

# 15 Organisation and Structure

## Introduction

- 15.1** Our terms of reference require us to consider “... the structure and organisation of criminal justice functions that might be devolved to an Assembly, including the possibility of establishing a Department of Justice, while safeguarding the essential independence of many of the key functions in this area”. They also require us to consider “... measures to improve the responsiveness and accountability of... the criminal justice system”.
- 15.2** This chapter sets out the current organisation of criminal justice functions in Northern Ireland, and considers how they might be organised in the context of devolution of responsibility of criminal justice functions to the Northern Ireland Assembly. In doing so it draws upon what has been said already in this report in respect of elements of the criminal justice system, most notably the need to protect the independence of the judiciary and the prosecution. We consider the accountability and responsiveness of the criminal justice system. We take account of the need for structures that allow for the efficient and effective management of the system and address the important issue of tackling delay in bringing cases to trial.
- 15.3** We note also paragraph 7 of the Policing and Justice section of the Belfast Agreement which states:
- “The participants also note that the British Government remains ready in principle, with the broad support of the political parties, and after consultation, as appropriate, with the Irish Government, in the context of ongoing implementation of the relevant recommendations, to devolve responsibility for policing and justice issues.”
- 15.4** We have, therefore, worked on the assumption that we should seek to bring forward proposals that are appropriate to the political and institutional context of Northern Ireland envisaged in the Belfast Agreement. We sought views in our consultation paper on whether and in what form criminal justice functions should be devolved to the Northern Ireland

Assembly, and on how those functions should be organised. We also sought views on what mechanisms agencies might use to draw out the views of the community and individual citizens on the services they provide, on what the role and nature of independent scrutiny should be, and on what more could be done to improve the accountability and responsiveness of criminal justice agencies.

- 15.5** We recognise that what we say in this chapter goes wider than criminal justice and addresses the administration of civil justice. Members of the judiciary are, for example, not only concerned with criminal matters; they also dispense civil justice.

## Human Rights Background

- 15.6** There are no international human rights instruments that deal explicitly with the matter of how a criminal justice system should be structured and organised. However, the *European Convention on Human Rights* in Article 1 requires states to secure the rights and freedoms set out in the Convention. It is implicit, therefore, that states must have in place systems which enable them, for example, to protect everyone's right to life (Article 2), liberty and security of person (Article 5) and private and family life (Article 7).
- 15.7** In the case of *Osman v the United Kingdom*<sup>1</sup> the European Court noted that: "... the first sentence of Article 2(1) enjoins the state not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction". The Court also noted that the primary duty of a state was to secure the right to life by putting in place an effective framework of criminal law to deter the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of the law.
- 15.8** Some of the instruments bear upon the administration of justice, as was noted in Chapters 4 and 5 in respect of the prosecution and judiciary (particularly in respect of the need for independence), and in Chapter 10 in relation to the administration of juvenile justice. They do not, however, provide much by way of direct guidance on how to organise and structure criminal justice systems. What is clear is that in designing criminal justice structures due care must be taken to ensure that those structures do not of themselves inhibit the state in fulfilling its obligations to protect the rights of its citizens. This suggests that the criminal justice system should be organised in such a way as to ensure that there are:
- mechanisms to develop effective criminal law;

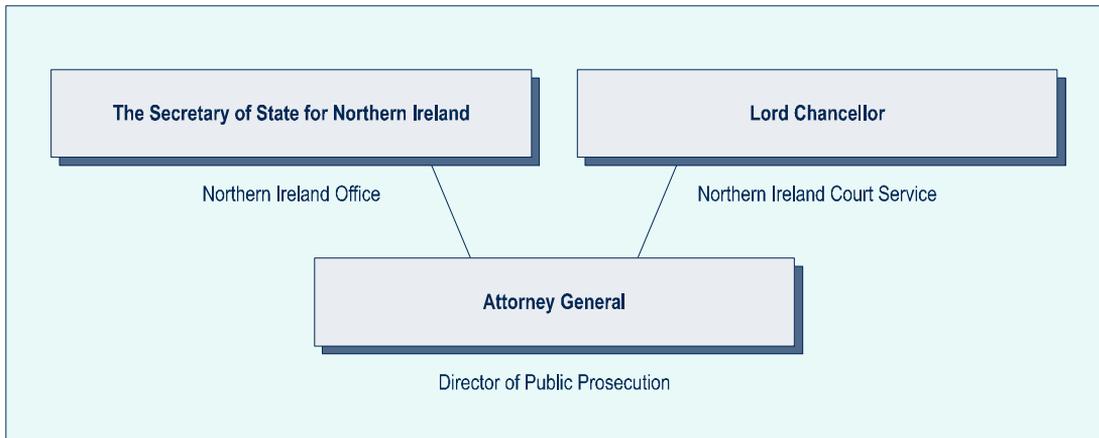
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<sup>1</sup> *Osman v United Kingdom*, 28 October 1998, Reports 1998-VIII.

- mechanisms for the prevention, detection, prosecution, adjudication and punishment in respect of crime, and that these are scrutinised regularly to ensure that their effectiveness and adherence to human rights norms are maintained and developed; and
- mechanisms to ensure that the elements of the criminal justice system work together in a co-operative and co-ordinated way in delivering services and upholding rights and freedoms.

**15.9** The avoidance of unnecessary delay is a human rights principle with direct bearing on the courts. *The European Convention on Human Rights* states that, “everyone arrested or detained... shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial”. This is accompanied by the need to bring those deprived of their liberty speedily before a court so that the lawfulness of their detention can be tested.<sup>2</sup>

*Organisation of the Criminal Justice System*



## Current Position in Northern Ireland

**15.10** The publicly funded elements of the criminal justice system are responsible to three Ministers: the Secretary of State for Northern Ireland, the Lord Chancellor and the Attorney General.

