

1 Introduction

The Belfast Agreement

- 1.1** The Agreement reached in Belfast on Good Friday 1998 provided for a “... wide-ranging review of criminal justice (other than policing and those aspects of the system relating to the emergency legislation) to be carried out by the British Government through a mechanism with an independent element, in consultation with the political parties and others”. This chapter sets out the origins of the review and the approach it has taken.
- 1.2** The Agreement set out what the participants to the multi-party negotiations believed the aims of the criminal justice system to be, and these formed the starting point for our work, and the touchstone against which we have measured all the proposals we considered and the recommendations we make. These aims “... are to:
- deliver a fair and impartial system of justice to the community;
 - be responsive to the community’s concerns, and encouraging community involvement where appropriate;
 - have the confidence of all parts of the community; and
 - deliver justice efficiently and effectively”.

The Agreement also noted 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”.

OUR TERMS OF REFERENCE

- 1.3** The Agreement also provided us with our terms of reference, as follows:

“Taking account of the aims of the criminal justice system as set out in the Agreement, the review will address the structure, management and resourcing of publicly funded elements of the criminal justice system and will bring forward proposals for future

criminal justice arrangements (other than policing and those aspects of the system relating to emergency legislation, which the Government is considering separately) covering such issues as:

- the arrangements for making appointments to the judiciary and magistracy, and safeguards for protecting their independence;
- the arrangements for the organisation and supervision of the prosecution process, and for safeguarding its independence;
- measures to improve the responsiveness and accountability of, and any lay participation in the criminal justice system;
- mechanisms for addressing law reform;
- the scope for structured co-operation between the criminal justice agencies on both parts of the island; and
- 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.

“The Government proposes to commence the review as soon as possible, consulting with the political parties and others, including non-governmental expert organisations. The review will be completed by Autumn 1999.”

- 1.4** The Agreement was put to separate referendums in Northern Ireland and the Republic of Ireland on 21 May 1998. Those referendums endorsed the Agreement and, as a direct result, the Criminal Justice Review Group was established on 27 June 1998 and began its work shortly thereafter.

COMPOSITION OF THE REVIEW GROUP

- 1.5** The Review Group consisted of four civil servants representing the Secretary of State for Northern Ireland, the Lord Chancellor and the Attorney General, together with five independent assessors who formed the independent element provided for by the Agreement. The membership of the Review Group was as follows:

Jim Daniell, Director of Criminal Justice at the Northern Ireland Office and Chairman of the Review Group;

Glenn Thompson, Director of the Northern Ireland Court Service;

David Seymour, the Legal Secretary to the Law Officers;

Brian White, Head of Criminal Justice Policy Division at the Northern Ireland Office;

Professor Joanna Shapland, Professor of Criminal Justice at Sheffield University and Director of the Institute for the Study of the Legal Profession;

Professor John Jackson, Professor of Public Law and Head of the School of Law at Queen's University, Belfast;

Eugene Grant QC, a barrister in criminal practice in Northern Ireland;

Dr Bill Lockhart, Director of the Extern Organisation in Northern Ireland, and Director of the Centre for Independent Research and Analysis of Crime;

His Honour John Gower QC, a retired English circuit judge.

- 1.6** The Secretary of the Review Group was Ian Maye of the Northern Ireland Office, who was assisted at various stages by Guy Banim, Rosemary Carson, Coleen Doak, Ernie Hewitt, Rafia Hussain, Bertha Martin, Linda McGookin, and Bridgeen Mullan. We were also assisted by Dr Debbie Donnelly, Principal Statistician at the Northern Ireland Office. We wish to place on record our gratitude to the secretariat. Without their commitment, organisational skills and drafting ability, together with patience and a sense of humour, we could not have completed our task.

The Approach We Adopted

- 1.7** We met for the first time on 1 July 1998 and held more than 45 days of plenary meetings. We began by briefing ourselves on the background to the criminal justice system in Northern Ireland and on its development in recent years. We received detailed position papers and briefings on current arrangements and procedures from government departments and the criminal justice agencies. We also took account of recent legislative developments, reviews and publications concerning the various aspects of the system that were within our terms of reference. We refer to many of them at appropriate points in our report.
- 1.8** We were an unusual group in that we were a mix of civil servants representing the Government and independent members who played a full part in all aspects of the review. As a result, we were not wholly a creature of government, nor were we entirely independent, as was the Independent Policing Commission for Northern Ireland. But we were given the freedom to address the task before us in the way we chose.
- 1.9** We worked from a broad interpretation of what constitutes the criminal justice system in Northern Ireland, which we believe includes the judiciary and the courts, the criminal justice agencies, the legal profession, victims, witnesses and defendants, and those voluntary and community groups who provide criminal justice services. For our purposes the criminal justice system includes the arrangements and procedures for dealing with crime from

investigation through prosecution to adjudication. It also includes providing facilities for carrying out sentences imposed by the courts, and policies and structures concerned with the prevention and reduction of crime and criminality, and the fear of crime.

