

Criminal Justice Inspection Northern Ireland  
Stakeholder Conference, 19 January 2005

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1. Many thanks to Duncan Morrow for starting off our proceedings in such a stimulating way.
2. In this talk I shall be reporting to you, as CJI's stakeholders, on the progress the Inspectorate has made so far and setting out proposals for the programme of inspections for the coming year. I want also to spend a few minutes reflecting on the context of the criminal justice system in Northern Ireland, because it is in relation to that context that our plans have to be drawn up.

*CJI's first year*

3. I begin with the report on the past year. As you all know, CJI has now started work. Our official birth-date was 1 October 2004, but we began to stir before then, with the first movements being detected around April 2004, when Marie Smyth and then Brendan McGuigan came on the scene. In June we moved in to new offices in Great Victoria Street last June, and the Inspectorate team has gradually been building up. Dan Mulholland changed imperceptibly from being the NIO's project manager responsible for setting up the Inspectorate to being CJI's Business Manager, and Keith Boyce and my secretary Linda McGookin came with us from Massey House. I must acknowledge the help Stephen Leach and his Criminal Justice Directorate team gave me throughout the setting up phase.
4. Since September 2004 we have formally inspected Magilligan Prison and the Juvenile Justice Centre, and we have conducted a wide-ranging review of the management of dangerous offenders, focussing particularly on the MASRAM arrangements for sex offenders. I also inspected with Anne Owers the conditions and treatment of women prisoners at Hydebank Wood. Those reports will be published shortly. Because all my reports have to be submitted to the Secretary of State, who must present them to Parliament, they are covered by Parliamentary privilege until publication, which limits how much I can say about them just now, but they will show that the Inspectorate is making a serious and constructive start. Inspections are under way in the State Pathology Department and the Forensic Science Agency, while at the same time, with HMIC, we are looking at the PSNI's use of forensic services.
5. CJI inherited one Inspector, Tom McGonigle, from the Social Services Inspectorate and his colleague Ronnie Orr has continued to work with us though remaining on the books of the SSI. The new Inspectors we have recruited are John Shanks, who hails from the Court Service and the Legal Services Commission, James Corrigan from PA Consulting, where he had been working in the criminal justice field, and Bill Priestley, formerly with police services in England and Northern Ireland and more recently with the Central Police Training and Development Authority, CENTREX. We also recruited two Assistant Inspectors, Ann Duncan from the North Yorkshire Criminal Justice Board and Ian Craig from the Office of the Police Ombudsman. We are currently advertising for one or two additional Inspectors.
6. Together with the other members of staff, Sean Deegan, John Gallagher, Sheila Hagan and Martina White, I believe that this constitutes a first class team, with an excellent balance of skills and experience.

### *Thanks to other Inspectorates*

7. It is of course a small team in relation to the scope of CJI's remit, and we rely heavily on the co-operation of our partner Inspectorates in England and Wales, several of which are represented here today. CJI was not designed to work in isolation. The Act that set it up provided that I could delegate my functions to a number of other Inspectorates. I could not do the job without them. It is therefore very encouraging that they have all, without exception, given me the utmost assistance in this first year. I am tremendously grateful to them all.

### *Communications strategy*

8. The Head of Research and Communication was the first post I appointed because I wanted to make research and communication central to the work of the Inspectorate. I did not want the agenda of the Inspectorate to be set solely by the agencies we inspected and their parent Departments. I wanted to have means of getting in touch with a wide range of people on the ground, to find out direct from them what were their perceptions and concerns about the criminal justice system.

9. We have carried that policy forward, holding meetings with local groups, sector and special interest groups and District Policing Partnerships. Children's organisations, churches, ex-prisoners' organisations and organisations representing the victims of the troubles and those who work with them have all been included in that programme, and CJI has benefited enormously from it. This stakeholder conference is a way of bringing together some of these groups, but if we wanted to invite all of them we would need to hire the *Odyssey*. Let me take this opportunity of thanking all of them, present or absent, for their contributions. We are committed to keeping up the programme of contacts and to staying in touch with all these organisations through our website and our newsletter, the *Spec*.

