Northern Ireland Assembly

Committee for Justice

# OFFICIAL REPORT (Hansard)

## Statutory Time Limits in the Youth Court: Department of Justice

24 September 2014

# NORTHERN IRELAND ASSEMBLY

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**Members present for all or part of the proceedings:**
Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sydney Anderson
Mr Stewart Dickson
Mr Tom Elliott
Mr William Humphrey
Mr Seán Lynch
Mr Alban Maginness
Ms Rosaleen McCorley

**Witnesses:**

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|---|---|
| Ms Maura Campbell | Department of Justice |
| Ms Jean Moore | Department of Justice |
| Mr Graham Walker | Department of Justice |

**The Chairperson:** I welcome from the Department of Justice Maura Campbell, deputy director of the criminal justice development division, and Graham Walker and Jean Moore from the division. You are all very welcome to the Committee. The evidence session will be recorded by Hansard. I ask you to provide a brief opening commentary, and then the meeting will be opened up to Committee members to ask questions. Maura, I will hand over to you at this stage.

**Ms Maura Campbell (Department of Justice):** Thank you very much, Chairman.

Good afternoon. The purpose of the briefing is to advise you on the outcome of our consultation on a statutory time limits (STLs) scheme for the youth court and our proposed way forward. As you are aware, there was a very high level of interest in the scheme among our stakeholders, given that this is such a significant step for the justice system here. We engaged extensively with stakeholders before, during and after the consultation, and that engagement was very helpful to us because it gave us a better understanding of the respective positions. For our part, it helped us to understand the underlying concerns, and it gave stakeholders a better appreciation of some of the technical and practical difficulties with some of the options being talked about. So, although we did not quite achieve a consensus on all the details of the scheme, we were all agreed that we want to see an improvement in overall performance in youth cases end to end. We were able to explain to stakeholders that STLs are part of that but are not the only show in town, and it gave us a chance to explain in more depth to them the other legislative and procedural reforms that we are bringing forward, including through the Justice Bill, that should help to complement the STLs scheme.

I want to mention briefly our latest performance report, which you will have seen in the pack of papers that we provided as part of our six-monthly written brief that you are due to consider later. The papers tell us that performance in the youth court in 2013-14 was largely unchanged during the period. We have started to analyse the data for the first quarter of this year, which is indicating a modest improvement, and we will report on that in the next report. We have also looked specifically at performance in the areas where youth engagement clinics have been piloted, because that is part of the package of procedural reforms to underpin the new statutory scheme. In B district, where clinics have been operating the longest, there has been a significant change in the way in which cases are being initiated, with the majority of cases prosecuted in the youth court in that district now being dealt with by way of charge rather than summons: around 79% of cases, whereas previously it would have been around one third. That has delivered substantial gains in performance. In fact, the average time from charge to decision has halved in that area in a single year. The proportion of the time that would have fallen within the period of the proposed STL was 45 days. That suggests to us that the clinics' approach should help to prepare the way for statutory time limits. Although we cannot guarantee that we will achieve exactly the same level of improvement in performance elsewhere as we have seen in Belfast, we think that it indicates that clinics should help to make a positive difference.

On the specifics of the consultation on STLs, we found broad support for their introduction, and the idea of a single time limit for both charge and summons cases was supported as well. Consultees were also broadly happy with the proposed approach to extensions and exclusions. The Public Prosecution Service (PPS) helpfully identified a small number of other offences that should be excluded. There were mixed views on the duration of the time limit and on the start and end points. On duration, we were recommending 120 days, and three out of 10 responses agreed with that. Two agreed provided that the statutory time limit started earlier. The PPS suggested that 120 days would be very challenging based on current performance, and the remainder commented that they thought that we needed to be more challenging in the amount of time.

Given that this is intended to be the outer limit as opposed to the average time, we do not think that 120 days is unchallenging. It is still our working assumption at the moment, but, before we finalise the duration, we plan to review a number of in-year cases to see how they would have performed against that time limit. In the future, if we think that the agencies are meeting that time limit comfortably, we think that it should be fairly straightforward to amend the regulations to allow for a shorter duration.

