

Accountability in the criminal justice system in Northern Ireland

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Good afternoon. It is a pleasure to speak with you today about the challenges facing the justice system in relation to governance and accountability and how this might change under a devolved setting.

I want to talk particularly about the relationship between accountability and independence, and indeed the independence of the agencies and their management or governance as a whole. I would also like to distinguish between the different types of accountability, although they are obviously all related to each other:

Firstly, there is political accountability. That's the accountability posed by the existence of democratic institutions and exercised by politicians.

Then there is audit accountability, by which I mean systematic accounting for money and performance.

The third type is management accountability – the 'buck stops here' accountability which means taking responsibility for specific decisions and in particular, for getting things wrong.

Finally, there is the accountability provided by being ready to give an explanation of what you are doing on a continuous basis, which is particularly interesting in the context of the often trumpeted 'independence' advocated by criminal justice agencies.

All of those are really important characteristics for criminal justice agencies. They are important for all public bodies. But openness and accountability are especially important in the justice field because justice is about the exercise of the power of the state, which is an inherently dangerous thing. If 'justice' is done in secret and without reasons being given, it very rapidly ceases to be justice at all.

In the past, there has been an absence of scrutiny and debate in democratic fora, and I shall come on to talk about how I hope the devolution of policing and criminal justice will help to rectify that.

The media, of course, provides a form of accountability, but they work to their own agenda; and the Courts – including the European Courts – also provide a means of holding public bodies to account, but they too are no substitute for a political process.

Political accountability

If you want accountability, you need to have democratic institutions that can perform the task of holding the agencies to account. And that has been the problem in Northern Ireland.

None of us have a crystal ball in relation to the implementation of devolved Government. I have taken as a working assumption, that it will be here sooner rather than later.

The introduction of devolved policing and justice in Northern Ireland will mean an entirely new phase in the development of the justice system here. Whether this is perceived as an opportunity or a threat will depend on where you stand in the debate. For me, it's an opportunity as it will change the dynamic, context and focus of justice agencies. This can and should provide a platform upon which the justice system of the future can be built.

Having a local Minister in Stormont five days a week, with access to the local community and the press, with an Executive Committee that is hungry for space, media airtime and column inches, will present a huge challenge to the status quo.

As the Lord Advocate of Scotland said last year at CJI's Stakeholder Conference "*criminal justice, more than any other area of Government activity, is vulnerable to the tyranny of the headline, of the last bad case, of the most recent horrific crime.*" It has been the case in Scotland that circumstances have combined to provide for more searching scrutiny of performance.

As the Lord Advocate said, accountability was much easier under Westminster control as "*there were more competing attractions to engage the interest of politicians down there*".

Under a devolved administration there's no doubt that all criminal justice organisations will come under increasing and relentless scrutiny. This is no bad thing. Particularly in Northern Ireland where the criminal justice system has been a contested space for so long. This is not a choice option.

Good governance demands that we engage more fully with the public rather than with a few stakeholders. This is part of the process of developing confidence through building knowledge, understanding and debate.

More importantly, there will be no automatic attachment to the policies and procedures of direct rule and this itself, will mean that a new dynamic will become apparent.

Greater accountability will inevitably lead to greater questioning of the way things are done, and less acceptance of the way things have been done in the past. We saw this with the introduction of the Review of Public Administration across the Northern Ireland Civil Service.

At a different level, there will be a different kind of accountability imposed on local Ministers as they help to shape responses to law and order issues.

Seán Alyward, Secretary General of the Department of Justice, Equality and Law Reform in Dublin said recently that a new Minister in Northern Ireland can expect *“to face daily calls for action...often on the foot of the understandable public sentiment that something must be done”* and in doing so, they can expect, as he said *“more brickbats than bouquets”*.

So, what questions will govern the debate moving forward? A thoughtful and responsive consideration of the issues or a knee jerk reaction to the headlines that appear in the Sunday papers... a weekly diet of ‘paedo accused of stalking play parks despite court ban’... that will inevitably focus political minds? It remains to be seen.

