



**The Independent Assessor of Complaints  
for the Public Prosecution Service**

# **Annual Report**

**2018/2019**

***Mr Alan Henry OBE***

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# Chapter 1:

## Background

*I was appointed to the post of Independent Assessor of Complaints (IAC) for the Public Prosecution Service (PPS) in May 2013. The role (see Chapter 6) entails investigating and reporting on complaints which are referred to me after they have been responded to fully within the PPS Complaints Procedures, and which are primarily non-prosecutorial in nature. I also carry out an audit function of all complaints to the PPS and carry out benchmarking to ensure that the PPS complaints procedures are compatible with best practice throughout the public and private sectors. My term of appointment was due to end after six years on 31 March 2019 but was extended by a short period of three months until 30 June 2019.*

This is the 14th annual Report on the work of the Independent Assessor of Complaints for the PPS. The Report covers the period from 1 April 2018 to 30 June 2019, although the statistical information is drawn from the period 1 April 2018 to 31 March 2019.

The Report provides information on complaints handling within the PPS, and statistical information for 2018/2019, along with comparisons with previous years.

Detailed reports on complaints referred to the Independent Assessor are shown at Chapter 2. I investigated and reported on all complaints which had progressed through the two tiers of the internal PPS Complaints Procedures, and which had then been referred to me. I reported on 4 cases referred to me as Independent Assessor of Complaints during the year, which was a reduction on the numbers recorded in previous years, which, in 2013/2014/2015 were 8 or 9, then 4 in 2017/18. In my view, it is not unreasonable to assert that the quality of PPS internal complaints handling at Stages 1 and 2 of the Complaints Procedures will have played a part in this, as evidenced by my audit of complaints, and my own complaints investigations and reports handling carried out during the year. In my Annual Audit of complaints this year (Chapter 3), I noted that of the 22 complaints audited, all were concluded at Stage 1 of the PPS Complaints Procedures, which again underlines the effectiveness and quality of complaints handling at the initial stage.

During my audit I noted that complainants felt genuinely aggrieved and felt that they had not received the quality or timeliness of service which they would have expected from the PPS, or the police, or the Courts Service or judiciary. While some complainants pursued their complaint at considerable length, in only one instance, did I feel that the complaint had been lodged frivolously or vexatiously. The complainants invariably expressed themselves articulately and, with one exception, with courtesy. The PPS had responded professionally and in timely fashion throughout the process, and it was apparent that thorough investigations had been carried out,

and responses were clear, transparent and comprehensive. Where lapses had occurred in the service provided by the PPS, those aspects of the complaint had been upheld, and apologies offered to the complainant as appropriate.

As I have noted in my audit during the year, I welcome the fact that effective complaints handling is now embedded in PPS, characterised by thorough investigation, and clear, transparent, detailed and timely acknowledgement and responses to the complainant. Responses to complainants were generally handled by a Regional or HQ Assistant Director, and responses personally signed off by them. Where complainants remained dissatisfied with actions or decisions taken by the PPS, a number expressed satisfaction that their complaint had been taken seriously and dealt with professionally.

The majority of all complaints originated from victims of crime, rather than from other sources, and in some cases these victims were vulnerable. This underlines the importance of thoughtful complaint handling, and clear and timely responses.

A number of aspects of complaints related to prosecutorial issues, for example, decisions to prosecute or not prosecute, and while these issues are, quite properly, not within my remit as Independent Assessor, I noted that clear explanations of the PPS's actions were given, or reviews of the decision carried out.

The second stage of the internal Complaints Procedures, that is, Stage 2 investigations and responses are now carried out by Assistant Directors from a different part of the PPS, and this process continues to work effectively. I am satisfied that this system is fair and impartial and is seen as such by complainants.

My Annual Report also provides information on the work of the Independent Assessor in relation to benchmarking which is part of my remit. (See Chapter 3) My aim is to ensure that the PPS's complaints procedures are fit for purpose and in line with best practice in both the public and private sectors. I have reviewed and considered the complaints procedures in a number of organisations.

As I have commented earlier, a further element of the Independent Assessor's role is audit of a proportion of all complaints received by the PPS. As stated, I received a total of 4 cases during the year, which had been specifically referred to me. However, there had been a total of 66 complaints made to the PPS, and I reviewed 22 of these cases in my audit, to amongst other things, monitor complaints handling in general, identify any themes emerging, and to understand the full complaints handling situations across all PPS locations. My audit report is at Chapter 3.

At Chapter 4 of this Annual Report, I show an analysis of all complaints received, and my comments under headings as appropriate.

At Chapter 5 of the Report, I detail the PPS Complaints Procedures.

At Chapter 6, I lay out my role as Independent Assessor of Complaints for the PPS.

At Chapter 7, I lay out my Conclusions and Recommendations.

During the year, I met with the Director of Public Prosecutions, and other Senior Management, including the Regional and HQ Directors to assist me in gaining an understanding of the current issues facing PPS staff across N.Ireland.

***I would like to record my thanks and appreciation for the support and assistance which I have received from the PPS Central Co-ordination Team. I would like to thank particularly Mrs Orla Goldrick for her unfailing assistance and efficiency in providing me swiftly with all the documentation which I required in order to carry out my investigations and audits over the last six years. I would also like to thank Dr Richard Scullion for his invaluable advice and assistance since my appointment as Independent Assessor of Complaints in 2013.***

## **Chapter 2:**

### **Case handling work of the Independent Assessor in 2018/2019**

I investigated and reported on 4 cases in the year, the same as in 2017/2018. Most of the cases were protracted and involved extensive investigations and communications by letter, email and telephone. I have made recommendations where appropriate and I would expect these to be acknowledged, considered and implemented. This year, once again, I have provided considerable detail in my case reports to illustrate how the PPS Complaints Procedures work in practice, and how a complaint may progress through the tiers of the Complaints Procedures, and subsequently to the Independent Assessor.

#### **Case 1**

In this case the complaint was brought by a part time volunteer with Victim Support N. Ireland. The complainant had been unhappy with a prosecutor at Ballymena with whom he said that he was having problems. The complainant lodged his complaint to the PPS in mid-August 2018. The basis of his complaint was that, in his role as a part time volunteer with Volunteer Support N Ireland he had observed what he perceived to be a lack of proper care and attention paid to victims and witnesses over a long period of time by one prosecutor.

The complainant cited one instance in May 2018. He said that he had been taking responsibility for four victims and witnesses, including one with learning difficulties. The prosecutor did not visit the waiting rooms all morning contrary to his and that victim's and witness's expectation. The complainant cited other examples of what he considered to be poor communication by the prosecutor both with victims and witnesses, and himself.

The complainant said that in May 2018, he had informed the prosecutor in front of a manager that he had made a complaint against her to his supervisor in Victim Support some weeks previously. He alleged that it was only then that the prosecutor had lodged a counter claim against him. The complainant said that he assumed his complaints to his supervisor would have been forwarded to the PPS. However, he said that in August 2018, he was told that he needed to lodge his complaint directly to the PPS using the PPS Complaints Procedures, which explained the delay in his complaint being recorded.

The temporary Regional Director sought further information from the complainant, and from Victim Support management. He considered information from the PPS and Victim Support in relation to the prosecutor's all round performance, and her relationships with victims and witnesses, and others. He also considered observations from an independent practitioner, and a PSNI representative at Court. The temporary Regional Director took note of the fact that no witnesses had made complaints about the prosecutor to Witness Service management at any stage. He also established that while the complainant had made informal comments about his

perception of the prosecutor's behaviours to his supervisors, he had not lodged formal complaints.

The temporary Regional Director having considered all the evidence and information concluded that there was no basis for the complaint and concluded that the complainant had lodged his complaint in some way to counter the complaint lodged by the prosecutor.

The complainant remained dissatisfied with the response from the PPS and referred it to me as Independent Assessor of Complaints.

I reviewed all the comprehensive documentation supplied by the complainant in his correspondence with me, and considered all the files, papers and correspondence from Victim Support and the PPS in relation to this complaint.

The temporary Regional Director in his investigation considered all the information provided by the complainant and obtained supporting evidence from other parties involved in the series of events. I did not review the earlier complaint lodged by the PPS prosecutor as it would not have been within my remit to do so. However, I noted the connection between this complaint and that lodged subsequently by the complainant. I also noted the conclusions of the investigation into the PPS's prosecutor's complaint which was carried out by Victim Support management. This investigation upheld the two main aspects of the prosecutor's complaint and deemed that the Victim Support's volunteer's behaviour had been inappropriate, stepping beyond his remit as a volunteer and contravening Victim Support's Code of Conduct. I also noted that the VS volunteer had not appealed the investigation's findings. I further observed that Victim Support management had given the volunteer sensible advice in relation to his interaction with prosecutors, victims and witnesses including, for example, how victims or witnesses should lodge a formal complaint to the PPS if they were not happy with how they had been treated. In this instance there was no evidence that this had occurred.