On the issue of the start point, which was probably the principal focus of people's attention, six out of 11 responses agreed with the proposed start point for charged cases, but only four agreed with the proposed start point for summons cases. The remainder of respondents wanted us to use earlier start points. We had chosen "complaint" for summons cases on the basis that that was the closest analogue for the point of charge in the status of the defendant, but the effect of that is that it excludes a chunk of the case preparation stage in summons cases.

As we have explained in Committee before, constructing an earlier start point for summons cases that align with the point of arrest would require us to legislate to create a new statutory start point for summons cases. We have agreed to scope out the idea of an earlier start point, with a view to introducing a workable earlier start point in the next mandate, because that will require additional legislation, but, in the interim, we have agreed to introduce an administrative time limit, which will cover those earlier stages and help keep a focus on that part of the process.

Views on the end point for a time limit were split fairly evenly between those who supported our proposal, which is at the start of trial, and those who advocated either an end-to-end time limit or else stopping at the start of the trial and then restarting the time limit for the sentencing stage. Our view is that statutory case management is the better solution for a trial stage and would be more consistent with the interests of justice. Moreover, we feel that a time limit for the sentencing stage, given that it was trialled in England and Wales and did not result in improved performance, should not be applicable here.

As I mentioned, for our next steps, we want to look at some actual cases that have reached the 120-day point. We will be working with the PPS to look at why those cases that did not meet the time limit were not able to achieve a shadow time limit. We will also be working to finalise the regulations over the next couple of months, and we will be looking very closely at the impact of youth engagement clinics, once those are fully rolled out around the turn of the year. We will also go back to stakeholders to discuss the options for the administrative time limit for the front end of the process and what a new statutory starting point for summons cases might look like in the future.

In summary, we plan to meet the Minister's commitment to introduce statutory time limits in the youth courts in this Assembly mandate by starting with a scheme that is broadly similar to the one that we proposed, then supplementing that with an administrative time limit for the earlier stages and reviewing the proposed duration of the time limit on the basis of actual performance during this shadow year. In other words, the scheme that we are starting with will not be the limit of our ambition. We will create the headroom to extend the scope of the time limit and reduce its duration when we feel that the time is right to do so. As ever, we are happy to take any questions.

**The Chairperson:** All right, Maura. Thank you very much. I have a couple of quick questions. First, I want to ask about the time at which this 120 days for formal criminal proceedings will begin. The PSNI and Include Youth wanted it to begin at the point at which individuals are told that they being reported for prosecution. Why did you not go with their view? That is the point at which they feel the clock should start ticking.

**Ms M Campbell:** We have always said that we wanted to try to keep as much of an equivalence between the time limits for charge and summons as possible. That would avoid the risk of creating some sort of perverse incentive: if there were an easier of two options, people would make the decision for the wrong reason. If we are looking at a new statutory point, we will have to look at options that try to correspond with arrest, because that is the point at which most people suggested they would like to see us starting for charge cases. It is about trying to identify a point in the summons process that is broadly analogous to the point of arrest.

**The Chairperson:** Remind me how many days it takes to deal with cases currently.

**Ms Jean Moore (Department of Justice):** Summons cases, end to end, took around 223 days. That includes the time taken to serve the summons in youth cases. For charge cases, it took around 96 days.

In the context of charge cases, the complete process, as measured, was covered within the scope of the time limit. For summons cases, it is a shorter period, and the overall period of around 140 days would be covered by the statutory time limit.

**The Chairperson:** So, the current average is around140 days.

**Ms Moore:** Yes.

**The Chairperson:** OK. The target that is being set will really shave 20 days off proceedings.

**Ms M Campbell:** Yes, except that we are comparing average times with maximum times. In quite a number of cases, it would actually require a bigger change in performance than just the 20 days. We are trying to calibrate this in such a way that there is a sufficient degree of challenge to the agencies to do things quicker without setting it so tight that we create a mini industry, with agencies coming to the court looking for extensions.

