



Northern Ireland  
Assembly

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COMMITTEE FOR JUSTICE

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**OFFICIAL REPORT**  
(Hansard)

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**Briefing on Actions Taken in Response to  
the Report 'Sexual Violence and Abuse'**

21 October 2010

**NORTHERN IRELAND ASSEMBLY**

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**COMMITTEE FOR JUSTICE**

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**Members present for all or part of the proceedings:**

Lord Morrow (Chairperson)  
Mr Raymond McCartney (Deputy Chairperson)  
Lord Browne  
Mr Tom Elliott  
Mr Paul Givan  
Mr Conall McDevitt  
Mr Alban Maginness  
Mr John O’Dowd

**Witnesses:**

Mr Gareth Johnston	)	Department of Justice
Ms Janice Smiley	)	
Superintendent Alistair Wallace	)	Police Service of Northern Ireland
Mr Stephen Burnside	)	Public Prosecution Service

**The Chairperson (Lord Morrow):**

We now move to a briefing on the actions taken in response to the findings of the Criminal Justice Inspection (CJI) report on the handling of sexual violence and abuse cases by the criminal justice system. I welcome Mr Gareth Johnston again. We all know who Mr Johnston is and what his position is in the Department. I also welcome Janice Smiley, head of the criminal justice

policy unit in the Department, Superintendent Alistair Wallace from the PSNI and Stephen Burnside from the Public Prosecution Service (PPS). I take it that Gareth will again present to the Committee. I ask you to briefly outline the actions being taken in response to findings of the CJI report. Thank you.

**Mr Gareth Johnston (Department of Justice):**

Thank you, Chairman. We welcome the opportunity to respond to the briefing that the Chief Inspector provided about the thematic review. I am joined in this session by colleagues from across the criminal justice system: Superintendent Alistair Wallace from the PSNI; senior assistant director Stephen Burnside from the Public Prosecution Service; and Janice Smiley from my own directorate in the Department. We are all working with other colleagues to deliver on the recommendations in the Criminal Justice Inspection report, and, more generally, to implement the regional strategy on sexual violence and abuse.

The regional strategy is the joint responsibility of the Department of Justice and the Department of Health, Social Services and Public Safety (DHSSPS). It was published in 2008 and sets out to tackle the wide range of issues that impact on the experience of victims of sexual violence and abuse. The strategy is victim focused and it was developed following widespread consultation. It deals with the entire spectrum of issues from promoting prevention strategies, challenging societal attitudes about sexual violence, through to providing a professional and sensitive approach to reported crime and delivering co-ordinated quality support services to victims. The commissioning of the Criminal Justice Inspection report was one of the key objectives of the protection and justice strand of the regional strategy, on which the Department of Justice and its criminal justice partners lead.

Needless to say, reports of sexual violence and abuse are among the most serious and damaging crimes that the criminal justice system has to deal with. However, as the Chief Inspector noted, they are often difficult cases to investigate and to prosecute successfully. Some of those difficulties have already been hinted at. Most of the offences are not witnessed by a third party, so there is no independent corroborating evidence. In the majority of cases, the offenders are known to victims, which can inhibit reporting or lead to a withdrawal of initial complaints. Cases involving offences that took place in the past are particularly complex, as often there is no forensic or other corroborating evidence. In those cases, the defence can make an abuse of process application and argue that the time lapse means that they cannot prepare a proper defence,

which is an additional hurdle that we need to get over. Therefore, compared with many other aspects of crime, sexual crime presents us in the criminal justice system with particular challenges.

The Criminal Justice Inspection review was an opportunity to look at the way the system collectively handles those cases to see whether there were opportunities to work even closer in order to enhance investigative and prosecution practice and help more cases achieve the threshold for prosecution. It was also important to increase victim confidence so that more people would come forward to report offences, and would sustain their involvement from that point until the end of the prosecution process. As Dr Maguire said, the inspection examined all the key stages of the justice process, from reporting of crime through its investigation, prosecution and court disposal from the twin perspectives of best practice and victim experience.

