

## CAJ Criminal Justice Conference

CAJ recently held a major criminal justice conference, entitled '*Human Rights and the Administration of Justice - Implications for Devolution?*' CAJ has worked on criminal justice issues since its inception in 1981 and this area remains a key priority for us. In light of the devolution of criminal justice powers and to mark the tenth anniversary of the publication of the report of the Criminal Justice Review, the conference provided the opportunity to reflect on what changes have taken place and what remains to be done to ensure greater transparency, accountability and human rights compliance within the criminal justice system.

The first keynote speaker to address the conference was Minister for Justice, David Ford MLA, who focused primarily on issues associated with the devolution of justice, particularly the upcoming Justice Bill, opportunities for reviewing the area of youth justice, challenges to the prison system and the issue of justice for victims. He touched on the Criminal Justice Review's recommendation that the Attorney General should produce human rights guidance for criminal justice organisations, stressing that "Everyone who comes into contact with the criminal justice system must be treated equitably; they must have their rights respected." Minister Ford also noted the need to strike a balance between accountability and independence of the Public Prosecution Service (PPS). The second keynote speaker at the event was the Rt Hon Elish Angiolini QC. Ms Angiolini gave an account of the concerns around the area of devolved prosecution from the perspective of the Scottish criminal justice system. Further details of this contribution can be found on page 6.

**Panel 1** looked at independence, accountability and human rights compliance of prosecutions in Northern Ireland, and featured Professor John Jackson, Dean, School of Law, UCD. Professor Jackson gave an insight into the arrangements for prosecution, particularly in relation to oversight and accountability. See pages 4 & 5 for more details. This was followed by a deeply moving account by Penny Holloway, mother of Thomas Devlin, regarding her struggle with the PPS in her family's quest for justice.

**Panel 2** looked at the challenges and opportunities of taking a human rights approach to the administration of justice. From CAJ's perspective, many of those recommendations that were concerned exactly with equality and transparency and accountability are the ones in which we have seen the least progress and, in some cases, we would argue, resistance to change. This panel contained presentations from Eugene Grant QC, Professor Dermot Walsh, University of Limerick, Karen Quinlivan, Bar Library and Koulla Yiousouma, Include Youth.

**Panel 3** focused on the area of human rights and prisons and began with an overview of CAJ's current position on the prison system, by Jacqueline Monahan, Criminal Justice programme Officer at CAJ (see page 3 for more details). Malcolm Evans from Bristol University, and a member of the UN Sub-Committee on Prevention of Torture then gave an insight into OPCAT/NPM as a preventative mechanism. This panel finished with a roundup of the need for prison reform in Northern Ireland by Pat Conway, Director of Services at NIACRO.

**Panel 4** consisted of political party representatives and was centred on devolution and local political accountability. The panel included Alban Maginnis, SDLP, Raymond McCartney, Sinn Féin, Stephen Farry, Alliance and Basil McCrea, UUP. This panel provided an opportunity for each of the political parties in Northern Ireland to address their areas of concern in the criminal justice system and answer questions from those present.

### Contents

CAJ Criminal Justice Conference	1/2
Human Rights and Prisons	3
Prosecutions - the Importance of Oversight and Accountability	4/5
Excerpts from the speech of Rt Hon Elish Angiolini QC	6
OPCAT and NPMs as a Preventive Mechanism	7
Civil Liberties Diary	8



Minister of Justice, David Ford MLA, Lord Advocate of Scotland, Rt Hon Elish Angiolini QC and Mike Ritchie, Director of CAJ

Professor Dermot Walsh, Limerick University



Panel 1. Penny Holloway addresses the conference



Basil McCrea MLA, UUP and Alban Maginness, SDLP



Koulla Yiousouma, Include Youth

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# Human Rights and Prisons

**Having considered the 40+ reports and reviews relating to the prisons in Northern Ireland that have been written since 2002 what is most startling is the repetition of themes and issues which have significant human rights implications and which remain insufficiently addressed in these review processes.**

As a public authority, NIPS is obliged to comply with the European Convention on Human Rights, as incorporated in the Human Rights Act.