1.10 We committed ourselves from the outset to full consultation. We believed that it was important to gather and test the views of as wide a range of opinion in Northern Ireland as possible. We also believed that we should consider the issues within our terms of reference from a human rights perspective, a perspective that underpins and runs through the Belfast Agreement itself. As a result we have paid a great deal of attention to international and domestic human rights obligations, and considered all of the issues before us from a human rights perspective.

1.11 The focus of our work has been guided by a desire to propose practical confidence building measures for a fresh political climate. We assumed throughout our work that the Belfast Agreement would continue to be implemented and that the political process would continue, leading to devolution of legislative and executive responsibility for economic and social matters to institutions of government within Northern Ireland. We also took account of the statement in the Belfast Agreement that the Government remained “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”. As a result, and because this was the wish of many of those we consulted, our recommendations are made on the assumption that criminal justice matters will be devolved to the Northern Ireland administration. In some cases, however, we have identified matters that can be taken forward which are not dependent on devolution having taken place.

1.12 We recognise also that we report at one point in time and as part of a wider political process which continues to develop, and will develop further as this report is debated and implemented. The extent to which our proposals should be taken forward in any given scenario is a matter for political judgment, and we express no views on transitional or interim arrangements which may prove necessary as a result. We do believe, however, that great care must be taken in implementing any package of agreed changes to ensure that the quality of justice and the efficiency of the system are maintained and enhanced, during the period of implementation and thereafter. Given the breadth and complexity of issues which we address, it is crucial that sufficient time is taken to consult with the criminal justice agencies and those who work within the system and to plan and conduct any process of change in a measured way.

PUBLIC CONSULTATION

- 1.13** We published a consultation paper on 27 August 1998. Its purpose was to set people thinking. The paper set out a range of issues which we intended to consider, but made it clear that we would be happy to consider other issues raised with us that fell within our terms of reference. It sought written comments, but also encouraged interested organisations and individuals to meet us to make their views known. We distributed over 5,000 copies of the consultation paper to political parties and individual politicians, the churches, the criminal justice agencies and the judiciary, to solicitors and barristers, and to a wide range of voluntary and community organisations known to have an interest in criminal justice issues.
- 1.14** In the months which followed we met representatives from the following: all of the political parties who wished to make submissions to us; the criminal justice agencies; the judiciary and magistracy, both professional and lay; the Bar Council and Law Society; the major voluntary organisations with an interest in criminal justice; and a wide range of human rights lobby groups. A list of those we met or from whom we received submissions or position papers is set out at Appendix A to this report. We also visited a number of courthouses in Northern Ireland to see how they operated at first hand and to speak to those who worked in them. We visited Antrim courthouse and we observed the proceedings in Belfast Magistrates' Court and Belfast Youth Court. In addition we visited Brighton Magistrates' Court. We also visited Lisnevin Juvenile Justice Centre and HM Prison Maghaberry. In all we held over 70 meetings with interested groups and organisations. We received over 90 written submissions, all of which were thoughtful and constructive.
- 1.15** We judged that the formal consultation process was successful in drawing out the views of the political parties, the criminal justice agencies, the legal profession, and the major voluntary organisations and lobby groups in the criminal justice field. We published a progress report in April 1999 to set out what we had done and to give a flavour of the issues raised with us. However, we also wanted to hear the views of those who came from the ground level in statutory, voluntary and community organisations, practitioners and those working at the periphery of, or interface with, the criminal justice system. As a result we held a series of nine seminars across Northern Ireland in May and June 1999 to which over 3,000 individuals, groups and organisations were invited ("Your Time to Talk" seminars). The seminars provided an opportunity for practitioners from different agencies and professions and community groups to work together to discuss the issues which we were considering. Around 300 people attended the seminars, from a wide variety of backgrounds, and contributed a great deal to the debate. We learned much from those seminars, and heard a wide range of views. We had feedback from those who attended that they too found the seminars very useful.

