINI "Securing Attendance at Court", v. <http://www.cjini.org/CJINI/files/32/32538c06-054e-4371-918e-e9ff15f5e76b.PDF>

² Commissioner for Victims and Witnesses "The Poor Relation: Victims and Witnesses in the Criminal Justice System" 20 July 2010, 3. <http://webarchive.nationalarchives.gov.uk/20110322191207/http://www.justice.gov.uk/about/docs/victims-in-justice-system.pdf>

³ J Doak "Victims' Rights in Criminal Trials: Prospects for Participation" 32 *Journal of Law and Society* 2005 ,294;JD Jackson "Justice for All: Putting Victims at the Heart of Criminal Justice?" 30 *Journal of Law and Society* 309

⁴ Criminal Justice Inspection Northern Ireland (2005) "Improving the Provision of Care for Victims and Witnesses within the Criminal Justice System in Northern Ireland", 16, <http://www.cjini.org/CJINI/files/ce/ceda45b5-8b15-4f7b-a2a4-9dfe1902eca4.pdf>

⁵ J Doak (2008) "Victims' rights, human rights and criminal justice : reconceiving the role of third parties" 1, Hart Publishing

victims' advocates, victims' rights groups, politicians and criminal justice professionals tasked with responding to the needs of victims.⁶ Commentators in the UK suggest that the increasing emphasis on victims in policy means that victims are more central to people's thinking on criminal justice and not merely regarded as a source of evidence.⁷

Academic literature indicates that victims' needs may fall into three categories. The first category is service needs which include compensation, proper treatment at court and assistance in testifying.⁸ The second category of needs is expressive needs which include the victim having the opportunity to express themselves in particular stages of the criminal justice process. The third category of needs highlighted are participatory or decision-making needs, i.e. influencing decisions such as bail, sentencing and parole decisions.⁹ It is argued however that the third category presents a threat to the adversarial system.¹⁰

3. Policy Developments in Northern Ireland

The Northern Ireland Office developed a Code of Practice for victims of crime in 1998. The Code of Practice provided guidance to victims on what to expect at each stage of the criminal justice process.¹¹ The Code of Practice was later revised in 2010 by the Department of Justice to describe to victims how they should expect to be treated at each stage of the criminal justice process.¹²

The Criminal Evidence (Northern Ireland) Order 1999 enables vulnerable or intimidated witnesses to avail of special measures in giving evidence in criminal proceedings such as the use of screens, removal of wigs and gowns, evidence by live link and video – recorded evidence.¹³ A Five Year Strategy for Victims and Witnesses “Bridging the Gap” strategy which was published by the Northern Ireland Office in 2007 aims to improve services to victims and witnesses in developing enhanced services in five key areas:¹⁴

- providing easier access to information;
- providing timely and specific information;

⁶ A Bottoms and JV Roberts (2010) “Hearing the Victim: Adversarial justice, crime victims and the State” xix, Willan Publishing, Devon.

⁷ H Reeves and K Mulley “The New Status of Victims in the UK: Opportunities and Threats” in A Crawford and J Goodey “Intergrating a Victim Perspective within Criminal Justice: International Debates” 2000 Asgate Publishing Company, 125

⁸ A Bottoms and JV Roberts “Hearing the Victim: Adversarial justice, crime victims and the State” xix

⁹ A Bottoms and JV Roberts “Hearing the Victim: Adversarial justice, crime victims and the State” xix

¹⁰ A Bottoms and JV Roberts “Hearing the Victim: Adversarial justice, crime victims and the State” xx

¹¹ Northern Ireland Office, “Consultation on a Revised Code of Practice for Victims and Witnesses of Crime” 3

¹² Department of Justice “A Code of Practice for Victims of Crime”, http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/code_of_practice_for_victims_of_crime.pdf

¹³ Criminal Evidence (Northern Ireland) Order 1999, <http://www.legislation.gov.uk/nisi/1999/2789/part/II>

¹⁴ Northern Ireland Office “Bridging the Gap Between Service Needs and Delivery 2007-2012”, 15.16. http://www.courtsni.gov.uk/NR/rdonlyres/1AC1C31A-40AE-4127-BB3C-942690F35DFC/0/pVW_BRIDGINGTHEGAPSTRATEGYpdf.PDF

- recognise and respond to individuals' needs; and
- providing victims and witness the opportunities to make their views known to criminal justice agencies.

Annual action plans have also been developed to deliver the victims and witnesses strategy. The 2011/12 Action Plan published by the Department of Justice includes a number of actions for the year to be delivered by responsible criminal justice agencies including:¹⁵

- Developing a model for Witness Care Units;
- Implementing the Code of Practice for Victims of crime and placing it on a statutory footing;
- To evaluate a pilot to reduce waiting times;
- Formalising practice regarding victim impact reports and impact statements and publishing a consultation.

Other policy developments from the Department of Justice in the last year include:

- Guidance for practitioners on Achieving Best Evidence;¹⁶
- Guidance on the criminal justice system for families bereaved through murder or manslaughter;¹⁷
- Guidance on the criminal justice system for victims of crime;¹⁸
- An Information handbook for adult victims of rape and sexual assault;

Measures in the Justice (Northern Ireland) Act 2011 to assist victims and witnesses including an offender levy which would be paid into a fund to pay for projects to support victims and witnesses; improvements to special measures provisions such as changes to eligibility for child witnesses, special provisions relating to sexual offences and changes to evidence by live link and video recorded evidence in chief.¹⁹

¹⁵ Please note this is not an exhaustive list of actions, for further detail http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/victim_and_witness_annual_action_plan_2011-12.pdf

¹⁶ http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/achieving_best_evidence_-_practitioner_guidance_may_2011_-2.pdf

¹⁷ http://www.dojni.gov.uk/a_guide_to_northern_ireland_s_criminal_justice_system_for_bereaved_families_and_friends_following_murder_or_manslaughter

¹⁸ http://www.dojni.gov.uk/a_guide_to_northern_ireland_s_criminal_justice_system_for_victims_and_witnesses_of_crime_-_26th_may_2010

¹⁹ Justice (Northern Ireland) Act 2011, Chapter 1 and 2

4 The Pathway through the Criminal Justice System

4.1 Reporting and investigation of a crime

The first time a victim may come into contact with the criminal justice system is in the reporting of a crime to the police. There are a number of ways a victim can report a crime:²⁰

- By dialing 999 in an emergency;
- Calling into the local police station or ringing the police in non-urgent matters;
- Calling the Crimestoppers helpline number if the victim does not wish to give their name;
- A third party can report the crime if the victim does not wish to call the police.

When a victim reports the crime, the police will obtain a statement to ascertain what happened. This statement may take two forms, normally a written statement or in some circumstances video recorded evidence, particularly in the case of vulnerable or intimidated witnesses.²¹ In some circumstances, the police may need to collect evidence from where the crime has taken place, or take photographs or fingerprints.²²

The Code of Practice for Victims of Crime sets out the services the police will provide to victims of crime.²³ The police will:²⁴

- Deal with victims and witnesses in a polite and fair way;
- Provide victims with an information leaflet;
- Pass contact details to Victim Support if the individual agrees;
- Write to victims within five days of reporting the crime to give the contact details of the investigating officer;
- Inform victims when someone has been arrested, been charged and the details of the defendant's first court of appearance;
- If after 3 months, and no-one has been identified for the crime, the police will contact the victim;
- In the case of murder or manslaughter or road death a Family Liaison Officer will be appointed to manage communication between the victim and the police investigation team;

²⁰ Department of Justice "A Guide to Northern Ireland's Criminal Justice System for Victims and Witnesses of Crime" May 2010, 11.

²¹ Department of Justice "A Guide to Northern Ireland's Criminal Justice System for Victims and Witnesses of Crime" May 2010, 15.

²² Department of Justice "A Guide to Northern Ireland's Criminal Justice System for Victims and Witnesses of Crime" May 2010, 16.

²³ Department of Justice "Code of Practice for Victims of Crime" 21 March 2011,3.

²⁴ Department of Justice "Code of Practice for Victims of Crime" 21 March 2011,3-4.

- In the case of victims of child abuse or rape, the case will be investigated by a specialist team;
- Pass information on needs to the Public Prosecution Service in cases of vulnerable or intimidated witnesses to ensure continuation of support;
- Give necessary information to the Compensation Agency and issue certificates as soon as possible if applying for compensation.

