



Northern Ireland
Assembly

Committee for Justice

**OFFICIAL REPORT
(Hansard)**

Avoidable Delay: Progress Report

9 February 2012

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 Colum Eastwood
Mr Seán Lynch
Mr Alban Maginness
Ms Jennifer McCann
Mr Basil McCrea
Mr Peter Weir

Witnesses:

Mr James Corrigan	Criminal Justice Inspection Northern Ireland
Dr Michael Maguire	Criminal Justice Inspection Northern Ireland

The Chairperson: The next item is a briefing from the chief inspector of Criminal Justice Inspection Northern Ireland (CJINI), Dr Michael Maguire. Dr Maguire is joined by James Corrigan, and they will brief the Committee on the findings in the CJI progress report into avoidable delay in the criminal justice system in Northern Ireland. I welcome you both to the meeting, and this session will be recorded by Hansard. I will hand over to you, and I am sure that Committee members will have some questions after you have made your presentation.

Dr Michael Maguire (Criminal Justice Inspection Northern Ireland): Thank you, Chairman. The background to this report was the full inspection on avoidable delay, which was published in 2010. In that inspection, we found that, despite the many efforts that were made to address the problem of delay, they had a limited impact. In 2010, we found that performance had flatlined since we last looked at it in 2006, and the length of time that it took to deal with youth cases was a particular concern. Overall performance compared unfavourably in the 2010 report with the jurisdiction most similar to ours, that is, England and Wales. My view then was that the length of time that it took the justice system to process individuals through to disposal by a court was simply too long.

In the 2010 report, we noted that the impact of delay can be severe for victims and witnesses. That message was repeated in our 2011 inspection into the criminal justice system's current treatment of victims and witnesses. Delay was the single most unforgiving issue that victims and witnesses raised about their experience of the system. The problems with delay included the potential to undermine confidence in the justice system, given the length of time that it takes to progress a case. Delay also has an impact on the Prison Service; for example, at the time of the 2010 inspection, 59% of the

prisoners in Maghaberry were on remand, which limited the Prison Service's attempts to deal with issues of reoffending. There is also an overall cost impact for taxpayers, victims and the police and so on that arises from the length of time that it takes to process cases. Our conclusion at the time of the 2010 inspection was that the current situation was not sustainable and that what we called a "step change" in performance was required to make a difference.

Following the publication of the 2010 report, it was agreed that CJI would provide an interim and further progress report to the Minister. That report would focus on actual performance, examine activities and initiatives to date and identify any emerging issues or concerns. That interim report was published last month. The overall finding of that interim report was that, once again and despite the major efforts to deal with the problem of avoidable delay, actual performance had deteriorated for Crown Court cases and Magistrates' Court cases that commenced through a report and summons. Those cases constitute the largest proportion of cases that are completed in the justice system. On a positive note, performance continued to improve in adult and youth cases that were commenced through a charge.

The pack that I sent you shows that the most recent available data show that it took an average of 439 days from charge to disposal in Crown Court cases. That was an average of 39 days more than in 2011-12, which is a 10% increase. Performance in adult summons cases deteriorated from an average of 220 days in 2009-2010 to 270 days in the first six months of 2011-12, which was a 20% increase. There was a particular concern about youth cases in 2010, and the situation with those cases also deteriorated from taking 258 days on average in 2010-11 to 290 days in 2011-12, which was a 13% increase.

There has been much activity across a number of organisations over the past 18 months. That has been led by the Criminal Justice Board, and there is a focus on four work strands. In my view, the work of the justice organisations has been comprehensive but conservative. It is comprehensive, in that the new governance and accountability arrangements have been established and a broad range of inter-agency and specific agency arrangements have been developed. However, the overall approach was based on an incremental performance improvement that has not delivered the necessary changes in adult and youth summons cases, which, as I said, impact on the majority of people who come into the justice system. It is CJI's view that a more radical approach is required to deliver the necessary step change. The starting point for that, as recommended in the previous two CJI inspection reports on avoidable delay going back to 2006, was the decision to introduce statutory time limits. Therefore, in this report, we recommend that statutory time limits be introduced on a phased basis, starting with youth court cases, within the next two years. Based on performance, a decision can then be taken on their introduction to adult cases. It is in that context that we welcomed the Minister of Justice's statement in the Assembly on Monday on the introduction of statutory time limits

Thank you. I am happy to take questions.

The Chairperson: Thank you. Looking at the table that was provided, it seems that cases take 56 days from conviction to disposal in the Crown Court. Why does it take that length of time?

Mr James Corrigan (Criminal Justice Inspection Northern Ireland): That is mainly due to the Probation Service's preparation of reports for sentencing.

The Chairperson: So, the Probation Service causes the delay, which is why the process takes so long. How does that period compare with the situation in other jurisdictions?

Mr Corrigan: Generally speaking, the post-verdict figures compare favourably with those in other jurisdictions. There does not appear to be unnecessary or avoidable delay at that stage of the process. The main delays happen at the earlier stages, rather than at the final stage.

