



Speech of Kit Chivers

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Introduction

This is our fifth Annual Conference. It is a special delight and an honour to have the Attorney General with us today and we look forward to welcoming a number of other distinguished guests and speakers, including the Lord Advocate who will talk about the Scottish experience of devolution.

The Inspectorate

I shall begin by saying a few words about the work of the Inspectorate, since that has to be the starting point for this speech. The number of reports we have produced has mounted steadily. It has seemed to me rather like the way young children count: 1, 2, 3, 10, lots. But there have been some particularly important reports in the past year: for example, the first inspection of the Public Prosecution Service; and some interesting and unusual ones, like the inspection of environmental crimes and the inspections of community restorative justice. We have also found that the follow-up reports which we have started to do to check on progress with our original recommendations have generated a lot of interest, perhaps because they are shorter and more clear-cut: have you done it (if you said you were going to), or haven't you?

The past year has been marked, of course, by Sinn Fein's joining the Policing Board and by the resumption of the Assembly, leading to a historic event for CJI, our first occasion for giving evidence to a Committee of the Assembly. The three of us who attended the ad hoc Committee on the draft Criminal Justice Order last month had a strong sense that we were doing what CJI was essentially created to do. We could now at last see a real customer for our reports and for the advice we could give off the back of them.

We shall be talking this afternoon about the inspection programme, so I shall not spend time on that this morning. I must mention for the record, however, that CJI is now the Inspectorate for the NI Court Service, the Legal Services Commission and the Life Sentence Review Commissioners (shortly to become the Parole Commissioners), and we look forward to working with all those new clients. We have been working closely with the Court Service on thematics for the past three years, so they are no strangers.

An Inspectorate which goes round criticising others (in however helpful and constructive a way) needs to be self-critical, and in the course of this year we conducted a self-assessment, exactly as we encourage agencies to do, using a simple form of the

EFQM model. The results were quite hard-hitting: we reckon we have a number of strengths, but we are by no means satisfied that we are yet as effective as we could be.

I took the courageous decision (as in “That would be a courageous decision, Minister”) to share the findings of our self-assessment with the Heads of the Agencies, and not surprisingly that provided the opportunity for them to unload their criticisms of the Inspectorate, all of which we take seriously. It so happens that the NIO has decided the time is ripe for a review of CJI, which will happen this spring, and that will be an opportunity for the Agencies to express their views and for Inspectors themselves to re-think their role and offer a new prospectus. It may be that in due course a Committee of the Assembly will want to discuss what it is looking for from CJI. I hope that you will take the opportunity this afternoon not just to discuss the specific inspection programme but to register any thoughts you have about the direction the Inspectorate should be going in more generally. We shall faithfully feed in any such thoughts to the review.

Before I leave the work of the Inspectorate may I, as I always do, sincerely thank the other Inspectorates who have worked with us so professionally and so co-operatively in the past year, especially HMIC, HMCPSI, HMI Prisons, ETI (who have now formally taken over responsibility for inspecting education and training in the prisons) and the RQIA. This year I must add to the list the Garda Síochána Inspectorate, with whom we have co-operated in our parallel reviews of roads policing North and South of the border. We have also co-operated with the Human Rights Commission and NICCY, and we greatly value all those relationships.

Devolution

The coming year may see the devolution of policing and criminal justice as envisaged in the Good Friday Agreement and the St Andrews Agreement. It is important that this Conference should show that it respects the position of the DUP: clearly, devolution can not happen until the First Minister and Deputy First Minister jointly judge that the time is right. But it is imperative that we plan for the eventuality of devolution, even if the timing is uncertain, and indeed the Committee of the Assembly chaired by Mr Donaldson is doing just that.

A cautious approach to devolution is understandable. The devolution of policing and criminal justice is not like the devolution of any other area of policy. It is radically important, because this - not health or agriculture - is the area of policy that was primarily contested. Policing and criminal justice is the essence of statehood. Devolving it is difficult, because the borderline between civil policing and national security is fuzzy and reaches into many parts of the justice system.