Some other relevant obligations and standards include:

- the International Covenant on Civil and Political Rights (ICCPR);
- the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- the Convention on the Rights of the Child;
- the UN Standard Minimum Rules for the Treatment of Prisoners;
- the Basic Principles for the Treatment of Prisoners;
- the European Prison Rules; and
- the Code of Conduct for Law Enforcement Officials;

The prison system in Northern Ireland does not measure up well against relevant international, regional and domestic human rights instruments; notably there are many persistent concerns repeated in numerous reports including: safer custody and security; staff and overall management issues; daily activities and long-term planning; health and well-being; living conditions; diversity and equality; complaints procedures; women; discipline; life-sentenced prisoners and juveniles.

What has happened repeatedly in the prison system over the years has been that each 'crisis' is remedied by a short-term response, a "plaster" remedy, without ever dealing with the cause of the infection. In response to the various reports and inspections, the Prison Service generally decides which recommendations they accept and which they do not. They generally then create an action plan for addressing recommendations. A build up of un-implemented recommendations has led to a focus on 1300 outstanding recommendations. In this kind of list based approach, the implementation of recommendations becomes more of a tick-box exercise rather than a mechanism for adequately dealing with genuine concerns about prison standards and prison reform.

There is an opportunity for change with the recent appointment of the Prison Review Team. However, the Review Team's terms of reference risks continuing a piecemeal approach to prison reform rather than an attempt to holistically address the fundamental and systemic problems. There is a need to step back and undertake an overarching appraisal of the policies and practices of prison system. The prison system as a whole should be examined in relation to effectiveness, efficiency and adherence to international standards so as to construct a strategic approach to reform.

This would bring the Northern Ireland Prison Service in line with its commitment, as noted in the NIPS Blueprint, Corporate Plan 2009/12 and Business Plan 2009/10, of:

'protecting the human rights and dignity of our staff, prisoners and all others with whom we come into contact' and their plan to 'continue to take forward a comprehensive review of all... existing policies, practices and procedures to ensure that they are human rights compliant'.

Devolution should be the catalyst for reform and there should be political will to take a notion of meaningful reform forward and see it through. Finally, the one issue which has not been repeated time and time again is this: Why have these problems been left to re-occur? The missing factor it would seem, is that no one has been held accountable for the failings of the prison system.

*For a full appraisal of the issues mentioned above through a human rights lens, a report will be available from CAJ in the coming weeks.*



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# Prosecutions - The Importance of Oversight and Accountability

## The Criminal Justice Review Context

**The Criminal Justice Review was established after the Good Friday/Belfast Agreement proposing a new start for Northern Ireland. The goal was that the criminal justice system would have the confidence of all parts of the community. The Review made its recommendations on the assumption that criminal justice matters would be devolved.**

Arguably, the single most significant element of reform proposed by the Review was the transformation of the existing Department of the Director of Public Prosecutions (DPP) into a new Public Prosecution Service for Northern Ireland (PPS). The most significant change recommended for the new PPS was that it would take over responsibility for all prosecutions formerly prosecuted by the police.

One of the big challenges for the Review was to consider what arrangements for oversight and accountability should be in place under a new devolved administration. In particular the question was whether any new Attorney General for Northern Ireland in a devolved administration should continue to have the same powers of supervision and direction as the Attorney General had over the DPP under the existing arrangements.

The standards of professional responsibility laid down by the International Association of Prosecutors in 1999 referred to the need for prosecutorial discretion to be exercised independently and free from political interference. Following on from this, the Recommendation of the Council of Ministers of the Council of Europe on the Role of Public Prosecution stated that specific instructions by government not to prosecute should in principle be prohibited.

Although the general standards are clear enough however, there was no clear consensus as to how exactly the relationship between prosecutors and government should be grounded. Within the UK and Ireland alone, the Review found that a variety of models co-existed. Apart from looking at models outside Northern Ireland, the Review consulted widely within Northern Ireland. There were concerns expressed about the possibility of political interference occurring under the existing present arrangements and this was especially the case in relation to a small number of high profile cases. This could be very damaging for confidence in the rule of law and the changes being proposed.