**15.11** The criminal justice system in Northern Ireland has evolved broadly in parallel with that in England. It is similar in many respects to that in the Republic of Ireland, which also has its roots in the English system. The criminal law within which it operates is a mix of common law, Acts of the Irish Parliament prior to 1800, Acts of the Northern Ireland Parliament, Acts

<sup>2</sup> Livingstone and Doak, Research Report 14, sections 1.4 and 1.7.

of the Westminster Parliament, and Orders in Council made since 1972. In general, changes to the criminal law in Northern Ireland have remained in step with those in England and Wales, although some differences arise due to the distinct circumstances in Northern Ireland.

## **SECRETARY OF STATE FOR NORTHERN IRELAND**

- 15.12** The Secretary of State for Northern Ireland has responsibility for the content of the criminal law in Northern Ireland and for the overall effectiveness of the criminal justice system. The Secretary of State also has responsibility for policy, legislation and the resource framework within which policing, prisons, and probation are delivered, together with policy on victims, crime prevention and community safety, and juvenile justice. The Secretary of State is responsible for the Compensation Agency, the Forensic Science Agency for Northern Ireland, State Pathology, and the provision of staff, offices and other resources for the Department of the Director of Public Prosecutions for Northern Ireland. Until 1997 the Secretary of State was responsible for considering alleged miscarriages of justice and for referring cases back to the Court of Appeal, where appropriate. On 31 March 1997 this responsibility in Northern Ireland and in England and Wales passed to the independent Criminal Cases Review Commission.
- 15.13** The Secretary of State is also responsible for the provision of certain facilities and services to enable sentences of the courts to be carried out, including prisons, probation and juvenile justice arrangements. The Northern Ireland Prison Service is a next steps agency within the Northern Ireland Office, with a Director General responsible to the Secretary of State for efficient and effective service provision. Probation is run by an independent Board (a non-departmental public body), appointed by and working within a strategic framework set by the Secretary of State. Juvenile justice arrangements have been the subject of recent legislative change and the introduction of a new strategic approach, intended to place more emphasis on diverting children away from the criminal justice system and custody.
- 15.14** In addition, under direct rule, the Secretary of State for Northern Ireland is responsible for certain aspects of civil law reform, which is delivered by the Office of Law Reform within the Department of Finance and Personnel.

## **THE ATTORNEY GENERAL FOR NORTHERN IRELAND**

- 15.15** The Attorney General for England and Wales is the chief law officer of the Government, with responsibility for advising government departments and representing the Government's interest in important legal disputes. The same person fulfils the functions of Attorney General for Northern Ireland. In Northern Ireland the Attorney is responsible for the

superintendence and direction of the Director of Public Prosecutions for Northern Ireland. The Attorney's functions in respect of the prosecution are set out in more detail in Chapter 4 of this report.

## THE LORD CHANCELLOR

- 15.16** The Lord Chancellor is a Minister, the Speaker of the House of Lords, and the senior judge when that House is acting in its judicial capacity. The Lord Chancellor exercises executive functions in Northern Ireland through the Northern Ireland Court Service, which is a unified and distinct civil service of the Crown. Those responsibilities in relation to judicial and tribunal appointments are set out in Chapter 6. The Lord Chancellor is responsible for policy, legislation and resources in respect of the administration of the civil and criminal courts, for civil and criminal legal aid, and for aspects of civil law.

## ACCOUNTABILITY AND INSPECTION ARRANGEMENTS

- 15.17** The criminal justice agencies in Northern Ireland are held accountable in a number of ways. They are accountable through their responsible Ministers to Parliament for the way in which they provide services, by way of parliamentary questions, scrutiny by select committees, and scrutiny of proposed legislation. They are accountable for the proper use of financial resources to Parliament, for which there are well-established audit systems. They are also directly accountable to the public, by way of Citizen's Charter commitments, annual reports, scrutiny by inspectorates, complaints mechanisms, and through judicial scrutiny of their actions. We have talked about these accountability mechanisms for each agency in the relevant chapter in the report.
- 15.18** One mechanism for achieving independent scrutiny and public accountability is through inspection. In Northern Ireland the RUC and Prison Service are subject to scrutiny by the HM Inspector of Constabulary (on a statutory basis) and HM Inspector of Prisons (by agreement) respectively. The Probation Service and juvenile justice centres are inspected by criminal justice specialists within the Social Services Inspectorate of the Department of Health and Social Services. The Forensic Science Agency for Northern Ireland is subject to inspection by the United Kingdom Accreditation Service, the body responsible for assessment and accreditation of organisations performing calibration, testing or sampling. Other agencies, such as the Northern Ireland Court Service and the Department of the Director of Public Prosecutions for Northern Ireland, are not subject to functional inspections at present, although they are subject to parliamentary scrutiny and financial audit.

## **INTER-AGENCY MACHINERY**

**15.19** In addition, there is inter-agency machinery designed to encourage co-operation and co-ordination across the criminal justice system. Ministers representing the Secretary of State for Northern Ireland, the Attorney General and the Lord Chancellor meet regularly to oversee the criminal justice system as a whole. They are advised by a Criminal Justice Board comprising the heads or senior officials of the main statutory organisations in the criminal justice system, with responsibility for developing the overall strategy for the criminal justice system and dealing with issues of inter-agency interest. Such issues include action to reduce delays in the criminal justice process and devising a strategy for developing information technology within criminal justice agencies in order to enhance the speed and quality of information flow between them. In addition the Criminal Justice Issues Group, which comprises representatives from the Bar Council, the Law Society and the judiciary, as well as the members of the Criminal Justice Board, considers important issues across the criminal justice system as a whole. The Board and the Criminal Justice Issues Group are supported by a common secretariat.

## **DELAY**

**15.20** The reduction in the time taken for court cases to be concluded is a key element in the Government's plans for improved efficiency in the criminal justice system and is being addressed through inter-agency machinery. Delay in criminal cases has been a problem in Northern Ireland and one of the tasks of the crosscutting review<sup>3</sup> was to examine delay and suggest how cases might be expedited.