Nevertheless there is a strong imperative to proceed, not just because it is a part of the settlement but because in the long run you cannot really separate policies on policing and criminal justice from the rest of social policy. The Secretary of State, the Attorney General and the Lord Chancellor *could* continue to administer policing and criminal justice in Northern Ireland but they would have to consult the Assembly at every turn;

and in many areas of policy (community safety, for example, or health provision in the prisons) they would need to co-ordinate with Ministers of the Executive. Parallel arrangements would not make for a coherent system of government.

Aideen Gilmore from CAJ will be talking later this morning about a number of issues that arise, but there is one particular aspect of the devolution arrangements which I want to mention. The arrangements that have been devised for the management of the criminal justice agencies are very strong – and rightly so – in guaranteeing the independence of the agencies. If the electorate is going to be willing to take the major step of transferring responsibility for justice to the Assembly they need to be assured that the vital decisions to arrest, to prosecute and to convict and sentence will be free from any political interference. There can be no question but that the proposed arrangements are sound in that respect.

But though independence is vitally important, so is a coherent criminal justice system. We need to be sure that the new arrangements are also going to be satisfactory in terms of public accountability and in terms of the effective management of the CJS. Perhaps a little more thought needs to be given to the mechanisms for co-ordinating policy and allocating resources, for setting targets for the system as a whole and for switching resources between agencies when necessary. I very much hope the arrangements for effective management and accountability of the criminal justice system can be clarified in the work which the Donaldson Committee has in hand.

NIACRO did us a great service recently by inviting over the extremely clever Edinburgh academic Lesley McAra to talk about some of the lessons from devolution in Scotland (about which we shall be hearing more after the coffee break). She identified two risks in particular that she suggested we needed to guard against. One was the temptation for politicians taking over responsibility for policing and criminal justice for the first time to incline towards ‘popular punitivism’ (though I think she was saying that it was really more a matter of the rhetoric than of the substance). Sounding tough on crime is always likely to play well with an electorate. The other was the temptation (to which the Scottish Executive had succumbed) to show that they were being active by creating a proliferation of new bodies, leading to extremely complicated funding arrangements.

I am optimistic that in Northern Ireland we shall maintain our thoughtful and considered approach to criminal justice. The Nolan show provides us all with a graphic reminder of the way the debate could go if we let it. Politicians have their constituencies to manage, of course, but at the end of the day I am sure everyone will want to be pragmatic about policing and criminal justice. The first question is ‘what works?’ and the second question is always ‘how much does it cost?’, and the need for cost-effectiveness will in the end keep us all on the right track.

The main benefit of devolution, I believe, will be the improved governance of policing and criminal justice. More oversight and more scrutiny will be good, because the democratic accountability of the criminal justice system has been attenuated under direct rule. But we need to bear in mind that this is a small jurisdiction, in which the criminal justice agencies are headed by relatively small teams of individuals who could

easily be overwhelmed by too much scrutiny. It will be important that those responsible for holding the agencies to account do it rigorously but at the same time exercise self-restraint. And of course the Inspectorate will want to play its part in that. We need to keep things manageable, maybe rationalising some of our supervisory bodies as we move forward.

We are going to have an open session for discussion of devolution-related issues at the end of this morning, and we shall want to focus on:

- What are the challenges and opportunities which devolution of policing and criminal justice will bring in your area?
- What impact do you see the devolution of policing and criminal justice having on the criminal justice system in the short and in the longer term?
- What steps should the agencies be taking collectively and individually in preparation for the changes?

The Past

Another thing that happened in the past year was the setting up of the Eames-Bradley Consultative Group on the Past. I had the pleasure of meeting the Group to give evidence, and because I believe this subject is of such importance and it is topical, because the public consultations are now in progress, I would like to give you a flavour of what I said to them.

When I lived in South London and worked at the Treasury one of my cycle routes to work used to go past a Victorian bathhouse (for washing, not swimming) near the Elephant and Castle. It was built by the worshipful Mayor and Aldermen of the Borough of Camberwell. The Victorians had their faults, but this always struck me as a marvellous benefit to confer on the residents of that dismal part of London for the health and happiness of poor people. Over that bathhouse those admirable Victorians had placed the inscription SALUS POPULI SUMMA LEX, 'the welfare of the people is the highest law'.