## The Review's Solution

The solution advocated by the Review was to recommend upon devolution the establishment of a new Attorney-General for Northern Ireland which would be a non-political appointment made by Office of the First Minister and Deputy Minister (OFMDM) who would be drawn from the legal profession. As a further safeguard against political interference the DPP should no longer act under the superintendence of the new Attorney General. Instead the functions of the Director should be exercised by him or her independently of any person and a new 'consultative' relationship between the Attorney General and the DPP. This relationship was legislatively enshrined in section 42 of the Justice (NI) Act 2002.

The model that has been implemented diverges from the model in England and Wales and is much closer to the model of the Republic of Ireland where the DPP also takes prosecution decisions independently of the Attorney General. This 'hands-off' approach as regards the Attorney General did not mean that the Review considered there should be no accountability or answerability for decisions. As well as the need for a published Code for Prosecutors to include a Code of Ethics to guide decisions and an annual report, in line with international standards and other practices elsewhere, the Review recommended:

- an inspection mechanism whereby the Criminal Justice Inspectorate for Northern Ireland (CJI) could scrutinise the quality of decision making. The Justice Act requires that such reports must be reported to the Attorney General.
- a need for reasons to be given in individual decisions to interested parties. This policy has been slow to develop and is still in a process of evolution.



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## Criticisms

But the question has been asked whether these arrangements provide enough oversight and accountability for the work of the PPS. Various criticisms have been made including criticism of funding arrangements, the need for greater accountability and the robustness of the consultative arrangements.

My first inclination as a member of the Criminal Justice Review was to take the view that we should wait and see how the new model works before initiating any immediate change. There is much to be said for this. In view of an accountability deficit opened up by the fact that there is no body to whom the PPS as a service is accountable, there could also be merit in a review that would look more broadly than the Criminal Justice Review had time to do at the various options for change. This brings us back to the role of the Attorney General. I do not think it would be appropriate to return to the old superintendence relationship that existed before devolution. What is now needed is to forge a new relationship between the DPP and the Attorney General – neither a purely consultative one nor a purely superintendence one. At the very least the present light touch consultative relationship whereby the DPP only needs to consult on matters relating to the code and the annual report could be strengthened by requiring that the DPP is under an obligation to consult with the AG on all matters relating to his or her functions.

In sum, I think there is enough concern about the present arrangements to warrant a review which would look widely at other models elsewhere. The Review was rightly in my view very exercised in a society coming out of conflict about the possibility of political interference in prosecution decision making and about the damage this would do the office of the DPP. Accountability mechanisms were recommended, but today now that devolution is in place and accountability is rightly a central concern, we need to look at how these might be strengthened without weakening the need for independent prosecution decision-making. If we can achieve this we would help to strengthen confidence in the new PPS.

*Professor John Jackson, University College Dublin.*

*John Jackson is the author with Barry Hancock of **Standards for Prosecutors: An Analysis of the National Prosecuting Agencies in Ireland, New South Wales (Australia), The Netherlands and Denmark**, published by the International Association of Prosecutors in 2009.*



**CAJ will produce a full report of this conference in due course. A full conference transcription will also be available on our website in the coming weeks. Check [www.caj.org.uk](http://www.caj.org.uk) for more details.**

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## Excerpts from the speech of Rt Hon Elish Angiolini QC: Accountability of the prosecution service – the Scottish Experience

“There was a concern with devolution of justice and with the Prosecution Service that it would bring about over scrutiny, that because of the small size of our jurisdiction that the Lord Advocate that I am and the Prosecution Service over which I have responsibility would be over exposed to criticism from parliamentarians and for party political purposes. I have not found that experience in Scotland.”

“Prosecutors in Scotland have come to terms with a new Parliament with increased legislative powers and responsibility for scrutinising the prosecution system. The experience has been salutary for us and for the Parliament, and indeed we have grown maturely together through that process. It has certainly sharpened our performance, it has made us scrutinise our own procedures, our own practices more carefully and it has made us more conscious of the responsibilities to the people whom we serve, and that can only be a good thing.”