10. Despite this emphasis on communication, CJI has deliberately not courted publicity. Some organisations comparable to CJI thrive on public exposure, but others have found that raising their profile has not necessarily helped them. Being independent does not necessarily mean that you have to take a political line. My aim is to remain below the level of political controversy, providing a reliable and impartial service to political debate.

10. It is CJI's policy not to make generalised 'political' statements but to stick to its knitting and fight on a battleground of its own choosing, namely the evidential basis of its published reports. The idea is that we say what we have seen, and if anyone wants to dispute with us, they must produce contrary evidence. That approach may not make for celebrity status, and it will not protect us completely in the long run, but it should increase our life chances.

### *Not facts but interpretations*

12. Having said all that, the truth of the matter is that we do not deal in facts most of the time. Nietzsche said, "There are no facts, only interpretations"; and while he was being a bit theoretical he was making a valid point. There are some things which we Inspectors can go out and observe that may deserve the status of 'facts'. But most of what we do is interpretation. We make judgments, and we make recommendations, and as we know no amount of 'facts' will ever logically entail a recommendation. The recommendation has to come from ethical assumptions or values inherent in the person who is making it.

13. Because of the way the statute is drawn every recommendation of the Inspectorate is a recommendation by me personally. Each judgment and recommendation will therefore reflect my ethical assumptions and values. But I am who I am, and I am acutely conscious that my ethical assumptions and values may not necessarily be reflective of the society I serve in

Northern Ireland. On the face of it, my detachment might be thought to make it easier to take an objective view, but it is an unrepresentative stance to take: nobody here, hardly, is detached in that way.

14. I therefore depend greatly on the advice of my team – all my team, but especially Brendan, Dan and Marie - to give me the necessary grounding and help me to see issues as a lifelong resident of Northern Ireland would see them. Even then there will be some things which it may not be appropriate for *me* to say. Nevertheless I am confident that by picking the right context and the right spokesperson CJI will be able to get its essential messages across.

15. I sometimes think that perhaps CJI does not need to do any actual inspection. I like to talk about setting up 'engines of improvement'. Self-assessment, on which we provided introductory training last year, is one such engine. The fact that we have articulated the values of openness, partnership and equality that we mean to inspect against is almost enough in itself to ensure that the criminal justice organizations begin to move in the right direction. We have become part of the environment they know they have to react to.

#### *Experience to date*

16. But CJI is not content just to exist. As I said, we have by now conducted a number of inspections. What lessons have we learnt so far from the experience?

17. Let me give you an example from the inspection of Magilligan Prison. CJI was assisted there by a team from HM Prisons Inspectorate, which included experts on health, drugs, education and training, as well as core prison management. The Adult Learning Inspectorate joined us, in partnership with Northern Ireland's own Education and Training Inspectorate. Inspectors from CJI took part in the regular prison inspection but also inspected the management of human resources at Magilligan. It was a complicated exercise, but the whole thing worked extremely well, with each Inspectorate contributing its part to the eventual report. We have proved that inspecting jointly can be done, and we shall get better at it with practice.

18. The methodology has basically worked well. The questions posed by the standard inspection framework (the 'common core') have proved their usefulness. It is never inappropriate to ask of a criminal justice organisation whether it is open and accountable, works well in partnership with other agencies, promotes equality and human rights, actively seeks feedback and strives for improvement, and delivers results and value for money to the taxpayer. The degree of detail into which it makes sense to go varies considerably, and it would be a mistake to try to tackle every question in the framework on every occasion. But as a rough prescription when planning an inspection it seems fairly robust and I am confident that the resulting reports will be well received.

#### *The criminal justice system in the NI context*

19. We must recognise, however, that our reports are not always going to be uncontroversial. There is a huge task ahead to transform the criminal justice system in Northern Ireland into a structure which is modern, economical and fit for purpose in the new post-conflict world. The legacy of the conflict is everywhere:

- a. Politically, in that there is as yet no return to devolved administration. This leads to less scrutiny and accountability than one would want ideally under devolution. That is particularly a problem in relation to criminal justice, where accountability arrangements are often an issue even in the best-run administrations.

