

The devolution era in Northern Ireland

David Ford discusses the innovations and advances since 2010



The focus on criminal justice since 2010, coincides with the creation of the Department of Justice in Northern Ireland in April of that year. I am very pleased to have the opportunity to outline our understanding of the devolution era, to make the case for our different justice systems, and for the sharing of innovations. In short, I want to make the case for a greater understanding of the benefits which devolved justice has to offer. First, three broader

contextual points.

There has not been a UK-wide approach to justice for 16 years. The entirety of the twenty-first century has been lived out under three different justice systems within the UK.

In that context, I welcome this event and Richard Garside's proposition that the Westminster view of justice needs to shift a little further towards today's devolution realities. This raises challenges for policymakers, especially those engaged in national issues, and for commentators alike.

My second point concerns the nature of devolution. Differences across the jurisdictions are not collateral or ancillary. The point I want to emphasise is that enabling difference is at the very heart of this – it is the point of devolution.

Thirdly, the conditions for devolution are not uniform across the UK jurisdictions. The political make-up of the jurisdictions, our

histories and aspirations are very relevant to how powers are sought, received and exercised. And in relation to Northern Ireland, it may be tempting to view this through the lens of 'The Past', but that is one part only of the story and I will return to this later.

The Northern Ireland context for justice, 2010 - 2015

The Department of Justice came into being in April 2010. It was the final piece of the devolution jigsaw in Northern Ireland and it was possible only with local political agreement. The devolution of justice had to be wanted and

workable at the receiving end.

Indeed, the creation of the Department of Justice was one element of the broader Hillsborough Castle Agreement in February 2010. Devolving justice was intended to help cement the political settlement in Northern Ireland more generally, and this is an important point. While preparations had been underway for the devolution of policing and justice functions for some years, the time between the political deal and the creation of the Department of Justice can be measured in weeks – nine weeks in fact.

As Justice Minister, it was vital that I was absolutely clear from day one about the benefits of devolution, as well as on my programme for reform. I am the Justice Minister and the leader of the Alliance Party,

working in a mandatory coalition with four other parties at the Executive table, and the political dynamic for the new Department of Justice required a very clear focus on reform and devolution benefits.

On taking office in 2010, I described the devolution benefits in the following way. First and foremost, accountability. A local Justice Minister, elected on a cross-community basis, who would be held to account by the Assembly, its members and its Justice Committee.

Second, the ability to identify local solutions to local problems, and to drive innovation. Third, the benefits of local partnership working in the fields of policy development and operational delivery. And fourth, the opportunity to reshape and reform the justice system. These four aims remain just as valid today and are at the heart of my agenda. I will illustrate how we are realising these benefits later in my speech.

But looking back to 2010, it is arguable that justice in Northern Ireland could have been a highly contested space, with little room for shared understandings or policies to be developed, and with little room for progress or reform. I want to say to you that this is not our experience. Agreements, progress and good outcomes are demonstrably possible. It is not always easy or straightforward, but that is the nature of politics – and mandatory coalitions in particular – and that is the challenge I was very happy to accept in April 2010.

And where are we now in 2015? Richard Garside's model of tendencies towards market building

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in England and Wales, nation building in Scotland, and community building in Northern Ireland has some attractions (see page 4 in this issue). It certainly makes the case for policymakers and commentators to think deeply about the differences which have emerged and are emerging in our systems.

For Northern Ireland, I accept the community proposition. Our focus at Executive level is supposed to be towards building a shared future, with a twin focus on rebalancing the economy and tackling disadvantage. In that light, the devolution of justice is strategically important to the development of community cohesion and to more radical thinking about social policy.

I promised to say a little about The Past and the implications for justice. Policing The Past is a present day issue, consuming significant operational resource. Victims of The Troubles continue to suffer. Our courts and inquest systems continue to adjudicate on cases stretching over four decades. For many of our citizens – and indeed some of our politicians – The Past is the context for today's civic engagement. And we continue to live under the threat of atrocities. In the year before the Department of Justice was established, we saw the brutal murders of two soldiers and a police officer; since then, another Police Service of Northern Ireland (PSNI) officer and a prison officer. This is beyond shameful and all the political parties in Northern Ireland are united in condemning the mindless activities of the dissidents.