**15.21** The main recommendation of the review was that a case management approach should be adopted within the criminal justice system. In other words cases should be monitored regularly to ensure that those which seem to be slipping receive individual attention. This has required the organisations involved, for example the RUC and the DPP, to set administrative targets for each of the stages of cases for which they are responsible, including those for indictable offences triable before the Crown Court and offences tried summarily before the magistrates' courts. In addition, on foot of a practice direction from the Lord Chief Justice, the judiciary has set targets for the period from committal to arraignment and the magistracy for the time from first appearance to disposal. The targets are being reviewed year on year with a view to reducing progressively the time taken to process cases, while at the same time not allowing concern for speed to interfere with the quality of justice. As part of this process the RUC is currently developing a joint performance management system with the DPP, the

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<sup>3</sup> The cross-cutting review of criminal justice, examining the work of the criminal justice system across departmental boundaries, was initiated by Ministers in August 1997 as part of the Government's Comprehensive Spending Review.

Forensic Science Agency and State Pathology. This involves service level agreements between the RUC and the other bodies covering such factors as the timeliness, content and quality of materials passing between the organisations.

**15.22** The review also made a number of detailed recommendations for legislative change and administrative change, for example new information technology systems for the transfer of case papers and other information. The programme of change is overseen by the Criminal Justice Board through a sub-group on which all the relevant organisations and the Law Society and Bar Council are represented.

**15.23** For some years now the criminal justice organisations have been operating an administrative time-limits scheme, monitoring the time taken to bring to trial cases tried on indictment and summary cases prosecuted by the DPP, where the defendant is remanded in custody. These tend to be the more complex cases being processed through the system. In such (non-scheduled) cases the average time lapse between first court appearance at which the accused was remanded in custody and committal for trial in the Crown Court for the first half of 1999 was running at 209 days. This was made up of 106 days for the police to investigate and assemble evidence and submit the file to the DPP, 69 days for the DPP to issue a direction and 34 days between direction and committal. The average processing time from committal to arraignment (the start of proceedings in the Crown Court) was 30 days. Arraignment to trial took an average of 55 days.

## Views Expressed during the Consultation Process

**15.24** We heard a range of views on how criminal justice functions should be organised, on whether and in what form criminal justice functions should be devolved to the Northern Ireland Assembly, and on how the responsiveness and accountability of the criminal justice system might be improved.

### THE EXTENT AND TIMING OF DEVOLUTION

**15.25** There was broad support for the proposition that responsibility for criminal justice functions should, in the fullness of time, be devolved to the Northern Ireland Assembly. Very few respondents believed that criminal justice functions should not be. Most of those who commented on this issue believed that responsibility for all aspects of criminal justice should be devolved, including responsibility for:

- policing, prisons, probation and juvenile justice;
- criminal law and procedure;

- the administration of the courts;
- the prosecution system; and
- the selection and appointment of the judiciary.

**15.26** As has already been noted in the relevant chapters, some concerns were expressed about devolution of more sensitive responsibilities such as those for judicial appointments and the prosecution system. Views on these issues were rehearsed more fully in the relevant chapters, and are not repeated here. However, there was almost universal support for the propositions that responsibility for the prosecution function should be kept separate from all other criminal justice functions and that the independence of the judiciary was of paramount importance.

**15.27** There were significant differences between those who commented on when devolution of responsibility for criminal justice matters should occur. In a Northern Ireland Grand Committee debate on this Review on 8 July 1999 David Trimble MP commented that: “devolution of responsibility for criminal justice functions and associated matters is extremely important, and should be achieved as speedily as possible. It is an important aspect of the move towards the whole community in Northern Ireland taking responsibility for these matters that most directly affect it. Clearly there are sensitivities and difficulties... but I hope that the Government’s policy will be to devolve as speedily as possible”. We heard other views that suggested that responsibility for criminal justice issues should not be devolved until such time as the criminal justice system had been reformed by the Government. One organisation commented that “... the Assembly will have to win legitimacy over a period of years before devolution of this central state responsibility would be seen to be appropriate”. We must say that we did not hear many fully considered views on this issue in the course of our consultation process. There was a general feeling, however, that criminal justice functions should be devolved at a point after responsibility for economic and social functions had been devolved.

## **THE ORGANISATION OF DEVOLVED FUNCTIONS**

**15.28** We were struck by the absence of any argument for significant change to the existing structure and organisation of criminal justice functions in advance of devolution. Where change was advocated, it was almost always premised on the assumption of criminal justice functions being devolved. The main exception to this was in respect of the prosecution function, which is discussed in Chapter 4 of this report.

**15.29** Relatively few respondents expressed an opinion on how criminal justice functions should be organised post-devolution. Most of those who commented on this issue suggested that many, and perhaps all, criminal justice functions should be gathered within a single Department of

Justice. One submission noted that “... a Department of Justice is potentially very positive. The most obvious benefit would be the establishment of a highly focused, specialised and locally-oriented body”. Another submission suggested that while most criminal justice functions should be brought within a single Department of Justice, responsibility for juvenile justice should fall within a Department for Youth, which would include education and care provision. One organisation, whilst generally supporting the concept of a single Department of Justice, noted that “keeping the various elements [of the criminal justice system] separate has the potential benefit that they may be less prone to adopt a unified anti-Catholic approach”.

**15.30** We heard evidence from the Forensic Science Agency for Northern Ireland on its relationships with other criminal justice agencies in Northern Ireland. The Agency noted that it worked mainly on behalf of the police (as was the case in most other jurisdictions) but that it also maintained a working relationship with the Department of the Director of Public Prosecutions. The Agency discussed whether there was a case for changing its status to that of a body independent of government or an integral part of the police. It concluded that while it was preferable to maintain its independence from the police, there was little to choose between remaining an executive agency and becoming a body independent of government.

**15.31** Those who commented on the handling of alleged miscarriages of justice recommended that the Criminal Cases Review Commission should continue to consider cases arising from Northern Ireland. The only adverse comment made about the operation of the Commission concerned the perceived delays in processing cases. Some organisations recommended that it should be given additional funding and staff to tackle its backlog of cases.