- b. Financially, in the high level of expenditure on criminal justice services compared to other jurisdictions. There are many reasons why the pattern of spending is as it is, but the bare fact has to be acknowledged: spending on criminal justice in Northern Ireland is, for historical reasons, substantial.
- c. Psychologically, in that so many people have been profoundly affected by the Troubles, and these psychological scars, while they can be eased, will never go away completely. Even death does not provide an end-point, because the attitudes and behaviours that are associated with the experience of psychological trauma – attitudes and behaviours that are practically endemic in Northern Ireland – are passed on from one generation to another. The phenomenon we observe in trauma victims of living on their nerves, often being on a hair trigger to respond to any imagined threat, can be seen in children coming into to youth justice system who are too young to have any direct memory of the Troubles. And trauma is only one aspect of the psychological legacy.
- d. Geographically, in that there are still parts of Northern Ireland in which policing and law enforcement is still problematical. The War may be over, and the country has become visibly more relaxed even in the short time I have been here. But there is still some paramilitary activity, and there are persistent disturbances in some areas, such as Derry/Londonderry. Without the confidence and cooperation of the local population the task of the police is made immeasurably more difficult.

20. A huge amount is being done to address those problems. People may argue about the pros and cons of aspects of them, but in essence the Patten recommendations have been implemented, and they represent major progress. There is more to do, as the Police Oversight Commissioner has identified, but the PSNI has already been transformed. The Chief Constable and his senior team deserve great credit for this. District Commanders are being innovative in reaching out to establish better contacts with their communities. But as Al Hutchinson has pointed out, more needs to be done to elicit a positive response from the public in some of the areas which are most in need of an effective policing service. Everyone needs to understand that policing is not optional: communities cannot be allowed to contract out. But it is worth exploring options for how to bring it about.

21. One approach is to build on the Community Restorative Justice schemes which operate in some areas on both sides of the divide and bring them into a proper relationship with the criminal justice system. The Justice Oversight Commissioner, Lord Clyde, has recognised that the schemes have a potential for good, provided they are carefully supervised to ensure that they work in accordance with sound principles and have no links with paramilitary organisations, and the Independent Monitoring Commission has likewise given them a cautious endorsement. If the necessary conditions can be satisfied the Inspectorate will be prepared to help by inspecting them, as the Criminal Justice Review envisaged, whenever the Secretary of State determines that the time is right.

### *The Past*

22. The legacy of unsolved murders from the past has been hanging over the PSNI since its inception. I am pleased that the Chief Constable has obtained funding to enable him to make inroads into the backlog of cold cases. He has said that he will follow a policy of providing maximum disclosure, which must be right. Many cases will by now be insoluble, however. The evidence, if it ever existed, is no longer available, and the perpetrators and any witnesses may have died.

23. Some other way needs to be found of resolving these cases, without over-burdening the criminal justice system and preventing it from carrying out its current duties. The criminal justice system may not be the best way to address the problem. Clearly, perpetrators should be brought to justice where they can be. But we have seen that long-drawn out judicial investigations can cost millions of pounds without providing much satisfaction at the end of the day. Some issues may need to be tackled through inquiries, but sometimes one cannot help feeling that there would be better ways to spend the money, for example through some form of truth process and by supporting the voluntary organisations which operate in this field.

24. Justice is a means to an end, not an end in itself. Its purpose is the healing of society. Society administers justice to the extent that it serves a constructive purpose by deterring crime, enabling folk to live in security and thereby promoting the common welfare (not an easy concept in Northern Ireland!). An important benefit of criminal justice is that it reduces the danger that individuals will take retribution into their own hands. People have a right to demand apologies and even compensation, but no one has a right to demand that others be punished. It is for the state to decide, and restorative measures may be more appropriate and effective than retributive ones.

#### *Victims and witnesses*

25. A major study is in progress on how the criminal justice system relates to victims and witnesses – including the silent victims who never report the offence and the potential witnesses who never come forward.

26. The study will focus on particular groups of victims where there are special concerns: victims of rape, victims of domestic violence, victims of racial or homophobic crime, children and young people, the elderly and the disabled. The study will examine how the agencies of the criminal justice system organise themselves to provide appropriate service to victims and witnesses and will make recommendations designed to improve that service and thereby increase public confidence in, and participation in, the criminal justice system. We plan extensive consultation over this study, and it will be the subject of a separate conference or seminar in March.