As suggested in the Code of Practice, victims may be referred to Victim Support by the police if the person agrees. Victim Support provides a community service which provides practical help and information on a range of issues including dealing with the police, courts, legal professionals, and making compensation claims.²⁵

4.2 Decisions to Prosecute

The next stage of the criminal justice process for victims and witnesses is when the Public Prosecution Service (PPS) decides that there is enough evidence to prosecute an identified suspect. The PPS Code of Practice clearly specifies that they “serve the public in that it acts in the public interest. Whilst it does have responsibilities to victims, it is not the legal representative for victims of crime nor does it act as their legal adviser.”²⁶ However it is useful to consider some of the responsibilities to victims when making the decision whether or not to prosecute. The PPS will write to victims in serious offences when they have received the police file.²⁷ When the PPS decides that there is enough evidence to prosecute, victims are notified of this decision and of the outcome of the prosecution in writing.²⁸ There are two tests used by the PPS when deciding whether to prosecute: the **Evidential Test** (which determines whether there is sufficient evidence adduced provide a reasonable prospect of conviction) and the **Public Interest Test** (whether the prosecution is in the public interest).²⁹ The PPS must also decide if prosecution at court is the most appropriate way to deal with the crime and may consider other options such as: an informed warning; a caution or a youth conference. If a decision is made that the appropriate course of action is a youth conference, a victim does not have to attend if they do not wish to do so. If a victim is willing to participate in a Youth Conference, they will be supported by a youth conference coordinator who will visit the victim at home to prepare them for the

²⁵ Victim Support NI “Annual Report 2009-10” <http://www.victimsupportni.co.uk/userFiles/File/VS%20-%20Annual%20Report%2009-10%20V4.pdf>

²⁶ Public Prosecution Service Northern Ireland “Code for Prosecutors including a Code of Ethics” , 25 http://www.ppsni.gov.uk/Site/1/Documents/Publications/Code_for_Prosecutors_Revised_2008v1.pdf

²⁷ Department of Justice “A Guide to Northern Ireland’s Criminal Justice System for Victims and Witnesses of Crime” May 2010, 19

²⁸ Department of Justice “A Guide to Northern Ireland’s Criminal Justice System for Victims and Witnesses of Crime” May 2010, 19, see also Public Prosecution Service “Victims and Witnesses Policy”, 26. http://www.ppsni.gov.uk/Site/1/Documents/Victims/Victims_and_WitnessesPolicyv1.pdf

²⁹ Public Prosecution Service “Victims and Witnesses Policy”, 9 http://www.ppsni.gov.uk/Site/1/Documents/Victims/Victims_and_WitnessesPolicyv1.pdf

conference and will show a DVD on a mock youth conference.³⁰ The victim of the offence can attend or participate by live link or phone or behind a two way mirror.³¹ A Youth Conference will give the victim the opportunity to express how the crime has affected them and their family, to assess whether the offender regrets their actions and to ask for the young offender to apologise or pay compensation.³²

If the PPS decides not to prosecute in a case, they will provide reasons. The reasons are normally provided in general terms indicating whether the decision was based on insufficiency of evidence or in the public interest. The PPS policy for victims and witnesses indicates that the general policy is considered in every case where a request for provision of detailed reasons is made.³³ Victims and witnesses may ask for a review if they disagree with the decision either directly or through a representative such as a family member, solicitor, support group or public representative.³⁴

4.3 The trial process

The next stage in the criminal justice system for victims and witnesses is the trial process. There are a number of agencies victims and witnesses may come into contact with including the PPS, the Northern Ireland Courts and Tribunals Service (NICTS), other legal professionals including the judiciary, Victim Support or the NSPCC.

In some cases, defendants will plead guilty and therefore victims may not have to attend court to give evidence. In other cases where a defendant does not plead guilty, the victim of the offence may be called to give evidence.³⁵ In each PPS region, there is a team of specially trained staff to deal with victims and witnesses known as the Community Liaison Teams (CLT).³⁶ These teams assist in providing information to victims and witnesses, checking witness availability and in some cases making referrals to other organisations such as the NSPCC or Victim Support.³⁷

The CLT also issue letters of notification to attend court, will organise suitable interpreters if English is not the first language of the witness or victim and make travel or accommodation arrangements for witnesses.³⁸ The PPS also work in conjunction

³⁰ Public Prosecution Service "Victims and Witnesses Policy", March 2007, 11. http://www.ppsni.gov.uk/Site/1/Documents/Victims/Victims_and_WitnessesPolicyv1.pdf

³¹ Department of Justice "A Code of Practice for Victims of Crime", 21 March 2011, 47

³² Department of Justice "A Code of Practice for Victims of Crime" 21 March 2011, 48

³³ Public Prosecution Service "Victims and Witnesses Policy", 31. http://www.ppsni.gov.uk/Site/1/Documents/Victims/Victims_and_WitnessesPolicyv1.pdf

³⁴ Department of Justice "A Code of Practice for Victims of Crime" 21 March 2011, 28

³⁵ Department of Justice "A Guide to Northern Ireland's Criminal Justice System" May 2010, 24.

³⁶ Department of Justice "A Guide to Northern Ireland's Criminal Justice System for Victims and Witnesses of Crime" May 2010, 19

³⁷ Public Prosecution Service "Victims and Witnesses Policy", March 2007, 3. http://www.ppsni.gov.uk/Site/1/Documents/Victims/Victims_and_WitnessesPolicyv1.pdf

³⁸ Public Prosecution Service Victims and Witnesses Information Booklet, March, 2007 3. http://www.ppsni.gov.uk/Site/1/Documents/Victims/Victims_and_Witnesses_Booklet%20-%20FINALv1.pdf

with the NICTS where the person who is a victim or witness in a case has a disability, to make arrangements ensuring ease of access for wheelchair users or persons with other disabilities who need assistance.³⁹

On the day of giving evidence, the prosecutor will introduce themselves and answer any questions. If a witness does not speak English, the PPS will provide an interpreter free of charge.⁴⁰ In the cases of vulnerable or intimidated witnesses, the PPS will apply to the court for special measures and may apply for the identity of victims and witnesses not to be revealed or reported in the press.⁴¹ Special measures include screens to shield the victim from the defendant; a live link to give evidence during the trial from outside the court; evidence given in private, removal of wigs and gowns by judges and barristers in the Crown Court; a video recorded interview before the trial for evidence in chief and the use of live link for evidence in cross examination; and aids to communication for example interpreters or symbol book or alphabet boards.⁴²

Vulnerable witnesses include:⁴³

- children under 17 years of age;
- witnesses who have a mental disorder;
- witnesses significantly impaired in relation to intelligence and social functioning;
- witnesses who have physical disability.

Intimidated witnesses include:⁴⁴

- witnesses whose quality of testimony is likely to be diminished by reason of fear or distress or the prospect of giving evidence;
- victims in cases of sexual assault and domestic violence ;
- those who have experienced past or repeat harassment and bullying or repeat victimization;
- the elderly and frail;
- witnesses to murder; and
- those who are making allegations against professionals or carers.

The PPS also has to take into account the views of victims at other stages of the criminal justice process. For example when a court is considering whether to grant an accused bail, the PPS will bring to the court's attention if it is considered that there is

³⁹ Public Prosecution Service "Victims and Witnesses Policy", March 2007, 11. http://www.ppsni.gov.uk/Site/1/Documents/Victims/Victims_and_WitnessesPolicyv1.pdf

⁴⁰ Department of Justice "A Code of Practice for Victims of Crime" 21 March 2011, 29

⁴¹ Department of Justice "A Code of Practice for Victims of Crime" 21 March 2011, 28

⁴² Department of Justice "A Guide to Northern Ireland's Criminal Justice System" May 2010, 30

⁴³ Department of Justice "A Guide to Northern Ireland's Criminal Justice System" May 2010, 29.

⁴⁴ Department of Justice "A Guide to Northern Ireland's Criminal Justice System" May 2010, 29

risk of interference with a witness.⁴⁵ The PPS will also take into account the views of victims when considering whether to proceed with a lesser charge than the original charge.⁴⁶ The PPS also has a role in ensuring victims are treated with respect and dignity in the cross examination process as they can challenge the defence in instances of inappropriate cross examination, or where they make inaccurate or misleading statements. The PPS will in certain cases apply for an order such as a Compensation Order to require the defendant to pay compensation to the victim or a Sexual Offences Prevention Order to protect the victim from serious sexual harm from the victim.⁴⁷

The Northern Ireland Court Service (NICTS) also plays a role in this stage of the process and staff can assist victims and witnesses by arranging visits to the court before going to give evidence, providing a place for victims and witnesses away from the defendant's family if possible and providing information on the court procedures or updating witnesses on the progress of the case.⁴⁸

In addition to the service provided by the PPS and the NICTS, there are witness services run by voluntary organisations available before, during and after the trial to ensure information and support for victims and witnesses for the prosecution. One service is an adult witness service run by Victim Support which is available in all courts. This service can offer emotional and practical support including:⁴⁹

- information on court procedures;
- the opportunity to look around the court room before giving evidence;
- a quiet place to wait before and during the hearing;
- someone to accompany the person in the court when they are giving evidence;
- practical help with expenses forms;
- put the person in contact with other agencies who can answer specific questions as Victim Support cannot discuss evidence or offer legal advice.