“Prosecution in the public interest, as I mentioned earlier, is a lonely enterprise. The role of the prosecutor in Scotland requires us to be constitutionally independent - independent of the members of Government, my colleagues of the press, and of victims and indeed of witnesses and anyone else. That is not an excuse for isolation or a lack of accountability in any shape or form, but prosecution to please would fundamentally undermine the democracy and indeed the rule of law.”

“It was Nelson Mandela in 1998, when he was awarded an award by the International Association of Prosecutors, having been incarcerated at the hands of prosecutors for a number of years, who very generously provided a vision of prosecutors for the new millennium and one which I think is a vision which is difficult to challenge about the prosecutor as a Human Rights lawyer, as not simply seeing Human Rights as challenge to the State but embracing Human Rights in what we do. Indeed, acting without fear or favour, independently of victims, but with compassion and understanding of the people that we serve and with humility in that respect. So independence is not an excuse for arrogance or for insularity. It is, however, absolutely vital to the working of the prosecution system that that independence is respected and understood politically.”

“In terms of accountability I have a right to address the Parliament, I'm not entitled to vote, I'm not a member of the Parliament, but I'm entitled to address the Parliament whenever I wish to. I'm entitled to attend Cabinet and address them where I think there would be an issue about the rule of law or indeed regarding prosecution. The Parliamentarians have the right to examine me and there is a provision in the Scotland Act which provides for a veto where I consider any answer to a question prejudices a particular case or wouldn't be in the public interest. But I am, subject to that, available in the Parliament to be questioned and accountable for the decisions which are made by me or on my behalf. And that, in practical terms, means that every three weeks my colleague and I have to turn up for Law Officer's questions along with the Justice Minister on any issues which they may have about the prosecution.”

“[g]iving reasons in those circumstances or explanations for cases is something which is highly desirable, it has assisted greatly in the understanding of the decisions we make. The decisions we make can be incredibly difficult where everybody, many of the highly eminent armchair critics will suggest that clearly there was a sufficiency of evidence, but to be able to explain it in a way which is understood more widely has been very liberating for us as prosecutors.”

“[ t]here are limits to giving reasons. However, I can say that generally the giving of reasons to victims over the last ten years has been immensely successful in terms of getting, if not an acceptance of the decisions, a far greater more profound understanding of the limitations and the constraints under which we operate and that decisions are based on evidence rather than whims or on some form of political agenda.”

A link to the full speech will shortly be available on our website [www.caj.org.uk](http://www.caj.org.uk)

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## OPCAT and NPMs as a Preventive Mechanism

The Optional Protocol to the Convention against Torture (the OPCAT) is fundamentally based on the idea that prevention can be fostered by establishing a system of regular visits to places of detention by independent bodies with the power to make recommendations for improving the treatment of persons deprived of their liberty. The OPCAT does two things. It establishes an international visiting body, the Subcommittee for Prevention of Torture (SPT), which has the authority to visit any place where persons are held within the jurisdiction of a state, in order to produce a confidential report which forms the basis of a dialogue with the State. Since it came into being in 2006, the SPT has conducted 3 or 4 visits each year and with nearly 60 states in the system it is clear that it will not be visiting a given country particularly often!