#### *Programme for 2005-06*

27. You have a copy of the Spec newsletter, which contains the outline of CJI's proposed programme for the coming year, subject to consultation and approval of the Secretary of State. There will be specific inspections of a number of agencies, but a large proportion of the inspection effort will be directed to three main cross-cutting, thematic subjects:

- Delay in the criminal justice system
- Diversionary schemes for young people
- Target-setting and performance management

28. Whether or not delay is the biggest issue facing the criminal justice system here, it is certainly one of the most visible and most frequently raised with CJI. One needs to be careful not to aim for speed at all costs, because delay is sometimes required in the interests of justice. But *avoidable* delay – of which there is a lot – costs money which could be put to better use and is the enemy of justice. Particularly in relation to children and young people, cases which are not heard until six months after the event may serve to administer justice narrowly defined, but their value as a means of getting children to address their offending behaviour is likely to be attenuated.

29. Extensive amounts of work have been done on delay over the years, but the results have until recently been disappointing. The new Causeway information system and other initiatives will undoubtedly be a help, and part of the purpose for making a fresh assault on the problem at this time is to maximise the impact these various innovations will have on actual case processing times.

30. This inspection programme is not set in concrete. If there are issues that arise, either from this conference or in the course of the year, perhaps at the request of the Secretary of State, CJI will be flexible enough to respond to them. We shall also be working up a longer term programme which will form the basis of CJI's Corporate Plan for the next three years, and we would value your input into that as stakeholders and interested parties.

### *Children and young people*

31. The specific theme of today's conference is how we can listen to children and young people and reflect their needs and concerns in the work of CJI. I said last year that I wanted to put the interests of children and young people at the heart of what this Inspectorate does, so we are shortly going to hear at first hand from some of them.

32. Children and young people are the acid test of a criminal justice system. If a system serves them well it is probably good enough for the rest of us. If there is one thing we can all agree about it is the importance of getting the treatment of children right.

33. Children and young people are, sadly, significant users of the criminal justice system. They are responsible for the majority of nuisance crime, and for a fair proportion of indictable offences. But we recognise that children who offend are almost always children who have a range of other problems and their offending behaviour cannot successfully be treated in isolation. It is necessary to look at the context in which the offending takes place, and Northern Ireland is generally good about this – as illustrated by the recent development of Youth Conferencing.

### *ASBOs and Young People*

34. Children may be responsible for their offences, but they are not responsible for their circumstances. They are not responsible for their families, or the lack of them. There is evidence to show that, while older persistent offenders are often intractable, positive engagement at an early stage can have a worthwhile influence on younger first offenders. Purely punitive measures are not by and large very productive for this group, and it is good to see that the courts in Northern Ireland place a relatively small number of children in custody.

35. Anti-social Behaviour Orders (or ASBOs) have now been introduced in Northern Ireland. The Government believes, and many of those involved in law enforcement agree, that they will be a useful addition to the means at the disposal of the courts for protecting people by controlling the sort of anti-social behaviour that makes many people's lives a misery.

36. Although ASBOs do not themselves criminalise an individual, breach of an ASBO does. I am confident, however, that the courts here will follow international good practice by giving due weight to the welfare of the child. It is helpful that the ASBO operating guidelines set out arrangements for engaging social services and other relevant agencies in cases relating to young people. I welcome the strong provision in the legislation to permit reporting restrictions in respect of children and young people. In the Northern Ireland context there has to be a presumption that the identity of the child should not be disclosed.

37. I believe there is scope to strengthen further the effectiveness of the criminal justice system's interventions with children and young people. With that in mind I propose that one of CJI's thematic studies in the coming year should look at the provision of diversionary schemes, not only by the Youth Justice Agency, but by the Police and the Probation Service and by voluntary and charitable organisations.

#### *Too much inspection?*

38. The Government is committed to streamlining inspection of the public services. This is a matter of very proper concern to some of my colleagues in England and Wales, who are anxious that essential inspection activities and the expertise to carry them out should not be lost in the proposed rationalisation of inspectorates over there.