The challenge for the justice system is threefold. First, we need to encourage victims to report offences. Secondly, we need to develop our best investigative practice so that more cases achieve the test for prosecution. Thirdly, we need to support victims effectively through the justice process so that their engagement with the process continues all the way through. I suggest that, although we have further to go, significant strides have been made, including since the work on the report was done. If I may, I will reflect briefly on that ongoing work to embed best practice and highlight some of the additional key activities in the action plan that has been drawn up following the Criminal Justice Inspection report.

The number of reported offences has increased from 1,822 in 2007-08 to 1,944 in 2009-2010 — an increase of 122. That does not necessarily reflect a growing prevalence of sexual crime. Research indicates that a limited number of sexual crimes are ever reported to the police, and we view increased reporting and those numbers that I just mentioned as a sign of growing confidence on the part of victims. We believe that a number of proactive measures that have been taken are likely to have contributed to that increased reporting.

First, together with DHSSPS and working in partnership with victims' groups, we mounted a major TV and radio advertising campaign between November 2009 and March 2010, which was about raising awareness of issues and encouraging victims to come forward to receive the help they need. There have been follow-up assessments of that campaign, and the public recognition figures about it — that is, people saying that they had seen the campaign and were aware of the

messages that it conveyed — were significantly above industry average.

Secondly, in the Sexual Offences (Northern Ireland) Order 2008, there were changes relating to sexual offence definitions, the law on consent and there was the introduction of tough new public protection sentences. Those were widely reported on and debated at the time, and were discussed with victims' support groups. We think that that has been significant in raising the profile of sexual offences and encouraging people to come forward.

Thirdly, we know from crime survey reports that there is high public confidence in policing generally, which we feel has contributed. There are some positive signs about reporting, even if we would like it to go further.

The next challenge is about the high level of attrition in cases reported to police; that is to say, the significant numbers of cases that are reported to police but then fall out of the system for one reason or another. That is a particular concern to all the criminal justice agencies. Around one third of victims decline to pursue their complaints having reported a sexual offence to police. There are other cases that struggle to meet the evidential test for prosecution because of the absence of corroborating or other evidence, as I mentioned. However, when cases do proceed to trial, there is an overall conviction rate of around 57%, as Dr Maguire mentioned.

The issue of attrition is not unique to Northern Ireland, but it is multifaceted. Work has been progressing in a number of areas to bring about improvement. We now have separate, dedicated units dealing with rape, child abuse and public protection issues so that specialist expertise and experience is brought to bear in these cases. The inspection identified issues around clarity of roles and responsibilities and around information sharing between those units. Those are addressed in the action plan that we presented to the Committee.

A new specialist rape investigator training course has been delivered to detectives, and all new recruits to PSNI receive training on first response to sexual crimes so that the integrity of the evidence can be maximised. The PSNI and the Public Prosecution Service have been working closely to deliver joint training to these specialist investigators, developing their skills so that they can build the strongest possible cases based on the available evidence.

The inspection recommended the creation of a tutor detective training programme, so that

experienced detectives could help support those being trained. That will be instigated as there is a new intake of detectives into PSNI. A rape steering group headed by the assistant chief constable for crime operations and involving PPS representatives has also been established and is providing leadership on strengthening the judicial response to the most serious of sexual offences.

In moving on to highlight some of the issues that were identified in the response around prosecution, I am glad to say that the inspection's report identified many good examples of working practice in the prosecution of sexual offences, particularly in the use of experienced prosecutors and counsel, and in their proactive training role for police officers.

Based on the Committee's earlier discussion, I will address what I think may be a misconception: the PPS does use expert prosecutors for the more serious sexual offences. Stephen will be happy to say more about that during questions if it would help the Committee. The point that the paper is making is that we have not adopted exactly the system used by the Crown Prosecution Service, but there are specific prosecutors who deal with the more serious sexual offences and who receive particular training. The references to that at paragraphs 4.5 and 4.14 of the report confirm the extent to which those experts were used in the sample of cases that the Criminal Justice Inspection looked at.

Again, I should clarify that counsel always meets the victim before trials, but the recommendation focused on a more formal consultation involving counsel, police, prosecutors and victims. However, I can confirm that counsel meeting victims is standard procedure.