**The Chairperson:** I suppose that the real fear for some people is that the statutory time limit is breached. Had STLs not been in place, people, although they could have taken longer to get through the courts, could ultimately have been convicted for a crime that they had committed. What are the safeguards to prevent that scenario happening? If that happened, there would be a public outcry that the Assembly had put legislation in place that allowed people to get off with crimes because the system could not get through cases quickly enough.

**Ms M Campbell:** I suppose that the first thing is that the proceedings would be stayed rather than completely collapse. There will also be the facility to apply for an extension in certain circumstances, and I would think that the potential impact on a victim would be one of the criteria that could be looked at by the courts when it makes a decision about granting an extension. We do not want the seeking of extensions to become the norm, so we are trying to ensure that as many cases as possible get through within the time limit. However, we do not want to set a time limit that is so lax that it institutionalises existing poor performance. That is why we have looked at what we can do procedurally to try to quicken the pace of cases getting through the court. Youth engagement is really the other side of the coin. If we can achieve the sorts of gains that we are starting to see in Belfast, we will be more confident of the agencies' ability to meet the time limit as proposed.

**Ms McCorley:** Go raibh maith agat, a Chathaoirligh. Thanks for the presentation. Can you give us more information on what difference has been made by the engagement clinics and what impact they have had on delivery?

**Ms M Campbell:** What has happened on the ground is that a lot of cases that would have previously ended up as summons cases in the youth court have been diverted away. Summons cases are where we have always had the principal difficulties. Cases that now proceed to the youth court are mostly charge cases, which are the higher-end cases. In the past, young people might not have wanted to make an early decision about the offer of diversion. Instead, they came to court and made that decision, so cases bounced out again.

I think that we have to acknowledge that part of the improvement could be down to the fact that there are fewer youth cases overall. That has probably helped in creating capacity in the court. So, it is probably a combination of factors. There could be some impact from the greater use of police discretion, which, again, has taken some of the clutter out of the system. A number of things coming together have helped make things a lot speedier for the cases that need to go to court. That is what we wanted to achieve.

**Ms McCorley:** I read about what happens when cases go to second and third summonses. What is the reason for the delay?

**Ms Moore:** The first summons is generally issued by post, with a court date for the young person to appear. If the young person does not appear on that court date, the summons is deemed to have been not served and is reissued by the PPS, either by post again, if there is a new address, or, on occasions, to the police for personal service. Essentially, the time taken in reissuing the summons and finding a new court date for the next appearance mounts up.

**Ms McCorley:** Is there some way in which that process could be shortened? Has there been some thinking about how that might be reduced?

**Ms M Campbell:** There are a couple of things that we are planning to do through the Justice Bill that should help with that. The first is the removal of the requirement for lay magistrates to sign a summons. They have to sign reissued and original summons, and that builds in delay, particularly in rural areas, where lay magistrates may be receiving them in batches each week.

**Mr Graham Walker (Department of Justice):** Allowing summonses to be issued by the PPS without them having to be signed by lay magistrates is probably the main legislative change that we are making to summons cases. That is likely to shave off a couple of days here and there, and possibly more in country areas, where bundles of summonses have to be taken to the courthouse, where a lay magistrate perhaps attends only one day a week to sign the summonses. That change will cut out a proportion of time from the reissuing process.

**Ms McCorley:** I have one final point to make. Some of the respondents said that the Department's recommendations were too far from the recommendations of the youth justice review. Have you done any work to try to bridge that gap, or are you discussing that with —

**Ms M Campbell:** We have discussed that on an ongoing basis with stakeholders, and the youth lobby in particular. It was actually discussions with them that shaped how we presented the consultation. Initially, we drafted a consultation paper that went straight into the detail of how an STLs scheme would work. However, after talking with stakeholders, we realised that we had to give a much fuller explanation of the breadth of work that we were trying to do. As I said earlier, the STL is not the only show in town; it is meant to complement a number of other things that we are trying to do.