Dr Maguire: We did an inspection on the Probation Service's pre-sentence reports, and we found that, in the main, they were generally completed within the set time limits and were favourably received by the judges. So, that was not a huge issue in the context of overall performance.

The Chairperson: One of the bigger increases is in the period from when the file is received by the Public Prosecution Service (PPS) until it decides what it will do with the case. On average, that

takes 138 days, and the average was 104 days in 2007-08. What reasons does the PPS give for why it takes so long for it to decide whether to prosecute?

Mr Corrigan: There are a number of reasons for that. The principal reason that the PPS gives is that it may not have all the information available to it in the file to allow it to take a decision. In other words, if the file that has been sent from the police to the prosecution is missing some material or there is insufficient information available to take a decision, the PPS has to request additional information from the police. All that takes time. The broader issue is file quality in the PSNI. Going back over the two previous reports, we pointed out that the poor quality of many of the files that go from the police to the prosecution is one of the major causes of delay. It means that the prosecution has to delay any decision on whether to prosecute.

The Chairperson: Let me understand the process. The first stage is from charge to the file's being received, which is the responsibility of the police, and the second stage is the PPS's decision. Those two stages account for around 200 days of the process. It is only at that point that the case gets into the court system, when there is issuing to the date of committal. I am asking how a statutory time limit would work. At the moment, the courts get involved only after 200 days. If the police were to be empowered to enforce a speedier process, they would have no remit in those first two stages of the process. That would apply only when the case gets into the court process. How would you see that statutory time limit working for those two elements?

Dr Maguire: I will say a few words on that, and then James can pick up on the detail.

The benefit of statutory time limits for us is that, as the name suggests, it puts a statutory requirement on all the organisations, whether that is the police or the prosecution service, to conform to the elements that have been set. The role of the judge is at the back end of the process, and that will ensure that, if extensions are asked for, for example, they are justifiable or that there are reasons for that.

There are a number of points to be made. First, whenever you look at the situation, you will see a high proportion of adjournments. One of the reasons for adjournments is that the case is not ready. The previous time we were here we spoke about case progression, so, whenever we talk about statutory time limits, we are talking about putting parameters on the decision-making and on the behaviours of organisations. That is so that by the time that cases get to court, they are ready, or else it takes less time for them to get to court. In general terms, we would see that as a benefit.

The Chairperson: So, you would specify that the police have x number of days from when someone is charged to their getting a file to the PPS, and then you would specify that the PPS has y number of days to decide whether to prosecute. How would you break down the imposition of a statutory time limit on a case? Can you walk me through how you think it would work? Say someone is charged for burglary. What should the statutory time limits be for each step of the way? How would you take it through?

Mr Corrigan: Different approaches are available to any criminal justice system. For example, there is obviously the experience in Scotland and the pilot youth court in England and Wales to consider.

You could have a single time limit from, for example, the point of arrest or charge through to trial. Alternatively, you could have two time limits as part of an overall time limit, with one from the point of arrest to the first appearance in court and the other from the first appearance in court to the date of trial. The individuals in question in the justice system can decide how the mechanics of time limits will operate. The overall intention is that you should try to reduce avoidable delay at the various stages of the process, so that, for example, there is more certainty for victims about when they might appear in court for a trial. Statutory time limits will, at least, put a minimum standard in place.

The experience from other jurisdictions is that statutory time limits can be modified to suit local circumstances. You can pick your starting point and end point, and you can decide to go for time limits within the overall time limit. It is really a decision for each jurisdiction, depending on its requirements.

The Chairperson: I might come back to that later. Most members have indicated that they want to ask questions, so I will start to bring them in.

Mr Weir: Thank you for your presentation. I appreciate that statutory time limits could create certain incentives to get things done, at least on the prosecution side. To be honest, we are talking about the issue more at a conceptual level, so it is difficult. How will we ensure that we do not have a situation whereby, when cases get to court, a clever defence barrister or solicitor tries to put as many spokes in the wheel as possible in the knowledge that they can drag it over the line? With the best will in the world, how will you prevent a situation that will inevitably lead to some cases being dropped because they have reached the statutory time limit? The result of that could be that potential criminals will walk free.

Dr Maguire: Those are very real and genuine concerns, and there a number of responses. You want to build in safeguards on extensions as part of the discussions about the implementation of time limits. There are associated risks with extensions, because, if everything were to get an extension, we would not really have statutory time limits. You will need to build in those safeguards in a measured way, and I expect to see that being part of the discussions as we move forward. In the context of what happens in court, it will ultimately be the judge's decision as to whether extensions are permitted. The reasons for that will need to be outlined, and decisions will be taken at that point.