Although acknowledging that decisions not to proceed with prosecutions were based on good evidential grounds, the report recommended that there should be a specific review of cases involving rape when a direction of no prosecution was made to see whether there was scope to help more such cases reach the threshold for prosecution. I confirm that that is being undertaken with the PPS and the PSNI, and action will be instigated in response to any issues that the review might identify as a learning point to help future crime investigations.

In relation to cases where counsel has been instructed, PPS prosecutors will also conduct an analysis of the evidence to explore ways of overcoming any identified difficulties that may impact on the ability to conduct a prosecution. The action plan also contains a commitment to identify what further steps could be taken to address the erroneous misconceptions about plea-

bargaining. I think that that relates to the issues about victim confidence that the Committee has discussed.

The PPS has already taken a number of steps to explain the circumstances under which it is appropriate to accept a plea to a lesser offence, and to reiterate that plea-bargaining has no place in the practice or procedure of the PPS. The PPS is committed to identifying further steps to address that issue.

Also important, as the Criminal Justice Inspection report recognized, is the support that is given to victims. We are moving forward in that area on two key fronts: the provision of information; and in the delivery of support and advocacy services. As set out in the action plan, the PPS and PSNI will be developing protocols to outline their responsibilities in updating victims of rape and serious sexual offences, and we can say more about that if it helps the Committee. The PPS and PSNI also operate a system of referral of victims to Victim Support, and, through them, to NEXUS, where they can avail themselves of practical and emotional support. The PPS has also worked with Women's Aid to provide training to those who support victims in court.

More broadly, we are looking at the issues around attrition. We will be announcing policy proposals later in the year to tackle it, with two practical examples of new support and victim care measures. The first of those is the publication of a comprehensive victim handbook, which will provide all the information that a victim needs to know about dealing with the aftermath of a sexual assault. It will explain the justice process from end to end, and highlight how medical and other support services can be accessed across Northern Ireland. Secondly, we will create specialist advocacy services for vulnerable victims to help them to access information on case progress and to sustain their engagement through to the end of the process.

One of the most significant developments will be the establishment of a sexual assault referral centre on the Antrim Area Hospital site, which is due to open in early 2012. That will bring together medical aftercare, forensic and other support services, and will develop a comprehensive wrap-around service for adult and child victims of sexual assault, with onward referral to locally delivered services. That is based on models that have been successful elsewhere, and it is aimed at starting intensive support just as an offence is reported and continuing that support through the criminal justice system.

In summary, implementing the recommendations of the report is one of the key objectives of the regional strategy action plan for 2010-12. In addition to the various measures that I outlined, the action plan sets out objectives that include introducing reforms in the law, which the Committee will have seen, particularly around the special measures in the Justice Bill. It also sets objectives about working with sexual offenders to minimise the risk of reoffending and about further examining the issue of avoidable delay as it relates to sexual crimes. Again, I can say some more about that if it helps the Committee.

Sexual violence is a cross-cutting issue. It needs a co-ordinated multi-agency response, and I am glad that there is no lack of support on working on the regional strategy from the partners that are represented here, and the other partners across the criminal justice system. There is also a commitment to securing continuous improvement in service delivery to victims and survivors of sexual violence and abuse.

Criminal Justice Inspection plays a vital role in scrutinising that work, and in ensuring that it is co-ordinated and delivered as effectively as possible. Its report highlighted a number of areas where, although we may be no worse than other jurisdictions, we need to do better. I acknowledge that, but I hope that what I said highlighted the wide range of fronts on which we are committing and committed to moving forward. We are very glad to take any questions that the Committee might want to ask.

**The Chairperson:**

Thank you for that in-depth and detailed report Mr Johnston. If I was a victim, I could be forgiven for thinking that I do not get that much support from the criminal justice system.

Take a look at the report that Criminal Justice Inspection has put before us; it makes harrowing reading. Lord Browne raised an issue relating to a case outlined on page 56. Mr Burnside might want to comment on it. It relates to the victim B case, in which a man had abused his three-year-old daughter. The written response by the PPS was addressed to “Dear Sir/Madam”, which sounds very uncaring and indifferent. The attitude comes across strikingly as: what is that to us? Do you agree with that, Mr Burnside?