When we talked to stakeholders, we were struck by the fact that the youth justice review team had made its recommendation on the basis of what it had seen in England and Wales. We were concerned about trying to impose such a solution locally, as England and Wales had a different start point from us. We concluded that that recommendation was made out of frustration by the review team. Cases were taking so long that it wanted to do something that would act as a catalyst for improvement. So, the discussion with stakeholders moved on to how we could meet the spirit of the review by tackling the problem end to end through a combination of things: statutory time limits; youth engagement; and some of the other legislative and procedural changes that we are trying to make.

Stakeholders had been very focused on the wording and the letter of the youth justice review's recommendation. A number of them would still like us to meet that, but there was a growing appreciation of the fact that that may not work so well in a jurisdiction where such use is made of summonses. The youth justice review looked at what was happening in England and Wales, which has much more of a charge-based system. It missed out the fact that the principal issue in Northern Ireland is with summonses, so it did not fit as well for those types of cases.

**Mr Elliott:** Thanks for the presentation. Can you tell me exactly why you cannot meet the recommendations in the review raised by Ms McCorley?

**Ms M Campbell:** The youth justice review recommended a statutory time limit from arrest through to disposal. To be honest, I do not think that 120 days for an end-to-end statutory time limit would be workable in Northern Ireland at this point. I think that we would struggle.

**Mr Elliott:** Why?

**Ms M Campbell:** Based on average performance, I do not think that it would be practicable to try to achieve that level of performance at this point.

**Mr Elliott:** Is the Department not capable of doing it?

**Ms M Campbell:** It is not just down to the Department; it is down to a range of agencies, each of which has a role to play in the justice process.

**Mr Elliott:** Such as? I am trying to get a flavour of it all. Which agencies?

**Ms M Campbell:** Given how cases are brought forward, it starts with the police. The next link in the chain, before the case gets to trial, would be the Public Prosecution Service. Other organisations would then be brought in, such as Forensic Science, when certain types of report are required.

I should mention, and I think that I have made the point before in this forum, that the youth justice review was one of a series of independent reports that we looked at as we developed our proposals, and we had started looking at statutory time limits before the youth justice review was published. We had been discussing it before with Criminal Justice Inspection. It was also featured in the Owers review on prisons. Slightly differing recommendations were made in each of those reports. What we were trying to do, and what the Minister wanted to achieve, was to find a solution based on our particular circumstances and the problems that we need to tackle here.

**Mr Elliott:** My issue is that, if we do not try to get to the end result, no pressure is being put on those other agencies, such as the police, the Public Prosecution Service, Forensic Science, or whatever. I do not accept your reasoning and excuses around this. I think that, unless the Department presses the issue, the situation is not going to improve. That is my personal view. I think that you can do a lot more. If the pressures come from you, others will respond to them.

**Ms M Campbell:** As I said, this is a significant step for Northern Ireland. It is a very new approach for us. It is not something that we have done before. This is not just about changing processes or speeding up existing processes. A lot of it is about changing behaviours and taking a lot of existing perverse incentives out of the process.

We do not want to rush into something that we do not think is workable or achievable at this point, which is why what we are talking about here is a phased approach. We will start with something that we think is deliverable, which will have an element of challenge in it but will also have the space and headroom to make it more challenging. We could then progressively extend the length of the time limit so that it covers more of the process. We could also shorten the period available to people to meet that time limit.

**Mr Elliott:** Would you say that the entire process is inefficient at the moment?

**Ms M Campbell:** There are inefficiencies in the system, but there is a variety of reasons for that. As we have said, there is no single point of failure here. If there were, our task of trying to achieve performance working with the agencies would be an awful lot easier. There are issues that we need to tackle, which is why we have the wider programme of work. This is only one element of it.

**Mr Elliott:** When do you see the system being as efficient as is practically possible?

**Ms M Campbell:** I wish that I could say, but we will look again, once we have implemented this phase of reforms and when we implement the Justice Bill, to see whether there is a requirement for a third phase of work or whether the work that we already have under way is sufficient to achieve what we want to do.That remains to be seen. I cannot guarantee, at this time, the extent to which the work that we are putting in place will make an improvement. It should make an improvement, but we will have to see whether that is enough of an improvement when we look at the performance.