This was an unfortunate case, in that it portrays a breakdown in relationships between a volunteer member of Victim Support and a substantive member of the PPS, involving claims and counter claims between two partner agencies. I have no doubt of the dedication and commitment of both parties involved, in their respective roles. The prosecutor had been described in very positive terms by her line management and other witnesses. The volunteer had had a number of years' service, and Victim Support described him as having had a strong record. I have no doubt of the empathy and consideration which he displayed towards victims and witnesses whom he supported. However, his behaviours in his interaction with the prosecutor in May 2018 left a lot to be desired, and in all the circumstances, having considered all the evidence, I did not uphold his complaint.

In terms of the PPS's handling of this complaint, I was satisfied that a very thorough investigation had been carried out, and that a clear, detailed and comprehensive response had been sent to the complainant. His complaint had been acknowledged and responded to in a timely manner.

In my investigation into, and review of this complaint I did not observe any reference to a service agreement between two partner agencies, Victim Support and the PPS. I therefore recommended that if such an agreement, or relevant protocols, including behaviours, did not exist, and given the close working relationship between the two organisations, consideration should be given to developing an appropriate arrangement.

I communicated my findings to the complainant and the Director of Public Prosecutions

## **Case 2**

This complaint arose from a minor traffic incident in Coleraine in December 2017, involving the complainant's vehicle. The PPS decided on a no prosecution decision against the other driver involved, which was confirmed following a review. The complainant lodged a formal complaint expressing a number of concerns including that not all of the appropriate evidence had been gathered by the police, to fully inform the prosecution decision, his correspondence had not been responded to and that he had not received information which he requested under the Freedom of Information Act and the Data Protection Act. The complaint was dealt with at the first and second stages of the PPS Complaint Procedures, and as the complainant remained dissatisfied, he referred the matter to me as Independent Assessor of Complaints.

The complainant was sitting in his parked car in December 2017, when, he alleged, a passing taxi struck his wing mirror. The complainant spoke to the taxi driver who examined his vehicle and said that there was no damage. The complainant, however, quickly obtained an estimate for repair, and later that day presented it to the taxi driver, who refused to accept it, and, according to the complainant, thrust it back in his chest, which the complainant alleged was an assault. The complainant referred the matter to the police, who investigated the incident, and prepared a file for the PPS, recommending no prosecution. The PPS subsequently took the decision not to prosecute on 10 February 2018.

The complainant wrote to the PPS in early February 2018, requesting a review of the prosecution decision, and asserting that not all the appropriate evidence had been gathered, including potential witness statements. He sought all documents relating to the investigation under the Freedom of Information Act and the Data Protection Act.

The complainant wrote again to the PPS in March 2018, indicating that he now wanted the matter to be treated as a formal complaint; he reiterated his previous concerns, and complained about the PPS's alleged failure to acknowledge or action his request for disclosure, or offer him an apology.

The PPS responded in April 2018, advising that the no prosecution decision had been upheld on



the grounds that it was one person's word against another, in relation to the alleged collision and the assault. The PPS said that if further evidence emerged then the PPS would reconsider the position.

The PPS again contacted the complainant by telephone later in April 2018, advising that they had decided to consider his request for disclosure under normal business, detailing the limitations of the FOI Act and DP Act, and advising that under normal disclosure the complainant would obtain a better understanding of the PPS's rationale in taking the no prosecution decision. The complainant expressed satisfaction at this explanation.

The Assistant Director wrote to the complainant in early May 2018, at the first stage of the Complaints Procedures, confirming that the no prosecution decision had been reviewed and the complainant advised on 4 April 2018. He apologized for the fact that a more timely and comprehensive response had not been communicated to the complainant. He also advised that a prosecution could still ensue if new evidence came to light. He then detailed the Tests for Prosecution as laid down in the Code for Prosecutors and said he was referring the case back to the PPS Directing Officer for her to formally request from the police any additional information or evidence, which, if received, would be considered by the PPS.

The complainant wrote again to the PPS on 11 May 2018, expressing dissatisfaction with the response. He had major concerns in relation to the failure of the PPS to provide a formal response to his requests for further information under the Freedom of Information and Data Protection Acts, and reiterated his concerns that insufficient information had been collected by the police to fully inform the PPS's prosecution decision.

An Assistant Director from a different PPS Department responded at the second stage of the Complaints Procedures, on 30 May 2018. In relation to the FOI/DPA requests, he said that the PPS had decided that, given the restrictions on information provided under this legislation, more detail would be available to the complainant through the PPS's responses to the request for a prosecution review, and subsequent correspondence. However, he said that he would now ask the relevant PPS Department to formally respond to the complainant under the FOI and Data Protection Acts. He also advised the complainant to address his concerns in relation to the police investigation to the PSNI, or the Police Ombudsman, and reiterated that the PPS had requested any further information or evidence from the police.

The Assistant Director said the complainant had received a full apology from the PPS for the delay and lack of detail in earlier correspondence.

The PPS responded to the complainant's request for FOI/DPA information on 6 June 2018. This letter said that under the FOI Act, a person is entitled to request information defined as "recorded information" meaning a document or extract from a document and does not include answers to questions or opinions. The PPS advised that they did not hold the information requested.

The complainant remained dissatisfied and referred his complaint to me on 10 June 2018.

I thoroughly reviewed all the files, papers and correspondence in relation to this complaint.

In the complainant's letter to me his main concern was that he was not provided with disclosure information relating to the circumstances following the road traffic collision. He asserted in his letter to the PPS of 11 March 2018 that he felt that not all information had been gathered which could have been taken into consideration by the PPS in reaching their prosecution decision. He therefore sought disclosure under the FOI/DPA legislation. He again contacted the PPS on 8 April 2018, making the same request. On 17 April 2018, the complainant was contacted by a member of the PPS staff by telephone. He was advised that any information supplied to him under the DPA would refer solely to personal information about himself, and that under the FOI legislation relevant information would be even more restricted, and to that extent would be unhelpful to him in understanding the PPS's rationale for reaching the prosecution decision, or in relation to additional evidence being gathered relating to the road accident collision. The complainant was advised that this information would be more readily available through normal PPS operational procedures, including the review of the prosecution decision. In my consideration, while it is true that the PPS did not respond initially to the complainant's requests under FOI and the DPA, and this a matter for the PPS, I am satisfied that the PPS's intention was to act in the complainant's best interests, and were attempting to provide the most useful and helpful information to him, and to deal transparently with him in regard to the gathering of information and the prosecution decision. Subsequently, the formal response from the PPS in relation to FOI/DPA was of no real assistance to him, as had been suggested by the PPS.

In relation to information and evidence gathered by the police, it is clear that the PPS sought such information, and they advised the complainant that they had again requested the police to provide any additional information available, which, if supplied could lead to a further review of the prosecution decision. I was satisfied that the PPS had attempted to gather the relevant information from the police and had continued to do so.

As regards the PPS's handling of the complaint, the complainant wrote to the PPS on 14 February 2018. This letter was not responded to and he wrote again on 11 March 2018 lodging a formal complaint in relation to the level of service he had received from the PPS, including the failure to respond to his previous letter, and the failure to acknowledge or action his request for disclosure, or provide an apology. This was clearly unsatisfactory. The PPS did provide some additional information on 6 April 2018, and the complainant was telephoned on 17 April 2018, in relation to the complainant's request for information under FOI/DPA. In a further letter from the PPS on 4 May 2018, the Assistant Director accepted that the level of service provided to the complainant initially had not been satisfactory, for which he apologised. This was entirely appropriate. Subsequently the PPS acknowledged and responded promptly and in detail to the complainant's letters. The PPS's letters at the first and second stages of the Complaints Procedures were clear, comprehensive and courteous.

In conclusion, I conveyed my findings to the complainant and thanked him for the clear and courteous manner in which he had pursued his complaint.

I communicated my findings to the complainant and the Director of Public Prosecutions.

### **Case 3**

This complaint arose from an incident which took place in March 2013. The mother of a 23 year old female with severe learning difficulties reported to the police that her daughter had been sexually assaulted and raped by her uncle. The alleged assailant was interviewed in August 2013, and subsequently charged with rape and sexual assault, and a file prepared for the PPS. The case was eventually heard in Court in June 2017 when the defendant was acquitted of all charges.

The victim's mother lodged a complaint with the PPS in June 2017 alleging that the police and the PPS had mishandled the case both before and during the trial. The complainant was responded to at both stages of the PPS Complaints Procedures, in February and March 2018. The complainant requested verbally with the PPS that her complaint should be investigated by the Independent Assessor of Complaints for the PPS.

Following the conclusion of the trial in June 2017, in which the defendant was acquitted of all charges, the complainant wrote to the PPS by letter dated 20 June 2017. I found no record of this letter being acknowledged by the Newry Office or responded to by the PPS at that time. In her letter the complainant expressed her dissatisfaction with the manner the case had been handled by the police and the PPS at Court. In her words, "the case was not put right ". She said that the time to wait for the case to come to Court, four years three months, was horrendous, and her daughter had been through a very traumatic time, having to attend interviews with the police, lawyers, doctors and other experts. The complainant said that she now wished that she had not reported the matter to police, that she and her family were still suffering from the fallout from it, and she and her family felt very aggrieved. The complainant also asked, "how could our most vulnerable members of society could be treated in this way".