There has also been ongoing street disorder, largely by Unionists, much of it directed against my Party, especially towards Naomi Long MP who defeated the DUP (Democratic Unionist Party) leader in East Belfast five years ago.

Two recent attempts at a political solution have reached the point where further progress is possible in Northern Ireland. We needed a

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political consensus for addressing the legacy of The Past so that our justice institutions could deal with today's justice issues. We needed a solution which was respectful and mindful of the needs of victims. We needed an investigative solution which ran with the grain of justice norms and values. And we needed an effective method for information to be given to victims, survivors and the bereaved. The Stormont House Agreement in December 2014 has provided a political framework for The Past, and we are hopeful that the new arrangements will make a significant difference to how The Past impacts on our justice system and our citizens. But as I said on 23 December, what was agreed was a 'deal to make a deal', and much work remains to be done to agree and implement the necessary detail.

Current politics

Of course, in the last two weeks [Editor: i.e. in March 2015] the Stormont House Agreement had a

question mark put over it by Sinn Féin withdrawing its support for Welfare Reform.

At a political level, the challenge is to get back on course as quickly as we can. For the justice agenda, and indeed our citizens, continued progress on The Past is vital. For our part, the Department of Justice is working hard to deliver on the aspects that fall to us, particularly in relation to legacy inquests and investigations

into The Past. The financial situation, with reducing resources for justice, is a challenge too and this has and will impact on our ability to drive change at quite the pace I would wish. It will mean tough choices, and creativity, in order to protect the front line but the reality is that no part of the justice system is immune from the financial realities.

Same and different

Against all that, it is vital that we keep a clear focus on today's challenges. Devolution has enabled me to advance a progressive justice agenda specific to our needs today, and hopefully has set the agenda for the coming years. But I think we need to also recognise that the UK jurisdictions still have a lot in common. The fundamentals of our systems are the same: a constitutionally independent judiciary, policing by consent, citizens' rights, and international requirements hold our separate systems together in a common legal and values-based framework. This is a strength.

Devolution is an additional strength, enabling justice to evolve locally in a recognisable framework. I believe we can do more to recognise this strength and learn from each other across the jurisdictions. This is vital because while justice is often, like politics, a fundamentally local issue for our citizens, we are in an age where UK and indeed European jurisdictional borders are sometimes irrelevant and

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where international developments resonate at home. This is not just relevant to the non-devolved national security space. Human trafficking, cyber-crime and the exploitation of technologies give rise to new

challenges in the devolution era. As the only UK Justice Minister operating with a land border with another State, I can attest to the benefits of looking outside our

jurisdictions for ideas, collaboration and innovation. I meet regularly with the Irish Justice Minister, a productive relationship which benefits us both. Our Organised Crime Task Force includes subgroups, on issues such as tackling fuel fraud, which benefit enormously from input from colleagues south of the border.

The more our systems evolve locally, the more important it is that national challenges are tackled with those differences in mind. Our local accountability and scrutiny arrangements, and the ways in which we organise our operational resources in the jurisdictions, are relevant to the success of national policymaking.

And the local conditions which made devolution politically possible in the first place remain relevant now. The political contexts in the jurisdictions are hugely relevant to national initiatives. Ignoring this reality, or expecting good policy to speak for itself, is not the best way forward. If Richard Garside is right about his market building, nation building and community building model, then it must follow that policymakers and commentators should double their efforts to understand this complex landscape and to make it work.

Our devolution realities and successes – accountability

Against that background, I want to share our experience of a national initiative – the National Crime Agency (NCA). An initiative which, on the face of it, was so operationally vital that the policy intention ought to have made the case for it to apply readily in Northern Ireland.

This example ends in a good outcome, but it is worth reflecting on the journey which was not by any means easy. Nor was the outcome certain. In fact it was only on Tuesday, 10 March this year that the

Order extending the role of the NCA into the devolved sphere was passed in Committees of the House of Lords and Commons.

So why is this issue relevant today? Let me start by quoting the Home Secretary, Theresa May. These two sentences probably capture the importance of the NCA on the one hand and the difficulties for Northern Ireland in implementing it on the other.