39. Our situation in Northern Ireland is different in some ways, but there is a parallel. We already have a bringing together of criminal justice inspection activities under the umbrella of CJI. But there are still a large number of players in the inspecting and monitoring field here. The Chief Constable is fond of pointing out that the PSNI is inspected, supervised or audited by about a dozen agencies, from the Policing Board to the Surveillance Commissioner, and now CJI. It is all too much, and it may detract from the effectiveness of the overall inspection regime as well as consuming too much police time. We need to structure this effort into a better co-ordinated programme of inspection for improvement which would provide a more effective challenge to the Service.

#### *Training and equipping the Inspectors*

40. Historically Northern Ireland has had too much of British officials coming over to tell local people how to run their affairs. The vision of the Good Friday Agreement, which despite recent setbacks is still all we have to go on, is that Northern Ireland shall henceforth be, if not a country in its own right, a largely self-governing entity in which power is shared between the two communities. It needs in that context to work out its own destiny. It may still sometimes need to call in a helper like myself from another jurisdiction, but by and large Northern Ireland people want to hear Northern Ireland accents among their advisers and their inspectors. That is why CJI was set up, to provide a locally-owned Inspectorate instead of just being subject to inspection from England and Wales.

41. CJI has advertised its posts widely, as it is bound to do, but I am proud to say that apart from one Assistant Inspector and myself it is a locally born and bred Inspectorate with an inter-communal balance. As I have said, it is indispensable that we draw on the expertise of England and Wales Inspectorates. But wherever possible local CJI inspectors will work with them in the field. Following a training day we arranged for the criminal justice agencies last year, we have put together two days of training for visiting Inspectors who will be coming over to work with us on particular assignments, and that training will start tomorrow, immediately following this conference. It will introduce visiting Inspectors to some of the differences in the legislative basis of the criminal justice system here, and give them some insight into the complex political context. I am delighted to say that there has been a tremendous expression of interest in that training.

#### *Working with the Agencies*

42. I want to end up by repeating what I believe inspection is for in the Northern Ireland context. I say 'repeat', because most of you will have heard me say this before, but it is important to keep it continually in mind. As I see it, inspection is about improvement, and CJI believes that improvement is best achieved by working *with* the criminal justice agencies, rather than by standing back and criticising them from afar. An Inspectorate must not get too close to

its clients in the sense of developing a cosy relationship. It needs to keep a certain distance in order to be free to challenge. But that does not mean that we should be strangers: we need to be in constant touch so that we each understand what the other is about, and when we inspect we should do so in conjunction with the agency inspected. That is why it is an integral part of CJI's methodology that we start by asking the agency to self-assess against our framework, and the rest of the inspection methodology is essentially a series of dialogues with the agency in which we compare our perceptions with its. The end result is hopefully an agreed programme of action for improvement.

43. The primary reason for adopting that approach to inspection is that it corresponds with what is regarded as current best practice and it has been shown to work. But it is an approach which particularly suits the needs of the criminal justice system in Northern Ireland. Organisations have learnt to be defensive here, because they know how unmerciful the tenor of public debate can be.

44. Professor Sir Desmond Rea, the respected Chairman of the Policing Board, said when I first met him that I would need the wisdom of Solomon. I have certainly benefited from *his* wisdom and that of other distinguished colleagues, such as Brian Rowntree, formerly Chairman of the Probation Board and now Chairman of the Housing Executive, Nuala O'Loan and Brice Dickson, to name but three. I have surrounded myself with wise counsellors in the shape of Brendan, Marie and Dan. But where the wisdom is really going to be needed is in the Inspectors as they go about their work in the agencies. Theirs is the task of interfacing with workers in the criminal justice system at all levels, and with the 'customers' of the system outside it. It is on their ability to interview effectively but sympathetically, to be at the same time professionally credible and yet card-carrying members of the human race, that the reputation and success of CJI depends. So my commission to them is that they be

'clever as serpents, unthreatening as doves'.

45. 'Do no harm' is a good first principle for Inspectors, as it is for doctors. Do no harm by wasting the time of management or upsetting staff. Do not make people's problems more difficult for the sake of a sexy report with hard-hitting recommendations. Try to find ways forward that will help people to do their jobs better, to enjoy their work and work to their full potential in it. Never lose sight of what the people of Northern Ireland have been through, and the scars which so many of them bear, especially in the criminal justice agencies. Be understanding of the local environment, and make recommendations which are realistic and helpful in that context. And if we can do all of that, we may even do a little good.

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