That sounds like a doctrine of pragmatism over principle, and the reality is that the justice system *is* basically pragmatic and isn't always about justice in a very pure sense. However we are all aware of the dangers of selling out to pragmatism: if you just do what is in the interests of the public without regard to justice for the individual it makes for a very unattractive sort of society. A good society holds the two things in tension with one another: at the end of the day the welfare of the public comes first, but we never lose sight of what is just.

A couple of examples. I think the debate that goes on around the alleged need to extend the time terrorist suspects can be held without charge is a credit to the country. No-one is saying that this is a trivial matter and that the police should just be able to lock people up on suspicion. The presumption among all parties is that people should

not be held without charge, and the question is whether there is sufficient evidence to prove the need for a longer period of detention. At the end of the day we are willing to do what needs to be done, but we don't lose sight of justice, and we are willing to place all sorts of protections around detention.

Second example: the current legislation on public protection sentences, where we are introducing sentencing of dangerous offenders not just according to what they have done but according to what they may do in the future: time in custody will depend on an assessment of dangerousness. That makes perfect sense, but we are all conscious that it is potentially in tension with justice for the individual, and, while I am sure the policy is right, equally it will be right for the Human Rights Commission to keep a close eye on how the new powers are used.

The justice system does what it needs to do, but it must never sell out to pragmatism. And that is what I told Eames-Bradley. It is vitally important to do something about the Past, to ensure that the present settlement endures. There are limits to what the criminal justice system can contribute to the process, but it must do what it can.

The justice system has to be scrupulously fair between individuals, but it does not have to take up every case that it could. If anyone wants to use the justice system to keep grievances alive rather than to resolve them, they need to understand that the system will not necessarily be on their side. At the end of the day it has no absolute obligation to be even handed between trouble-makers and peace-makers: it may quite properly take the side of the latter, if that is in the public interest.

We have to look to the interests of the whole society, and the next generation of our society, and that may mean hard decisions.

People often think justice is hard-edged and clinical, and forgiveness is something soft and cuddly. But the opposite is the case. Justice makes due allowance for human frailty: forgiveness is tough and pragmatic.

I am not going to repeat in detail the points I put to Eames-Bradley, some of which were offered in a personal capacity, but basically:

1. The criminal justice system has limited ability to help in resolving the legacy of the past. We need to look for alternative approaches.
2. People who seek 'justice' are often looking for different things. The eventual solution will need to include a range of remedies, including compensation and other support for victims, the recording of individual histories, and possibly some restorative conferencing.
3. However it would be wrong to place too much weight on restoration at the individual level. The burden needs to be taken off individuals by means of a strong agreed political declaration. (That is the hard-edged 'forgiveness' in the sense of a mutual cancellation of obligations.)
4. A new mechanism needs to be set up to bring together and make best use of the resources available.

Models of management

I want to say one other thing in this speech, since it is the last I shall be giving at an event like this. It takes me back to the report we did on *Target setting and performance management*. In that report you may remember we pointed out that there are many potential problems with managing organisations through targets, and innumerable ways in which target-setting can go wrong.

I would like to suggest what I think is wrong with the whole target-based approach to management. It works in some places and for some specific purposes, but basically as a way of running organisations it is flawed. I call what follows the 'Cain and Abel' theory of management.

You remember there was serious sibling rivalry between Cain and Abel because Cain was a settled farmer and Abel was an adventurous nomad. The management theory from which target setting emanates comes from the military, who are basically free-rangers like Abel. They live by short-term, highly energetic projects. The 'target' is literally in the cross-hairs of their rifle.

But running organisations is actually more like farming or gardening: it's a long-term business, which has no defined end-point. It goes in cycles, and you have to plan ahead and take stock from time to time, but you never win or lose in relation to the business as a whole, you just go on. You go on patiently developing your assets, learning new techniques, tending and keeping every part of the garden neat and improving its productivity. Every now and then there is a project which needs the 'Abel' treatment, and targets can be useful for focusing attention on priorities, but the main business is in 'Cain' mode.