The complainant's solicitors wrote to the PPS on behalf of the complainant, on 31 July 2017, requesting a meeting with the PPS, to discuss the outcome of the case. The PPS responded by letter dated 4 August 2017, requesting that any concerns should be put in writing to the PPS. Subsequently, the complainant rang the PPS on 18 August 2017, seeking a progress report on her complaint. She was advised of the letter to her of 4 August 2017, asking that she put her complaint in writing. The complainant wrote to the Director of Public Prosecutions on 23 August

2017, detailing again her concerns about how the case had been handled by the PPS and attaching her previous letter to the PPS dated 20 June 2017. The DPP's Private Office acknowledged this letter the same day. The PPS responded by letter dated 25 August 2017, offering a meeting between the complainant, Counsel, and the Directing Officer.

At this meeting on 7 September 2017, the complainant accompanied by her husband, reiterated her concerns about how she felt that the case had been mishandled by the PPS. A note of the meeting reports that Counsel advised the complainant that the victim had met twice with a professional clinician and his reports did not support the victim as being a credible witness. He also added that in the Achieving Best Evidence interviews, the police had asked leading questions and therefore the decision had been taken not to rely on the ABE tapes, as it was also not clear that the victim was telling the truth during the interviews. In response, the complainant said that defence counsel had lied about her twice, and the Directing Officer replied that she was not sure how the defence had done this. The complainant enquired about the possibility of a retrial, Counsel responded that there had been a jury verdict and that was the end of the matter. The complainant asserted that the clinician was not an expert, to which the Directing Officer responded that the clinician would disagree with that and the victim was not capable of being a witness. Other issues were discussed, and the complainant said that the police should be reprimanded for asking leading questions in the ABE. She concluded by saying that she thought that her Senior Counsel was very good, while the defence lawyers in her opinion were lightweight. The report concluded by noting that the complainant seemed satisfied with the outcome of the meeting.

On 15 November 2017, the complainant rang the PPS Office in Newry suggesting that there should be an appeal against the Court decision. She was advised there was no legal point on which to appeal. The complainant reiterated her dissatisfaction with the manner in which the case involving her daughter had been handled by the PPS, and she described the outcome as a whitewash. She also advised that she would be taking a case of misrepresentation against the Directing Officer. The Directing Officer, who took the call, described the complainant's tone as aggressive, and said that the complainant had launched a tirade. She advised the complainant that she was concluding the call.

The complainant wrote to the PPS by letter dated 20 December 2017, highlighting her concerns about the alleged mishandling of her daughter's case. Attached to her letter was a copy of her original letter of complaint of 20 June 2017, detailing the six main elements of her complaint:

Why was the voice of her daughter, a vulnerable adult, not heard at the trial?

Why were her recorded interviews not presented as evidence in Court?

Why was her daughter not called as a witness at the criminal trial?

Why was she advised that her daughter could not attend Court?

Why did one of the prosecuting barristers leave during the course of the trial?

During the course of the trial the PPS failed to adequately communicate with her and her family, providing them with an explanation of the trial process, the presentation of evidence, and

decisions made.

These letters were then dealt with as the first stage of the PPS Complaints Procedure.

The Assistant Director (West and South) responded fully to the complainant by letter dated 1 February 2018. He firstly apologised for the delay in replying, indicating that apart from considering the case file, he had obtained reports from the Directing Officer as well as Senior and Junior Counsel involved in the case.

In respect of the specific questions raised by the complainant in her correspondence, the Assistant Director responded:

1. The Court heard legal submissions in relation to the victim's competency and the admissibility of her Achieving Best Evidence interview. An expert witness had given evidence in Court to the effect that he could not be satisfied that the victim understood the questions being asked at interview. She was frequently confused or gave contradictory responses or answers agreeing to the questions. Additionally, the questions at interview were frequently leading, particularly with regard to important issues such as penetration. The Judge therefore asked the prosecution to consider its position. The Assistant Director said that Prosecuting Counsel decided that it was no longer tenable to admit the victim's ABE evidence.

2. and 3. The Assistant Director referred to his response at 1.

4. The Assistant Director noted that while Prosecuting Counsel had confirmed the victim would not be giving evidence, the complainant herself had said in correspondence that it was the police who had informed the complainant that her daughter "was not even allowed up at Court".

5. The Assistant Director advised the complainant that, as she knew, the case was adjourned on a number of occasions and the original prosecuting counsel was unable to continue due to other commitments. However, he was replaced by another Senior Counsel who was fully briefed as his replacement, and he and Junior Counsel, who had been in place throughout, were experienced, specialising in criminal law, and therefore the victim was not under represented at any stage. The Assistant Director added that the complainant herself had complimented Senior Counsel about his cross examination of the defendant, and his closing speech to the jury.

6. In his investigation, the Assistant Director had communicated with the VWCU, and prosecuting counsel. He had confirmed that the VWCU had written to the complainant on numerous occasions to give her updates and information, as the prosecution progressed. He confirmed these as including 20 May 2015, 3 February 2016, 14 March 2016, 13 May 2016, 8

October 2016, 6 March 2017, 26 April 2017, and 23 June 2017. The Assistant Director advised that Prosecuting and Junior Counsel consulted with the complainant every day at Court during the first stage of the trial both in the morning and at the conclusion of proceedings. At the second stage of the trial, Prosecuting and Junior Counsel went to the witness suite at almost every break in proceedings to speak to the complainant and her family to ensure they were kept informed. Following the conclusion of the case, the complainant met with, at her request, Senior and Junior Counsel and the Directing Officer to address her concerns, and answer questions regarding the conduct of the case. The Assistant Director said that he did not consider that there was any failure to communicate with the family in this case.

The Assistant Director concluded that while he recognised and understood the disappointment felt as a result of the outcome, this was a very serious and difficult case. However, following his investigation, he did not consider that either Prosecuting Counsel or the Directing Officer had failed to discharge their duties, and he therefore could not uphold the complaints.

The Assistant Director advised the complainant that if she remained dissatisfied, she could refer her complaint to the second stage of the Complaints Procedures.

The complainant wrote again to the PPS by letters dated 3 February 2018, 17 February 2018, and 14 March 2018. The letter dated 17 February was acknowledged on 21 February, but I was unable to find acknowledgements to the other two letters. In these letters, the complainant disputed the information provided in the Assistant Director's letter of 1 February and criticised a number of other aspects as to how she felt the trial involving her daughter was mishandled by the prosecution.

The Assistant Director (Serious Crime Unit) responded to the complainant by letter dated 21 March 2018, at the second stage of the PPS Complaints Procedures. She assured the complainant that she had had no previous involvement in this case. She advised the complainant that she had read the evidence in the case, and considered all the correspondence, between the PPS and the complainant, including her most recent letters. She had also read the full response provided by the Assistant Director (W&S) of 1 February 2018. She noted this Assistant Director had sought information from the Directing Officer, Senior and Junior Counsel, and from the Victim and Witness Care Unit. She commented that the Assistant Director had addressed each individual concern which she had raised. She said that she was satisfied that the Assistant Director (W&S) had acted entirely in compliance with the PPS Complaints Procedures and had fully investigated her concerns.

The Assistant Director concluded by saying that she understood that the outcome of the case would have been disappointing to the complainant, and why she would want to question the decisions taken. However, she was satisfied that the case had been properly handled throughout and on this occasion, it was simply not possible to prove the victim's allegations

beyond all reasonable doubt, which is the very high standard of proof our laws require before a person can be convicted. The Assistant Director noted the PPS's conviction rate was 86% of Crown Court cases which she said provided some reassurance that cases are well handled, and a high level of conviction achieved. She said that sometimes despite the best efforts of the prosecution team and the victim and witnesses it was simply not possible to convince a jury of the defendant's guilt beyond all reasonable doubt and in these circumstances the defendant must be acquitted.

The Assistant Director advised the complainant that if she remained dissatisfied with the PPS response she could refer the matter to the Head of Policy and Information at Belfast Chambers.

I thoroughly reviewed and considered all of the papers in relation to this complaint against the PPS. As may be seen in my report above, a number of the elements of the complaint are operational and prosecutorial in nature and therefore do not fall within my remit as Independent Assessor of Complaints to investigate or on which to make findings. These elements of the complaint relate to the management of the prosecution case and the decisions taken in that regard. While I reiterate that it is not appropriate for me to make comment on decisions taken, my thorough reading of the papers and files in the case confirms to me that very detailed legal consideration and thought was given to these issues and the decisions reached, by Prosecuting Counsel and the Directing Officer.

The last element of the complaint relates to the complainant's allegations that the PPS failed to adequately communicate with her and her family before and during the trial, and provide them an explanation of the trial process, and the presentation of evidence and decisions taken. Clearly, the issue of effective communication with victims and witnesses is very important, particularly in cases involving individuals with severe learning difficulties,

I reviewed all the files in this case, and I was satisfied that prior to the trial in June 2017, there was a consistent level of communication with the complainant by the Victim's and Witness's Care Unit, in 2015, 2016 and 2017, leading up to the trial itself.