## ACCOUNTABILITY AND INSPECTION

**15.32** In contrast, we heard a great deal of comment on the issues of accountability and inspection. Most of those who commented agreed that devolution of responsibility for criminal justice functions to the Northern Ireland Assembly was the key to improving accountability. Criminal justice agencies would come within the control of local politicians and would be subject to regular scrutiny by the Assembly committee structure, by the Assembly as a whole, and would also come within the ambit of the proposed Civic Forum.

**15.33** We also heard a range of views from a variety of sources on other mechanisms which could strengthen the accountability of individual criminal justice agencies and the criminal justice system as a whole to the Assembly, to the community as a whole and individual members of the public. These included:

- The publication of annual reports by each agency, setting out information on the agency’s functions, its performance in relation to agreed objectives and commitments, information

on the nature and outcome of complaints, and information on public and stakeholder attitudes to its performance. Some also suggested that an annual report should include information on the religious, gender and ethnic composition of the agency concerned.

- The development and publication of standards of service that the public can expect from each agency.
- The development and publication of codes of practice or statements of ethics for the staff of each agency.
- The development of mechanisms by each agency to determine regularly the views of the public on the service provided by the agency concerned.
- The development and publication of information packs by each agency on the service it provides. This was seen as a key way to inform and educate the public about the operation of the criminal justice system.
- The commissioning and publication of research into the operation of agencies and projects within the criminal justice system.
- The publication of information on the views of the public and users of the service.
- The need for clear, easily understood and well publicised complaints mechanisms for each agency.
- The involvement of the voluntary and community sectors in inter-agency machinery.

**15.34** We heard a range of views in relation to the arrangements for the inspection of the criminal justice system. Most of those who commented on this issue believed that there was merit in a single criminal justice inspectorate. Those who supported the creation of a single inspectorate did so for a variety of reasons. One reason put forward most commonly was that such an inspectorate would allow thematic inspections across a number of agencies to be carried out. One submission noted that “... the various parts of the system are so dependent on each other and changes to one have such implications for others that a single properly managed and resourced inspectorate would be preferable”. Most of those who favoured a single inspectorate also recommended that it should be independent of government and of the agencies that it was responsible for inspecting. One submission also suggested that it should be responsible for considering equality policy and “Targeting Social Need” analyses “of the working practice of the criminal justice system”.

**15.35** Not everyone favoured a single criminal justice inspectorate. Some felt that the existing inspection arrangements were adequate. Others felt that a single inspectorate could not hope to cover the very different and diverse range of services provided by criminal justice agencies and that specialist knowledge would be diluted or lost. Others felt that inspection was not an appropriate tool for some parts of the criminal justice system, such as the work of the judiciary or the courts, where it was feared that an inspectorate would compromise judicial

independence. In addition, some criminal justice agencies believed that they were already subject to sufficiently rigorous third-party inspection covering all aspects of their work and that any additional layer of inspections was unnecessary. This was particularly the case in respect of the Forensic Science Agency of Northern Ireland, who argued that United Kingdom Accreditation Service scrutiny (which sets standards for the organisation and management of work), coupled with moves to develop a Council for the Registration of Forensic Practitioners in the United Kingdom (which would provide a degree of reassurance about the competence and ethical standards of forensic practitioners), obviated the need for additional inspection. Similar arguments applied to the State Pathology Department, whose staff would also become subject to scrutiny by the Council for the Registration of Forensic Practitioners.

- 15.36** We heard the view expressed by some that whilst inspection reports were currently made available to the public, in practice it had proved difficult in the past to obtain copies of reports. Those who commented on this issue believed that inspection reports should be routinely published, presented to the relevant Assembly committee and made easily available to the public.
- 15.37** The issue of delay in bringing cases to trial was raised with us, usually in general terms, on many occasions during the review, from a range of perspectives. It was a concern of the profession, the criminal justice agencies, the political parties, human rights groups and others. At the same time, there was recognition that, especially as law and procedure became more complex, speed should not be achieved at the expense of quality of justice.

## Research and International Comparisons

- 15.38** We commissioned a review of relevant research information in respect of modelling the organisation of the criminal justice system, with particular reference to the potential devolution of criminal justice functions to the Northern Ireland Assembly. The resulting research report is published along with this report.<sup>4</sup> We drew upon their report, and the information we gathered in the course of our study visits, in our consideration of the options for the organisation and structure of the criminal justice system in Northern Ireland post-devolution.
- 15.39** We recognise, however, that the lessons we can draw from experience in other countries is limited, given the unique political and institutional context which exists in Northern Ireland. There are no ready made solutions based on the experience of other jurisdictions, although there are some pointers from which we can learn.

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<sup>4</sup> Walker and Telford, Research Report 18.

## MODELS IN OTHER JURISDICTIONS

- 15.40** We saw a number of models for organising criminal justice functions in the jurisdictions we visited. To illustrate the range of existing models we describe the arrangements in a number of these jurisdictions. We first of all describe the arrangements in Scotland and the Republic of Ireland, both of which have omnibus justice departments. The arrangements in the Netherlands provide an example of a typical civil law approach, while Canada illustrates an approach within a federal jurisdiction with a mixed common law and civil law heritage. New Zealand provides a model that has recently resulted from a major reform of institutions.

## SCOTLAND AND THE REPUBLIC OF IRELAND

- 15.41** The organisation of criminal justice functions in Scotland and the Republic of Ireland is similar in many respects, in that they both separate responsibility for prosecution from other criminal justice functions, and they both have omnibus justice departments which are responsible for most criminal justice functions.
- 15.42** In Scotland, responsibility for criminal justice functions is split between the Lord Advocate, who is responsible for the prosecution system and who plays a significant role in the appointment of the Scottish judiciary, and the Scottish Justice Department. The Justice Department is responsible to a Minister in the Scottish Executive, and is responsible for all criminal justice policy and procedure and for social work policy relating to criminal justice, and for the running of the Scottish prisons, through the Scottish Prison Service, which is a next steps agency. The Department is responsible for the organisation, administration and staffing of the Supreme and Sheriff Courts in Scotland, working through a next steps agency, the Scottish Courts Service. It is also responsible for the organisation of policing in Scotland.
- 15.43** In the Republic of Ireland most criminal justice functions come within the ambit of the Department of Justice, Equality and Law Reform. The Department is responsible for overall criminal justice policy, policing, prisons, probation services, the organisation and administration of the courts, judicial appointments, and for equality and law reform issues. The Department has recently created executive agencies to run the courts and the prisons. The independence of the judiciary is guaranteed by the Constitution of 1937. The Director of Public Prosecutions, while appointed by the Attorney General and having a consultative relationship with the Attorney, does not act under the Attorney's direction or superintendence. The Director's independence is protected by statute.