These are Theresa May's words:

I established the NCA (to replace SOCA) to take a wholly new

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approach to tackling serious and organised crime and the relentless disruption of organised criminals. In contrast to what went before, the NCA has the power to task and command other law enforcement assets and the capability that reaches from local to international crime network.¹

Would anyone reasonably object to that? The answer is I did, and so did some of the political parties in Northern Ireland. I had no doubt about the benefits we would gain from the NCA's skills but there was no prospect of a Westminster body telling the PSNI what to do, or trampling on its ground, or being unaccountable.

This is not just a political viewpoint. The constitutional arrangements for policing in Northern Ireland were hard fought following the Good Friday Agreement. It follows that a body which, for instance, tasks and co-ordinates is not a suitable or acceptable approach to Northern Ireland.

While the NCA's predecessor, SOCA, had been in place for a number of years, it was established before the devolution of justice in Northern Ireland. So with the NCA, the Executive and parties had an opportunity for the first time to consider the NCA's role in the devolved arena. The two critical aspects of our policing foundations are accountability – principally to a Policing Board, which is separate from government but has both political and independent representation – and the primacy of the police.

My challenge was to take the Home Secretary's vision and translate that into something which fitted within our hard-won accountability and operating framework. My challenge was to persuade the Home Secretary, the Director General of the NCA and, as far as possible the Policing Board, as well as our political parties. And in fairness, the Home Secretary was alive to the need to make adjustment, although it took an amount of engagement to fully persuade that the NCA must fit completely within our structures and not be a bolt on or extension. Not all our political parties are persuaded that we have achieved a good outcome. I am convinced that we have.

The lesson from this is the need to build in deeper and earlier engagement with the devolved administrations on national

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challenges. And within our own accountability structures, we have achieved a huge amount of local progress through good and early engagement. I am glad to pay tribute to the work of our

Justice Committee, and the impact it has had on the policy agenda. Through collaborative working between the Committee and the Department, we have made substantive improvements to the

¹ Source: National Crime Agency – Annual Report and Accounts 2013/14.

services and support available to victims and witnesses of crime.

This includes a new Victim Charter setting out clear entitlements for victims of crime, a new Victim and Witness Care Unit providing a seamless service for as much of the victim journey as possible, and the introduction of Registered Intermediaries to assist the most vulnerable people in our society to give their best evidence.

We have also given victims clarity and certainty for the future by creating a shared vision, through an agreed strategy which will extend into the next Assembly mandate. This strategy – which we've entitled 'Making a Difference' – brings together both the findings of the Committee's first major Inquiry and the Department's own work with victims and their representatives.

And on the theme of learning and sharing from each other, my Registered Intermediaries Schemes (RIs) have drawn on the England and Wales experiences and has gone further, by making RIs available for suspects and defendants as well as victims and witnesses.

Reshaping and reforming justice

While our political and institutional landscape in Northern Ireland may appear complex from the outside, I don't want to over-play that. Our settlement was hard-won. Wearing my Party hat, I can see room for improvement in our settlements. As Justice Minister, I am absolutely committed to working within our existing democratic institutions. With that in mind, I felt it would be an unforgivable error to take the role of Justice Minister and not take the opportunity for big reform. To allow our thinking to be confined would have been a mistake.

Not everything I want to do is easy to progress, but that makes it even more essential to engage, explain, persuade, and then to deliver on promises for reform – to deliver the devolution benefits. I will share two examples with you. Firstly I would like to talk about the reform of the prison system in Northern Ireland. When I became Justice Minister I was determined to put

reform at the centre of my agenda. The Northern Ireland Prison Service has a proud and distinguished history and had played its full part during Northern Ireland's difficult past. That is one of the reasons why I am told that successive Direct Rule administrations left it in the 'too difficult' tray. I wanted to see the Prison Service move away from its security focus and into a more progressive, rehabilitative system that would help make Northern Ireland safer. One of my first actions on becoming Minister was to commission a root and branch review of our prison system. In October 2011 the Prison Review Team, led by Dame Anne Owers, presented their report to me. It contained 40 wide-ranging recommendations that, in their words, would deliver end to end transformational reform in the prison system.

This review presented five key challenges:

Firstly it placed rehabilitation at the centre of the work – Historically the Prison Service focused on containment. That had to change.

We needed to address the declining prison estate – The years of under-investment had taken its toll on the buildings, utilities and overall infrastructure of our prisons.