Can you guarantee a situation whereby someone will not walk free? I do not think that we can, and that has been the case elsewhere. However, we already have statute barred cases in which there is a six-month time limit from arrest to the PPS's decision. After that period, those cases become statute barred and the prosecution does not proceed. From memory, those cases were running at about 40 a month from the beginning of 2011, which is nearly one a day, and cases for the individuals concerned did not proceed because the time limit was not met. Those involved relatively minor cases, but it is already happening. Improvements mean that the numbers of those cases are down to a couple of cases a week. So, it is about thinking about putting statutory time limits on the table as an agenda item and building safeguards in through the discussions.

Mr Weir: I think that it is clear that there needs to be a lot of discussion on this matter. However, your point about statutory bars, which mean that a number of cases are dropped that should not be, is not a particularly strong argument for the introduction of statutory time limits.

I want to ask you about a couple of other issues. This question may be more for the Department to answer directly, but one of the things that struck me as I read through the report was that a number of initiatives were mentioned, some of which will have a direct impact on particular cases. For example, a greater use of court fines at an early stage, such as fixed penalty notices, or the encouragement of earlier guilty pleas, will impact on individual cases but will not particularly change the system. It may mean that the statistics are reduced in those areas, but, as mentioned, cases in which there is no guilty plea at an early stage will not really reduce the time that it takes to process Crown Court cases. It is helpful that you have broken the analysis down into the various elements. I assume that there are comparable statistics from other jurisdictions, and it would be useful to have an analysis of where the biggest gaps are. I am plucking this one out of the air, but the period from when the PPS receives a file to its decision, for example, may be massively out of kilter with what happens elsewhere. If so, effort may need to be concentrated there. That is one of the issues that would need to be looked at.

Dr Maguire: I think that that is fair. There are always problems with comparisons, because we are not always comparing like with like. However, some of the figures that we had on youth cases, for example, showed that, in Northern Ireland, we take on average 290 days from informing the accused to disposal and 150 days for charge. In England and Wales, the figure was 38 days for charge. When you look at adjournments, you will see that there were 130,000 adjournments in 2008. That is an average of 6.4 in a Crown Court, which is an average of 4.7 for youth defendants and 2.2 for adult defendants. It was an average of 1.3 for youth and adult defendants in England and Wales. In cases dealt with at first appearance, there were 12% for youth defendants in Northern Ireland and 42% in England and Wales. So, however you cut it, even though the comparisons are not directly there, even by the margin that they are out, there is still a significant difference. I will be honest: I accept that statutory time limits are a blunt instrument and they are not the answer to all this. The situation that

we have now is that we have done our work going back to 2006. Performance has flatlined; it is not getting better, and that is why we need to get some momentum into it.

Mr Weir: Rather than ask a question, let me make a final comment. You are right. One of the things that is quite disturbing is that, through you and others, there has been a much greater focus on this, particularly since 2010. Yet the concern is that the figures in most of the areas seem to be deteriorating rather than improving. Obviously, however, there have been some improvements in some areas.

Dr Maguire: Figures have deteriorated in three areas out of five.

Mr Weir: That is the thing that is concerning. You would think that the fact that it is being scrutinised would make most people say, "Let us see in what ways we can improve our processes and get better results." However, that does not appear to be the case.

Dr Maguire: That is why, in the 2010 report, I was very keen to make sure that we did a relatively short follow-up. The interim report came out about 18 months after the initial publication, so they are relatively fresh data. When you look at experiences across the water and see what changes have been made, you will see that those happened because good information was used, decisions were taken and corrective action was put in place. That is where you begin to see the changes. That is why I was keen to make sure that the focus continued relatively sharply.

Mr McCartney: Thank you both for your presentation. There are a number of statements in the foreword of the document that illuminate the rest of the report.

Dr Maguire: Are you going to hang me by my own words?

Mr McCartney: No. It is great; you do not even have to go beyond the foreword. Is there an acceptance in all the agencies of the justice system that prosecution through to disposal by a court simply takes too long? Is that accepted by everyone?

Dr Maguire: I think that it is accepted at a senior level. There is a recognition that we compare unfavourably and that we need to do something about it. The issue for me is more about when you drop that down to operational levels. For example, a police officer may be preparing a file. Is delay at the forefront of his mind when he is filling it in? Perhaps not, but it might be, so it is about making that connection. We have had this conversation before; the issue is about making that connection between attempt and operational reality. That is where you want to get the difference in. So, that acceptance is there at a senior level, but whether that pervades the entire justice system is harder to say.

Mr McCartney: I pulled this statement of yours out of the foreword:

"it requires in the first instance a real desire...to make it happen."

So, is that desire there?

Dr Maguire: I think that it is there, yes.

Mr McCartney: Where does the responsibility to make it happen lie? Speaking in the abstract, if you go for a statutory limit of 120 days, which is what people are talking about, who in the system will then be responsible for saying, "Part A should take 30 days; part B, 30 days; and part C, x number of days" and so on?

Dr Maguire: Those are good questions, and maybe you can ask them of the Department of Justice (DOJ). The Department will look at the legislation and set the overall timescale. How that works its way through is another thing. The decision has to be taken, as James said, on how you parcel that up. The Department will set the overall target.