The other service available is the Youth Witness Service which is run by the National Society for the Prevention of Cruelty to Children (NSPCC) and is available in all Crown Courts and in some magistrates' courts, youth court and county courts and is currently

⁴⁵ Public Prosecution Service "Victims and Witnesses Policy", March 2007, 14, http://www.ppsni.gov.uk/Site/1/Documents/Victims/Victims_and_WitnessesPolicyv1.pdf

⁴⁶ Public Prosecution Service "Victims and Witnesses Policy", March 2007, 14, http://www.ppsni.gov.uk/Site/1/Documents/Victims/Victims_and_WitnessesPolicyv1.pdf

⁴⁷ Department of Justice "Code of Practice for Victims of Crime" March 2011, 29.

⁴⁸ <http://www.victimsupportni.co.uk/what-we-do/witness-service>

⁴⁹ <http://www.victimsupportni.co.uk/what-we-do/witness-service>

being extended to all courts.⁵⁰ The Youth Witness Service provides the following service:⁵¹

- Explaining the court layout and what happens at court;
- A visit to see the court before the trial;
- Trying to help with any worries about going to court;
- Showing young witnesses ways to stay calm;
- Providing support at court for families and supporting young witnesses in the TV link room or the courtroom;
- A quiet and safe place to wait during their time in the court building;
- Preparation for a possible verdict and other potential outcomes;
- Support at sentencing;
- Making sure the police, the prosecution, the court and the lawyers are aware of the needs and wishes of the young witness;
- Advice to parents and carers on how best to support their child;
- An opportunity to talk about the experience of giving evidence following the case;
- Onward referral to help from other agencies.

4.4 The Sentencing Process

The judge alone is responsible for deciding the sentence in a case and takes into account a number of factors including the penalties set out in statute, whether the defendant has pleaded guilty, sentences established in case law and mitigating factors. The judge may also take into account a victim impact statement which is presented to a judge before a sentence is passed.⁵² The PPS will present a victim impact statement to the court if the victim has prepared one.⁵³ A Victim Impact Statement contains information on the feelings of the victims and the impact of the crime on their lives for example emotionally, physically and financially, etc. Victim Impact Statements cannot however make reference to how long the victim feels that the person should spend in custody.

Prior to the devolution of policing and justice in April 2010, the Attorney General in England and Wales may have had the power to exercise discretion in relation to criminal cases, including the power to refer unduly lenient sentences to the Court of Appeal. However after devolution of policing and justice, this responsibility has been

⁵⁰ Department of Justice "A Guide to Northern Ireland's Criminal Justice System" May 2010, 26.

⁵¹ Public Prosecution Service "Victims and Witnesses Policy", March 2007, 21,
http://www.ppsni.gov.uk/Site/1/Documents/Victims/Victims_and_WitnessesPolicyv1.pdf

⁵² Department of Justice "A Guide to Northern Ireland's Criminal Justice System" May 2010, 35

⁵³ Department of Justice "A Code of Practice for Victims of Crime" 21 March 2011, 28

transferred to the Director of Public Prosecutions.⁵⁴ Unduly lenient sentences are described as sentences which “fall outside the range of sentences that a Judge taking into account all the relevant facts including guidance on sentencing from the Court of Appeal could reasonably consider to be appropriate.”⁵⁵ In appeal cases where a defendant has been convicted in a magistrates’ court, a defendant can appeal against their sentence or conviction. If a county court appeal has been made against a conviction, a victim may have to go to court to give evidence again.⁵⁶ There are some cases where the Court of Appeal may decide that the magistrates’ court came to a decision that was wrong, for example applying a point of law incorrectly. The result of this is that the magistrates’ court may have to hear the case again and apply the point of law correctly. In such instances, victims and witnesses are not likely to be called again to give evidence.⁵⁷

4.5 After the trial process

After a trial is over, there are a number of Victim Information Schemes available to inform victims of when the offender in the relevant cases will be released from prison or hospital. The **Prisoner Release Victim Information Scheme** is run by the Northern Ireland Prison Service and provides victims with information about adult offenders who have been convicted of a crime against them. Victims can be given information on periods of temporary release from custody; the month and year in which the offender is expected to be released; any conditions attached to their release and any breaches of these conditions which would result in the offender being returned to custody.⁵⁸ Victims who choose to be given information on temporary release from custody will be given the opportunity to express concerns that they may have which will be taken into account by the Home Leave Board. If a prisoner’s case is referred to the Parole Commissioners who are responsible to them for making decisions on the prisoner’s release, victims can be told when commissioners are considering the prisoner’s release give the commissioners their views; and be told the commissioners’ decision if the prisoner is to be released and the conditions which apply.⁵⁹

The **Probation Board for Northern Ireland Information Scheme** (PBNI VIS) is another information scheme. This scheme provides victims with the choice of having information about the probation sentence in their case. The information available to the victim includes:⁶⁰

⁵⁴ See B Dickson 2011 “Law in Northern Ireland: An Introduction”, SLS Publications, 287:Attorney General’s Office <http://www.attorneygeneral.gov.uk/UJS/Pages/Statistics.aspx>, section 41 of the Justice (NI) Act 2002

⁵⁵ Public Prosecution Service “Victims and Witnesses Policy” March 2007, 15,

http://www.ppsni.gov.uk/Site/1/Documents/Victims/Victims_and_WitnessesPolicyv1.pdf

⁵⁶ Department of Justice “A Guide to Northern Ireland’s Criminal Justice System” May 2010, 35

⁵⁷ Department of Justice “A Guide to Northern Ireland’s Criminal Justice System” May 2010, 37

⁵⁸ Department of Justice “A Guide to Northern Ireland’s Criminal Justice System” May 2010, 41

⁵⁹ Department of Justice “Code of Practice for Victims of Crime” March 2011, 38

⁶⁰ Department of Justice “A Guide to Northern Ireland’s Criminal Justice System” May 2010, 41

- the type of supervision the offender is subject to;
- the length of supervision/licence;
- information on conditions;
- information on further sentences in the case of breach;
- information on how PBNi along with other agencies manages the case and the opportunity to include victims' concerns;
- information on other criminal justice agencies that can provide support;
- the opportunity to be involved on a voluntary basis in restorative contact with the offender.

According to the PPS policy on victims and witnesses, the PPS has entered into a protocol with the Probation Board and PSNI to improve the effectiveness of information to victims where the offender has received a probation supervised order as a sentence.⁶¹

There are similar services for victims of mentally disordered offenders. **The Mentally Disordered Offenders' Victim Information Scheme** is a voluntary scheme run by the Mentally Disordered Offenders' Unit which provides information to registered victims on temporary periods of absence from hospital as part of the offenders' treatment plan and decisions of review tribunal hearings. Victims also have the opportunity to express their view in writing on the impact the offender's leave or release will have on them.

4.6 Compensation

The Compensation Agency is responsible for processing applications and making awards on three different compensation schemes: criminal injuries, criminal damage and Justice and Security (Northern Ireland) Act 2007 Compensation schemes.

The victims and witnesses of violent crime may qualify for compensation under the Northern Ireland Criminal Injuries Compensation Scheme 2009. There are a number of agencies victims and witnesses may be involved with in the process of applying for criminal injuries compensation. Firstly in order to be eligible for compensation the crime has to have been reported to the police and the victim has to cooperate with them in the prosecution. Victim Support provides help, information and support throughout the process. They can help with the application, and review application and can represent victims at appeal hearings. The Compensation Agency makes the initial decision on compensation claims and agency staff also can carry out a review. In the case that a person disagrees with a review decision, they can appeal to the Criminal Injuries

⁶¹ Public Prosecution Service "Victims and Witnesses Policy", March 2007, 6
http://www.ppsni.gov.uk/Site/1/Documents/Victims/Victims_and_WitnessesPolicyv1.pdf

Compensation Appeals Panel which is an independent organisation run by the NICTS.⁶²

To apply for compensation in relation to criminal damage, a victim must complete a notice of intention form within 10 days of the damage happening and serve it on the Department of Justice and the local police. The actual application has to be made within four months which can be extended to six months. The request for extension has to be made in writing to the Compensation Agency.⁶³

Applications for compensation may also be made for loss or damage as a result of an action by the police or army under the Justice and Security (Northern Ireland) Act 2007. The legislation provides a right to claim compensation from the Security of State for Northern Ireland, however the Compensation Agency administers the scheme and applications have to be made within 28 days of the date of the damage. If there is dissatisfaction with the agency's decision, there is a right of appeal to the county court.⁶⁴

⁶² Department of Justice "A Guide to Northern Ireland's Criminal Justice System" May 2010, 47-48

⁶³ Department of Justice "A Guide to Northern Ireland's Criminal Justice System" May 2010, 47-48

⁶⁴ The Compensation Agency "A Guide to the Justice and Security (NI) Act 2007: A Guide to Compensation in Northern Ireland", <http://www.nidirect.gov.uk/compensation-guide-justice-and-security-act-2007.pdf>

5 Statistics on Perceptions of the Northern Ireland Criminal Justice System

This section will consider key statistics regarding the experiences of victims and witnesses in the criminal justice system in Northern Ireland. The information is derived from three main sources: the Northern Ireland Crime Survey; Northern Ireland Victims and Witnesses Survey (NIVAWS) 2010-2011 findings; and a study by the National Society for the Prevention of Cruelty to Children (NSPCC) and Queens' University Belfast on the Experiences of Young Witnesses in Criminal Proceedings published in May 2011.