**Mr Burnside (Public Prosecution Service):**

I would, indeed, agree with that. The Public Prosecution Service was set up in 2005 and worked off the Causeway system. A number of letters were set up in template form, and those templates were used to inform victims and witnesses at various stages in the process of what was happening with their cases. Unfortunately, some of the templates were not particularly victim-friendly. They were not, as you can see from this example, something that we, as an organisation, would be proud of sending out.

In 2009, we introduced a policy of sending full personal letters, written by the prosecutor who takes the decision in a range of no-prosecution cases, including cases that involve rape and serious sexual offences and also offences where death has occurred or there has been an allegation of serious criminality. Criminal Justice Inspection is inspecting our letters at present to see that they are going out to people and that they are properly, and personally, written to the individuals involved. I hope that that particular situation will not arise again.

**The Chairperson:**

That is reassuring. However, this is symptomatic of the whole attitude of society over the past 35 to 40 years, whereby the victim is just an unfortunate statistic and is not that important a player. If there is something we can do to change that whole concept so that the victim is important, we should do it. To me, the victim is the all-important person in this. As I read through the report — and it makes gruelling reading — it is clear to me that the victims are not that high on the agenda.

**Mr McDevitt:**

I will pick up on that point. The report of July 2005, ‘Improving the Provision of Care for Victims and Witnesses within the Criminal Justice System in Northern Ireland’, and its follow-up report in March 2008, included a recommendation that the Criminal Justice Board should ensure that the victim is accorded a status within the system to ensure that justice is equally dispensed to all victims as well as to the accused. Criminal Justice Inspection tells us in this report that that has never been achieved. Why is that?

**Mr Johnston:**

A wide range of work on victims has been moving forward to ensure that victims have the status that they deserve in the criminal justice system. We have to remember that, if it were not for the evidence that victims give, there would be no criminal justice system. We all very much

recognise the vital role that victims play.

In response to your specific point, the CJI review of victims' services and its follow-up report made a number of recommendations. There is now a five-year strategy for victims' services in place. It has seen a range of improvements in services, and someone who is a victim of crime now will get appropriate referrals to Victim Support and other support services when they approach the police. We have improved the information available to victims as they go through the system. In particular, the police have a current project to ensure that victims are appropriately updated as the case is considered and investigated by the police. Those updates are regular, and that is all part of the police's wider strategy on customer service.

We have seen improvements, some of which Stephen highlighted, in prosecutions, and we now have information services in prisons and in the probation side so that victims can know if offenders are going to be released or if there are any significant changes to their status or community sentences. Therefore, there is a systems-wide approach to victims that is moving ahead. Criminal Justice Inspection is currently carrying out a piece of work that is looking again at those issues. I hope that, through that work, we will be able to demonstrate that, since the initial report some five years ago, we have made significant progress.

**Mr McDevitt:**

When will you be able to come before us and say that the victim has eventually been accorded a status within the criminal justice system?

**Mr Johnston:**

I want to emphasise that that is the case now.

**Mr McDevitt:**

Why, in July, did Criminal Justice Inspection find that that had not been achieved?

**Mr Johnston:**

Is there a specific reference to that in the report?

**Mr McDevitt:**

Yes; it is at the top of page 82, under "Other recommendations".

**Mr Johnston:**

I think that the inspectorate is referring to the general perception and concern on the part of victims that they are put on trial during the process. There has been discussion this afternoon about the adversarial system and what that means for victims. As the report says “Not achieved”, the inspectorate may feel — I am sure that it does feel — that we have not reached the stage that it wants us to be at. Nevertheless, I think that that belies a great deal of progress in victims’ services.

**Mr McDevitt:**

I understand that that status is a subjective term, but I refer you to key recommendation 4 on page 81. The original report, which was published in 2005, recommended that:

“The Criminal Justice Board should set up a jointly owned Victims and Witnesses Information Unit located within one central function for administrative purposes. The purpose of such a unit would be to provide a single point of contact to the CJS to help any victim or witness”.