During the trial itself the original Prosecuting and Junior Counsel advised that they consulted with the complainant each day at Court, and also advised that, at the later stage of the trial, Prosecuting and Junior Counsel visited the witness suite at almost every break in the proceedings to speak with the complainant and her family to ensure they were kept informed. While I note that the complainant disputes this and asserts that she had to seek out Counsel on occasions, I am satisfied that overall there was a very satisfactory level of communication with the complainant and her family during the trial. Following the Court case, a meeting with the complainant and her husband was arranged with Counsel and the Directing Officer, which was a further opportunity for the complainant to raise her concerns and for the PPS to explain as to

how key decisions were reached in the case.

In terms of how the PPS handled this complaint, the complainant first wrote to the PPS by letter dated 20 June 2017. It appears that this letter was not acknowledged. After telephoning the PPS in August 2017, the complainant was advised to put her complaint in writing. A meeting was arranged with the complainant on 7 September 2017. She wrote again, to the Director of Public Prosecutions, by letter date 20 December 2017. This letter was acknowledged promptly, and the complaint was dealt with at the first stage of the PPS Complaints Procedures. The PPS responded in full by letter dated 1 February 2018. The complainant wrote further to the PPS three times in February and March 2017. One of these letters was acknowledged. The complaint was subsequently investigated and responded to at the second stage of the Complaints Procedures on 25 March 2018.

The complainant remained dissatisfied and requested verbally in April 2017 from the PPS that the complaint should be referred to the Independent Assessor of Complaints for the PPS. In overall terms, this complaint was handled well, noting, however, that some letters from the complainant do not appear to have been acknowledged. It would also have been preferable to have responded by letter to the complainant shortly after the meeting on 7 September 2017, dealing specifically with the list of concerns raised by the complainant in her letter of 20 June 2017.

Having thoroughly reviewed all the papers in this rather distressing case, I had great sympathy for the complainant, and of course, importantly, her daughter. They had been involved in this matter since the alleged incident in 2013, dealing with the police, medical experts, lawyers and the legal and court processes. The complainant has pursued her grievances with tenacity and determination with a number of bodies including the PPS. I am aware that the complainant herself has ongoing health issues.

However, notwithstanding this, I was unable to uphold the elements of this complaint against the PPS, either in terms of the PPS's communications with the complainant and her daughter both before and during the trial, and subsequently in terms of the PPS's handling of her complaint.

I communicated my findings to the complainant and the Director of Public Prosecutions.

## **Case 4**

This complaint arose from events surrounding a high profile trial heard at Laganside Court in Belfast commencing in January 2018. Following the trial, the complainant contacted the PPS



asserting that as a witness at the trial she had been subjected to unwanted personal abuse of her privacy by the media, which had caused her and her family considerable and sustained distress. The complainant felt that she had been afforded little or no advice from the Victim and Witness Care Unit regarding procedures and expectations, particularly in relation to entering and leaving the court complex to avoid the large media presence. The complainant was particularly concerned about one particular occasion when, as she left the court building at lunch on the second day of her attendances for the trial, she had been subject to behaviour from the media which in her view bordered on harassment.

The complainant wrote to the PPS in early March 2018, lodging her complaint. The PPS responded by letter dated 14th March 2018. The complainant wrote again on 4th April 2018, and the PPS responded by letter dated 2nd May 2018 at the second stage of the PPS Complaint's Procedures.

As the complainant remained dissatisfied, she wrote to me as Independent Assessor Complaints for the PPS, by letter dated 9th May 2018.

I considered carefully all the papers and correspondence in relation to this complaint, including the complainant's letters to the PPS of early March, and 4 April 2018, and the PPS's responses dated 14th March 2018, and 2nd May 2018. I also spoke to and corresponded with PPS staff. In relation to the complainant's letter to me dated 9 May 2018, I considered each of the specific issues which she raised.

The complainant firstly comments that the Assistant Director who carried out an investigation at the second stage of the PPS Complaint's Procedures, did not appear to interview the PPS personnel who met with the complainant and her father, at her request. I am satisfied that the Assistant Director, as part of his investigation, did in fact speak with the PPS Directing Officer, who was present at this meeting.

Secondly, and undoubtedly the most significant element of this complaint, the complainant commented on, in her words, "the PPS's failure to anticipate the media interest in the case, and the subsequent ordeals I was subjected to". The PPS in both letters to the complainant responding to the complaint, referred to the unexpected nature of what turned out to be a huge level of media interest in this trial, and, consequently, all those playing a part in it. In the first response, the Assistant Director commented that "none of us predicted the sustained level of media interest, and I can appreciate why the VWCU did not identify this as an issue ". In the second response to the complainant, the Assistant Director characterises the level of publicity as "unprecedented", and comments that "we were prepared for a high level of media interest but I think it is fair to say that what occurred outstripped what even the most seasoned observers expected " Notwithstanding this, the particular incident which the complainant feels most aggrieved about took place well after the trial had commenced, and the pattern and level of media interest had become well established. It appears that there were no untoward

incidents on the first day of the complainant's appearances at court, when she entered and left the court on four occasions. However, on the second day of her attendances, while she entered the court without incident, as she left the court precincts at lunchtime, after beginning her evidence, the complainant described how she was met by members of the media whose behaviour, in her words "bordered on harassment". Clearly she felt that this was a very unpleasant and alarming experience, which the PPS accepted. The complainant brought the incident to the attention of witness services in the court, who reassured her, and made arrangements for her to leave via an alternative exit later that day.

The PPS themselves had noted in correspondence with the complainant, that, "with the benefit of hindsight perhaps we should have done things differently" and that "we will learn from this case". However, the PPS concluded that their staff, and those in the Witness Service did all they could reasonably have been expected to in the circumstances and did their best to provide a high level of witness support. I accept, and am satisfied that the PPS took the complainant's concerns seriously and that while, in the overall context of this trial, and in a number of ways, the PPS fully discharged their remit in terms of witness support, greater anticipation and consideration could have been given in relation to the complainant to mitigate the potential exposure to the press and other media on the occasion in question.

Thirdly, the complainant comments that a simple apology along the lines of "we let you down" would have gone a long way to assuaging her exasperation and anger. However, I understand that the PPS did not become aware of the impact of the press intrusion on the complainant until the receipt of her correspondence in early March 2018. Having received that letter, the PPS responded on 14 March 2018, the Assistant Director commenting that "I very much regret that you have not received the support you expected from the VWCU". She further states that "I fully acknowledge your upset and disappointment and accept all that you say. I am, however, unable to identify any failing on the part of VWCU staff, who have acted in accordance with their current guidance. Your comments raise very important issues however, which will be the subject of a de-briefing meeting at the end of the trial and may lead to a revision of that guidance." I am satisfied that these comments represent a clear apology to the complainant.

It is extremely pleasing to record, as I have noted above, that the PPS have clearly acknowledged that they will learn from this case, and that there may be a revision of the guidance for VWCU staff. I am also aware of a nine month inquiry led by a retired Appeal Court judge, into how sexual offences cases are dealt with in N.Ireland, has commenced, and I have no doubt that the PPS as an organisation will have a significant input into that.

Finally, this has been an unfortunate and alarming experience for the complainant arising from events surrounding this trial, and I have every sympathy for her in that regard. The PPS have acknowledged that the complainant took exceptional steps to fulfil her civic duty at considerable cost to herself. I am satisfied that the PPS responded to the complainant in a timely, open, transparent, and courteous manner, and that they did take her concerns very seriously.

I communicated my findings to the complainant and the Director of Public Prosecutions.

## **Chapter 3:**

### **Audit and Benchmarking**

#### **Audit**

##### Audit of Complaints

1 April 2018 – 31 March 2019

##### Report

As part of my remit as Independent Assessor, I undertook an audit of a proportion of the total number of complaints received by the PPS between 1 April 2018 and 31 March 2019. I audited a total of 22 complaints of the total of 59 received (37%). I requested that the PPS provided me with a range of complaints received and dealt with by all Regional Offices and Head Quarters Departments.

##### Analysis

Total complaints audited 22

##### By Region

Belfast/East	8
West/South	7
Serious Crime Unit	4
VWCU	3

##### Gender

Male 12  
Female 10

The number and proportion of female complainants (45%) showed an increase over the previous 2 years (around 30%) . I do not draw any specific conclusions from this, but it may be a factor worth noting and monitoring in future audits.

#### Community Background/Ethnicity/Disability/Age/Marital Status/Sexual Orientation

Once again, I have been unable to breakdown complaints by community background or any of the other equality categories apart from gender Unfortunately, very few of the satisfaction questionnaires and the associated monitoring forms are returned to the PPS by complainants at the end of the complaints procedures. Although the questionnaires are now signed by me, this had had no effect on the level of return from complainants. It is therefore not possible to obtain the appropriate data. I gave consideration to sending the monitoring form to complainants at the commencement of the complaints process, but this could be misinterpreted by complainants, and possibly act as a deterrent to them progressing their complaint, which would be wholly counter productive. I am therefore unable to provide a solution as to how this this statistical information, apart from gender, might be gathered.