- 1.16** We reflect many of the views presented during the consultation process, but what we say in this report can only be a distillation of what we heard. The views expressed were both thoughtful and genuinely held, and we listened carefully to what people had to say to us. We benefited greatly from them, and we wish to thank all those who contributed to the debate.

RESEARCH AND STUDY PROGRAMME

- 1.17** From the very beginning of the process we recognised that we should consider experience in Northern Ireland and in other jurisdictions, and that we should find out the views of the public in Northern Ireland on criminal justice issues. We commissioned a programme of comparative research to review the experiences of other jurisdictions on a range of key issues. In addition we put in place an extensive programme of survey research and focus groups to shed light on the views of the public on matters which have an impact on the community's confidence in the criminal justice system. The output of the research is published along with this report, and we draw upon its findings as we examine specific issues within the report. The research reports and their authors are listed in Appendix B. The views and opinions expressed in those reports are those of the authors and do not necessarily reflect those of this Group. Where in the text of this report we mention research which we commissioned, the associated footnote refers to the author(s) and the number of the research report as listed in Appendix B.
- 1.18** We decided that we should visit some other jurisdictions to see at first hand how other justice systems work, to find out their strengths and weaknesses and to determine what lessons, if any, could be learned for our work. Over the past year the Group, or small teams representing the Group, visited a number of other jurisdictions, including Belgium, Canada, England and Wales, Germany, the Netherlands, New Zealand, the Republic of Ireland, Scotland, South Africa and the United States. Those visits proved invaluable in teasing out the experience of other jurisdictions in delivering criminal justice, and helped us put flesh on the bones of the material we had gathered in the course of our research programme. They assisted us in assessing whether approaches adopted elsewhere might be applicable in the particular circumstances of Northern Ireland. We should like to express our gratitude to those in all the jurisdictions we visited who so willingly gave of their time to assist us in our work.

THE PAST

- 1.19** In the course of our consultation process, we heard a range of views about how the criminal justice system had performed over the past 30 years. Some thought that it had served Northern Ireland well, in the face of the considerable challenges posed by the security situation; and we heard some suggestions that, if the system was working, change should not

be introduced for the sake of it. Others, however, felt differently and expressed strong views about what they believed to be bias against particular parts of the community and a failure adequately to safeguard human rights. There was, of course, a range of opinions between these positions and there was much discussion about the workings of particular parts of the criminal justice system.

1.20 We heard a number of calls for past events to be investigated by the Review Group. Like the Policing Commission we were not set up as a committee of inquiry with all the legal powers to call for papers and question witnesses. That was not within our terms of reference. We were asked to “bring forward proposals for future criminal justice arrangements...”. And in that sense we looked forward to the future, not backwards to the past. But we did listen carefully to genuinely and strongly held views, from differing perspectives, about past events. It was important for us to understand these points of view if we were to develop recommendations for arrangements most likely to inspire the confidence of all parts of the community in the future. We do not express any opinion about the validity of views about past events and wish to stress that where we suggest change, this should not in itself be taken as implying criticism of what has gone before.

1.21 We should like to say something about those who have worked in the criminal justice system over the past years, many of whom we have met in the course of our deliberations. We include in this those acting in a judicial capacity, the police, prosecutors, defence lawyers, those agencies whose role it is to ensure that the sentences of the court are carried out, and administrative staff. We are mindful of the sacrifices that they and their families have made over the past 30 years. We pay tribute to those who have paid with their lives the ultimate price for upholding the rule of law and serving the cause of justice, and to those who have been injured or lost loved ones. We recognise and appreciate the challenges and difficulties faced by those in all parts of the criminal justice system at a time of civil strife and division within the community.

POLICING AND EMERGENCY LEGISLATION

1.22 We heard calls during our consultation process for the Review Group to work closely with the Independent Policing Commission, given the obvious overlap between policing and criminal justice. We heard similar calls in respect of emergency legislation. For many, the experience and perceptions of criminal justice were influenced heavily by views on policing and emergency legislation. Some people found it difficult to understand why reviews of policing, criminal justice and emergency legislation were being conducted separately. Our response was always the same: that we could not rewrite the terms of reference that had been agreed by the parties to the Belfast Agreement. We were, however, conscious of the linkages

between these three areas, and that our efforts to develop proposals for a fair, rights-based, and effective criminal justice system which inspired the confidence of the community as a whole could not be divorced from the outcome of those separate reviews.