## THE NETHERLANDS AND CANADA

- 15.44** Criminal justice functions in the Netherlands are organised in a way that is typical of the continental European civil law approach. Responsibility for policing and for the internal security of the state rests with the Ministry of Interior, while all other justice functions - including responsibility for the appointment of the judiciary and for the prosecution service - rest with the Ministry of Justice. The criminal justice system has undergone considerable change in recent years. Responsibility for policing has only recently been transferred from the Ministry of Justice to the Ministry of Interior, and the prosecution service and its relationship to the Government and parliament has been reviewed and reshaped, with a view to enhancing public accountability while strengthening the independence of prosecutorial decision making.
- 15.45** In Canada, which has a mixed common law and civil law heritage, both the federal government and the provinces have responsibilities for criminal justice functions. At federal level criminal justice functions are split between the Attorney General and the Solicitor General. The Solicitor General is responsible for policing and law enforcement, national security, corrections and conditional release of prisoners. Delivery of service is through a number of agencies, notably the Royal Canadian Mounted Police, the Canadian Security Intelligence Service, the Correctional Service of Canada, and the National Parole Board. A small central department provides the Solicitor General with policy advice and support. Other criminal justice functions, including overall responsibility for criminal policy and the criminal law, policy on victims and crime prevention, the appointment and training of federal judges, federal courts administration, and the federal prosecution function, fall within the remit of the Department of Justice of Canada, which is responsible to the Attorney General. A number of provinces are organised in a similar way with criminal justice functions divided between two ministries. Others, such as Alberta, combine all these functions within a single Ministry of Justice.

## NEW ZEALAND

- 15.46** The management of the public sector in New Zealand changed radically in the years after 1985, as did its structure. Prior to 1995 justice functions were concentrated in a single Department of Justice. Responsibility for criminal justice is now spread across a number of departments, ministries and agencies. Core criminal justice functions are the responsibility of four departments: the Ministry of Justice, the Department of Corrections, the Department for Courts, and the Crown Law Office, together with the New Zealand police. Each of these organisations reports directly to a Cabinet Minister.
- 15.47** The Ministry of Justice provides strategic policy advice to the Government across the justice sector, focusing on constitutional law, civil justice, criminal justice and electoral operations. It also manages the system for judicial appointments, and considers alleged miscarriages of justice.

- 15.48** The Department of Corrections manages all custodial and non-custodial sentences imposed by the courts on offenders. It has three core elements: the Public Prisons Service; the Community Probation Service; and the Psychological Service. The Department of Social Welfare provides facilities and staffing for family group conferencing, working through the Children, Young Persons and their Families Service. The Department for Courts administers all courts and tribunals and enforces court orders relating to fines and debts.
- 15.49** The Crown Law Office is responsible for the criminal prosecution system and for providing legal advice to the Government. It is responsible to the Attorney General and is headed by a government official, the Solicitor General. The New Zealand police is a national police service. It is not responsible to any department of state, and reports directly to the Minister for Police. It develops its own policy and legislative proposals that are taken through Parliament by the Minister.

## **DELAY**

- 15.50** In many jurisdictions the need to avoid undue delay, which we have noted in international instruments as a human right, has been a focus of government activity. In England and Wales, for example, legislation enabling the application of statutory time-limits has been in place for some time. So far these regulations have related only to indictable offences and have imposed limits only on the time that defendants spend in custody awaiting trial. More recently the Crime and Disorder Act 1998 has introduced provisions allowing different time-limits to be set in different classes of cases, for example allowing shorter time-limits for persistent young offenders. Pilots are being planned with a view to more widespread implementation in due course.
- 15.51** There is always a need to ensure that the pressure to dispose of cases quickly does not compromise the right to a fair trial. Furthermore, a defendant might receive a fair trial but little support or help to prevent re-offending. The development of the community court model in America was in part a response to the pressure on judges to dispose quickly of relatively minor offences, with little attention being paid to tackling the causes of criminal behaviour. We heard in a number of jurisdictions of the danger of focussing on speed of process at the expense of other considerations. For example, pressure to reduce delay could inhibit the development of restorative and reparative outcomes, given the need to contact victims and organise conferences.

## Evaluation and Recommendations

- 15.52** Earlier in this chapter we made clear that we had worked on the assumption that we should seek to bring forward proposals that were appropriate to the political and institutional context of Northern Ireland envisaged in the Belfast Agreement. We did not see it as within our remit to consider what, if any, overall structural and organisational changes were necessary in the period leading up to devolution, however long that period might be. We do not, therefore, recommend any change to the current allocation of ministerial responsibilities in advance of devolution, although we have elsewhere in this report argued for some re-ordering of responsibilities within current portfolios. These include the substantial changes we have recommended to the prosecution service and the arrangements for the management of the Secretary of State's responsibilities for juvenile justice.
- 15.53** We focus on how criminal justice functions might best be marshalled within the Northern Ireland Executive and what arrangements are necessary to ensure that the elements of the criminal justice system are held accountable to the new institutions of government in Northern Ireland, to the community as a whole, and to individuals who come into contact with the criminal justice system. In our discussion of criminal justice matters we inevitably include areas, such as judicial matters and the courts' administration, which are equally relevant to the civil justice system.

