
Statutory Time Limits

Bar Council - Consultation Response

Introduction

1. The Bar Council is the representative body of the Bar of Northern Ireland. Members of the Bar specialise in the provision of expert independent legal advice and courtroom advocacy. Access to training, experience, continual professional development, research technology and modern facilities within the Bar Library enhance the expertise of individual barristers and ensure the highest quality of service to clients and the court. The Bar Council is continually expanding the range of services offered to the community through negotiation, tribunal advocacy and alternative dispute resolution.

Background

2. The Bar Council welcomes the opportunity to contribute to the Department of Justice's consultation on Statutory Time Limits. The Bar is supportive of the proposition that access to justice must be delivered in a timely fashion; justice delayed can at times equate to justice denied with negative impacts on defendants, complainants and witnesses. It is also important to note that this is supported by Article 6(1) of the European Convention of Human Rights which states:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

3. Furthermore, the Bar recognises that the need for such efficiency becomes even more paramount when children and young people come into contact with the criminal justice system. We take the view that young people must be processed as quickly as possible through the system in order to safeguard their health, wellbeing and future prospects. Article 3 of the United Nations Convention of the Rights of the Child provides that *"the best interests of the child shall be a primary consideration"* in all actions concerning children. Meanwhile Article 40(2)(b)(iii) states that every child accused of having infringed the criminal law must *"have the matter determined without delay by a competent, independent and impartial authority"*. These human rights instruments must underpin any efforts to address delay in the youth justice system.

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Delay in the Criminal Justice System

4. The Bar notes that the consultation document appears to advocate the broad introduction of statutory time limits but with an initial focus on cases in the Youth

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Court. This has been considered in several independent reports in the last number of years. This includes 2011's 'A Review of the Youth Justice System in Northern Ireland' led by John Graham and 'The Review of the Northern Ireland Prison Service' by Dame Anne Owers. 2012 saw the publication of 'Avoidable Delay - A Progress Report' by the Criminal Justice Inspection Northern Ireland which also called for the introduction of statutory time limits in order to reduce the levels of avoidable delay throughout the system.

5. However, we would point out that these reports cited in the consultation document were all published over four years ago. For example, 'Avoidable Delay - A Progress Report' from January 2012 stated that Crown Court defendant cases took more than 400 days on average from charge to disposal in 2011-12. The report also highlighted that adult summons defendant cases in the Magistrates' Court averaged 270 days in 2011-12. Youth charge defendants were dealt within an average of 118 days in 2011-12. Meanwhile youth summons cases took an average of 290 days during this period.
6. The Bar would point out that justice agencies and the courts have been working to improve efficiency in the system with initiatives such as case management and reform of committal proceedings introduced under the Justice Act (Northern Ireland) 2015. There has also been a significant cultural shift in the Crown Court in NI. 2012 saw a considerable backlog of cases at this level but by 2014 this had largely been eradicated through the allocation of extra judicial resources. Consequently, any figures used from the aforementioned reports as the basis for driving the introduction of STLs in the Youth Court and subsequently the adult courts are outdated. We would request that the Department provides more up to date information from the Causeway Criminal Justice IT Platform on the current existence or extent of delays across the various court tiers.
7. Furthermore, we note that there have been a number of recent changes within the youth justice system aimed at removing young people from the justice system entirely. It is unclear from the consultation document whether any recent statistics or analysis is available in relation to this. However, we note the publication in December 2015 of the Criminal Justice Inspection Northern Ireland's report on 'Monitoring of Progress on Implementation of the Youth Justice Review Recommendations'. We would point out that the observations contained in this report from inspectors appear to show that timeliness in dealing with young offenders is being prioritised (recommendation 14) with the establishment of Youth Engagement Clinics, efforts by the PPS to reduce the time taken to make decisions and process youth cases, the establishment of Youth Court guidelines by the NICTS and the introduction of annual targets by