It will then be the responsibility of the individual organisations. One of the benefits of it — a blunt instrument though it may or may not be — is that it will require organisations to work together in a

different way than they have perhaps done before, because the overall system will be subject to the target. The Department of Justice will set the framework and strategy, and people will then have to comply.

Mr McCartney: I am not saying that you will come up with a model, but, from your experience to date, is there a role for a magistrate at the beginning of the process to say that this should be in front of a court within 90 days and if it is not, he will be asking questions?

Dr Maguire: That can happen at the minute.

Mr McCartney: Why does it not happen, however? What is the explanation for it not happening?

Dr Maguire: I cannot comment on what happens inside a court, because of the judicial system and our remit, but many of the problems that we identified that led to delay are individual organisation-specific issues such as, as James said, file quality with the police. You then get into connections between the police and the PPS. That has improved because, at one time, it was a case of ping-pong, for want of a better term, between the two. Files were going back and forward, and the police were saying that the PPS was asking for too much, while the PPS was saying that the police had not given it enough to make a decision. We have moved on from that, but, nonetheless, those types of issues still remain in the system, and it is about trying to address some specifics in the organisations, at an operational level, that will make a difference. My view is that the statutory time limits approach set the parameters for that and set tighter parameters than those that exist at the moment.

Mr McCartney: You talk in the progress report about different agendas and self-interest. How do we tackle that? How do you establish what the agenda is and where self-interest lies?

Dr Maguire: In the 2010 report, we identified that, for example, the police were meeting their time limits target, but the files were not necessarily complete. Therefore, from an organisational perspective, they were meeting their agenda, which is the time limits target, but, from a system-wide point of view, that caused problems because, on occasion, the PPS said that it did not have enough information to make a decision. That is the difference between an organisational self-interest, which is a target there, and a broader system-wide interest. For me, statutory time limits set the overall framework within which the justice system operates, and it is potentially even more important because of the fractured — I do not mean it necessarily negatively — nature of accountability, whereby the police, through the Policing Board, the judiciary and the PPS sit where they sit. There is that overall coherence, and you can perhaps expect that in some other areas.

The Chairperson: You set a statutory time limit. If the PPS fails to deal with a case within that time frame, what is the punishment?

Dr Maguire: The punishment for the system —

The Chairperson: Apart from embarrassment.

Dr Maguire: Sanctions are an important issue, and you would need to think about those as part of the next stage of the discussion. The ultimate sanction, which is an unacceptable one, is that the individual potentially goes free. That is not a sanction that any organisation will want to have laid at its door as the consequence of that. With other sanctions, you are then into the difficult area of what happens if it does not happen. My view is that, in setting those disciplines and parameters, you then begin to address some of the core problems that are leading to the difficulties.

Mr Lynch: Thank you for the presentation. Like my colleague, I will quote from your foreword. You said that operational practice:

"requires changes in behaviours at the front line and a shared desire among all those involved to make a difference."

How do you believe that behaviours can be changed? What do you mean by that?

Dr Maguire: There are two answers to the question, and I may ask James to come in here. First, a theme that I picked up from a number of inspection reports is the difficulty that organisations have in turning intent into reality. Saying it does not make it so. We may desire to reduce the length of time, but that in itself is not enough. You need to make sure that that percolates to the front line in the way in which organisations are run and work. Senior management may say that something is important, but there needs to be a follow-through to ensure that it works its way into the operational front line.

We need the police to deal properly with file quality, including the levels of quality assurance and oversight and what sanctions will be imposed internally on those officers who continue to produce files that are not subject to good quality. Those disciplines need to be in the organisation. Likewise, as cases progress, the PPS should take the right approach to case management and its associated disciplines. That is a role for managers to manage, and the transparency of those organisations will be seen through their doing that work and putting the mechanisms in place to make that happen.

I cannot see any other way around it. It is about those at the front line making decisions that will impact on the overall length of time taken. Management can set the strategic direction, the Department can sit above that and set the time limits, but that should be pushed into the operations of the organisations. James, do you want to talk about some of your experiences in the area?

Mr Corrigan: One example of a change in behaviour would be in the area of case readiness. In many instances when cases first appear in court, neither the defence nor the prosecution is ready to proceed. Therefore, nothing happens and the case is simply adjourned until the next sitting. We want to see much more case readiness from both the defence and the prosecution, so that, when there are court dates and hearings, something constructive happens.

You must look at that from the perspective of witnesses and victims who, very often, attend court on all those occasions. They have told us that they attend court but nothing happens. They do not know what happened other than that the case was adjourned to another date. We want to see that change in behaviour on both sides, not just on the prosecution side. We should try to facilitate and encourage that type of change through the introduction of statutory time limits and other initiatives.

Dr Maguire: We published a piece of work last year on securing attendance at court. One of the things that came out of that was the cost to the police of turning up to court only for cases to be adjourned. When an officer spends four hours in court, he is not out working in a community policing role or progressing files. It is downtime. We costed that in the context of one of the district commands to understand the impact, and it ran into several hundred thousand pounds. Making changes at the front line to some of the operational behaviours will make a difference.