I will not read on; colleagues can read it themselves. When should we expect to get to that point? A lot of what you have been telling us about suggests to me that that is still an ambition of yours, but what are the barriers? What is stopping us from getting there?

**Mr Johnston:**

That was a specific model that Criminal Justice Inspection recommended. It came to be known in the criminal justice system as the “one-stop shop” for victims. We are addressing the issues that underlie that, but perhaps in a different way than that particular model. Police have piloted a victim update bureau. The principles behind that are being rolled out throughout the Police Service. I would like to think that we can demonstrate progress, albeit not exactly the model that was envisaged in 2005, but something that addresses the underlying problems.

**Mr McDevitt:**

I have one last question. I am sorry that I am not going to get to ask more about this report, but these are legacy matters that are illustrative of the issues that remain in the system. On that same page of this report, page 81, we can see that the 2005 report recommended that:

“The NICTs, DPP/PPS and PSNI should examine the technical opportunities which may now be available to update victims and witnesses about developments in their case including whether they need to attend court, the date, time and venue where the offence will be listed, and the eventual outcome of the hearing”.

That is a bureaucratic solution, not a cultural or major policy solution. After five years, why has

that not been achieved?

**Mr Johnston:**

There is a new system that was introduced — Stephen will keep me right — in the PPS, which is about calling people to Magistrate’s Court cases. That is done through the community liaison officers. Therefore, there is a new system, and the feedback that I have been hearing is that it has been working reasonably well, and that much better notice is being given to victims of the need to attend trial, where they need to be and when they need to be there. Consideration is being given to improvements that could be made to cases in the Crown Court system.

**Mr Burnside:**

With the consent of victims, we use techniques such as text messaging and e-mails to BlackBerrys to keep victims up to date on what is happening in their court case, where it is, what time they need to be there and so on.

**Mr McDevitt:**

Are those services offered to every victim in all courts?

**Mr Burnside:**

They are currently used to call victims to Magistrate’s Courts, which is where the PPS has responsibility.

**Mr McDevitt:**

Are they offered to every victim in every case before a Magistrate’s Court?

**Mr Burnside:**

That option is included in our victims’ packs.

**Mr McDevitt:**

Does a victim have to go through the pack and read it, or does someone explain that that option is available?

**Mr Burnside:**

The information is contained in the written communication.

**Mr McDevitt:**

Unfortunately, a lot of people who interface with the criminal justice system do not have the capacity to wade through the information. I have seen some of the material, which is well presented, and I am not criticising it. However, I am the sort of person who likes to get to page 82 of reports. There are not many of us about, unfortunately. What other mechanisms are in place in the court to ensure that someone understands that they can get a text message if they want?

**Mr Burnside:**

There is direct contact with our community liaison teams. For example, in cases of domestic violence, we phone the victim or witness a couple of the days before the case. At that point, that option will be offered.

**Mr Johnston:**

More generally, we are moving forward in victims' services. Undoubtedly, that issue will come before the Committee, particularly when the Criminal Justice Inspection report comes forward. We are moving on the basis of recognising that all victims and witnesses are not the same. They have individual and specific needs. It is about identifying those who have the greater need and who have been impacted to a greater extent by the crime, and it is about making specific offers of particular services to them, while recognising that other people are perfectly happy to get a pack and turn up on the day if they need to. We realise that a triage approach, as it is referred to in casualty departments, almost needs to be taken with victims of crime.

**Mr O'Dowd:**

I have a couple of quick questions for Alistair, the PSNI officer. Have the rape evidence kits now been deployed to officers?

**Superintendent Alistair Wallace (PSNI):**

Yes, my understanding is that they have been deployed throughout the service.

**Mr O'Dowd:**

I take it that training has been provided to officers on the use of those kits.

**Superintendent Wallace:**

It was mentioned that it has become part of the initial training for new police officers, and there is more advanced training for specialist officers in the child abuse units and rape crime units.