There was a renewed focus on outcomes to reduce reoffending – The Service needed to develop a better understanding of its existing actions for supporting vulnerable and 'at risk' prisoners. It also needed to develop better outcomes in education and purposeful activity. All of which are crucial to addressing offending behaviour.

Refreshing the workforce – The Service had not recruited to their officer grade in many years and at

that time staff played a very different role. That needed to be addressed; and

Finally, I inherited a costly Service – The operation of the Service offered little value for the public purse in terms of outcomes and investment.

Each of these five areas has seen significant progress over the past three years. Next month, our Young Offenders Centre will become a college with development plans and support for all students to ensure they gain qualifications, address their offending behaviour and resettle positively back into the community.

The prison estate is being redeveloped to provide better support for people in custody. There are plans for a new female facility in the medium term, and a new step down unit in the short term. And our largest male prison at Maghaberry is being reconfigured into three mini-prisons to allow for a much more progressive and focused

regime.

Since 2010, over 500 staff have left the Service while 300 new people have been recruited. The focus of their training, and for the remaining experienced staff, has been on engagement with prisoners to help address their

offending behaviour and to reduce the risk of re-offending. We've cut the cost per prisoner place by over 20 per cent, while focusing on rehabilitation. Much more progress has been made – these are just a few examples of the progressive reforms that have taken place. The Prison Service today is not the same Service I inherited in 2010. Reform will continue to be the central focus of the Service for years to come. My second example of reform concerns legal aid, an issue which all of our jurisdictions are grappling with. Access to justice cannot mean justice at any cost. Justice cannot be driven by self-interest or a desire to sustain

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antiquated practices and approaches.

In 2010, I inherited a budget for legal aid which was routinely set significantly below the actual level of demand during Direct Rule. As a result the legal aid budget was annually managed within a much larger budget. This model becomes increasingly difficult to manage in the context of a smaller budget that is declining and facing other pressures. I was determined to seek local solutions for local problems, and I launched the Access to Justice Review to bring forward proposals for reform, with a particular emphasis on alternative approaches to resolve disputes and secure value for money. I had the opportunity to develop and deliver arrangements which best suited the environment in Northern Ireland.

Agenda for change

The Review set an agenda for change and we are gradually moving forward with it. Initially, as a consequence of the financial constraints, the focus has of necessity been on reducing cost and I have concentrated on reducing fees and ensuring the right level of representation.

The nature of the devolution settlement in Northern Ireland has presented challenges. The Justice Minister does not have responsibility for all aspects of policy which impact on the justice system. For example responsibility for respect of Family Law – which is a significant cost driver – does not rest with me, but with another government department. The same is true of regulation of the legal profession.

Getting the right sort of joined working has been a challenge, especially where investment has been needed in order to get the necessary change initiated. We have demonstrated in other areas that joint working can be very effective, and we will continue to work to deliver this in access to justice.

Devolution has been an enabler, in that we no longer follow slavishly the developments elsewhere. As a result we have so far managed to avoid the worst implications of reform elsewhere. We develop bespoke solutions. Cut and paste policy has long-gone.

I have delivered significant reform to the legal aid system, without which there would be an even greater pressure on the budget. Further reform is planned and will be implemented. The nature of the issues are such that they will not be resolved by fee reductions alone. It will be necessary to start to look at areas which might be perceived to restrict access to justice. However, this will be done in a way which allows us to focus on and make arrangements for alternative approaches and which minimises the impact on access to justice.

These examples lead me full circle to the devolution benefits I outlined earlier. There are many ways to

measure the success of those benefits but outcomes matter most. This holds us together too: the need to deliver demonstrable change in our respective jurisdictions. In addition to Richard Garside's central

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proposition, I would add some challenges of my own. Can our respective citizens – and I include England and Wales – see improvements in our systems since 2010? Do our systems feel more relevant? Are their experiences of justice better, and have we enhanced confidence in justice?

These are common challenges and it is vital that whatever path we are on in our jurisdictions, we should continue to learn from each other in answering those questions. It is vital that we innovate and share learning with each other. Innovation is vital because justice has to look ahead to future generations. Justice is a long-haul endeavour and we need to think about the steps we can take

now to influence and prevent criminality, to encourage a culture of lawfulness, and to create conditions which break the cycle of offending.