Mr Lynch: Do you expect to see changes in that area in your next report or in the next year? Will you focus on that?

Dr Maguire: We want to see a number of things. We expect movement on our recommendations on that specific issue. I will come back to this, but I have said that I will do an annual report, and I hope to see changes.

In reality, if performance improves, we will not need to introduce statutory time limits. We have taken a conservative approach and recommended that statutory time limits be used in youth cases, which are the most difficult. If that and the overall process works, we may not need to introduce time limits for adult cases. That decision can be taken down the line. The problem that we face is that all the initiatives that we have tried to date have not worked. We first identified this problem in 2006, and it has not got any better. Therefore, you need to put a different dynamic and momentum into it. You can make decisions further down the line about whether you want to extend statutory time limits to adult cases.

Mr Wells: The obvious solution would be to vary the pay of those involved downwards according to their lack of performance. If people do not perform, we can simply reduce their pay or bonuses. That is probably too revolutionary for the Civil Service, but that is exactly what would happen if it were happening in private industry. It strikes me that you have no sanction for those who are, quite clearly, dragging their heels. I often wonder what we need to do to get any form of discipline into the Civil

Service, the Northern Ireland Courts and Tribunals Service and general government. It is quite clear that people are failing miserably. They are failing the system, the victims and the criminals. That is too revolutionary, I know. I am sorry to throw out such a shocking suggestion. However, if it were ICI, FG Wilson or Shorts, it would be done overnight, and that is the difference. However, I know what the Civil Service and government attitude is to this: you cannot touch anyone who fails to produce the goods, and they are not producing the goods here. I am sorry for shocking you. I will move on to something a wee bit more mundane.

I have had a lot of experience of statutory time limits in planning, and it has created a whole new industry of agents, consultants, architects, and so on, who seem to spend their time ensuring that a case that should have gone to enforcement goes over the time limit. I refer to the dreaded four-year and 10-year rules. I have seen the most remarkable ducking and diving and craft being used to get applications approved that have not been approved and have been built past the four-year rule. I have no doubt that, if you introduce a statutory time limit, you will create a new industry of those who will deliberately prevaricate and cause difficulties to ensure that things run over the limit. How can you stop that, given that you cannot even control the people for whom you have direct responsibility?

Dr Maguire: I have a couple of responses to that. The first is that I spent 18 years in the private sector. I know what performance management is like, and I have been the subject of it. It focuses the mind, and a performance management approach is something that I would strongly recommend as a way of doing business in any organisation.

You mentioned experience. Interestingly, there have been statutory time limits in Scotland for a considerable time. As I understand it, the sky has not fallen in. It is very interesting to listen to Assistant Chief Constable Hamilton, who has just been appointed to the PSNI. He spent three years in Scotland and has come back feeling very positive about statutory time limits and the impact that they can have on disciplines and progressing cases. I suppose that my overall view is that statutory time limits can be a blunt instrument, but I come back to the point that we have been looking at performance since 2006, yet we are now in 2012 and the situation is not getting better. Therefore, do we continue with an incremental approach?

Mr Wells: No. You let criminals go free.

Dr Maguire: Not necessarily.

Mr Wells: That is what you are suggesting.

Dr Maguire: Not necessarily. It does not happen. You can build in safeguards.

Mr Wells: Your staff are not performing. They are dragging their heels at every level and performance is getting worse, so the solution is to let guys go scot-free.

Dr Maguire: No. That is not what I am saying. I am saying that performance management is a good thing, and I recommend it within organisations. You can build in safeguards, and it is right to do so. However, can you guarantee that someone will never walk free? You cannot, because that is one of the risks associated with statutory time limits.

As to where the inspectorate is, I want to put the issue on the table and have it discussed. I want the next phase of the debate to try to generate a momentum so that I am not writing a report in 18 months that states that performance is flatlined or is getting worse. The system — victims, witnesses and overall — deserves better.

Mr Wells: What would happen in a private industrial situation in which performance is flatlining or has been going downhill for seven years?

Dr Maguire: In my previous life, I would have been out of a job.

Mr Wells: Correct. At the very least, you should say, "Folks, no pay rise until you sort this out" and to counsel, "No fee until you sort it out." That would concentrate minds, and you would suddenly find that the whole situation would change remarkably. The difficulty here is that you have problems at every

level, and the solution is that the victim suffers. Eventually, there will be one or two high-profile cases on 'The Stephen Nolan Show' or whatever. For example, some little old lady has had her windows put in, counsel have ducked and dived for years, the case has gone past the time limit, and she demands justice but is too late to get it. At least there should be provision, in exceptional cases, for cases to be brought back into the system. However, a blanket rule that if you hit a certain deadline you are out will encourage a continuation of what has been going on by some individuals who know that, if they can hit that particular finishing tape, they are home and dry. It will become unenforceable.

Dr Maguire: I think that your concerns are genuine and absolutely need to be addressed as part of the discussion. I have no difficulty with that at all.