5.1 Northern Ireland Crime Survey

Within the annual Department of Justice/NIO/NISRA Northern Ireland Crime Survey there is a section concerned with perceptions of policing, justice and organised crime.

Since October 2007 the NICS has measured public confidence in both the fairness and effectiveness of the criminal justice system (CJS). This approach led to the development of a new series of questions, replacing those used to construct a six-strand composite measure to gauge confidence in the CJS between NICS 2003/04 and 2007/08.

5.1.1 Indicators from 2003-04 until 2007/08

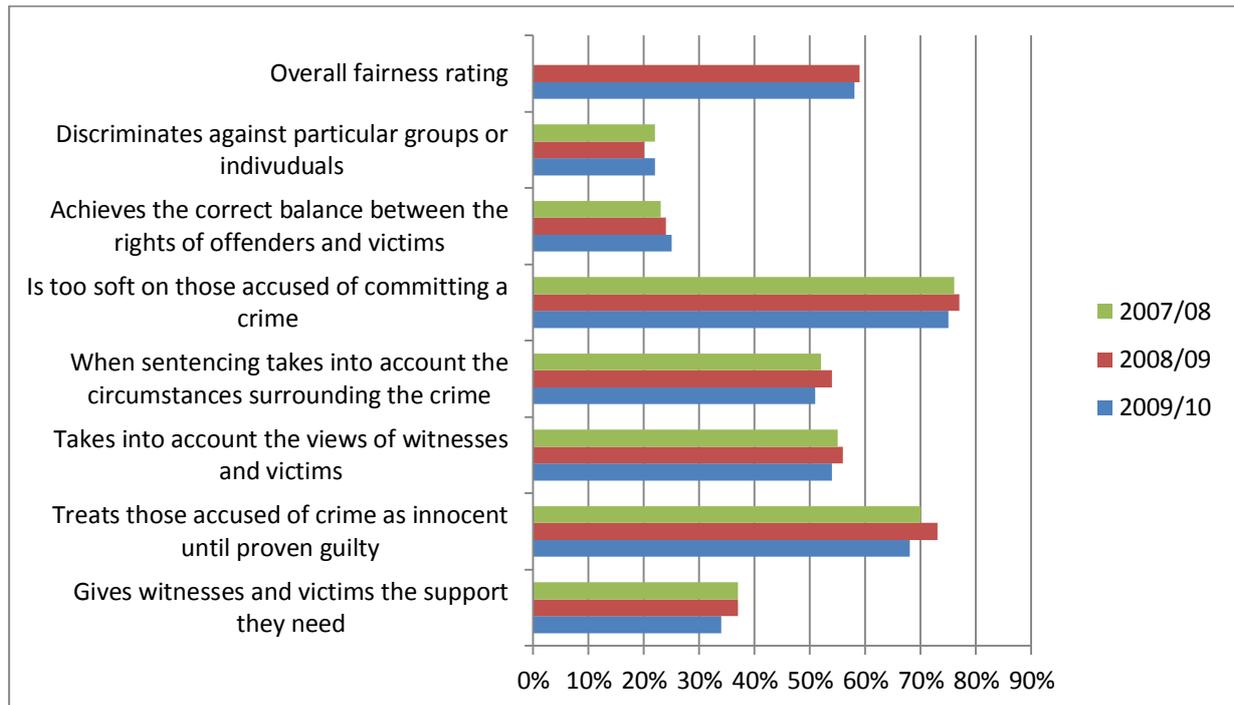
From 2003/04 until 2007/08, the NCIS had monitored confidence in the CJS through an unweighted composite measure, consisting of a suite of six indicators, which elicit views on the fairness and effectiveness of the CJS in Northern Ireland.⁶⁵

1. Bringing those who commit crime to justice;
2. Meeting the needs of victims of crime;
3. Respecting the rights of the accused and treating them fairly;
4. Dealing with cases promptly and efficiently;
5. Reducing crime; and
6. Dealing with young people accused of crime.

⁶⁵http://www.dojni.gov.uk/index/statistics-research/stats-research-publications/perceptions_of_policing_justice_and organised_crime_findings_from_the_200910_northern_ireland_crime_survey.pdf

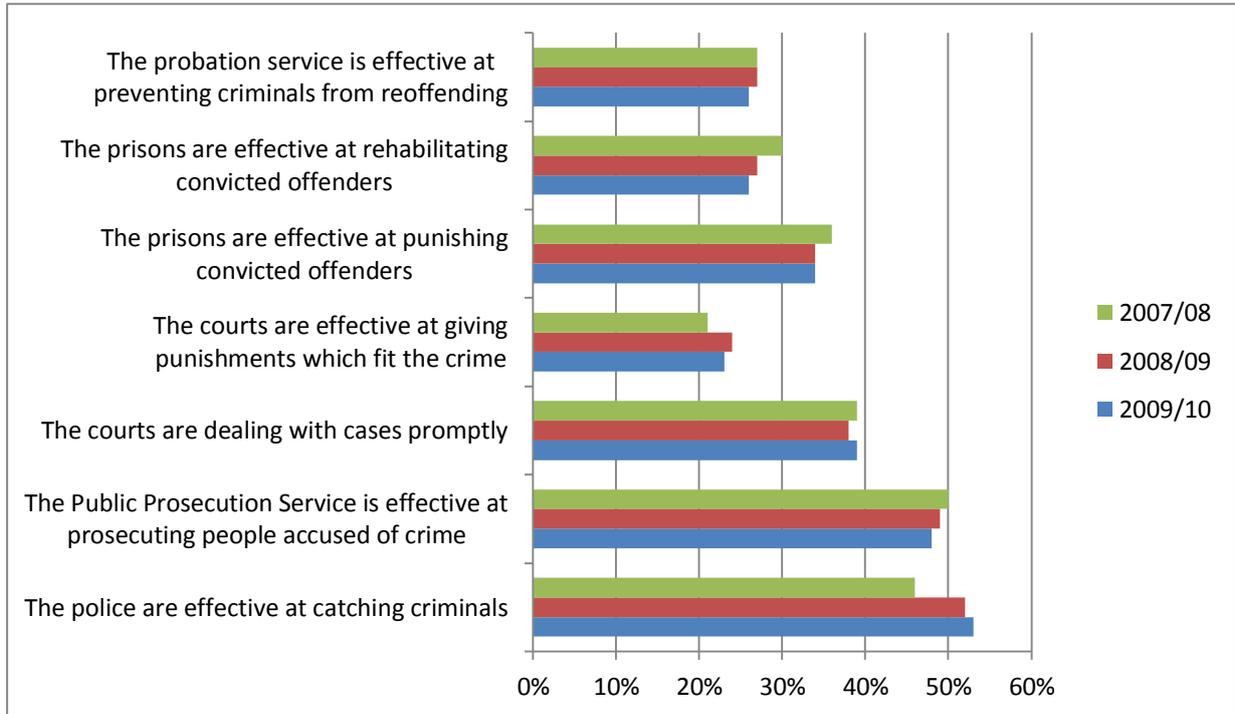
5.1.2 Indicators 2007 to present: Confidence in the fairness of the criminal justice system in Northern Ireland

NICS respondents, since October 2007, have been asked to what extent they agree or disagree with a number of statements concerning fairness of the criminal justice system. The newer statements appear to put much greater emphasis on witnesses and victims as part of the CJS. The chart below demonstrates the trends in respondent's confidence in the fairness of the CJS in Northern Ireland between 2007/08 and 2009/10.