#### Method of Complaint

Letter 8

Email 8

Telephone call 1

Web complaint form 5

The methods of submitting complaints remain relatively consistent with my previous audits. Of the 5 complaints submitted through the web complaint form process, 3 complainants commented on difficulties in using this method. One complainant tried 5 times and submitted a screen print to confirm the problems. I have commented on this issue in previous audits. I

recommend that the PPS fully review the web complaints system to ensure that it is fit for purpose and user friendly, which to date, it clearly is not. At the same time, I recommend that the web complaint form itself is reviewed and amended to ensure that it allows complainants to explain their complaint fully and provide any other information in a logical and sequential manner.

## Stages of Complaints Procedure

First stage 22

Second stage 0

Independent Assessor of Complaints 0

None of the complaints which I audited proceeded beyond the first stage. Having reviewed all these complaints, I am satisfied that the major contributory factor in this situation is the high quality of complaints handling at this stage, in terms of timeliness and quality of response, and I commend the PPS for this. Apart from demonstrating an excellent service to the public which it serves, this outcome reflects an efficient use of resources by the PPS. I also noted that in all cases, the complainant was advised of the opportunity to progress their complaint to the second stage if they so wished.

## Nature of Complainant

Victim/Witness 16

Other 6

The majority of complaints (73%) were received from victims or witnesses, or from individuals acting on their behalf. The PPS Complaints Procedures may be accessed by any member of the public who has had contact with the PPS. Clearly, the majority of complaints will arise from those involved in the prosecution process. Equally, it would be anticipated that complaints will generally arise from victims of crime, or witnesses, who have concerns about how the PPS has handled their case. Other complaints arose from individuals who felt that they should not have been prosecuted, or felt that others should have been prosecuted.

## Basis of Complaints

Although there is no persistent theme or themes emerging from this audit, the issues of communications and perceived behaviour of prosecutors at Court arose in a number of complaints. As regards communications, a number of complaints related to victims or witnesses who felt that they had not been advised of court hearings or other dates in relation to their case, in a timely fashion, or at all. PPS responses pointed out that in the majority of instances this had not been the responsibility of the PPS, the process was fully explained, and the complaints were not upheld. In three instances, the PPS had erred in not communicating with the complainant appropriately, and apologies were made. As I have noted in previous audits, as regards the latter issue, ie behaviour of prosecutors at Court, complaints most often arose from a misunderstanding of the role of prosecutors before and at Court, which was fully explained in the PPS responses, and the complaints not upheld. However, this once again highlights the need for the PPS to have an effective process for explaining more clearly to victims and witnesses prior to a Court hearing, what the precise role of a Court prosecutor is, to assist in mitigating misunderstanding, before and during the Court process. In other instances, complaints related to delays in prosecution decisions, and in the Court process itself. I noted that in these instances, the PPS responses detailed the reasons for such delays, some of which were outwith the PPS's responsibilities, and in other instances, full apologies were offered. In two particular cases, I noted that complaints had been received from relatives of victims where prosecutions had not been successful. Given the nature of the alleged offences, and the impact that the Court outcomes had had on the victims and their families, I was particularly impressed by the very detailed, sensitive and sympathetic responses sent by the PPS, which were exemplary. I do feel that this empathetic approach is necessary and appropriate, as it is important that victims, witnesses, and their relatives fully understand the reasons for prosecutions failing, even if they do not agree with the outcome.

## Commentary

Once again, the large majority of complaints are dealt with and completed at Stage 1, relatively few progress to the second stage, and even fewer to the Independent Assessor.

I have mentioned in this Annual Audit that none of the 22 complaints which I reviewed

progressed to the second stage of the Complaints Procedures. However, I am aware that, of the total of 59 complaints received by the PPS, a few, small in number, do progress to the second stage, and to the Independent Assessor.

All complaints are almost exclusively personally responded to by Assistant Directors, with two exceptions being noted, although this is inevitable taking account of annual leave or other absence. The quality of responses is uniformly excellent. Responses are invariably detailed and comprehensive, reflecting a thorough investigation and review of the files and correspondence. Responses are clearly expressed, jargon free and aim to deal openly and honestly with the concerns of the complainant. Apologies are offered where there have been lapses in the quality of service provided by the PPS. The opportunity for the complainant to progress their complaint to the second stage and to the Independent Assessor, are invariably offered. Responses by the PPS are courteous, and helpful, and where appropriate meetings with PPS staff are suggested. In terms of timeliness, the achievement of timescales as laid down in the PPS Complaint's Procedures, is greatly facilitated by the work of staff in the Central Management Unit, firstly by their invariably very prompt acknowledgement of correspondence from the public, and equally importantly, by their effective monitoring of complaints in the system, with reminders sent to Assistant Directors as deadlines near, as necessary, and the issue of holding letters to complainants where extensions of time for response are required, and the advice of a revised date for the dispatch of a full response.

I commend the PPS for their current performance in complaints handling and note that there has been a significant improvement over the last three years to the current uniformly high level.

## **Benchmarking**

Part of my role as Independent Assessor of Complaints is to influence the adoption of best practice by the PPS in dealing with complaints. The PPS Complaints Procedures have been adapted and amended over the last few years in order to ensure that they are truly fit for purpose and in keeping with best practice of complaints handling in the public and private sectors. The PPS Complaints Procedures are benchmarked against a variety of organisations, both private and public. The benefits of this approach are evidenced by the outcomes over a range of measures, for example, quality and clarity of response, and timeliness of acknowledgment and full response. These outcomes are measured by the PPS themselves and the Independent Assessor of Complaints. I welcome the fact that the outcomes over many of these measures have shown continued and sustained improvement over recent years, and in some instances, for example, the target set for initial acknowledgement of a complaint of 5 days, and the 20 day target for full response, have reached 100% and 86% respectively, which is highly

commendable indeed. The outcomes for quality of responses to complaints from the PPS are somewhat more subjective, but my audits and case investigations and reports demonstrate responses which are courteous, clear, jargon free, detailed and comprehensive, and offering apologies where appropriate.

During the year, I benchmarked PPS Complaints Procedures against a number of organisations in the public sector, including the NHS Belfast Trust, the Northern Ireland Ombudsman, the Police Ombudsman, and, of course, the prosecution authorities in England and Wales, in Scotland and the Republic of Ireland. In this process, I was satisfied that PPS Complaints Procedures were of an equivalent or higher standard.

In terms of measuring complainant satisfaction with the handling of complaints by the PPS, and as noted in my Annual Audit, it has not been possible to gather statistical information in this regard, due to the fact that very few complainants complete and return the satisfaction questionnaires which are sent out after each complaint process has been finalised. Alterations to the questionnaire process have not been successful in attracting a greater response rate. However, a soft measure of complainant satisfaction is the percentage of complaints which are resolved at the first stage of the complaints procedures, and do not progress to the later stages. My Annual Audit showed that all of the 22 cases which I reviewed were resolved at the first stage, or informally resolved. This is an excellent outcome, and demonstrates the benefits of effective complaints handling, including timeliness at the initial stage. Apart from the benefits to the organisation of this success in customer satisfaction, as I have noted above, it also, clearly, has the advantage of considerable savings in terms of cost and resource.

A further benchmarking comparator which is of interest is the percentage of complaints received by an organisation in relation to the total number of operational cases which the organisation handles per annum. In the case of the PPS, 43,298 cases were handled in 2018/2019, and 59 complaints received. This equates to 0.14%, a remarkably low figure, and should be a source of satisfaction for the PPS. It is difficult to determine appropriate comparators but in a number of public authorities the range of % complaints to cases handled ranged from 1.5% to 3%.

In relation to benchmarking complaints handling with other prosecution services in other jurisdictions, I have reviewed those in England & Wales, Scotland and the Republic of Ireland. For the sake of completeness, I lay out the procedures in those jurisdictions.

In the case of the Crown Prosecution Service for England and Wales, the Independent Assessor role commenced in 2013, and while in theory similar to that in Northern Ireland, it has significant differences in terms of processes and working practices. This is mainly due to the size of a prosecution service covering all of England and Wales, the number of cases handled, and the



number of complaints received. The CPS Independent Assessor notes that the depth of investigation and the quality of response to complainants at Stage 1 give cause for concern, which, as I have reported, is not the case in NI. The Independent Assessor also observes a significant number of breaches of the Victim's Code in England and Wales, and continuing problems with the Witness Care Units, again issues which do not feature significantly in complaints which I have dealt with or audited in NI. The majority of complaints in England and Wales are received from victims, as in NI, but the principal category was offences against the person (58% of complaints received), the majority being victims of domestic abuse. This is not the case in NI where complaints arising from these sources represent a small proportion of the total received.

As I have noted in my previous Annual Report, the CPS Independent Assessor, and indeed CPS lawyers may make consolatory payments to individuals "...where there is clear evidence of uninsured material loss or severe distress caused by maladministration or poor service by the CPS". The Independent Assessor further recommends that such a payment should be automatically considered by the CPS following any breach of the Victim's Code. I do not believe that such payments are appropriate or necessary in NI, and in all cases which I have handled personally since 2013, or reviewed in my audits, I have only recorded one instance where a request for a consolatory payment was made, in that case for alleged business loss, and my conclusion in that case was that it was not appropriate. While it is entirely appropriate to consider and compare the processes and outcomes of the complaints procedures in England and Wales, I am satisfied that there are few if any improvement opportunities to be applied in NI at the present time.