Mr Wells: Does this require primary legislation?

Dr Maguire: Not as I understand it.

Mr Wells: Does it require Executive approval?

Dr Maguire: The legislation is already there.

Mr Wells: To introduce statutory time limits? Is there any democratic control over this decision?

Mr Corrigan: The mechanics of what time limits will look like have not been determined. The logistics of how and when time limits will be implemented, what cases they will include, what the safeguards are, and all that, are still to be decided.

Mr Wells: If you introduce a time limit and it becomes obvious that it will allow some criminals — in this case, at the youth-justice end — to go free, what control does the Assembly have over that, if any?

Mr Corrigan: You can obviously build a number of safeguards into existing legislation or, if there is need, amend it or create new legislation. For example, the prosecution can request an extension. My understanding of the 2003 legislation is that there is also scope to re-institute proceedings at a later date if necessary.

Mr Wells: I am thinking of the 108 people in the Building who are called MLAs, who will undoubtedly face the wrath of victims if all of this goes wrong. If, after consulting our constituents, parties and people who are involved in the wider justice system, we are unhappy with it, can we at present do anything to stop you introducing the time limits?

Dr Maguire: It will not be us who will introduce them.

Mr Wells: Can we stop them being introduced?

Dr Maguire: The accountability mechanism is what it is. Maura is appearing before the Committee after me. Therefore, you can ask the Department what the process will be. I suspect that all proposals that are put forward will be subject to considerable scrutiny, and rightly so.

Mr Wells: Yes, but what can we do as a Committee? Can we pray against it? Can we put 30 names on a petition of concern? Can three of our members stop it? What can the Assembly do to prevent you? Does it have to go through the Executive? If we believe that it is wrong, what can we do to stop you introducing time limits? Not you, but the system.

Dr Maguire: You can ask Maura that question.

Mr Wells: You are not aware of anything?

Dr Maguire: I do not know the answer.

Mr Wells: The Department may have picked up on that question and be ready for a grilling. I must say that I am extremely uneasy about that entire proposal. When the community becomes aware of what you suggest, it will also be uneasy.

Dr Maguire: You are right to be uneasy, because that uneasiness is about ensuring that what we put in place addresses some of the problems. However, I come to back to the point that, when we did a report in December 2011 on the care and treatment of victims and witnesses, which I discussed with the Committee, the single most unforgiving issue that was raised with us was delay. We are faced with a situation. Whether we like it or not, and the reasons that we like it or not, is neither here nor there. Since 2006, when we did our first inspection report, delay has not improved. Therefore, we either carry on with an incremental approach, with the impact that that has on victims and witnesses, or we try to do something different.

Mr Wells: You crack a whip.

Dr Maguire: We try to do something different in order to make a difference to the length of time that it takes.

Mr Wells: You crack a big whip.

Dr Maguire: If there are other options on the table, let us discuss them as part of the process.

Mr Wells: That would never be tolerated for five minutes in private industry. That is me finished.

Mr Dickson: Chairperson, I am going to agree and disagree with Mr Wells. I think that he is actually coming at it from the wrong perspective.

Mr Weir: Spoken like a true Alliance Party man.

Mr Dickson: I think that he is scaremongering when it comes to people being released without ever having to face trial. It is not beyond the wit of individuals to create time-limit protocols that say, as a starting and guiding principle, that a criminal will never go free without an appearance in court. It is also perfectly possible to say that defence time will not count in any prevarication.

I agree with Mr Wells that it is a matter of employee performance. It is nothing short of scandalous that employee performance has allowed us to get to this situation. If, when we dig down further, we are told that, in fact, the entire situation is totally and utterly under-resourced and is not properly resourced to be able meet appropriate time limits, that might be an answer. However, nobody has said that so far. Therefore, we continue the debate on the assumption that it is not an under-resourced situation.

I remember when, as chairperson of a district policing partnership, I was told with the greatest confidence by local police that they had substantially improved their file performance time and the quality of files; that they had officers in place who checked files before they went to the PPS; and that they were doing absolutely nothing wrong. Either you are not telling me the truth or they did not.

We certainly need to write to the police and hold them to account, because that is where it all starts. Dr Maguire is telling us that there are issues with file quality. The Police Service of Northern Ireland is accountable to the Policing Board, members of which are also Members of the Assembly. If such issues exist, we should write to them and ask why, when millions of pounds are spent on the PSNI, we cannot get a simple file-quality standard and they cannot employ someone to check file quality or to arrange appropriate protocols with the PPS before the file goes to it. A lot of this is down to quality-management and employee-performance issues. It is also perfectly possible, Dr Maguire, that, to assuage Mr Wells's concerns, the ultimate decider on any case not meeting its statutory time limit should be the judge. Therefore, it will be the judges who will be blamed if cases and criminals go free without an appropriate trial or whatever the issue happens to be. Each case should be tracked with the time limit on it, and there should be orange and red flags along the way to warn that the file is going to run into the sand unless someone takes action. I agree with Mr Wells that those are the

people who should be looking to the appropriate performance, and there should be appropriate sanctions against the individuals who are not performing. It is as simple as that.