### EXTENT AND TIMING OF DEVOLUTION

- 15.54** We were struck, but not surprised, by the widespread view held amongst those we heard from in the consultation process that criminal justice functions should be devolved to the Northern Ireland Assembly. Few disagreed with the premise that the new Northern Ireland Assembly should assume responsibility for most or all criminal justice functions, although there were differences of opinion on precisely when such functions should be devolved.
- 15.55** We considered whether there should be a programme of devolution of criminal justice functions, with some functions being devolved at different times, or whether all criminal justice functions capable of being devolved should be devolved at the same time. We also considered elsewhere in this report whether there are specific criminal justice functions which should continue to be reserved or excepted matters indefinitely, such as responsibility for judicial appointments or the prosecution system.
- 15.56** We believe that there is no reason in principle to withhold from the Northern Ireland Assembly responsibility for a similar range of criminal justice functions to those devolved currently to the Scottish Parliament. That would mean broadly those criminal justice responsibilities now within the remits of the Secretary of State for Northern Ireland, the Lord Chancellor and the Attorney General. Functions excluded from the remit of the Scottish

Parliament include: national security; measures against terrorism and subversion; official secrecy; interception of communications; and nuclear security. **We recommend that responsibility for the same range of criminal justice functions as are devolved to the Scottish Parliament should be devolved to the Northern Ireland Assembly. Our preference is that they should all be devolved at the same time.**

**15.57** The precise timing of devolution of responsibility for criminal justice functions will, of course, be a matter for discussion between the political parties in Northern Ireland and the British Government, and we make no firm recommendations on this. In practice, if responsibility for justice functions is to be devolved as a package then it can only be devolved once appropriate legislative provision has been made for excepted matters, including the appointment of the judiciary. This will require primary legislation by a Westminster Bill, for which time will have to be found in the legislative timetable. We recognise that it is possible to provide a legislative framework to allow for the staging of devolution of some functions.

## **ORGANISATION OF DEVOLVED FUNCTIONS**

**15.58** We envisaged in Chapter 4 the creation of a local, non-political Attorney General for Northern Ireland to carry out a range of functions, including oversight of the prosecution process and responsibility for the Law Commission (which was discussed in Chapter 14). We take as a given fact here the creation of such a figure, which would separate out responsibility for the prosecution from all other criminal justice functions. If it is decided that such an appointment is not to be made, we remain of the view that the Public Prosecution Service should be separate and freestanding. We also recall that we envisaged responsibility for community safety activity falling within the remit of the Office of the First Minister and Deputy First Minister, rather than within a department, although if this does not prove possible then these would be matters for a Department of Justice. We therefore focused our attention on how other criminal justice functions should be organised in the context of devolution. We considered two principal models: one in which all criminal justice functions are gathered together in a single omnibus Department of Justice; and a second in which justice functions are split between two departments.

**15.59** In the first model all functions other than the prosecution function, responsibility for the Law Commission and judicial matters are gathered within a single Department of Justice headed by a Minister for Justice that would encompass responsibility for:

- criminal and civil law and procedure (excluding those aspects of civil law not currently within the remit of the Office of Law Reform and the Northern Ireland Court Service);
- policing, prisons, probation and juvenile justice;
- policy in relation to victims and witnesses;

- policy and legislation in relation to firearms, fireworks and explosives;
- public order policy and legislation, and the Parades Commission for Northern Ireland;
- criminal injury and damage compensation;
- the administration of the courts (including coroners' courts);
- criminal and civil legal aid;
- the enforcement of judgments and other orders of the courts;
- the Forensic Science Agency for Northern Ireland and the State Pathology Service;
- funding the Judicial Appointments Commission (responsibility for the appointments would rest with the First Minister and Deputy First Minister, as recommended in Chapter 6);
- co-ordination of criminal justice research.

**15.60** Given the size and spread of responsibilities of such a department there may be a need for the Minister to be assisted by a junior Minister.

**15.61** The second model envisages splitting criminal justice functions between two departments. It is possible to do so in a number of ways, and we have seen a number of models in other jurisdictions. Given what we said in Chapter 12 in relation to the future management of prisons and probation, and in Chapter 10 about the management of the juvenile justice system, we suggest that in this model these functions should remain together within a single department, together with policing. Responsibility for all other justice functions would rest within a separate Department of Justice.

**15.62** We recognise that other factors may influence the choice of the number and composition of departments with responsibility for justice functions, and that it is possible to conceive of models in which functions are split between more than two departments, as is the case in New Zealand. We note, however, that the difficulties of ensuring co-operation and effective co-ordination across the statutory elements of the criminal justice system are likely to become more acute as the number of departments increases. An omnibus department of the type we described above would have the advantage of minimising problems of co-ordination and would mirror the arrangements in both Scotland and the Republic of Ireland. We would counsel against creating more than one principal department with responsibility for criminal justice functions, in addition to that of the role of an Attorney General for Northern Ireland. **We recommend the creation on devolution of a single Department of Justice, headed by a Minister for Justice, bringing together all justice functions other than the prosecution, responsibility for the Law Commission and judicial matters.** Such a department would not, of course, have any role in making judicial appointments.

**15.63** It will be apparent from our recommendations that we envisage a range of criminal justice services being delivered through next steps agencies, focusing on efficient and effective

service delivery in accordance with the overall policy established by the responsible Minister. There will need to be a strong policy element in the core of the Department of Justice in order to advise the Minister. However, it is important to note that the agencies themselves, often with specialist professional expertise, will play an important role in the development of policy. This is particularly the case, for example, with the Prison Service where operational matters cannot be easily divorced from policy and where it is important that the Minister has access to advice from the Director General on policy matters. On the other hand, where the courts' administration is concerned, the "arms length" relationship with the Minister, usually associated with agency status, will be particularly important as a means of distancing from the executive matters in which the judiciary have an interest. Such considerations, along with accountability mechanisms, will need to be reflected in the framework documents that govern the relationship between agencies, the core department, and the Minister.