In Scotland, the complaints procedures in the Procurator Fiscal Services are significantly different from those in NI. They do not have an Independent Assessor of Complaints. Complaints are dealt with internally, essentially in a one stage process. An initial attempt is made to resolve the complaint informally, generally face to face or by telephone. If resolution is not achieved, or the complaint is more complex or serious, an investigation is carried out, and written response provided. If the complainant remains dissatisfied, he/she may refer the matter to the Scottish Ombudsman's Office, which handles such cases from a wide range of public authorities. I am satisfied, at this stage, that the complaint systems in the Procurator Fiscal Services would not be appropriate in NI.

In the Republic of Ireland, there is no Independent Assessor of Complaints for the prosecution service, the Office of the Director of Public Prosecutions. Complaints are dealt with internally, firstly by a senior lawyer, with a right of appeal to the Deputy Director.

As I have said benchmarking is an essential part of the role of Independent Assessor, and it is a useful tool to ensure that PPS Complaints Procedures comply with best practice externally and are fit for purpose.

## Chapter 4

### Complaints Handling in the PPS 2016/2017

The PPS maintain comprehensive records of complaints, and an analysis and breakdown of the figures by various categories. These are shown below with my comments on each category, as appropriate.

#### Total Complaints

**Table 1: Numbers of complaints and written requests**

Year	Complaints Logged	Written Requests
2014 / 2015	89	138
2015/2016	67	126
2016/2017	66	105
2017/2018	90	156
2018/2019	59	186

Over the years the total number of complaints received by the PPS has fluctuated over a band between 65 and 90. The total this year of 59 is therefore somewhat less than usual, and considerably less than last year's total of 90. I do not draw any conclusions from this, and it is too early to categorise this as a decreasing trend.

**Table 2: Outcome of complaints**

Year	Upheld	Partially Upheld	Dismissed	Resolved Informally	No further action required	Outstanding	Total
2014/2015	8	4	44	25	6	2	89
2015/2016	6	6	38	7	10	-	67
2016/2017	3	14	33	4	11	1	66
2017/2018	7	11	60	7	3	1	90
2018/2019	2	7	44	3	2	1	59

Only 9 complaints were fully or partially upheld (15%) while 50 were dismissed or otherwise disposed (85%). While these figures reflect a significant decrease over the previous year, a clear trend had not been established.

**Table 3: Complaints substantiated (partially or wholly upheld)**

Year	Number of Complaints	% Substantiated
2014/2015	89	14
2015/2016	67	18
2016/2017	66	26
2017/2018	90	20
2018/2019	58	15

As noted above

**Table 4: Reasons for complaints**

	2017/2018	2018/2019
Case Handling/Delay	27	18
Primarily prosecutorial	27	13
Communication / Information	19	13
Conduct of staff / Counsel	28	16
Court Performance	17	14
Other	12	6
<b>Total</b>	130	80

*NOTE: Complaints may comprise of a number of elements.*

The percentage of complaints relating to the conduct of staff/counsel and court performance (35%) is comparable to the previous year (38%). However, as I indicated in last year's Annual Report, I carried out an analysis of these figures and it transpires that the majority of these complaints are not upheld, but rather, often arise from a misunderstanding of the role of prosecutors at Court, and the Court process itself. I have referred to this in another part of this Annual Report, and I am confident that the PPS will wish to address this through better communication of the PPS prosecutor's role, to victims and witnesses.

## Complaints by Regional Area

**Table 5: Total number of complaints received**

	Belfast/ Eastern	Western	Southern	SCU	Private Office Central, HCI & F&D	Other	Total
<b>2018/19</b>	16/59 (27%)	12/59 (20%)	9/59 (15%)	12/59 (20%)	5/59 (9%)	5/59 (9%)	59/59

Complaints are spread across the Regional offices and HQ Departments. Historically, fewer complaints were received and dealt with by West/South Regional Office. However, this has reversed this year, with 35% of complaints being dealt with at W/S. I do not place any great significance on this

**Table 6: Complaints substantiated (partially or wholly upheld)**

	Belfast/ Eastern	Western	Southern	SCU	Private Office Central, HCI & F&D	Other	Total
<b>2018/19</b>	5/16 (31%)	1/12 (8%)	1/9 (11%)	1/12 (8%)	0/5 (0%)	1/5 (20%)	9/59 (15%)

There is a significant disparity in terms of complaints substantiated between Belfast/Eastern Regional Office and the other Regional Office and HQ Departments. I am not aware of specific reasons for this, and it may be that Assistant Directors will wish to consider this.

**Table 7: Numbers of complaints acknowledged within 5 days**

	Belfast/ Eastern	Western	Southern	SCU	Private Office Central, HCI & F&D	Other	Total
<b>2018/19</b>	16/16 (100%)	12/12 (100%)	9/9 (100%)	12/12 (100%)	5/5 (100%)	5/5 (100%)	59/59 (100%)

The achievement of 100% of all complaints being acknowledged within 5 days is remarkable and reflects the trend in this outcome over the last 3 years since the centralisation of acknowledgements to the Central Management Unit. My Annual Audit showed that in fact most acknowledgements are despatched on the day of the receipt of the complaint or the following day. This might indicate that the target here could be amended from 5 days to 3. However, I do understand that this could prove difficult for some Regional Offices and HQ Departments; however, it may be a matter which the PPS might wish to consider.

**Table 8: Numbers of complaints dealt within 20 days**

	Belfast/ Eastern	Western	Southern	SCU	Private Office Central, HCI & F&D	Other	Total
<b>2018/19</b>	16/16 (100%)	10/12 (83%)	9/9 (100%)	8/12 (67%)	3/5 (60%)	5/5 (100%)	51/59 (86%)

The number and % of complaints dealt within 20 days as specified in the PPS Complaints Procedures has fallen slightly to 86% compared with 93% last year. I do not consider this as a significant issue and indeed the outcome in 2014/2015 was 46%. I commend the Regional and HQ Assistant Directors for achieving the current high levels and I am also conscious of the role of the CCU in this in monitoring response times and issuing reminders as necessary. There will always be cases where the 20-day response cannot be met either because a case is complex and requires extensive investigation or other factors. In these instances, I noted that letters had been sent to the complainant advising them that some additional time would be required and giving them a revised date for a response to be communicated.

## **Chapter 5**

### **Complaints Handling Process in the PPS**

#### **General**

The Case Handling Process in the PPS has been successfully in place for a number of years. The PPS is committed to providing a high standard of service at all times. If the PPS provide an ineffective or inefficient service or treat someone impolitely or unfairly or if there is a failure to adhere to the PPS' Code of Ethics or Code for Prosecutors, the complaints process provides a sound and practical mechanism for the PPS to learn about it. The really important aspect is that the PPS investigates the complaint thoroughly and, where it is justified, ensures that the lessons are learnt, and the PPS strive to put things right, and improve the overall standard of service it provides to the public. A key component of complaints handling is that the complaint is handled professionally, and with sensitivity and courtesy at all times.

#### **Definition of a complaint**

The PPS definition of a complaint is:

“Any communication which expresses dissatisfaction with, or criticism of, the service provided to the community by the PPS.”

Such complaints may relate to:

- The effectiveness and efficiency of the work of the prosecution service; for example, the time taken to process a prosecution case or the promptness of payment of witness expenses.
- The manner in which a person was treated by a member of staff of the PPS or by someone acting on behalf of the PPS (for example, a barrister instructed by the PPS).
- Any failure to adhere to the PPS Code for Prosecutors or Code of Ethics, that is, which does not relate to a prosecutorial decision. The PPS Code for Prosecutors, which includes the Code of Ethics, is available via the PPS website at [www.ppsni.gov.uk](http://www.ppsni.gov.uk).

It should be noted that the PPS complaints procedure is not the appropriate mechanism for defendants to seek to have the cases against them withdrawn or to overturn their convictions. If you are a defendant in this situation your complaint will not be considered as part of our complaints procedure. You should instead seek independent legal advice.

Where a complaint relates to ongoing criminal cases, we may only be able to provide limited information. We reserve the right not to deal with a complaint in relation to an ongoing case if it might prejudice the proceedings.

### **Who can make a complaint?**

Any person who has had contact with the PPS in whatever capacity can make a complaint. A complaint can be made directly by an individual or through their nominated representative, for example, a family member, solicitor, support group or public representative.

### **How can a complaint be made?**

There are a number of ways in which to make a complaint. These are listed clearly in the PPS Complaints Handling Procedures displayed on the PPS website, and copies may be obtained in a variety of formats. Essentially, complaints may be made by email, letter or directly via the PPS website, by telephone, and by SMS text.

### **What information will I need to provide?**

To help us in dealing with your complaint, the following information would be appreciated:

- Your name, address and contact details; this may include details of any representative whom you may want to have with you or speaking for you.
- Full details of the complaint, providing as much information as possible, including dates, the sequence of events which gave rise to concern and, if known, the names of persons involved.
- If applicable, the PPS reference number quoted in any previous correspondence you may have received.