Secondly, and in recognition of this, the OPCAT requires States to establish or designate a National Preventive Mechanism (or NPM) which is functionally independent, has the authority and capacity to visit any place of detention and make appropriate recommendations, and to engage in dialogue with the State and also with the SPT. The UK NPM was established in March 2009 and is uniquely complex. Some states, such as France, Germany and Switzerland, have established entirely new mechanisms. Others have adapted the mandate of an existing body (usually an Ombudsman's Office or NHRI). The UK has identified existing bodies with relevant competencies and appropriate structures which, in combination, cover all places of detention. Some of these are 'thematic' in coverage, others regional. The result is an NPM comprising 18 separate agencies, 9 in England and Wales (two with responsibilities in Wales only); 5 in Scotland and 4 in NI. Those in Northern Ireland are (a) Criminal Justice Inspection NI (CJINI), (b) NI Policing Board Independent Custody Visiting Scheme (NIPBICVS), (c) Regulation and Quality Improvement Authority (RQIA) and (d) the Independent Monitoring Boards (these perhaps being best understood as a further range of individual components of the NPM, thus increasing its size and complexity even further). The key issue for the UK NPM arises from its complexity. Each of its component parts has its own focus, traditions and working methods. How is this to cohere into a national preventive 'system'? The answer has been to give HMIP an overarching co-ordination role, including the responsibility to produce an 'annual report' of the NPM. Quite what 'co-ordination' means in this context is unclear, but it is unlikely to include influencing operational activities, which would probably be as unwise as it would be unwelcome. Nevertheless, some skill will be needed to present the activities of so diverse a range of bodies as a national 'system.' There is also a rapidly developing network of NPMs across Europe, and beyond, sharing practice, expertise, etc. How all parts of so regionally and functionally variegated an NPM will be able to feed into and benefit from this is likely to be a further challenge. There are a number of clear advantages for those bodies which are designated as a part of the NPM since both their mandate and their independence becomes underpinned by the international commitments set out in the OPCAT: they become part of an 'international' system. At the same time, becoming part of that international system brings with it additional responsibilities, including that of maintaining contact with the SPT, which might offer them 'advice and assistance' and may also make recommendations concerning their functioning. At the very least, it adds to the workload of already overburdened bodies. There is no doubt that the system of NPMs established under the OPCAT offers many opportunities for improving systems of national inspection and through this, of prevention. The challenge is to ensure that the UK NPM is as coherent in its approach to this task as its complex composition permits.

*Professor Malcolm Evans OBE,*

*Bristol University*





## Civil Liberties Diary - September

### 3 September

The Chairman of the Policing Board, Barry Gilligan, has stated that he will not be returning to the Board until a police investigation into his involvement in a controversial land deal is complete.

### 9 September

The Secretary of State, Owen Paterson, warned that, if local politicians fail to reach consensus on controversial marches, the Parades Commission will be reappointed in January. He stated that local leaders must find a solution that brings the communities in interface areas together.

### 13 September

Hundreds of nationalists who were interned in the early 1970s have brought legal action against the British government. This multi-million pound suit is based on the physical and mental treatment they suffered while interned.

### 15 September

The Billy Wright Inquiry released its final report. The Panel found that there was no collusion by security forces in Billy Wright's murder, but that his death was the result of "a series of failings in the management of the Northern Ireland Prison Service."

### 27 September

The Chief Inspector of Schools has announced that beginning next year inspectors will be able to perform full inspections of schools without advance notice. The inspections focus on teaching, leadership, and management within the school. The reform of the monitoring process aims to give inspectors a more accurate picture of school performance. Once the changes are introduced, approximately one in every ten inspections will be unannounced.

### 30 September

The Chief Constable brought a challenge before the Court of Appeal to a ruling that Senior Coroner John Leckey was right to decide that next of kin should see redacted reports into a series of RUC shootings 28 years ago. The Court of Appeal dismissed the case, meaning that families will now have access to state documents. Additionally, the coroner was awarded his legal costs.

The Probation Board for Northern Ireland revised its community service program so as to give victims a say in how offenders spend their community service punishment hours. Victims can now ask that the offender completes his or her hours with an organisation specified by the victim.

### Can you help with Just News?

CAJ urgently requires a monthly volunteer to help us with the Civil Liberties Diary page of Just News. This involves collecting newspapers from the CAJ office once a month, typing up a small number of the main civil liberties / human rights based news from that month, then forwarding the document to us for publication. If you are interested, or have any questions about this role, please email [louise@caj.org.uk](mailto:louise@caj.org.uk) or call 028 9031 6000.

We would like to take this opportunity to thank Mark Bassett, who generously undertook to provide us with the Civil Liberties Diary page of Just News for the last 6 years. We wish him every success in his future career.

*Compiled by Elizabeth Super  
from various newspapers*

## Just News

**Just News** welcomes readers' news, views and comments.

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