**Mr Elliott:** Finally, do you feel that the inefficiencies are costing significant amounts to the justice system?

**Ms M Campbell:** I think that having a system in which everything is based on preparing for a full contest contains a lot of inefficiency. I would like a system in which we can differentiate at a much earlier stage between the cases that need to go to trial and full contest, and those that may have the potential to get an earlier guilty plea. We are looking at that, not just in the youth courts but in the Crown Court, through a pilot that we plan to initiate in January. We are trying to underpin that with the legislative changes in the Justice Bill to encourage earlier guilty pleas. There are many cases in which the system prepares for a full contest — lots of reports are commissioned, requiring a lot of time and energy — only for a plea to be entered at the door of the court. If we could change those behaviours, we would gain by freeing up capacity in the courts to focus on the cases that need to go to full contest. There is also the potential to make savings in legal aid from not prolonging cases unnecessarily.

**Mr Elliott:** So there is a financial cost.

**Ms M Campbell:** Inefficiency will always have a financial cost associated with it, and there is scope for the system to become more efficient, but that requires changes across a variety of fronts, and I do not think that it is down to any one agency. We all need to continue to work collaboratively on it. A large effort will be required to achieve that.

**Mr McCartney:** I want to follow on from the points that Tom and Rosie raised. I am a bit concerned that the youth justice review seems, to some degree, to have been referenced out of your report. The introduction refers to three independent reviews but does not say what they are, so there is no signposting or pathway to assess them. There is no mention of the youth justice review until paragraph 2.70, which is merely a response to other respondents. That concerns me because, although it is a challenge to reduce the time limit to 120 days — nobody doubts that — there does not seem to be a pathway to achieve it. There seems to be an acceptance that we may never reach that, so we will try our best guess. That should be tightened up. The youth justice review had a particular purpose. The review team highly praised a lot of the work being done in and around youth justice, and, when they set that target, they were being reasonable and understood that it would take a while to achieve. Referencing out the review does the document no favours at all.

**Ms M Campbell:** In the original consultation document, we discussed the review in considerable detail and provided quite a bit of analysis of some of the practical issues that we faced in trying to implement the letter of what it had recommended.

**Mr Lynch:** You mentioned, Maura, that there were 3,064 adjournments in the youth courts. What is the reason for such a high number?

**Ms M Campbell:** There is probably a range of reasons, and some cases will still be adjourned, maybe, for example, to consider the offer of diversion when a case is not suitable for youth engagement. Bear in mind that youth engagement is currently in place only in Belfast; it is being extended elsewhere. Its roll-out should, we hope, help to reduce that number.

Other adjournments might be down to evidential reasons — particular evidence not being available or witness non-attendance. Exercises have been done on the reasons for adjournment across the courts. There is a variety, but it comes down to a lack of case readiness. We hope that statutory case management, once it is introduced, should assist with that. We want people to look at these issues at a much earlier stage, and we want the judge to have more tools available to him to ensure that prosecution and defence come to the court in a state of readiness.

**The Chairperson:** I want to bottom out how this would be introduced, if that is what the Department is minded to do. It would be introduced by way of regulations. Would that be done by negative resolution or affirmative procedure?

**Mr Walker:** My understanding is that it would be by negative resolution.

**The Chairperson:** It is a pretty significant change to deal with by negative resolution. Why is that? Obviously, you will have looked at whether primary legislation is necessary to give effect to this.

**Ms M Campbell:** The negative resolution is because they are based on existing primary legislation, so we are following the requirement in the 2003 Order. If the Committee wants us to appear again to take it through the regulations and brief it on them, we would be happy to do that.

We included the draft regulations in the consultation documents, so consultees had an opportunity to look at them. We did not really get much response on the detail of those in the consultation exercise, but, if the Committee would like more information, we would be happy to provide it, even if it is through the negative resolution procedure.

**The Chairperson:** Thank you very much for coming to the Committee.