**Mr O'Dowd:**

Gareth, earlier, you made a presentation on the Justice Bill, part of which is about providing assistance to vulnerable witnesses. Is there anything that you can learn from the Criminal Justice Inspection report that will enhance your recommendations for the Justice Bill, or do you think that the Bill satisfactorily cover the issues?

**Mr Johnston:**

Before the Criminal Justice Inspection report was published and as the CJI was looking at its emerging recommendations, we had an opportunity to receive a presentation from the protection and justice subgroup. At that time, we were in the course of preparing the Justice Bill. Some of the Bill's provisions, such as special measures and the use of intermediaries, will have an impact on sexual offences. The most striking example that I have seen of an intermediary helping was in the case of a woman who had severe communication difficulties and who had been sexually abused, possibly by a carer. There is a victim support video in which she speaks about her experience through her communication helper. That was a sexual case, and it is very much the sort of case where the intermediary special measure could have an impact.

**Mr McCartney:**

Thank you for your presentation. The inspection's report states:

“The exact reasons why almost three-quarters of cases are not taken forward for prosecution is not clear.”

Who will be involved in the thematic review?

**Mr Burnside:**

First, the Public Prosecution Service is absolutely sure why those cases are not taken forward. They are not taken forward on the basis of the test for prosecution. In most of those cases, the evidential test was not met; there was not sufficient admissible evidence available to sustain a prosecution and a reasonable prospect of a conviction. In cases of such a serious nature, it is seldom that the public interest test, which is the second part of the test for prosecution, would be used as the reason not to proceed with a prosecution. The reasons are set out clearly in our decisions, and in looking at those decisions, we are satisfied that, in each individual case, the

prosecutor who has taken the decision has done so properly.

Through our quality assurance team, which is an internal PPS team, we are now seeking to take forward a thematic analysis to determine whether, in a range of cases, there is a particular problem that causes individual cases to fail at that point. In considering the 75% figure, we need to be careful about what we are comparing. The system here is not the same as it is in English jurisdictions, and police here are required to report a greater number of cases to the Public Prosecution Service than the police in England do. The attrition rate at that stage, rather than at an early stage, is higher than it would be in England for that reason. Where there is an identifiable accused and some evidence, the police are required to report that to the Public Prosecution Service in Northern Ireland. That is not the case in England, where the police are not required to report cases where they are strongly of the view that no prosecution can be obtained.

**Mr McCartney:**

I understand that, in individual cases, the prosecutor would know why he is not proceeding to court. Up to now, has there been any attempt to analyse cases? Does the prosecutor report back, presenting his or her reasons, without anyone having looked at it to identify common themes? In an earlier presentation, we heard about co-location, and we heard that sometimes the files that come from the PSNI are not up to standard and are put back and sent to and fro. Why has it taken until now to have a thematic review? Was that not built into the system? Should it be built into the system?

**Mr Burnside:**

I think that it should be built into the system. It is important that we look at why there is that key drop-out rate. However, if we look at each particular category of rape offences, we can see that the reasons for a no-prosecution decision are relatively clear. There are essentially three categories. In stranger rape cases, the general reason is that the accused has not been identified sufficiently. Where the accused is identified, there is almost inevitably a prosecution.

In cases that are referred to in some reports as “stranger 2” cases, where people meet socially, interact and know each other for a short time after which a sexual offence is alleged to have occurred, the main reason for a no-prosecution decision is that one party says that it was without consent and the other party says that it was with consent. There is a provision in the Sexual Offences (Northern Ireland) Order 2007 that assists us in that regard in determining that both

parties are responsible for ensuring consent. That has helped us in obtaining prosecutions.

However, the standard that we have to meet is that of “beyond reasonable doubt”. I am sure that, if members were to watch a rape or serious sexual offence prosecution proceedings, they would hear defence barristers stand up and ask the members of the jury whether, having heard the evidence from the defendant who believed that he had consent, they are absolutely sure beyond a reasonable doubt that that could not have been the case for him at that time.