- 15.64** We note in passing a number of points in relation to the Forensic Science Agency of Northern Ireland and the State Pathology Department. We have already indicated where, within government, they should be placed, and we do not recommend any change in their status. We believe that it is important for the Forensic Science Agency and the State Pathology Department to be seen to be independent of the police and the prosecution. We note, however, that the location of the Forensic Science Agency, on a site that is closely associated with the police, is unfortunate and detracts from the perceived independence of the Agency from the police. We recognise the historical and security reasons for this arrangement, but **we recommend that as peace and political stability become embedded efforts should be made to find an alternative site for the Forensic Science Agency that would not be shared with the police.**
- 15.65** In addition, **there is scope for enhancing the management arrangements for the Agency and we recommend that a forensic science professional or academic from another jurisdiction in the United Kingdom should be invited to join the Agency's advisory board. We recommend secondments to and from other forensic science organisations to encourage professional development and discourage the development of a police or prosecution-focused culture.**
- 15.66** As regards the State Pathology Department, we note its particularly heavy workload and recommend that it be reviewed to ensure that the expertise of its staff is properly deployed. We also note the limited administrative support arrangements for the State Pathology Department, and recommend that it should be strengthened to ensure that the professional staff are able to devote their time to professional tasks. There should be sufficient administrative support to enable the Department to prepare and publish an annual report and other documents to enhance public accountability.

## CRIMINAL CASES REVIEW COMMISSION

- 15.67** We were not aware of any pressure to create a separate and distinct Criminal Cases Review Commission in Northern Ireland. **We recommend, therefore, that the existing Criminal Cases Review Commission should continue to consider cases that involve alleged miscarriages of justice emanating from Northern Ireland.**

## ACCOUNTABILITY AND INSPECTION

- 15.68** We noted from Strand One of the Belfast Agreement that “there will be a Committee for each of the main executive functions of the Northern Ireland Administration” and that:
- “the Committees will have a scrutiny, policy development and consultation role with respect to the Department with which each is associated, and will have a role in initiation of legislation. They will have the power to:
- consider and advise on Departmental budgets and Annual Plans in the context of the overall budget allocation;
  - approve relevant secondary legislation and take the Committee stage of relevant primary legislation;
  - call for persons and papers;
  - initiate enquiries and make reports;
  - consider and advise on matters brought to the Committee by its Minister.”

- 15.69** We believe that the creation of such a committee for each department concerned with justice issues will provide a powerful means of holding the criminal justice system to account. If criminal justice functions are split between two or more departments there may be a need for the Assembly to consider the creation of a standing committee to consider cross-cutting issues within the criminal justice system. There may also be a role for the consultative Civic Forum that paragraph 34 of Strand One of the Belfast Agreement envisages.

- 15.70** In addition, Chapter 3 sets out a number of recommendations designed to enhance the accountability and responsiveness of the agencies within the criminal justice system, and of the criminal justice system as a whole. **We recommend that agency annual reports should, as a matter of course, be laid before the relevant departmental committee. In addition, if the Assembly constitutes a standing committee for the criminal justice system as a whole, we recommend that it and any departmental committees should receive and consider an annual report on the system in its entirety, prepared by the Criminal Justice Board.**

**15.71** We noted the importance of inspection as a tool for holding criminal justice agencies to account for their actions and for the proper expenditure of public resources. In respect of the latter, we recognise that the Northern Ireland Audit Office will continue to play a vitally important role in holding departments and individual agencies within the criminal justice system to account for the expenditure of public funds. We also noted the views we heard in the course of the consultation process in relation to inspection. All those who commented on this issue believed that inspection of criminal justice functions was both necessary and desirable. There was some disagreement over whether individual agencies should have their own inspection arrangements or whether there should be a single, all-embracing and independent criminal justice inspectorate.

**15.72** We believe that in the political and institutional context of Northern Ireland envisaged by the Belfast Agreement, and in the organisational context outlined above, the balance of argument favours the creation of a single independent criminal justice inspectorate. Therefore, **we recommend the creation of a statute-based, independent Criminal Justice Inspectorate which should:**

- be responsible for ensuring the inspection of all aspects of the criminal justice system other than the courts;
- be funded by the Minister for Justice, and that the Chief Criminal Justice Inspector should be appointed by that Minister;
- present its inspection reports to the Minister for Justice, the responsible Minister (if the agency inspected is the responsibility of another Minister) and the relevant departmental committee or standing committee;
- publish its reports and make them widely and readily available;
- publish an annual report of its activities, present that report to the Minister for Justice, and lay it before the relevant departmental and standing committees;
- be responsible for advising Ministers on standards within criminal justice agencies (standard setting should remain the prerogative of Ministers);
- employ a range of full and part-time inspectors and buy in expertise, including that from other inspection agencies in England and Wales and Scotland, as appropriate (such as HM Inspectorate of Prisons and HM Inspectorate of Constabulary);
- be responsible for determining its own programme of inspections, in consultation with the relevant Ministers;
- carry out a range of inspections, including; periodic, cyclical and surprise inspections of systems and structures; thematic, issues-based inspections; and inspections which might require special skills (e.g. medical expertise); and

- work closely with other inspectorates (e.g. on Health and Safety, Mental Health, and Social Services) and with professional bodies such as the Royal College of Pathologists and the Policy Advisory Board for Forensic Pathology.

## INTER-AGENCY MACHINERY

**15.73** Whatever structure is eventually adopted for organising criminal justice functions in Northern Ireland there will be a continuing need for inter-Ministerial and inter-agency machinery to develop and maintain a co-operative and coherent approach to delivering the aims of the criminal justice system. This needs to occur, as at present, on three levels:

- (i) at ministerial level within the Northern Ireland Executive;
- (ii) at the level of heads of agencies and senior policy-makers within the devolved departments and the Public Prosecution Service; and
- (iii) at the level of (ii), but involving other significant partners, such as other relevant Northern Ireland departments, sentencers, the voluntary sector, and the legal profession.