It would also be helpful if a preferred means of contact was included, as well as an indication of the most suitable time for our staff to contact you.



In order to help you to provide all necessary information, a complaint form is available to download from the PPS website. Central Co-ordination Branch will also forward a copy of the form by post or e-mail on request.

Please note that depending on the nature and/or complexity of the complaint, it may be necessary to ask you for further information at a later stage.

### **How quickly will my complaint be dealt with?**

The PPS will acknowledge receipt of your complaint, via your preferred method of contact, within 5 working days. We will normally seek to make a full response within 20 working days.

If it is not possible to make a full response within 20 days, you will be informed why the response has been delayed and given a revised target date for a full response.

### **How long do I have to make my complaint?**

Unless there are exceptional circumstances, a complaint will only be dealt with if it is made within 6 months from the date of the incident in question.

### **Can the matter be resolved informally without making a complaint?**

Some individuals who are dissatisfied with the service that we have provided will simply want someone to review their concerns as quickly as possible – without the need to lodge a formal complaint. In such instances, it may be possible for the cause of the dissatisfaction to be resolved immediately and we will aim to do so by providing an explanation, apology or other appropriate outcome.

The initial step is to contact us in order that the matter might be resolved informally. If you are interested in an informal resolution, please contact us either by telephone (02890 897100) or by email to [info@ppsni.gsi.gov.uk](mailto:info@ppsni.gsi.gov.uk).

If we are unable to resolve your concerns satisfactorily via this process, then you may wish to pursue a formal complaint following the outlined procedure.

## **What can I do if I am dissatisfied with the way my complaint has been dealt with?**

Most complainants are satisfied at the initial investigation stage (Tier 1). If you are not satisfied with this response, you must tell us within one month of receiving our explanation. Complaints received outside of this timescale will not be considered.

In such circumstances, your concerns should be set out in writing to: Head of Central Management Unit

Public Prosecution Service

Linum Chambers Bedford Street Belfast BT2 7ES

Normally your complaint will be referred to an Assistant Director from a different area of the organisation (Tier 2) For example, where your complaint is in relation to a regional office, the review will be conducted by an Assistant Director from PPS Headquarters.

## **Is there any appeal against the way the PPS has decided to deal with my complaint?**

There is an external independent assessor who will review a complaint where the complainant is not satisfied with the way in which the PPS has decided to deal with the matter. The Independent Assessor operates with full independence from the PPS.

The Independent Assessor can investigate your complaint only:

- After the matter has been investigated by the PPS, and that having been concluded, you are still not satisfied; and
- If it is not primarily prosecutorial in nature. While the remit of the Independent Assessor allows for the consideration of failures against the PPS Code for Prosecutors or Code of Ethics, he is unable to comment on matters which relate directly to a prosecutorial decision. A prosecutorial decision includes the decision whether or not to bring a prosecution and any decision made in the course of criminal proceedings which relate to the conduct of the prosecution.

You may contact the Independent Assessor by the following methods:

By Letter:

Alan Henry OBE

Independent Assessor of Complaints for the Public Prosecution Service

P.O. Box 928 Belfast BT1 9AN

By email: [independent.assessor@gmail.com](mailto:independent.assessor@gmail.com)

The Independent Assessor operates a confidential and secure service. On receipt of your complaint he will deal with you directly and will make available to you a copy of a leaflet which explains his role and remit in more detail. The PPS will permit the Independent Assessor access to the files relating to your complaint and will seek to meet his requests in full as he investigates your concerns.

### **Policy on unacceptable actions or behaviour by complainants**

The PPS understands that individuals may act out of character in times of difficulty or distress. Indeed, a complainant may have encountered upsetting or distressing circumstances prior to bringing a complaint to the PPS. Therefore, the PPS does not view actions or behaviour as unacceptable simply because a complainant is assertive or determined. However, the actions or behaviour of complainants who are angry, demanding or persistent can result in unreasonable demands on the PPS or unacceptable behaviour towards PPS staff. Whilst there are relatively few complainants whose actions or behaviour the PPS will consider to be unacceptable, the Service reserves the right to restrict complainant contact, particularly where the actions or behaviour present a threat to the safety of PPS staff.

A copy of the PPS Policy on Unacceptable Actions or Behaviour by Complainants is available on request. Alternative formats of this policy are also available.

### **Complaints about partner organisations**

The PPS works in partnership with a number of organisations to provide a range of services, for example to victims and witnesses. Complaints about the delivery of services by partner organisations should be directed in the first instance to these bodies. The PPS website includes a range of useful contact points in this regard.

## **Can I ask about prosecutorial decisions or request reasons for a decision not to prosecute?**

Requesting a review of a decision:

People should be able to rely on decisions taken by the PPS. Normally if the PPS tells a suspect or a defendant that there will not be a prosecution, or that the prosecution has stopped, that is the end of the matter and the case will not start again. However, there may be reasons why the PPS will review this decision, for example where new evidence or information becomes available or a specific request is made by a person, typically a victim, involved in the case. Requests may be made directly by an individual or through a nominated representative (for example, a family member, solicitor, support group or public representative).

When requesting a review, a person may be able to provide further evidence or information which has not previously been taken into account. In such a case, the public prosecutor who made the original decision will carry out the review taking into account the additional evidence or information. However, if no new evidence or information is provided the review will be conducted by a different public prosecutor to the person who made the original decision.

The public prosecutor conducting the review will decide whether the original decision should stand or whether a fresh decision is required. In either event the person requesting the review will be informed.

Requesting reasons for a decision not to prosecute:

In all cases where it does not prosecute the PPS provides reasons for its decisions, albeit in the most general terms. In a range of more serious cases the PPS goes further and gives more detailed reasons. In any case it is open to a member of the public or interested person to ask for further details of why a decision was made not to prosecute. If you wish to request a review of a PPS prosecutorial decision or to make an enquiry regarding the reasons for a decision not to prosecute, please write to Central Co-ordination Branch (address as above) or send an email to [info@ppsni.gsi.gov.uk](mailto:info@ppsni.gsi.gov.uk).

The Independent Assessor of Complaints does not have any role in the review of prosecution decisions or in the giving of reasons for decisions.

## **Complaint handling: Monitoring arrangements**

The PPS is committed to ensuring that these complaint handling arrangements are effective. Therefore, on completion of each complaint case, we will send you a short follow-up questionnaire asking you to provide feedback on the way your complaint was handled.

Monitoring will of course be undertaken in a confidential way. All information provided will be held securely and questionnaires can be submitted anonymously (that is, we will not require your name). However, we will ask you to provide some information about yourself (for example, your age and gender). As set out in the PPS Equality Scheme, drawn up in accordance with section 75 of the Northern Ireland Act 1998, the PPS is committed to monitoring any adverse impact as a result of any its policies to which section 75 applies. Monitoring of complaints is essential in this regard and can assist the PPS to deliver a better service.

## **General principles to be followed by the PPS**

- The complaint handling process will be open and accessible.
- Complaints will be dealt with in a timely, effective and consistent manner.
- Complaints will be considered fairly and impartially in line with the policy and procedures set out in the PPS Complaint Handling Policy.
- Complaints will be investigated by individual's other than those about whom the complaint was made.
- Members of the public making a complaint will be dealt with professionally and with sensitivity and courtesy at all times.
- The complaint handling process will deliver continuous improvement.
- The Independent Assessor will consider all complaints properly referred to him and also report annually to the Director of Public Prosecutions. He may make recommendations, and the Director is obliged to respond to these recommendations.
- The Independent Assessor will audit a proportion of all complaints received. The purpose of this is to identify any patterns and to obtain a clearer picture of the types of complaints being received.

## **Chapter 6**

### **Role and Remit of the Independent Assessor**

The Independent Assessor oversees not only the PPS complaints handling arrangements themselves, but also the development of guidelines and protocols relating to complaints handling. He can also comment on the procedures used and how they were applied, including quality of service, and can make recommendations for improvements to the Director of Prosecutions as Head of the PPS.

The Independent Assessor can investigate a complaint only after that complaint has been investigated by the PPS, and that having been concluded, the complainant remains dissatisfied. An overview of the PPS complaint handling arrangements is shown at Chapter The Independent Assessor will produce a report for each case he investigates, to include his findings, and, where appropriate, his recommendations. These will be forwarded to the Director of Public Prosecutions, for him to consider and respond.

The Independent Assessor will not act as a complainant's advocate and cannot enforce the complainant's rights. His role has to do with determining whether or not a complaint was handled fairly, thoroughly and impartially by the PPS, and also to influence the adoption of best practice in dealing with complaints. The PPS is obliged by its policies to aim for the highest standards in all that it does, including handling complaints.

As well as handling complaints properly referred to him, the Independent Assessor reviews and audits a proportion of all complaints made to the PPS. The purpose of this is to identify any patterns or themes and to obtain a clearer picture of the types of complaints being raised, as well as changes in patterns year by year.

The Independent Assessor is required to report annually to the Director and may also make recommendations. The Director is obliged to respond to these recommendations.