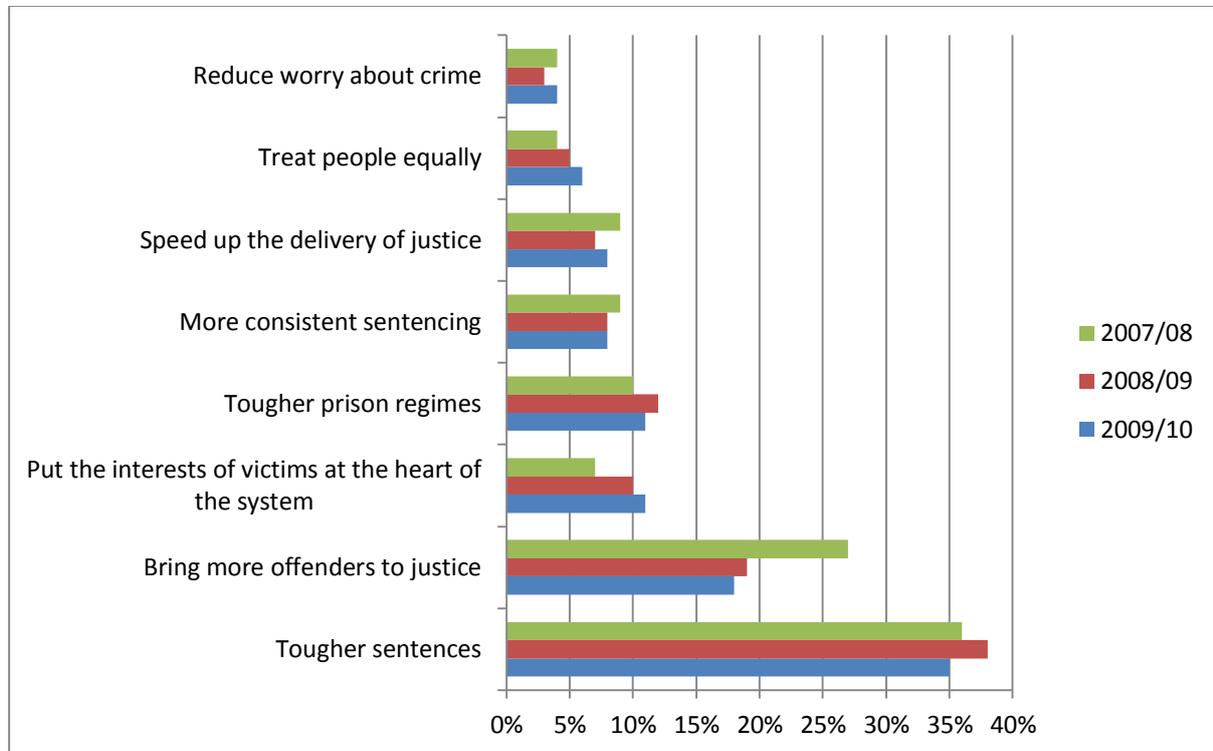
5.1.3 Confidence in the effectiveness of the criminal justice system in Northern Ireland

NICS respondents have also been asked for their views on the effectiveness of the organisations that make up the CJS in achieving particular outcomes, as well as how they feel about the overall effectiveness of the CJS. This data is of particular importance as it relates to the agencies, and their effectiveness, which victims and witnesses encounter in the CJS, see the chart below



5.1.4 Perceptions of how the criminal justice system could increase its confidence rating

The chart below provides information from the NICS on perceptions of how the criminal justice system could increase its confidence rating.



5.1.5 Confidence in the criminal justice system: Victims and Non-Victims

- According to the 2009/10 NICS the levels of confidence in the CJS were higher among those respondents who had not previously had any direct contact with the system, either through being a victim of crime reported to the police or by attending court as a victim/witness/spectator.
- NICS 2009/10 respondents who had been victims of a crime that was subsequently reported to the police expressed lower levels of confidence in both the fairness (52%) and effectiveness (32%) of the CJS than those who had never been victims (62% and 41% respectively).⁶⁶
- There were similar responses in the 2008/09 NICS – 53% of those who had been the victim of a crime reported to police viewed the CJS as a whole being fair, whereas 62% who had never been a victim had the same perception. Effectiveness ratings were 30% vs 41% among the same respondents.

⁶⁶http://www.dojni.gov.uk/index/statistics-research/stats-research-publications/perceptions_of_policing_justice_and_organised_crime_findings_from_the_200910_northern_ireland_crime_survey.pdf

5.2 Northern Ireland Victim and Witness Survey Findings

5.2.1 Introduction

This section will highlight key findings from the DOJ report, 'Performance of the Criminal Justice System from a Victim and Witness Perspective: Comparison of Findings from the 2008/09, 2009/10 and 2010/11 Surveys'. The trends will be broken into three distinct categories, entitled 'Pre-Trial', 'Trial' and 'Post-Trial' for the purposes of this paper in order to illuminate victim and witness perspectives of the Criminal Justice System in NI during each phase of the criminal justice process.

The Northern Ireland Victim and Witness Survey was commissioned by the NIO as a means of both monitoring progress against the various actions detailed in the 'Bridging the Gap' strategy document and, more specifically, with a view to monitoring performance against the 'Justice for All' key performance indicator. To date three administrations of the survey have been undertaken covering 2008/09, 2009/10 and 2010/11.⁶⁷ Ipsos MORI undertook the first administration of NIVAWS in 2008/09 and were subsequently commissioned in the summer of 2009/10 to undertake a further three administrations of the survey covering the period 2009/10 up to 2011/12.⁶⁸

Victim and witness details for NIVAWS are sourced from PPS records.⁶⁹

5.2.2 Findings From the Pre-Trial Phase

Giving a Statement

- The vast majority of the 2010/11 survey respondents (94%) reported being satisfied with how they had been treated while giving their statement to the police; the equivalent figures for the earlier years were 93% (2008/09) and 95% (2009/10).
- The proportion of respondents who reported not having had any official follow-up on their case across all three surveys accounted for 15% in 2010/11 and 17% in both 2008/09 and 2009/10.

⁶⁷ Department of Justice, *Performance of the Criminal Justice System from a Victim and Witness Perspective: Comparison of Findings from the 2008/09, 2009/10 and 2010/11 Surveys*, p.1

⁶⁸ Department of Justice, *Performance of the Criminal Justice System from a Victim and Witness Perspective: Comparison of Findings from the 2008/09, 2009/10 and 2010/11 Surveys*, p.2

⁶⁹ Department of Justice, *Performance of the Criminal Justice System from a Victim and Witness Perspective: Comparison of Findings from the 2008/09, 2009/10 and 2010/11 Surveys*, p.3

Case Outcome

- Approximately half of the respondents to each survey reported that the case they had been involved in had gone to court (48% in 2008/09, 45% in 2009/10 and 52% in 2010/11)
- However approximately one fifth of the respondents reported that they did not know what the case outcome had been (19% in 2008/09, 22% in 2009/10 and 20% in 2010/11)

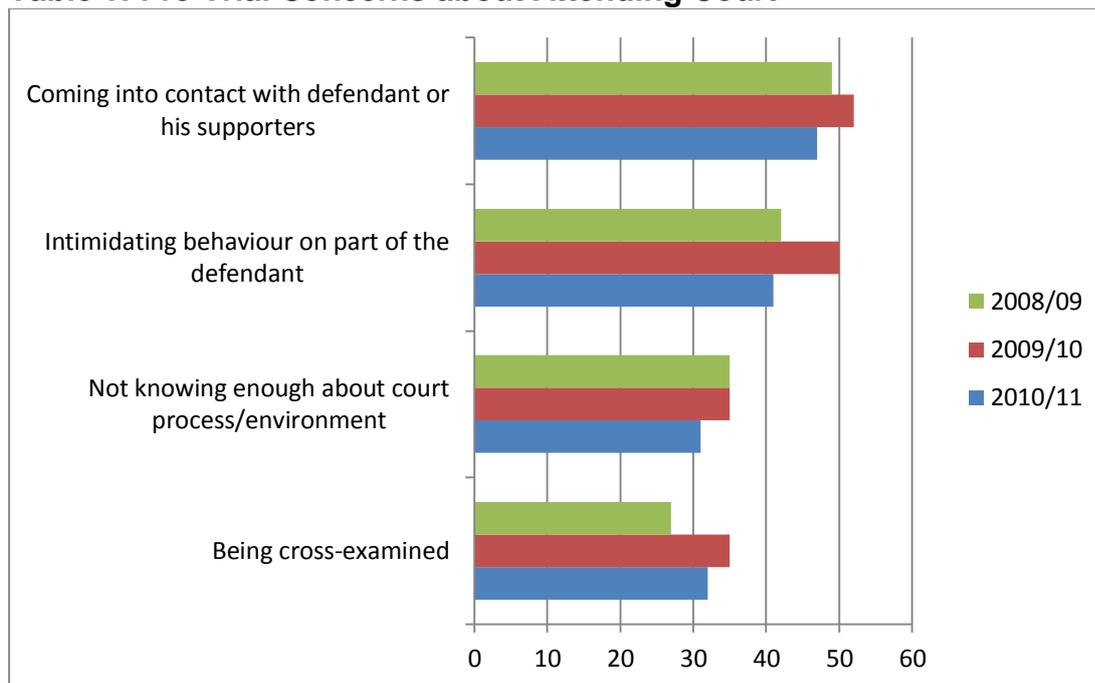
Dropped Cases and Formal Police Cautions/Warnings

- Fewer than half of respondents (43%) who had been involved in cases where the charges had been dropped, or where a formal police caution or warning had been issued, reported being satisfied with the outcome of their case. This finding is consistent with the equivalent finding for the earlier years of the survey (2008/09: 44% satisfied; 2009/10: 47% satisfied)
- In the 2010/11 survey 35% of respondents involved in cases where the charges had been dropped reported being satisfied with the case outcome compared with 56% of those involved in cases where the outcome had been a formal police caution or warning.