Audit accountability

One of the particular areas of potential interest is the cost of the criminal justice system, as the current budget of £1.3 billion will make it the third largest after health and education. This will give it a prominence and profile that will be different to before. Questions are already being asked of justice agencies as they prepare for devolution, such as:

- Why is the cost of keeping someone in prison in Northern Ireland nearly three times as expensive as elsewhere?; and
- Why is Northern Ireland’s expenditure on legal aid nearly double that of England and Wales?.

These things are part of the legacy of the past, and they cannot be expected to change overnight, yielding a huge ‘peace dividend’. But it is important that there should be steady public pressure for improvement, on a realistic timescale, or progress is likely to be very slow. And that brings us to the question of accountability.

One of the reasons why progress is slow at present is the extent to which the criminal justice agencies are shielded from accountability under the current regime.

The arrival of the criminal justice system as part of the devolved institutions will give it a prominence and profile that will be different to before.

Particular questions that may arise include:

- looking at the balance of resources across the criminal justice system. Do they reflect political priorities? Do we have a system that is based on a historical allocation of resources rather than a planned approach to service delivery?;
- what about staffing, behaviours and 'the way things are done around here' - the culture. Are they what is required to deliver a local vision for the policing and justice? and
- it will open up the debate about value for money in a more focused way, with a specific emphasis on what outcomes we want from the criminal justice system.

It may also mean a more coherent focus on the linkages between the criminal justice agencies and the devolved departments, though of course this is already happening. No-one could look at the issue of mental health in prison, for example, without considering the role of the health service in Northern Ireland.

Inevitably, the challenges of the future will require a more outward looking criminal justice system. Can we really address the problems of youth offending without considering why young people are excluded from school, and their progression along a conveyor belt that for many, stops in prison? Of course I am not suggesting that these issues do not focus people's minds, or that co-operation is not taking place. I am simply saying that under devolved Government, these issues will come into a sharper focus.

Management accountability

Accountability for management and resources is also likely to change under a devolved setting.

For example, the Policing Board holds the Chief Constable to account for expenditure and performance against the Policing Plan. I do not want, for one minute, to detract from the good work the Policing Board does.

But, despite having 10 political representatives on it, the Board doesn't look at the issues in the way the Assembly would. There is no immediate pressure of democratic accountability which asks whether we should be spending so much on this particular service, rather than on health or education, compared to what we are getting from each service. The Policing Board holds the police to account within a narrowly defined frame of reference.

Other agencies of the criminal justice system have comparatively little democratic oversight at present. The Public Accounts Committee at Westminster has hardly ever (has it ever?) examined areas of the criminal justice system in Northern Ireland.

The Northern Ireland Affairs Committee has done stalwart work, and some excellent thematic reports have been issued, but it is not its job to monitor the criminal justice system on a continuing basis.

CJI inspects the agencies and writes reports, but there is no forum at present, in which its reports can be debated. The public in Northern Ireland is dependent on

the media to provide the public forum, and of course the media is highly selective about which subjects it thinks worth its while to cover.

That is perhaps the strongest argument for devolution of policing and criminal justice.

The Assembly and, in particular, its Justice Committee, will provide the forum for regular questioning of the agencies, and for the use of this Inspectorate's reports and those of other bodies'.

CJI has already found the value of being able to give evidence to Committees as Inspectors have in the past addressed the Environment Committee and Assembly and Executive Review Committee.

The other powerful argument for devolution is the coherence argument, the fact that criminal justice interfaces with many areas of social policy which are already devolved, such as health, education, social housing, community safety and social services.

One of the problems in securing adequate accountability for the performance of the criminal justice system, is the difficulty of measuring the quality of the service being provided. It's a particular problem with policing, because the range of activities is so vast, and often, the main measures of success are the degree to which things do not happen.

If we have a year without any serious further offences being committed by high risk sex offenders, does that prove the effectiveness of our management arrangements, or is it just good fortune? To be honest, there will always have to be a degree of luck about it, because we know, that no arrangements are ever, going to be foolproof. We are always just managing down risks, not eliminating them.