**15.74** **To this end we recommend that Ministers in the Northern Ireland Executive responsible for criminal justice functions, together with the Attorney General for Northern Ireland, should meet regularly to oversee the criminal justice system as a whole. They should, in particular, agree and publish a common set of aims for the criminal justice system, as recommended in Chapter 3.**

**15.75** The ministerial group will require support at official level by way of a group which is responsible for developing the overall strategy of the criminal justice system, for ensuring that the system works co-operatively and in a co-ordinated way to provide services to users and to the public, and for dealing with issues of inter-agency interest. **We recommend that support to the ministerial group should continue to be provided by the Criminal Justice Board. The Criminal Justice Board should comprise, as at present, the heads of the main statutory agencies within the criminal justice system and senior policy-makers from within the relevant departments. It should comprise:**

- The head of the Public Prosecution Service.
- The Chief Constable of the Police Service of Northern Ireland.
- A senior representative from the Attorney General's Office.
- The head of the Department of Justice and of any other department with criminal justice functions.
- The heads of the Prisons, Probation, Courts and Juvenile Justice Agencies.

■ **The head of the central Community Safety Unit.**

**15.76** We see a continuing need for an inter-agency group, such as the Criminal Justice Issues Group, which provides a means of co-ordinating the consideration of new needs and policy issues across the range of organisations contributing to criminal justice, and which looks forward, innovates and reviews new inter-agency initiatives. It should bind together representatives of the criminal justice agencies, including the members of the Criminal Justice Board, with representatives of other relevant Northern Ireland departments, the judiciary, the Bar Council and the Law Society. We note the important role which sentencers and the legal profession have played in taking forward the work of the Criminal Justice Issues Group and the continuing importance of their involvement in future. In addition, **we agree with those who suggested that the membership of the Criminal Justice Issues Group should be expanded to include representatives of the major voluntary sector organisations, given the important role they currently play - and will continue to play in future - in delivering criminal justice, and we so recommend.**

**15.77** We recommend that the ministerial group, the Criminal Justice Board, and the Criminal Justice Issues Group should continue to be supported by a common secretariat, which should be located within the Department of Justice.

## **CASE MANAGEMENT AND DELAY**

**15.78** Throughout our consultation we heard calls for the speedier disposal of justice and for a reduction in the time taken to bring cases to trial. There were particular concerns about the impact of delay on people being held in prison awaiting trial, and we are conscious of the human rights implications if people are not brought to trial within a reasonable period. This is an area where the inter-agency machinery outlined above can make a major contribution.

**15.79** As noted above, as a result of a review that concluded in 1998, the criminal justice system in Northern Ireland is already taking a number of steps to reduce delay. The steps include setting administrative targets for the various stages of cases linked to case management systems and joint performance management. The RUC and the DPP are the key agencies when it comes to issues of timeliness in the period up to committal. It is the intention to keep the administrative targets under review with a view to seeing whether they can be progressively reduced during the period to 2002. We note that the judiciary is playing an important role in the management of cases, especially following arraignment, with a view to ensuring that trials take place in a timely fashion. Magistrates are also actively engaged in keeping adjournments to a minimum and seeking to reduce the time taken to dispose of cases. There has been a significant and positive culture change in the courts.

**15.80** We commend this work. The new system has been in operation since the beginning of the 1999 calendar year and there have been some improvements both in terms of a reduction in

overall time taken and in a lower rate of failure to meet specific targets (notwithstanding the tightening of targets). However, it will take some time before we can be certain that the new arrangements are having a continuing effect. We are conscious that at a time of major change sustaining a downward pressure on time taken to bring cases to trial, without compromising on the quality of justice, will be a big challenge.

- 15.81** Within Northern Ireland there is already legislation (Northern Ireland (Emergency Provisions) Act 1996) enabling the Secretary of State to set statutory time-limits for scheduled offences. However, the power has not been used. There has been concern that the introduction of custody time-limits might result in persons suspected of serious offences being released on bail or acquitted. This is a particular concern in relation to terrorist cases that often rely on lengthy and detailed forensic examination to provide evidence for the prosecution. We note, however, that statutory time-limit schemes permit the limits to be extended on certain grounds. For example in England and Wales an extension may be granted under the Prosecution of Offences Act 1985 if there is “good and sufficient cause for doing so” (for example if a witness is ill on the day of trial) or if “the prosecution has acted with all due expedition” (which would enable an extension in cases where delays had been caused by the defence).
- 15.82** In thinking about the time taken to bring cases to trial, we are conscious of a number of considerations. There is the human rights imperative that cases be brought to trial in a reasonable time and, particularly when defendants are remanded in custody, there are obvious reasons for wanting determination of guilt or innocence and sentencing to take place as soon as possible. But there are other factors to bear in mind. For example the longer the time that elapses between an incident and a witness giving evidence, the more likely it is that problems of recall will arise. Delay can increase the pressure on victims and witnesses who may be concerned about a court appearance; and it can also increase the distress suffered by victims as a result of the offending behaviour.
- 15.83** In the light of all these considerations we conclude that the arrangements introduced in Northern Ireland after the cross-cutting review, including the extended administrative time-limits scheme, should be allowed to run, but that they should be monitored closely. There remains considerable scope for improvement. **We recommend the introduction of legislation that will enable statutory time-limits to be introduced in Northern Ireland, should that be judged to be necessary.** If the administrative scheme proves not to be having the desired effect, that might be a trigger for the introduction of time-limits; such statutory limits might also be considered for classes of case where delay is particularly damaging. Further, **we recommend that in addition to setting target time-limits within which cases should be completed, attention should be paid to the average time taken to process cases at the relevant stages.** This will help ensure continued downward pressure on completion times for all cases, not just those that might be the most difficult.

## **ORGANISED CRIME**

**15.84** Several people raised with us concerns about the possible future development of organised crime in Northern Ireland. A number of factors might contribute to this including an increase in drugs related crime, some ex-paramilitaries turning to crime for personal gain, and the spread of organised crime from other jurisdictions. Countering organised crime requires intelligence and detective work, financial expertise, an effective legal framework, co-operation between agencies and with the private sector, and, above all, co-ordination with ground-level community safety activity. Increasingly, it also places a premium on international co-operation. To facilitate an effective approach in dealing with this threat **we recommend the establishment of an inter-agency group in Northern Ireland tasked with developing a strategic and co-operative framework for countering organised crime. The core of such a group might be the Department of Justice, the police, Customs and Excise, the Public Prosecution Service and the central Community Safety Unit.**