### **Complaints which may be investigated**

The Independent Assessor may investigate all complaints, with the exception of those which are mainly prosecutorial in nature that is where they are primarily in relation to a decision by the PPS to prosecute in a particular case. All requests for the review of a prosecutorial decision should be directed to the PPS.

The types of complaints investigated by the Independent Assessor may include:

- The effectiveness/efficiency of the work of the prosecution service (for example, the time taken to process a case, or the promptness of payment of witness expenses).
- The manner in which a person was treated by a member of the staff of the PPS, or by someone acting on behalf of the PPS.
- Any failure to adhere to the PPS's Code of Prosecutors, or Code of Ethics.

### **Length of time the process will take**

The Independent Assessor will take a maximum of 8 weeks to investigate, progress, and conclude a complaint. At the outset of the investigation, the complainant will be told the likely timetable for the case and the complainant advised on any changes in the original estimates for the time required.

### **What the complainant needs to do**

The complainant should normally submit their complaint in writing. This may simply be by letter, providing an outline of the complaint, or he/she may submit by it by email, on tape, in Braille, or other media, or in a language other than English.

The Independent Assessor has discretion to interview the complainant and/or their representative in person but will not normally do so.

The Cost of making a complainant

The process is free to the complainant. The complainant does not need independent or legal advice when making a complaint to the Independent Assessor. The Independent Assessor cannot award costs or compensation.

### **Completion of the investigation**

When the Independent Assessor has completed the investigation, he will communicate the outcome and his findings to the complainant.

## **Remedies available to the Independent Assessor**

The Independent Assessor may make recommendations to the PPS. The Director is obliged to consider these, and to respond to the Independent Assessor, however, he is not obliged to implement the recommendations.



## Chapter 7

### Concluding Notes and Recommendation

This is my 6th and last Annual Report as Independent Assessor of Complaints for the PPS. I have found it an extremely rewarding and very interesting role, and am even more convinced of the importance and significance of the role in providing an independent view and oversight of how complaints from members of the public, particularly victims and witnesses, are handled by the Public Prosecution Service, and to provide reassurance to them that they will be treated fairly and equitably.

In my 6 years as Independent Assessor, I am pleased to note the increasing level of professionalism and efficiency which the PPS have demonstrated in handling complaints from members of the public which they serve. I am satisfied that the complaints handling arrangements in the PPS are fit for purpose, effective and reflect best practice set against equivalent arrangements in other organisations in the public and private sector.

The standards which are now being achieved and maintained by the PPS, particularly over the last 3 years, are indeed excellent, and in many cases, exemplary. This is evidenced by the performance measure outcomes in terms of timeliness, and also by the qualitative performance in areas such as extent and depth of investigations, clarity and openness of communications with complainants, and the offering of apologies as and when appropriate.

In terms of hard performance outcomes, it is particularly remarkable, and noteworthy that in a diverse organization operating throughout N. Ireland, the PPS achieved for the first time this year 100% timeliness in terms of responses to initial complainants within 5 days, indeed most of these acknowledgements would have been despatched within 2 to 3 days. Equally, the outcome this year for full responses to complainants within 20 days, of 86%, although a small drop on last year (95%), was still highly commendable. As I have noted, these outcomes reflect the significantly better performance since 2013/2014 where the outcomes were in the order of 50/60%.

In terms of qualitative standards, I have noted in complaints referred to me, having been processed through the two internal stages of the Complaints Procedures, and also complaints which I have reviewed in my Annual Audit, that responses are invariably courteous, detailed, comprehensive, clear, jargon free, and address all the complainant's issues of concern. It is clear that a full investigation and review of the files has taken place. In my Annual Audit I reviewed 22 of the total of 59 complaints received. I was satisfied that these complaints were being dealt with as thoroughly and effectively as those reaching me as Independent Assessor. It is of interest that none of these 22 complaints progressed to the second stage of the complaints procedures. This again has been an increasing trend in recent years and is a further indicator of the professionalism with which all complaints are now being dealt with by the PPS.

I attribute this significant success to the commitment and professionalism of PPS staff dealing with complaints, particularly Assistant Directors on whom the onus falls to carry out a thorough and timely investigation and draft full and detailed responses to complainants. Equally, the changes to the complaints procedures themselves including the centralization of initial acknowledgements to complainants, and the close monitoring of the progress of individual complaints handling until the final response is despatched, played an important role.

As Independent Assessor of Complaints, I received 4 complaints which had progressed through the first two stages of the PPS internal Complaints Procedures. This is approximately half the number I have dealt with in earlier years. I have no evidence as to why there has been such a reduction, but it would not be unreasonable to suggest that complaints being acknowledged promptly, investigated thoroughly, and responded to clearly, openly and comprehensively internally by the PPS will have had a bearing on the reduction.

At Chapter 2, I detailed all complaints which came to me as Independent Assessor. All of them were protracted and time consuming for both the PPS and myself. At Chapter 3, I detailed the audit which I carried out during the year.

Aspects which I would draw attention to are:

Once again, most complainants felt genuinely that they had been treated unfairly either through PPS operational processes, or by court prosecutors, or that their complaint had not been handled satisfactorily. Complainants generally expressed themselves articulately and courteously and the PPS responded in similar fashion. The very large majority of complaints were dealt with and completed at stages 1 and 2. I am confident that this reflects and underlines the importance of prompt acknowledgement and clear and timely responses to complainants at the earliest stage.

Complaints which I would consider vexatious are very rare, but even in these few cases, responses from the PPS should be, and are, courteous, timely and professional. In relation to the actions and behaviours of complainants, the PPS Complaints Procedures define the policy in this area. It is accepted that individuals may act out of character, in times of difficulty and stress. The PPS does not view actions or behaviours as unacceptable simply because a complainant is assertive or determined. However, the policy, quite correctly, states that the actions and behaviours of complainants who are angry, demanding or persistent can result in unreasonable demands or unacceptable behaviour towards PPS staff. The PPS, therefore, reserves the right to restrict contact, particularly where the

actions or behaviours present a threat to PPS staff. I am clear that personal abuse or insults are equally unacceptable and I recommend that the policy in this area is amended to reflect this. Again, in a very few cases complainants pursue their complaints to a degree where it impacts unduly on PPS staff time and resource. I consider that it is appropriate for the PPS to advise the complainant appropriately and terminate the contact. Clearly, it is a matter of judgement for the PPS as to when this point has been reached in individual cases. I recommend that the policy is amended to reflect this.

The importance of benchmarking cannot be underestimated, and it is equally important to review both the Independent Assessor's and the PPS's Complaints Procedures, and to make any amendments as necessary.

Associated with comments already made in this Annual Report, I recommend that attention is given to the following points:

- The excellence of written communications which is apparent in most areas of the PPS, particularly by Regional and HQ Assistant Directors is shared with other areas of the PPS to ensure a uniformly high standard.

- Full and unqualified apologies are offered to complainants in a timely fashion, and where appropriate

- A full review of the web complaints system and the web complaint form is carried to ensure that that it is fully effective and fit for purpose

- Complainants are advised at the appropriate stage of the facility to progress their complaint to the second tier, or to the Independent Assessor of Complaints.

- A review of the information provided to victims and witnesses about the role of PPS prosecutors before and at Court is initiated

In terms of operational issues:

- Prosecution decisions are taken and communicated within the PPS target timescales.

- Reviews of prosecution decisions are completed in timely fashion, and the outcome advised to the individual.

- The issue of the provision of special measures for vulnerable victims or witnesses is given appropriate and careful consideration

-Victims and witnesses are advised in advance and in good time of court or other meeting dates.

Finally, as I have noted in my previous Annual Reports, the PPS receive less than 1% of complaints in relation to the total number of cases handled each year. This compares very favourably with the situation in other organisations in the public and private sector. Most complaints received by the PPS are handled very well, and many in an exemplary fashion. While some, very few in number are not, I have noted throughout this Report that the overall picture demonstrates a continuing improvement in complaints handling throughout the PPS for the public which it serves, and I highly commend the PPS for this.

Finally, as this is my last Annual Report as Independent Assessor of Complaints for the PPS, may I record my great thanks to the Director of Public Prosecutions, Mr Stephen Herron, and his predecessor, Mr Barra McGrory, and to all the PPS Senior Management team, who have demonstrated their support for the role of Independent Assessor of Complaints itself, and have been unfailingly courteous and helpful throughout my 6 years in post.

I wish the PPS every success in the future in the many challenges which they face.

### **About the Independent Assessor**

Alan Henry OBE was appointed as the Independent Assessor of Complaints for the PPS in May 2013. He had 25 years' experience in human resources, organisational development and equal opportunities, and is now an HR Consultant

He was formerly a Commissioner of the Equality Commission and a Commissioner of the Human Rights Commission. He was a Civil Service Commissioner. He was an Independent Assessor for the Commissioner for Public Appointments. He was a Lay Panellist for the Office of Industrial and Fair Employment Tribunals. He was a Lay Assessor for the National Clinical Advisory Service. He is a Member of the Doctor's and Dentist's Remuneration Board. He was also a Governor of the South Eastern Regional College and is a Governor of an Integrated College. He is Chair of the N. Ireland Council for Integrated Education.