There may be statistical validity in tracking crime trends of increases or falls in particular types of crime, but often there are external factors behind the trends, such as the technical advances in car and home security, the greater availability of cheap drugs, and changing social trends which influence patterns of offending.

Independence and accountability for individual case decisions

The most difficult area, both now and probably under any devolved regime, is the question of accountability for individual case decisions.

At management level, the principle is very clear. The police, prosecution and courts have operational independence, so that no Minister can, or should ever be in a position to order the arrest of someone, influence the decision of the Director of Public Prosecutions to prosecute anyone, or influence the decisions of a Court.

Independence in relation to individual case decisions is perfectly compatible with the co-ordination of policy and resources. There should be no problem about guaranteeing that in whatever structure we end up with. I do not think we should exaggerate the difficulty of ensuring that independence or, let it lead us into unnecessarily complex administrative solutions. The problem arises at the other end

of the process, when questions are asked about whether the right decisions were taken.

As far as the judiciary is concerned, there is a high degree of scrutiny and accountability through the appeals process, which is (normally) held entirely in public. Judges give their reasons fully and rigorously. There is little scope for politicians to add value through the discussion of individual judicial decisions.

The media will sometimes pick up a case where the sentence seems unduly lenient, but unless one has studied the case, heard the evidence and read the judge's summing up carefully and has knowledge of the precedents and sentencing norms, it is hazardous for any person to second guess a court.

It is reasonable for lay persons to raise questions, but it must be for the Public Prosecution Service and for the Appeal Court to decide whether there is anything to the complaint.

As regards the police, the police no doubt make mistakes, but PACE is there to make sure that most of the time, no great harm is done. If we can set to one side the current debate about lengthening the period people can be held without charge for terrorist offences, for the general run of offences, nobody is held for an unreasonably long time just on the say-so of the police.

There is a right to bail, unless there are compelling reasons to the contrary. And any misconduct by the police is subject to the independent scrutiny of the Office of the Police Ombudsman for Northern Ireland.

The main complaints about the police that are likely to surface at the political level would be complaints about failure to investigate properly, or failure to handle forensic evidence properly (as we heard in the Seán Hoey trial).

These are all matters that can be looked at on a case-by-case basis by the Police Ombudsman, and there should be a strong presumption that that is where they belong. The Assembly and its Justice Committee would not have much to contribute until the Ombudsman had reported, at which point, they could debate their report and ask the Chief Constable whether or not he proposed to act upon it.

That leaves the Public Prosecution Service, where at present there is rather limited public accountability for individual decisions. It has to be recognised that the business of giving reasons for prosecutorial decisions, and specifically for decisions not to prosecute, is a complex field, and that the PPS has improved in this regard in recent years, partly in response to the recommendation of the Criminal Justice Review on this subject.

The Director made an important on-the-record statement about 18-months-ago. It dealt with the Service's practice regarding the giving of reasons, and explained the constraints the Service was under, where for example, the safety of individuals was at stake.

Nevertheless, there is nowhere at present, and there will be nowhere under the devolution proposals, where any person – either the Director of Public Prosecution or the Attorney General – can be questioned about such decisions.

These are activities which are conducted legitimately on behalf of all of us. If MLAs have questions, they should have the opportunity to ask the responsible agencies face-to-face, and receive an honest account of the policies and practices of the agencies, without of course, having access to sensitive operational detail or going into matters of national security.

They should also hear from, and be able to question, the Surveillance Commissioner and the Investigatory Powers Commissioner for Northern Ireland, to check that rigorous inspections are being made, and that the rules are being complied with.

Complaints: accountability for the handling of individual cases

In addition, I would like to say a word about the importance of good complaints procedures as a tool for ensuring accountability.

The Criminal Justice Review said that complaints handling was “*an essential part of effective accountability mechanisms*”, and it recommended (Rec. 16) that systems should be “*accessible, understood, administered sensitively and expeditiously, and having an independent element where appropriate*”.