Pre-Trial Concerns about Attending Court

- Survey respondents who had been asked to attend court to give evidence were asked whether or not they had concerns on a range of issues related to attendance at court from travel arrangements to being cross-examined to loss of personal time etc.
- Across all three surveys the most frequently identified concerns related to coming into contact with the defendant (and his/her supporters), intimidating behaviour of the defendant or his/her supporters, not knowing enough about the court process/environment and being cross examined.

The chart below provides information on responses relating to pre-trial concerns.

Table 1: Pre-Trial Concerns about Attending Court

27% of respondents in 2008/09 were concerned with being cross-examined. This increased to 35% in 2009/10 and fell slightly, to 32%, in 2010/11. 35% of respondents highlighted concern at not knowing enough about court process/environment in 2008/09 and 2009/10. By 2010/11 this had dropped to 31%. Concern about intimidating behaviour on the part of the defendant increased from 42% in 2008/09 to 50% in 2009/10 but fell to 41% in 2010/11. Concern about coming into contact with defendant or his (and her) supporters remained relatively consistent over the three year period with a rise from 49% to 52% and a drop to 47% in 2010/11.

Satisfaction with How Dealt with in Lead up to the Trial/Attending Court

- Across all three surveys the majority of respondents reported that they had been satisfied with the information they had received to prepare them for going to court prior to the trial date (74% in 2008/09, 82% in 2009/10 and 78% in 2010/11)
- Approximately four fifths of respondents to the 2010/11 survey (81%) considered that they had been satisfied with how they had been dealt with prior to attending court. This compares with 77% of respondents in 2008/09 and 84% in 2009/10.

5.2.3 Findings from the Trial Phase

Attendance at the Trial/Hearing

- In the 2010/11 survey, two thirds of respondents (67%) involved in cases which progressed to trial/hearing reported that they had been asked to attend the

trial/hearing to give evidence and 53% of respondents reported that they attended the trial/hearing.

- This compares with 2009/10 when 63% of respondents had been asked to attend and 53% attended and 2008/09 when 54% of respondents had been asked to attend and 43% attended.
- Of respondents asked to attend to give evidence in 2010/11, 26% reported that they actually gave evidence; the equivalent figures for 2008/09 and 2009/10 were 30% and 24% respectively.

The Court Experience

This section highlights trends in response to key questions over the three year period concerning the experience of victims and witnesses in who were asked to give evidence in court.

- Of those asked to give evidence and who attended court 86% in 2010/11 understood what was happening in court while they were there, with only 13% not understanding. Responses have been generally consistent over the three year period, with 82% understanding in 2008/09.
- Satisfaction with the consideration shown to those who ultimately gave evidence before giving their evidence remained relatively consistent, with those satisfied equating to 74% in 2008/09, 77% in 2009/10 and 71% in 2010/11. Dissatisfaction fell from 25% in 2008/09 to 20% in 2009/10, but rose again to 28% in 2010/11.
- Of those who were cross examined in 2008/09, 50% felt that the barrister for the other side was courteous, with 46% feeling that they were discourteous. Perceptions of the barrister declined in 2009/10 with 54% feeling they were discourteous and 55% in 2010/11.
- Of those who ultimately gave evidence 88% felt that they were dealt with fairly whilst giving evidence. However by 2010/11 this had fallen to 76%.
- However of all those who attended court 69% were satisfied with their experience of court in 2008/09, with a rise of 9% to 78% in 2009/10 and a slight decrease (75%) in 2010/11.

5.2.4 Findings from the Post-Trial Phase

Case Outcome and Sentence

- Of those cases that went to trial, 81% found out what the outcome of their case was in 2008/09, 82% in 2009/10 and 79% in 2010/11.

- However from a low of 68% in 2008/09 there was an increase to 78% in 2009/10, 77% in 2010/11 in those who thought that the outcome of the case was fair.
- Of those trials where the offender was found/pleaded guilty 75% knew what the sentence was in 2008/09, 76% in 2009/10 and 70% in 2010/11.
- In 2008/09 54% felt that the sentence given was fair. This remained consistent in 2009/10 (51%) and 2010/11 (52%).

Voluntary Support Service/Victim Information Schemes

- In 2008/09 31% of **victims only** had contact with Victim Support at any stage in the process. In 2009/10 and 2010/11, incorporating victims and witnesses, the proportion who had contact with Victim Support was 24% and 22% respectively.
- However of those who did have contact with Victim Support there was a high rate of satisfaction with the contact they had had. 85% of **victims only** were satisfied in 2008/09 with 86% and 91% of victims and witnesses satisfied in 2009/10 and 2010/11 respectively.
- Of those cases where the offender was found/pleaded guilty and received a sentence of 6 months or more only 19% in 2008/09 were aware of the Prisoner Release Victims Information Scheme⁷⁰. This rose slightly, to 21%, in 2009/10 and then to 27% in 2010/11.

5.3 NSPCC/QUB Research on the Experiences of Young Witnesses in Criminal Proceedings

5.3.1 Introduction

Over the past decade governments in England, Wales and Northern Ireland have introduced a raft of policies and procedures in order to ensure that child witnesses are able to give their best evidence and receive the support they need. Despite these efforts, however, research in England and Wales demonstrated a continuing gap between policy and the practice reality of many children's experiences of giving evidence in criminal courts. The small number of Northern Ireland interviews in this research, however, and evidence of on-going difficulties

⁷⁰ In 2008/09 all victims regardless of the length of the prison sentence were asked about PRVIS.

experienced by young witnesses, pointed to the need for additional research in Northern Ireland to explore the issues further and inform policy and practice in this jurisdiction.⁷¹

This section will highlight some of the key findings from the May 2011 report for the Department of Justice which was researched and written in conjunction with Queen's University Belfast and the NSPCC. Again, for the purposes of this paper, the results will be categorised into 'Pre-Trial', 'Trial' and 'Post-Trial' in order to illuminate the views of young people in each category.

Potential research participants were identified via the NSPCC's Young Witness Service (YWS) according to the following criteria:

- They were aged under 17 at the time of the offence;
- They have evidence for the prosecution at trial in respect of any type of offence at either a Magistrates, Youth, or Crown Court in Northern Ireland;
- The case had been completed with no ongoing involvement from the YWS.⁷²

Due to being a general survey rather than an investigation of a three-year period like the previous report, 'Performance of the Criminal Justice System from a Victim and Witness Perspective: Comparison of Findings from the 2008/09, 2009/10 and 2010/11 Surveys', it has not been possible to provide an indication of trends. It was, however, considered important to summarise the results of this survey as it illuminates the feelings of young people regarding their experience of the criminal justice system as victims and witnesses.

5.3.2 Findings from the Pre-Trial Phase

Waiting to go to Trial

The majority of young witnesses (83.8%) described themselves as being very worried or anxious in the pre-trial period. Nineteen (51.4%) said that they had not been too worried at first but had become more anxious as the trial date approached and twelve (32.4%) said that they had been worried about court right from the outset.