In the round, this is a complex area. The simple, sound bite-style, quick answer is to say that there should be time limits, but, when you drill down into them, they are fraught with problems and difficulties, none of which should be particularly scary if you set the backstop that no one goes free. In other words, even though there are time limits, it will ultimately be a matter for a judge to decide whether it is in the public interest, regardless of the time limit in which this case is heard.

The Chairperson: I do not think that there was a question. It was a fine statement.

Mr Dickson: I am delighted that everyone agrees with me.

Dr Maguire: In answer to Mr Dickson, the answer is yes.

Mr Dickson: The answer is yes. We have solved the problem.

The Chairperson: I did not want to lead the witnesses.

Mr A Maginness: As far as prevarication is concerned, if this is a judicially controlled situation, which it should be and, in my opinion, would be, I cannot see prevarication getting very far. A judge would simply say that time is being wasted and that we should get on with it. Of course, in any case, it would be the duty of the judge to say that, and judges do say that at present. I do not see that as being a major issue.

In paragraph 2.6 of the progress report, you state that the number of eligible defendant cases has substantially increased, from 20,000 to 23,000 in 2010-11. You go on to say that, on a broader level, the number of criminal cases that was sent to the PPS has declined from 63,000 to 58,000 in 2010-11. I am trying to understand that. Can you explain that to me?

Mr Corrigan: The figure of 23,000 refers to a subset of cases. It is only adult-summonsed defendants.

Mr A Maginness: Right, but the overall figure includes youth.

Mr Corrigan: Yes, it includes all the cases. The trend that is emerging at the broader level is for a decreasing caseload.

Mr A Maginness: There is a decreasing caseload, yet there is an increase in delay.

Mr Corrigan: Yes; that is right. That is a fair assessment.

Mr A Maginness: That makes the situation even worse than previously.

Mr Corrigan: There are some exceptions in that. For example, the PPS would say that the number of indictable decisions that it is taking has increased quite significantly in the past number of years.

Mr A Maginness: Yes, it said there are over 2,000, compared with 1,600 in 2009. Is there any obvious reason for that?

Mr Corrigan: There is no obvious reason, and that is one of the difficulties that the criminal justice system is addressing. Crime is falling, and the overall caseload is falling, yet the PPS is taking more indictable decisions.

Mr A Maginness: I assume that those decisions are per defendant rather than charges or counts against a person.

Mr Corrigan: Yes.

Mr A Maginness: It is quite interesting, and I agree with you, that there is anecdotal evidence that points to the increasing complexity of some court cases. Have you any comment to make on that? My view is that they have increased in complexity over the past decade or more because of new legislation and exhaustive and protracted discovery applications in relation to evidence. Are you of that view?

Mr Corrigan: When we speak with the PPS and the judiciary and get their views, they say that, in general, complexity has increased. There are more complex fraud cases, for example. If you judge complexity by the volume of information contained in the files, that is pretty evident. That is the view coming to us from the PPS, the judiciary and also some members of the Bar.

Mr A Maginness: I have looked at the documentation and as far as I can see — I could be wrong — you have not shown the length of trials. Is there information available on the number of court days?

Mr Corrigan: No, that is a separate issue. The length of trials is not included in timeliness data in most jurisdictions. Obviously, the trial period will not constitute part of any time limit introduced.

Mr A Maginness: I understand that, but is there any evidence — even anecdotal evidence — that trials last much longer here than in other parts of the UK or in the South?

Mr Corrigan: No, that has not been pointed out as a particular issue. The issues are more about getting the case to trial rather than the trial itself.

Mr A Maginness: You might not have hard-and-fast views on this, but is the time limit that you suggest up to the point of committal?

Mr Corrigan: What the end point will be is really a decision for the Minister or the justice system in general. You could have it at the point of committal or you could have it at the point of the first day of the trial. It is up to the justice system to determine what period of a case should be subject to greater scrutiny and accountability.

You also have to think of the victim at all times. For victims, the case essentially starts when the offence is committed and continues until they attend the trial. The view expressed to us from victims' perspective is that they would like as much of the period as possible to be included within a time limit.

Mr A Maginness: I understand your point about victims. What about the defendant who is acquitted? Mr Redknapp was acquitted of very serious charges yesterday. That case lasted five years, according to him anyway. That is an intolerable length of time for any person to wait for a trial. In those circumstances, it would be right and proper to say, "You have had so many years to do this. This man is entitled not to be proceeded against." Would you be sympathetic to that? What is your view on that?

Mr Corrigan: Take the example of Scotland, where there is a time limit for a trial to take place. There is a separate time limit for an individual who is on bail and a more strict time limit for an individual who is held on remand. That has given strong discipline to the time period for trials in Scotland. They do not have that in England, and we do not have it either. Many people in Scotland tell us that that is one of the positive aspects of the time limits.