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the Youth Justice Agency for Youth Conferences.¹ Meanwhile the figures cited in relation to recommendation 15 on statutory time limits show that the performance on youth charge cases (from charge to disposal) fell within the DOJ's initial proposed STL of 120 days with 2013-14 rates displaying an average of 95 days and the first quarter of 2014-15 an average of 99 days. Youth summons cases were well outside the 120 days in 2013-14 with a rate of 247 days in 2012-13. However, this has shown some improvement with an average of 182 days in 2013-14.²

8. The Bar believes that any efforts to introduce statutory time limits must also recognise the need to address the underlying causes of delays in the system. The general experience of criminal practitioners suggests that much of the delay in proceedings across the criminal justice system can be located in a number of areas, namely: delays in the investigative process, delays in the putting together of prosecution files, problems in relation to secondary and third party disclosure, lack of witness availability and lack of court time. Whilst it is important that cases are concluded within a reasonable time frame it is also vital that they are conducted fairly with the provision of high quality legal representation in order to preserve public confidence in the system. Experienced counsel play an integral role in promoting these high standards and often save the court time and money by identifying any procedural issues.

STL Start Point Options

9. The Bar takes the view that options 1-4 are not viable start points for the development of any meaningful STL scheme. Option 5 for starting the STL when the accused is informed that the case is being proceeded with provides the only useful and consistent start point. The benefits of this approach are outlined in the consultation document, highlighting that at this stage there is some certainty as the police are satisfied that there is a case to answer. In addition, this information is already being recorded centrally as the date when the accused is informed is recorded by the Causeway Criminal Justice IT Platform.
10. We believe that the use of any other start point for an STL scheme will bring significant drawbacks. Options 1-4 outlined in the consultation all start too early

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¹ Criminal Justice Inspection Northern Ireland, 'Monitoring of Progress on Implementation of the Youth Justice Review Recommendations', December 2015, page 41 at <http://www.cjini.org/CJNI/files/35/355260de-ceb0-43f8-ad83-e91fee363dd1.pdf> (last accessed 23 March 2016)

² Ibid page 43

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in the process when police will not have been able to determine if there is a case for a defendant to answer. Option 1 outlines the possibility for starting the STL at the point the offence is reported to the police. However, this could make justice organisations accountable for a stage when no individual has been linked to committing the offence. Option 2 points to starting the STL when a suspect has been identified with option 3 indicating the point of arrest or first point of contact between the suspect and police. Option 4 is the date of first interview with the suspect. Data for all of the start points in options 2-4 is not currently recorded on the Causeway Criminal Justice IT Platform. Furthermore, none of these constitute a uniformly reliable point at which there is certainty around the direction of a case. The identification of a suspect, contact between the suspect and police or first interview cannot be enough to start the clock running on an STL in any case.

Length of Time for an STL

11. The Bar believes that option one of 120 days from start point to bringing the case to trial would be the most appropriate length of time to begin testing an STL system. We also note with interest that the DOJ will shortly be reporting separately on performance against an Administrative Time Limit of 120 days from the date of the offence which will be worth taking into consideration when deciding an appropriate length of time for an STL. In relation to cases in the Youth Court, an initial STL of 120 days could then potentially be refined and reduced to 70 days or under as suggested by the Lord Chief Justice in due course.
12. We note that the options put forward for the length of time for an STL only extend from an appropriate start point to the case being brought to trial. The Bar would also welcome the opportunity to consider up to date statistics detailing the breakdown of time periods for dealing with cases from first appearance to final disposal in the Youth Court, Magistrates' Court and the Crown Court. As mentioned above we would welcome the opportunity to consider any material which might reveal recent trends in the system and any underlying reasons for delay.
13. The Bar would also point out that there is no mention in the consultation document of any consequences for failure to comply with an STL. We would query how responsibility for any failure will be attributed and whether any sanctions are envisaged for breaches of an STL.

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14. The Bar also believes that provision must be made for exceptional cases in which it would not be possible to adhere to an STL. For example, it is unlikely that it would be appropriate for a case involving multiple young people charged with serious violent offences, such as rioting, to be dealt with under the time constraints of an STL given the gravity of the criminal activity. We take the view that the Department should consider whether exceptions to an STL scheme will be required for very complex cases potentially involving a high volume of disclosure or a large number of charges.