- 1.23** Much of our work was done at the same time as that of the Independent Commission on Policing for Northern Ireland, but we were expected to report some months after that Commission. The timing of our respective reports was quite deliberate, in that the participants in the multi-party negotiations recognised that it was difficult to separate policing from other aspects of criminal justice, and that we would need time to reflect upon the recommendations which emerged from the Policing Commission in framing our own report. That is not to say, however, that we worked in isolation from the Policing Commission. On the contrary, it was important for this Review Group and the Policing Commission to be aware, in broad terms, of the issues which the other was considering and to ensure that our respective efforts were best directed. We did not, however, believe it appropriate to share our thinking.
- 1.24** Legislation against terrorism is the subject of a United Kingdom-wide review announced in October 1997, which led to the publication of the consultation paper *Legislation Against Terrorism*,¹ in December 1998. We took the view that where issues raised with us were properly within the remit of that review we would pass such comments on to those responsible. Our terms of reference constrained us from doing or saying anything more in this report on emergency legislation.

THE STRUCTURE OF THIS REPORT

- 1.25** In the next chapter of our report we consider the nature and extent of crime and criminality in Northern Ireland. We also consider people's experiences of the criminal justice system in Northern Ireland and set out the findings of the attitudinal and focus group research undertaken on our behalf. We contrast the findings, where appropriate, with other jurisdictions.
- 1.26** In the remainder of the report we have attempted to follow a common pattern, where appropriate, in setting out chapters. In each we consider: the current arrangements in Northern Ireland; the human rights background; what we heard during the consultation process; the available research on the issue and what we know of international experience and trends; and an evaluation of the options for change together with our recommendations.
- 1.27** In Chapter 3 we address the human rights and guiding principles which should underpin the operation of the criminal justice system in Northern Ireland. In Chapter 4 we consider the arrangements for the prosecution of offences. In Chapters 5, 6, 7 and 8 we examine issues relating to the criminal courts and, importantly, the way in which members of the judiciary

¹ *Legislation Against Terrorism: A consultation paper* (1998), Home Office and Northern Ireland Office, CM 4178, London: HMSO.

are appointed. In Chapters 9 and 10 we consider the issues of restorative and reparative justice, and juvenile justice. In Chapter 11 we look at the arrangements for crime prevention and community safety in Northern Ireland. In Chapter 12 we consider the arrangements for adult sentences and for prisons and probation in Northern Ireland. Chapters 13 and 14 concern the arrangements for victims and witnesses and for law reform respectively. Chapters 15 and 16 are about the organisation and structure of the criminal justice system in Northern Ireland, and the arrangements for conducting criminal justice research. Finally, Chapter 17 considers the scope for structured co-operation between criminal justice agencies North and South, and within these islands.

- 1.28** We were essentially a Review Group looking at criminal justice issues, rather than a Royal Commission looking independently into the legal system in Northern Ireland as a whole. Our remit was wide but, given the time and resources available to us, we focused on those issues specified in our terms of reference and on issues raised with us during the consultation process. Criminal justice is where the expertise of our individual members lies. However, a significant number of our proposals, such as those relating to judicial appointments, the role of an Attorney General in Northern Ireland, and mechanisms for law reform, have implications for civil justice and cannot be resolved by criminal justice experts alone. Our proposals are made from a criminal justice perspective, but we recognise that in some areas a civil justice perspective will need to be taken into account when our recommendations are considered.
- 1.29** Where possible we have given a broad indication of the possible cost implications of our proposals. We have not, however, been able to cost our proposals with any real degree of precision, and in some instances it may not be possible to attach firm resource estimates until the proposals have been fleshed out in the consultation and implementation processes. Taken together, we believe our proposals offer the opportunity to develop an effective and efficient criminal justice system in Northern Ireland that commands the confidence of the community as a whole, at a relatively modest cost.
- 1.30** We have covered much ground in our review. Some of our proposals relate to things that are already happening or beginning to happen. Taken together, our recommendations represent a major, but measured, programme of change. We welcome and recognise the need for meaningful and inclusive consultation on our proposals, particularly with those whom they will affect, including those who work in the criminal justice system.
- 1.31** This is the background against which we did our work. You will find our conclusions and recommendations in the ensuing chapters of this report. We commend them to the British and Irish Governments, to the political parties in Northern Ireland, and to the people of Northern Ireland as a whole.