As Michael Maguire said, it is not our decision; it is for all within the justice system and here in the Assembly to think about what type of occasions to include, what length of the process to include and what cases to possibly exclude. All those decisions have still to be taken. We are just at the very early stages.

Mr A Maginness: I have just one final point to make. You referred to the 2003 legislation in relation to time limits. My understanding, from listening to the Minister of Justice — perhaps Maura Campbell can clarify this later — is that the Department does not regard that as the most suitable legislative vehicle to bring in time limits. Have you any comment on that?

Dr Maguire: We have not been prescriptive. I know from talking to some that have experience in Scotland that they may see limitations in relation to the legislation here. For me, that is part of the

discussion about moving forward. It is part of the implementation agenda. My role in this is getting to the stage at which I am not sure what the alternative is. When we look at adults in the Magistrate's Court, the 2010 report states that it takes 232 days from inform to disposal, and 123 days for a charge. I accept that it is not comparing like with like, but it is 48 days in England and Wales. That is the difference. It is about getting that different dynamic into the way in which we do things here to make a difference in order to try to ease some of the problems.

Mr A Maginness: I suppose part of the reasoning is that, if there is the threat or possibility of time limits being introduced in the future, the agencies may act more efficiently and effectively in dealing with disposals.

Dr Maguire: I would hope that the sense that we are going to do it will focus minds in a way that perhaps has not been the case to date.

Mr S Anderson: The more I listen to this, the more I think we have such a big issue that everyone has to be involved, including the agencies, the individuals and all the people around that. Your report shows that, over the years, it is not going forward but backwards. It is deteriorating in every sense of the word. That certainly does not give me any confidence in moving forward. You talk about using the threat — let us call it that — of statutory time limits, and that the people who are causing the problems will get their act together, but I ask why they are not getting their act together now, without any threats.

I have to come in on behalf of my colleague and raise the issue about safeguards. He raised the issue about this Assembly having no powers to decide on the statutory time limit legislation that is already there. Would we have anything to say on the safeguards? Those will have a big impact on how we see this going forward: to ensure that the victim is safeguarded at every point along the way. This democratic Assembly must have some say to ensure that the victim is always protected. My view is that the victim must always be protected and that someone should not walk out the gate at the end of the system, as is maybe being proposed. I have big concerns about that. How would that develop? Would we be able to ensure that that would not happen?

Dr Maguire: I am sure that Maura Campbell will take you through what the process of implementing the time limits will be and how that will unfold. I agree with what your colleague has said. Ultimately, it will be a judicial decision as to whether or not someone will be released.

Mr S Anderson: If we go out to sell that to our constituents, I do not think they will be very happy. At the end of the day, someone is logjamming the system — that is the other issue. There will be stages within the system, whether it is the PSNI, the PPS, the legal profession or whoever. How do we ensure that those people are in some way being punished for logjamming the system? How do you define that in a way that will ensure that this is going to work?

Dr Maguire: There are several issues there. One situation that we have, and I have spoken about it before when we discussed it in the context of delay generally, was the way accountability works in the justice system. The PSNI is held to account by the Policing Board; and then there is the PPS. I know there is a consultation paper out on the superintendence role of the Attorney General, but, at the minute, that is less than what it was under the Attorney General in England and Wales. The judiciary sits out on one side, and we have the Department of Justice, so that is four areas immediately in relation to how accountability works. It is difficult, and I absolutely appreciate that this is a difficult area. Where the change is going to be made, as James said and as we have identified in the report, is at an operational level.

Performance management is part of that; there is absolutely no disagreement there, but it is also about the disciplines within which people do their work, and getting organisations to work together in a way in which they have not before. To use the example that we gave in the 2010 report, there is the potential for ping-pong between the PSNI and the PPS with different targets, and the overall system suffered because of the way in which things worked. Greater coherence is needed around that.

Coming back to the safeguards, it is absolutely right that those questions are on the table, because you need to be reassured about what is going to happen ultimately: what will work to the benefit of the

system overall and for individual victims and witnesses. I still come back to the point that delay is not getting any better. You said yourself, that, since 2006, it is the single most unforgiving issue that was raised with us by victims and witnesses. Can we be assured that incremental change, which is what we have had to date, will deliver the goods? Experience tells us that it will not. Therefore, we need to put a different dynamic into it, and that is where my logic takes me to the introduction of statutory time limits. There is a huge debate on how that will work in practice, but I would like the debate to happen as a way of trying to move the system to a different place in respect of overall performance. I was very keen simply to focus on the numbers in the report and not to get into the whys and wherefores of the detail. Those numbers look across the system, they are saying what they are saying, and that is what has brought me to where I am.

Mr S Anderson: I take the point. It is how it all works in practice, Chair. Let us see how it goes.

Dr Maguire: It is all very fine in theory, but will it ever work in practice? *[Laughter.]*

The Chairperson: No other members have questions. Thank you very much for coming along, Dr Maguire and Mr Corrigan.