I would like to share two brief examples of 'innovation-in-action' with you now.

Innovation: a new social enterprise

Research worldwide shows that the earlier we intervene in a vulnerable child's life, the more positive impact we can have on their long-term life outcomes. Recognising this, several of the Departments in Northern Ireland joined together with a private funder, Atlantic Philanthropies, to establish a funding pool to be used over the course of the next three years to develop sustainable and targeted interventions.

My Department has designed and is leading a project called "'6 out of 10": breaking an intergenerational cycle' which operates on this simple premise – that if six out of every ten young boys who have a father in prison will go on to offend themselves, there must be a way to work with the parent to pull the family out of this cycle of offending. To do so we have designed a project which seeks to combine two very important desistance motivators – employment and family.

Money from the central pot has been used to seed-fund the creation of a community interest social enterprise company called 'The Book Reserve' which will become profitable and self-sustaining during the funding period. Each year, 12 young parents who are serving a custodial sentence in our Young Offenders Centre, and who have a motivation to change their lives for the sake of their children, will be offered the opportunity to take part in the project. They will undergo intensive parenting support and capacity building prior to release from custody, at which point they will be employed in the social enterprise for a year. During this year they will receive additional community counselling and parenting support and have access to educational and training programmes in addition to working in the company. At the end of their year,

each young parent will be supported in finding permanent employment, and will continue to have access to a mentor to provide ongoing support and advice.

The project is currently in year one, and I am hopeful that it will deliver demonstrable outcomes not only for the young parents, but for their children and will be something we can build upon and expand in the future. I am excited about the prospects for this project, for the parents and children it will support, and for the contribution it will make to a safer community in Northern Ireland.

Innovation and partnership working

And my last example, of innovation in the field of partnership working. It concerns our police service working with community leaders and residents to develop solutions to a local problem.

This example dates to August 2014 and concerns approximately 100 young people gathered at the scene of an Internment Anniversary bonfire. Initial reports concerned burning barricades and the young people subsequently engaged in a sustained attack on police vehicles.

Twenty-one people were identified subsequently as having committed a variety of offences. The conventional approach, of bringing people before the courts, has been applied in relation to some. But also in this case, the police and local community worked together in partnership to develop a solution which recognised the severity of the incident and residents' concerns, but

also the need to re-integrate the young people into their community.

Recommendations have been made to our prosecution service that the young people should take part in Restorative Conferences via our Youth Justice Agency. The local community is preparing an action plan for this to be delivered by community organisations. It will involve the young people coming face to face with residents and with the police officers involved on the night of the incident. The programme would also look at avenues which could be explored regarding the young people working towards community based academic or voluntary qualifications. Prosecution files have been submitted, and the community partners are in the final stages of presenting their proposals through the police.

Commentators on policing in Northern Ireland will, I think, note this as a significant development not just for those involved in this case. It is significant in what it tells us about partnership working and the benefits of close co-operation at community level. While it is easy to look to restorative justice in cases of minor crime or anti-social behaviour, more work is needed to determine its appropriateness to serious cases.

In conclusion, I hope I have given you a flavour of what we set out to achieve in 2010, and how we are living the devolution benefits today.

We should of course always ask whether there is more to do. No system is perfect but we have to believe in and seize the opportunities which the devolution era offers to us as politicians, policymakers and commentators.

In closing, I want to say that I am proud of the justice system in Northern Ireland, of the reforms we have delivered since 2010 in the fields of prison reform, support to victims and in many other initiatives. There is more to do, but devolution has enabled some significant advances to be made.

I am pleased to work in an environment of increased accountability and local scrutiny, I am pleased to work in an environment which enables, indeed requires, enhanced local partnership working and innovation in policymaking and delivery. I am proud of the many staff and public servants – the probation officers, police and prison officers, the court officials – who work in our system to make things better for citizens. And I am proud of the outcomes we are seeing, such as the very low numbers of women in custody today, and the very low numbers of children in detention. In fact, there are more people in this room today [Editor: There were approximately 100 people at the Centre's conference on 23 March 2015] than there are women and children in detention in Northern Ireland.

I am very glad of the opportunity to share our understanding of the devolved justice era with you and to give you a flavour of the exciting innovations we have to offer in Northern Ireland. ■

David Ford MLA is Justice Minister, Northern Ireland

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