UK Justice Policy Review

Volume 6

From the General Election to Brexit

7 May 2015 to 23 June 2016

by Richard Garside, Matt Ford, Helen Mills and Rebecca Roberts

THE HADLEY TRUST

CENTRE FOR CRIME AND JUSTICE STUDIES

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About the authors

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Contents

Executive summary

This is the sixth volume in the *UK Justice Policy Review* series, covering the period from the May 2015 General Election to the Brexit referendum in June 2016. It assesses and explains criminal justice developments across the United Kingdom's three criminal jurisdictions of England and Wales, Scotland and Northern Ireland.

This *Review*, like previous editions, focuses on the key criminal justice institutions of policing, the courts and access to justice and prisons and probation across the UK. It combines concise, critical analysis of policy developments with key data on the main trends.

Speeches

The first section covers four representative speeches made by leading politicians in each jurisdiction.

In England and Wales, this includes Theresa May's speech to the Police Federation in May 2015 where she set out her programme of police reform, and David Cameron's February 2016 speech on prison reform.

Scottish Justice Secretary Michael Matheson's September 2015 speech, 'Fairer Justice', is examined, as is outgoing Northern Ireland Justice Secretary David Ford's speech in March 2016, 'The Social Value of Justice'.

Legislation

The next section covers legislation that passed through the UK parliament and the devolved assemblies during the period under review. This includes: the UK-wide Psychoactive Substances Act; the Policing and Crime Bill in England and Wales; the Community Justice (Scotland); and, the Justice (No 2) Act in Northern Ireland.

Policing

The policing section begins with an overview of the five different police governance and accountability models in force across the UK's three criminal justice jurisdictions. Page 15 includes an infographic of the Serious and Organised Crime Assessment by the UK-wide National Crime Agency.

Two developments affecting the whole of the UK are then discussed: police spying controversies and enquiries into historic child sexual abuse. A selection of the major controversies facing different forces across the UK are highlighted in an infographic on page 17.

The rest of this section highlights important activity and debate particular to each jurisdiction. In England and Wales, this included issues around understanding police demand and a new funding allocation formula.

An infographic on page 18 summarises the results of the second set of Police and Crime Commissioner Elections, held during the year under review.

In Scotland, controversies continued to blight the new national police force.

As in previous years, the difficulties in ensuring the independent investigation into historical deaths resulting from civil conflict persisted in Northern Ireland.

Data dashboard

The data dashboard shows changes in criminal justice expenditure, staffing levels and the number of people criminalised

and subject to various criminal justice sanctions, in each jurisdiction between the review year and 2011/12 and 2014/15.

Courts and access to justice

The section on courts and access to justice begins with an outline of developments in the continuing disputes over legal aid between the London and Belfast administrations and their respective legal professions.

The raft of former Justice Secretary Chris Grayling's criminal justice policies abandoned by his successor Michael Gove are highlighted in an infographic on page 22.

Then follows an overview of moves to codify rights and protections for victims of law-breaking. This includes specific measures around tackling domestic violence and abuse. The strategies developed by each jurisdiction are summarised in an infographic on page 24.

In England and Wales, there were some important developments around injustices experienced by people who are criminalised. This included challenges to the doctrine of Joint Enterprise and the system of disclosure for criminal convictions.

Moves on court closures and efficiency in all three jurisdictions are also covered.

Prisons

The section on prisons opens with a discussion of the relative sizes of the custodial estates and prison populations in each jurisdiction, summarised in an accompanying infographic on page 26.

Then follows an outline of plans to renew the prison infrastructure across the UK, followed by analysis of key developments. An infographic about Just Solutions International, the commercial arm of the Ministry of Justice, wound up in the year under review, is included on page 28.

It then considers some of the regime challenges, particularly the growing crisis of prisoner safety and violence. Page 30 includes an infographic on deaths, self-harm and assaults in prisons. Developments in youth justice are also covered.

Probation

The probation section highlights the heterogeneity of developments across the three jurisdictions.