- The biggest reason given by young witnesses for worry in the pre-trial period was anxiety about giving evidence (56.7%) with 46% being simply 'scared' and 46% feeling intimidated by the defendant/defendant's friends or family.
- A stark statistic indicated the effect of being a young witness on school attendance and performance with 62.2% having missed days at school. Some young witnesses included days missed due to attendance at court and not specifically as a result of anxiety or stress in the pre-trial period. The authors have however suggested that it is

⁷¹ The Experience of Young Witnesses in Criminal Proceedings in Northern Ireland: A Report for the Department of Justice (NI), Hayes et al, May 2011, p.5

⁷² The Experience of Young Witnesses in Criminal Proceedings in Northern Ireland: A Report for the Department of Justice (NI), Hayes et al, May 2011, p.16

clear that for a significant number of the young witnesses in the study the pre-trial period was very difficult and that, for some, symptoms persist post-trial.⁷³

Pre-Trial Preparation and Support

- Just under half - 48.6% - of the young witnesses in the study had a pre-trial familiarization visit to the court, with 77.8% of them considering that this visit had occurred at the right time.
- According to interviews with young witnesses and their parents 54% of the young people had pre-trial contact with a supporter from the NSPCC YWS. 35.1% of these constituted both a court visit and a home visit, while 13.5% had a court visit only; and 5.4% a home visit only.
- Parent interviews indicated that of the young witnesses who had contact with a supporter before the trial, 50% had two pre-trial contacts whereas 5% had ten pre-trial contacts.
- 85% of young people and 89.5% of parents said that either the supporter had made a lot of difference or that it was contact with the supporter that had made it possible for the young person to go to court.
- 97.3% of the young witnesses said that someone had helped them by explaining about court and answering their questions although often this was on the day of the trial.
- 86.5% said that the NSPCC YWS had helped them.
- 40.5% said that a parent or mother relative had helped.
- 35.1% said that help had been provided by a police officer.
- 2.7% of respondents said that the court clerk had helped them; the judge had helped them; a friend had helped; that someone had helped them but they could not remember who that person was.

5.3.3 Findings from the Trial Phase

Arrangements at Trial and Special Measures

- 62.1% waited to give evidence away from the public in a separate waiting area.
- 16.2% waited in the location of a remote TV link away from the court building.
- 21.6% reported that they had waited in 2 different locations.
- 18.9% said that they felt "OK" whilst waiting to give evidence but the majority (78.4%) stated that they felt very nervous, anxious or upset.
- The majority of young witnesses (75.7%) stated that there were toys, magazines, TV/video/DVDs available while they waited. Although 10.8% felt that there was nothing to do/nothing age or gender appropriate.
- 60% of young witnesses gave evidence in a TV link room at Court Building, whereas 28.6% gave evidence in a TV link room at a Remote Location.

⁷³ The Experience of Young Witnesses in Criminal Proceedings in Northern Ireland: A Report for the Department of Justice (NI), Hayes et al, May 2011, p.27

- 8.6% gave evidence in Open Court while only 2.8% gave evidence in Open Court screened from the defendant.

Parents of young witnesses were asked a range of questions concerning how the court took account of their child's needs.

- 46.2% felt that the court took account of their child's health needs (e.g. tiredness, time allowed to take medication) 'very well' and 'quite well', while 48.1% felt that the court took account of their child's developmental needs (e.g. attention span and level of understanding) 'very well' and 'quite well'.
- 46.7% felt that the court took account of their child's welfare (e.g. in relation to any stress experienced by your child) 'very well'; 48.5% felt that that the court took account of their child's security (e.g. ensuring your child did not see the defendant at court) 'very well'.

Answering Questions

- When asked how they felt whilst answering questions, the majority (65.7%) said they felt 'nervous' while just under half (48.6%) stated they felt 'upset/scared/shaky' – 31.4% stated that they felt 'OK, quite confident'.
- A large majority (77.1%) of young witnesses described the questions asked by the defence lawyer as 'Repetitive', while just under half (45.7%) described the questions as 'Too long/complicated'.
- 60% of young witnesses, when describing the behaviour of the defence lawyer, stated that they had been told that they were 'Lying more than once' while 65.7% felt that the defence lawyers had 'Tried to put words in my mouth'.

5.3.4 Findings from the Post-Trial Phase

After the Trial

- The majority of cases (70.3%) resulted in a conviction on at least one charge and 66.7% of parents and 75.7% of young people recalled someone letting them know about the verdict soon after the trial finished. The person who did this most commonly was the YWS supporter (39.3%), followed by the police (32.1%), a relative (25.0%) and the PPS (14.3%).
- For young witnesses family members were the biggest source of support in the post-trial period (62.1%) with much smaller proportions reporting the YWS (16.2%) and the police (8.1%) as the most helpful after the trial.
- On the other hand almost half of parents (48.5%) felt that the YWS had been the biggest help after trial, followed by much smaller numbers citing the police (6.1%) and family members/friends (6.1%) as the most helpful.
- 62.2% of young witnesses indicated that they would be willing to give evidence in a criminal trial again if asked although just over half (51.4%) stated that there was nothing positive about the experience of being a witness.
- All but one of the young people who said they would not give evidence again were victims of sexual and violent offences rather than witnesses.

- 63.9% of young people suggested some changes to improve how young witnesses are treated at court. Much of this focused on cross-examination by defence lawyers with young children describing this as too hard and not taking enough account of the age of the child; for example:

“Defense lawyers should be nicer – slow down, not jump about with their questions and not use complicated sentences.” (13 year old witness to violent offences)

And

“You should be allowed to make the decision about how you give evidence.” (15 year old victim of sexual offence)

- 40.5% of young witnesses also suggested some changes to the way witnesses are supported. A number suggested more pre-trial contact and support to help prepare them for court, others more post-trial support
- More than half of parents (54.5%) indicated that they would have liked more help and information. More face-to-face contact with YWS supporters, someone to call if they had questions and advice on how to support their child were the types of help parents most frequently referred to. Other types of help/information cited included earlier contact with the NSPCC YWS, being made aware there was a YWS, post-trial support and being told the outcome.

6 International Human Rights Instruments and EU Law

There are a number of international human rights instruments that are relevant to victims and witnesses. The United Nations (UN) *Declaration of Basic Principles for Victims of Crime and Abuse of Power* contains a number of duties of member states including: access to justice and fair treatment; restitution; compensation; and assistance.⁷⁴ Subsequently, the Eighth UN Congress on the Prevention and the Treatment of Offenders in 1990 published *Guidelines on the Role of Prosecutors*.⁷⁵ The guidelines specify that prosecutors shall consider the views and concerns of victims when their personal interests are affected and ensure victims are informed of their rights in accordance with the Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power.⁷⁶ Guidelines have also been developed by members of Commonwealth countries building on the UN Declaration of Basic Principles. The *Commonwealth Guidelines for the Treatment of Victims of Crime* was developed in 2003 and outlines best practice on dealing with victims and witnesses.⁷⁷ The guidelines

⁷⁴ The UN Declaration of Basic Principles for Victims of Crime and Abuse of Power, adopted by the General Assembly resolution 40/34 of 29 November 1985. Available at <http://www2.ohchr.org/english/law/victims.htm>

⁷⁵ <http://www2.ohchr.org/english/law/prosecutors.htm>

⁷⁶ Section 13 (d) of Guidelines on the Role of Prosecutors, <http://www2.ohchr.org/english/law/prosecutors.htm>

⁷⁷ Commonwealth Secretariat “Guidelines for the Treatment of Victims of Crime: Best Practice”, 2003

detail minimum standards in relation to the assistance and treatment victims and witnesses should expect from criminal justice agencies including law enforcement officials, prosecutors and the courts. The guidelines also set out the rights of victims at post sentencing stage and duties of member states in relation to compensation or restitution. It should be noted however that these guidelines and declarations have no legally binding effect but rather represent good practice and the commitment of members of the UN and Commonwealth to adhere to these principles.⁷⁸

The provisions set out in the European Convention on Human Rights (ECHR), incorporated by the Human Rights Act 1998 are also relevant to victims in Northern Ireland as it is unlawful for public authority to act in a way that is incompatible with a convention right.⁷⁹ Victims are not expressly referred to in the text of the ECHR; however it is suggested that victims and witnesses have implied rights under the convention.⁸⁰ The articles of the ECHR have been interpreted by the European Court of Human Rights (ECtHR) to give effect to aspects of victims' human rights. Article 2 (the right to life) has been interpreted to include duties to have effective criminal provision to protect victims, the right to police protection, the right to effective investigation, and the right to involvement in the decision whether to prosecute.⁸¹ Article 3 (the right to freedom from torture, inhuman and degrading treatment) has been interpreted to include a duty on states to have effective criminal sanctions and duties to investigate, prosecute and punish.⁸² Article 8 (the right to private life) has been interpreted by the ECtHR to include the right to effective legal safeguards to prevent violations of rights.⁸³ It is interesting to note that the Police Service of Northern Ireland (PSNI) makes specific reference to the articles of the ECHR in its policy directive on dealing with victims of crime, specifically Articles 2, 3, 8 and Protocol 1, Article 1 (protection of property).⁸⁴

The need to improve services to victims was reflected in the Northern Ireland Human Rights Commission's (NIHRC) advice on a Bill of Rights for Northern Ireland. NIHRC recommended that provisions should include that every victim of crime should have the

⁷⁸ Commonwealth Secretariat "Guidelines for the Treatment of Victims of Crime: Best Practice", 2003, 9: Criminal Justice Review Group "Review of the Criminal Justice System in Northern Ireland " 2000, 28, http://www.nio.gov.uk/review_of_the_criminal_justice_system_in_northern_ireland.pdf. Christine Chinkin notes that principles are a form of 'soft law' which she describes as having an informative and educative role which is well suited to non-judicial means of dispute resolution, see C Chinkin 'The Challenge of Soft Law: Development and Change in International Law' (1989) 38 ICLQ 851.