CJI undertook a review of complaints handling in the criminal justice system last year. The most important area is of course, complaints against the police, which are handled by the Police Ombudsman, whose office we had inspected separately a year earlier. The service provided by the Police Ombudsman is a model of its kind, and is internationally recognised as good practice.

Policing is the most important service, because that’s where the overwhelming proportion of the public’s contact with the criminal justice system takes place.

However, other services deserve attention too. And here we found that the picture was inconsistent.

Most criminal justice agencies had a system of appeal or independent oversight of their complaints system, but the oversight bodies had different remits, and different legal status.

Inspectors have nothing against the concept that independent agencies should be able to have their own bespoke complaints systems which suit the requirements of their businesses.

We do believe however that there is scope for developing a system of unified, independent oversight of complaints within the compact jurisdiction of Northern Ireland. We recommended that consideration should be given to forming a single complaints oversight body to fulfil the role of an external, independent assessor of complaints, for all the main criminal justice agencies in Northern Ireland.

Oversight and scrutiny – the role of CJI

Finally, this brings me to the role and responsibilities of scrutiny bodies. First of all, Northern Ireland is well populated with bodies which provide the raw material for management accountability.

These include Inspectors, auditors, monitoring bodies like the Human Rights Commission, the Committee on the Administration of Justice, British Irish Rights Watch, Ombudsmen and complaints Commissioners.

Recently, I counted 16 separate bodies that scrutinise the Northern Ireland Prison Service alone. Given this level of external scrutiny, it's a reasonable question to ask of what impact it has, and what role it should play?

The Assembly is going to mean a sharp increase in the amount of governance the criminal justice system will face. And that is all to the good. 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 so rigorously, but at the same time, exercise self-restraint. We need to keep things manageable - and of course, this Inspectorate will want to play its part in that.

Someone needs to plan for the criminal justice system as a whole, to determine consistent policies on subjects like for example Avoidable Delay, Hate Crime, and the treatment of Victims and Witnesses.

Someone needs to allocate and re-allocate resources to the agencies, as there is no hope of getting efficient and effective management if the different criminal justice agencies are each allowed to go their own way, determine their own priorities, and bid for funding independently of one another.

There is a real risk of over scrutiny that serves to disable organisations that rather jealously guard their independence and their right to make enquiries as they see fit...and there is an obligation to ensure that we avoid placing an unnecessary burden on organisations as we seek to improve performance.

I can only speak directly for the Criminal Justice Inspectorate. In undertaking our work, we should conform to Government policy on inspection. Cabinet Office Guidance on the principals for inspection of public services include issues such as the need to:

- focus on outcomes;
- have regard to value for money;
- encourage continuous improvement; and
- take a user's perspective when assessing service provision.

Increased public confidence in the criminal justice system ultimately depends on the capacity of the justice system to deliver 'what it says on the tin'. There should be a

shared agenda between the inspected agencies and the Inspectorate around securing improvement in how services are delivered.

In my view, the role of Criminal Justice Inspection is to work in partnership with other inspection organisations to provide assurance that the way people are treated within the system in Northern Ireland, is in line with good standards and practices adopted elsewhere.

Secondly, I see an agenda that focuses more explicitly on the management challenges facing the criminal justice agencies as they get to grips with delivering more for less within a devolved setting.

This Inspectorate is also the only unified inspection body in the United Kingdom.

This puts us in a unique position to identify issues that are common to some or all agencies, and to promote inter-organisational good practice around areas such as domestic violence and youth offending.

I believe the agenda should also include the linkages that exist between the criminal justice agencies and devolved Departments.

We have used these principals to develop our inspection agenda which we launched in January.

So in conclusion, the messages I would like to leave you with this afternoon are:

- accountability and scrutiny are essential components of a modern justice system;
- that this dynamic is likely to change under a devolved setting when local accountability, in whatever form it takes, will mean a different way of doing business, and a different questions being asked; and
- finally, while like death and taxes scrutiny will always be with us, I believe it should be enabling for organisations rather than disabling. I want the organisations we work with to succeed in what they do.

CJI can assist with this as it occupies a unique space in the landscape, by providing a panoramic view across the criminal justice system.

Thank you.