That explains a lot about why the conviction rate in those circumstances appears to be low. The accused is entitled to the presumption of innocence and often it is simply one person’s word against another’s, without any supporting evidence. In those cases, for example, forensic evidence is generally irrelevant because sexual intercourse is admitted and the issue is one of consent. Frequently, medical evidence is not sufficiently strong enough to be able to say that any injuries suffered are directly attributable to a sexual assault. Therefore, there is very little chance of any evidence bolstering the version of events presented by the individual concerned that the act took place without consent.

The issues with historical and child sexual abuse are about how to present evidence to a standard that is beyond reasonable doubt when the injured party may be anything between seven — or even younger — and 10 or 12 years old or when the offence may have happened 40 years ago. Those are considerable difficulties. The cases are complex, and it is hard for a prosecutor to put someone on trial for rape, which is a significant step to take against anyone, when the evidence is not sufficient to reach that standard. Those are the difficulties that we encounter in trying to push forward the need to obtain better evidence and to ensure that we are prosecuting those cases in which people should be prosecuted.

**Mr McCartney:**

There is a 57% conviction rate. Do you know how many people plead guilty and how many are found guilty by jury? What is the ratio?

**Mr Burnside:**

No, I do not know the figures for that year, but guilty pleas on sexual offences cases are relatively rare. In normal, if I can use that phrase, or other criminal offences, people tend to plead guilty in about 80% to 90% of cases. In my experience of sexual offence cases, that number drops way



down, as people are not prepared to plead guilty to those types of offences.

**Mr McCartney:**

Gareth mentioned the model for sexual cases earlier. Are you satisfied that the model that you have in place covers everything?

**Mr Burnside:**

Yes. There are four regions in the PPS. In each of those regions there are sexual offences experts who have been specifically trained and who are involved in training other prosecutors, the police and the counsel that we use. They also attend conferences and specialise in that area. In the report, you will see that all but one of the cases were dealt with by a specialist, and, in the one case that was not, a specialist was consulted. We regard that as a very important area. However, as regards having someone to do that all the time, because of the scale involved, it is not possible to follow that precise model.

**The Chairperson:**

Mr Burnside, how do you rate a 57% conviction rate?

**Mr Burnside:**

How do I rate it?

**The Chairperson:**

Yes; is it good, bad or mediocre?

**Mr Burnside:**

I do not rate it in that sense. What is important for a prosecutor is that the cases that are presented to the court should be presented to the court — in other words, that the test for prosecution is passed — and that all the cases that are presented to the court are tried fairly. If someone is acquitted, because of the nature of our system, they should be acquitted. If someone is justly acquitted that should please the entire system and not just the defence.

**The Chairperson:**

It follows that the other 43% should never have been in court in the first place.

**Mr Burnside:**

It is important to differentiate between the concept of proving someone legally guilty in a court of law and whether they actually committed the offence.

**The Chairperson:**

Surely they are either innocent or not innocent.

**Mr Burnside:**

They are actually innocent or not innocent, but legal guilt or innocence is something very different. We must prove on the basis of available, admissible evidence and beyond reasonable doubt that that person committed that offence. It is an evidence-based system, and the particular difficulty with sexual offences is that the evidence is often limited to one person. It is a very difficult case to present in a system in which the standard of evidence required — I will put it into percentage terms, although I do not entirely agree with this — is something like 90% to 95% certainty. If it involves a balance of probabilities as to whether someone was or was not raped, that is a different test. Very often, we will write letters to those who have alleged rape but whose case we cannot prosecute to tell them that it is not that we do not believe that they have been raped, it is just that we cannot prove it beyond reasonable doubt in our adversarial system.

**The Chairperson:**

You would not say to a defendant that you do not believe them to be innocent but that you cannot prove them guilty. You are saying that the other way round.

**Mr Burnside:**

A defendant is innocent in law.

**The Chairperson:**

Yes. There is no dispute about that. So, the 43% of cases should not have been there. What is the conviction rate for the whole spectrum of cases that come to court?

**Mr Burnside:**

Across the courts, it is a percentage in the low 90s.

**The Chairperson:**

For convictions?

**Mr Burnside:**

Yes, for convictions, including guilty pleas.

**The Chairperson:**

The general conviction rate is 90% across the whole spectrum, but in that one area, it is 57%. We will stop there. Thank you very much for coming and sending your report.