⁷⁹ Section 6 of the Northern Ireland Act 1998 provides that the Northern Ireland Assembly cannot pass legislation which is incompatible with convention rights. Section 6 of the Human Rights Act prohibits public authorities from acting in a way that is incompatible with convention rights.

⁸⁰ C de Than "Positive Obligations under the European Convention on Human Rights: Towards the Human Rights of Victims and Vulnerable Witnesses", 67 Journal of Criminal Law, 165 2003, 168.

⁸¹ C de Than "Positive Obligations under the European Convention on Human Rights: Towards the Human Rights of Victims and Vulnerable Witnesses", 67 Journal of Criminal Law, 165 2003, 170-171. 174.

⁸² C de Than "Positive Obligations under the European Convention on Human Rights: Towards the Human Rights of Victims and Vulnerable Witnesses", 67 Journal of Criminal Law, 165 2003, 177-178

⁸³ C de Than "Positive Obligations under the European Convention on Human Rights: Towards the Human Rights of Victims and Vulnerable Witnesses", 67 Journal of Criminal Law, 165 2003, 177-178

⁸⁴ Police Service of Northern Ireland "Policy Directive for Dealing with Victims and Witnesses", 8, http://www.psni.police.uk/policy_directive_0506.pdf

right to appropriate material, medical, psychological and social assistance and the right to be informed of the progress of investigation and legal proceedings.⁸⁵ In response to the NIHRC's advice, the Northern Ireland Office proposed to consider whether any further measures were required to provide support and protection to witnesses.⁸⁶

In addition to international human rights law, the 2001 European Union (EU) Council Framework Decision on the Standing of Victims in Criminal Proceedings provides for minimum rights for crime victims in criminal proceedings. The provisions include the right to be treated with respect, the right to be heard and supply evidence. Member states are also required to provide victims with information on the types of services and support victims of crime can access.⁸⁷ The European Commission has published proposals to strengthen the rights of victims in Europe.⁸⁸ The proposed directive contains provisions on the following:

- The right to receive information including the right to interpretation and translation services;⁸⁹
- The right to access victim support services;⁹⁰
- Rights in criminal proceedings including the right to be heard, rights in a decision not to prosecute, the right to legal aid, the right to decisions on compensation and the rights of victims resident in another member state;⁹¹
- Recognition of vulnerability and protection of victims including children, persons with disabilities, victims of sexual violence and human trafficking;⁹²
- Training of practitioners and co-operation and co-ordination of services.⁹³

⁸⁵ Northern Ireland Human Rights Commission "A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern" 10 December 2008, 43.

http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/51/A_Bill_of_Rights_for_Northern_Ireland_%28December_2008%29.pdf

⁸⁶ Northern Ireland Office Consultation Paper "A Bill of Rights for Northern Ireland: Next Steps" November 2009, 102. http://www.nio.gov.uk/consultation_paper_-_a_bill_of_rights_for_northern_ireland_next_steps.pdf

⁸⁷ EU Council Framework Decision on the Standing of Victims in Criminal Proceedings 2001/220/JHA 15 March 2001, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001F0220:EN:NOT>

⁸⁸ European Commission "Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime" COM (2011) 275 final, Brussels 18.05.2011, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0275:FIN:EN:PDF>

⁸⁹ Articles 4-6 of "Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime" COM (2011) 275 final, Brussels 18.05.2011, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0275:FIN:EN:PDF>

⁹⁰ Article 7 of "Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime" COM (2011) 275 final, Brussels 18.05.2011, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0275:FIN:EN:PDF>

⁹¹ Articles 8-16 of "Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime" COM (2011) 275 final, Brussels 18.05.2011, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0275:FIN:EN:PDF>

⁹² Articles 18 of "Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime" COM (2011) 275 final, Brussels 18.05.2011, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0275:FIN:EN:PDF>

⁹³ Article 24-25 of "Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime" COM (2011) 275 final, Brussels 18.05.2011, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0275:FIN:EN:PDF>

The UK has indicated it will opt in to the proposed EU Directive so it will apply in the UK.⁹⁴

7 Conclusion

This paper has examined the status of victims and witnesses in the criminal justice system. The research suggests that traditionally victims have had little role in the criminal justice process which is dominated by the relationship between the state and the defendant. However the research also indicates that greater emphasis has been given to victims in international, European and domestic policy, particularly in ensuring victims are treated with respect by criminal justice agencies, have access to the provision of information and support services.

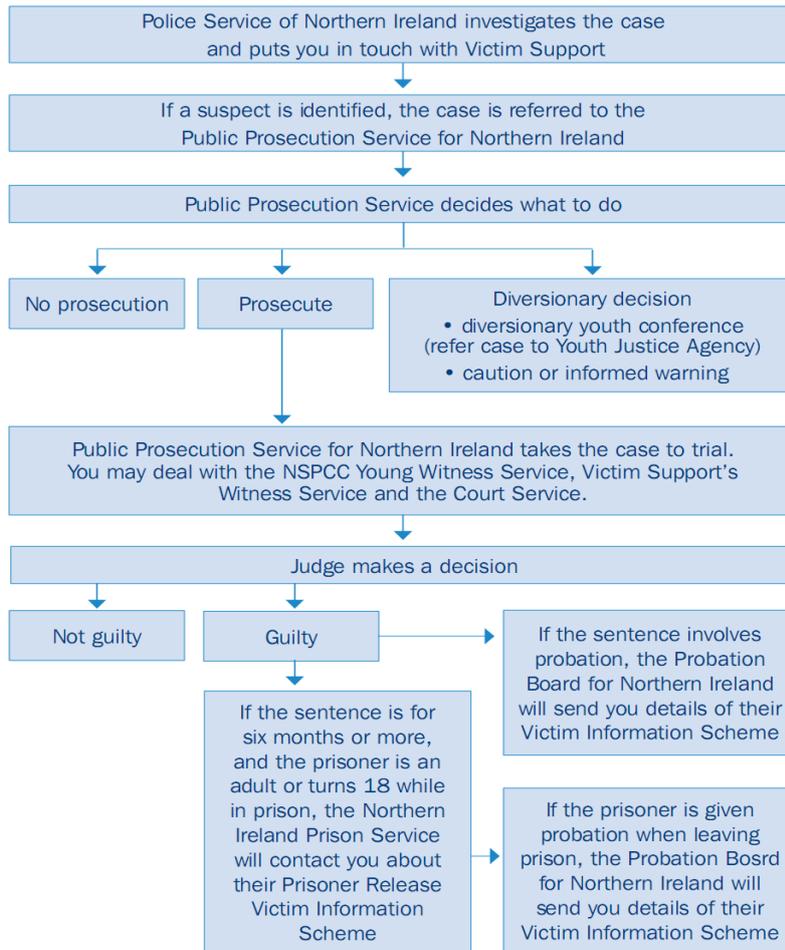
The briefing paper sets out the process that victims and witnesses experience as their case goes through the criminal justice system. This process includes various stages: the reporting and investigation of the crime, the decision to prosecute, the trial, sentencing, after the trial and the possibility of compensation. It is evident from the research that victims may encounter a range of different bodies, both statutory and voluntary at each stage of the process.

There are statistics regarding the experiences of victims and witnesses in the criminal justice system. These statistics come from the NI Crime Survey, the NI Victims and Witnesses Survey and research conducted by the NSPCC and QUB.

⁹⁴ Ministry of Justice "Crime Victims in Europe to get extra protection" 26 August 2011, <http://www.justice.gov.uk/news/press-releases/moj/pressrelease260811a.htm> ,

Annex A- The Path through the Criminal Justice System⁹⁵

Path through the Criminal Justice System



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⁹⁵ Source: Department of Justice: Code of Practice for Victims of Crime, March 2011, 11. http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/code_of_practice_for_victims_of_crime.pdf