That is true for a small organisation like CJI as much as it is for a big one. It is the way I see Brendan managing this little outfit. He is, as John Le Carré would put it, a Constant Gardener.

It is true at the political level, too, I suspect. Voters are smarter than we think. One of the reasons why the public is becoming increasingly sceptical about politics is that they know that real government isn't like a series of '*Mission Impossible*s'. There is a place for targets, but they are not the heart of the business.

What has CJI achieved?

The question we are bound to ask as the bottom line is whether CJI has done any good. CJI has been fully operational for three and a half years now. What has it achieved?

There is a lot it hasn't done. It hasn't yet really had an impact on the management cultures in the agencies, most of which still need to become more self-critical and more customer-focused. The best self-assessments we have come across were not from the mainstream criminal justice agencies but from the Police Ombudsman's Office and the

DOE's agencies. The system is still too inward-looking, too preoccupied with its own interests, too little prepared to see itself as a servant of the community. Maybe we should start talking about the criminal justice service, rather than system? The need for customer focus is why I have invited Steve Costello to talk to us this afternoon.

And then, where we have done things, we generally cannot claim the credit for it. We have done a lot of work on public protection, for example, publishing three reports over the past three years on the management of sexual and other dangerous offenders. But it is not because we recommended it back in 2005 that the Government is now legislating to end automatic 50% remission and place the inter-agency arrangements on a statutory basis. I am sure we have helped to push public protection up the agencies' agenda, and we may have contributed to the policy, but the main driver has been public opinion, especially in the light of the tragic murder of *Attracta Harron*.

Avoidable delay in the justice system is another example. The Government had been wrestling with this acute problem for many years. We produced a report which focused attention on it and led to a fresh inter-agency initiative with strong Ministerial support. I believe there are signs coming from the Ballymena pilot that the effort may be beginning to bear fruit. But if there are improvements, the credit will rightly belong to the agencies, not to CJI.

Our reports on Hate Crime and on Victims and Witnesses have also led to new initiatives. We have sometimes felt that the agencies were a bit slow to respond to our proposals, and that the responses were sometimes a bit bureaucratic and wordy rather than action-oriented, but nevertheless things are happening. We Inspectors are sometimes inclined to be impatient, but we need to be Constant Gardeners and to recognise that things take time to change, especially in a small jurisdiction where many of these initiatives will fall on the shoulders of the same small cadre of senior officials.

This continues to be a great job, and I am constantly amazed to have the privilege of doing it. It is a job of great variety and many delights. Looking back at the year, though, the best things have not been the dinners at Hillsborough or the glittering receptions in the Royal Courts of Justice, but clacking together coconut shells at the Juvenile Justice Centre's carol service and being told off by Sr Oona for not keeping time. Or the time when I had a meeting with some Republicans after the *Ard Fheis* resolution on policing, and they said to me, "You have to understand, Kit, that in our community we like to avoid criminalizing young people wherever possible", and I was able to say, "Well, welcome to the criminal justice system!" It is the sense of being part of a body of people, many of them in this room today, who are all patiently working away like Constant Gardeners to put Northern Ireland back together and to make it the just and peaceful community it should always have been.

Sir Patrick Cormack

It will fall to Brendan now to introduce our next speaker, Sir Patrick Cormack, but before he does so can I pre-empt him by saying how delighted I am to have Sir Patrick with us today. It is appropriate to invite him this year as the Northern Ireland Affairs

Committee will soon be handing over its remaining responsibilities to a Committee of the Assembly, and I note that they are to have a meeting with the Donaldson Committee this afternoon. I just want to say how much I have admired the energy, the thoroughness and the breadth of vision with which Sir Patrick has led the Committee. The range and quality of the Northern Ireland Affairs Committee's reports has done Northern Ireland proud, and we are all very much indebted to the Committee and in particular to its Chairman.

Thanks to colleagues in CJI

Can I just say, finally, a word of thanks to my colleagues in CJI? We enjoy great morale and *esprit de corps* – I do not think working in CJI is 'just a job' for any of us – and it is a great privilege to work with them.

Kit Chivers**17 January 2008**