The new structure of privatised probation in England and Wales, is outlined. A map of the new arrangements is included on page 33. A selection of reviews and inspections of the new arrangements are highlighted.

Legislation to reorganise probation delivery at a more local level in Scotland is covered.

Minor tweaks to the probation service in Northern Ireland are discussed.

Finally, this section considers the ongoing controversies around electronic monitoring.

Coming up

This final section previews some of the main developments that will be covered in more detail in the next edition of UKJPR. The implications of Brexit and ongoing austerity have been determinative of much that has unfolded since the Brexit referendum. Criminal justice policymaking since the referendum has unfolded in a far more unpredictable and turbulent context.

Introduction

Between General Election and referendum

The 13 month period covered by this edition of *UK Justice Policy Review* (UKJPR) is bookended by two notable political events. At one end is the May 2015 General Election, which returned the first majority Conservative UK government for nearly two decades. At the other is the June 2016 referendum on the UK's membership of the European Union, which inaugurated a new period of politics and policymaking, distinctive in many ways from that which preceded it. This edition of UKJPR is concerned with assessing and explaining criminal justice developments across the UK's four nations and regions – England, Wales, Scotland, and Northern Ireland – between these two events. Developments since the referendum, examined in brief in the 'Coming up' section at the end of this edition, will be treated in more detail in subsequent editions of UKJPR.

Three different jurisdictions

Three criminal justice jurisdictions span the four UK nations and regions: the combined jurisdiction of England and Wales, and the separate jurisdictions of Scotland and of Northern Ireland. The institutions performing analogous criminal justice functions – such as the police and probation services – are structured in different ways across these three jurisdictions. Below the national and regional level, decision-makers such as Police and Crime Commissioners and the emerging 'metro mayor' structures add further layers of potential complexity. Beyond this are the various day-to-day macro- and micro-decisions made by a myriad of local decision-makers and practitioners.

Criminal justice policy is therefore influenced by a wide array of individuals and institutions, but it is easy to get lost in complexity and detail. In keeping with the approach of previous editions of UKJPR, the focus is on assessing the main criminal justice policy developments across the three jurisdictions, as decided upon and implemented by the UK government (in England and Wales), the Scottish Government and the Northern Ireland Executive. This means missing out, or glossing over, much detail that some will consider important. The justification for this is that the detailed implementation of criminal justice policies is generally contingent on the broad direction set by national and regional governments. It is the broad direction of criminal justice policy that this *Review* examines.

The key players

Regardless of the wider consequences of the 2015 General Election, the main decision-makers remained largely unchanged. In two of the UK's three criminal justice jurisdictions – Scotland and Northern Ireland – criminal justice policymaking was a devolved matter. The Scottish First Minister and Justice Secretary – Nicola Sturgeon and Michael Matheson – had been in post since late 2014. In Northern Ireland, the First Ministers – Peter Robinson and Martin McGuinness – and the Justice Minister, David Ford, had likewise long been in their roles. The legislative and policy programmes in both jurisdictions were well-established, with elections not due until May 2016.

In England and Wales, David Cameron, Prime Minister in the outgoing coalition government, remained in post, as did Theresa May, Home Secretary since 2010. The only major change was the replacement of the unpopular Justice Secretary,

Chris Grayling, with the controversial former Education Secretary and Chief Whip, Michael Gove.

Overview of key developments

In England and Wales, many of the policies pursued by the Conservatives while in coalition, remained in place. Police and Crime Commissioners were here to stay. The debate moved on to how their powers might be extended and enhanced. Further steps were taken to shrink the court estate and to introduce improved ICT into case management. Ministers appeared content to continue with the coalition government's problematic reform and privatisation of the probation service.

Innovation came in prisons policy, in the form of a prison-building programme and proposals for 'reform' prisons. Work on both policies had barely begun by the time of the June 2016 referendum. That aside, much criminal justice policymaking in England and Wales during this period took the form of swerves, rethinks and U-turns. The Treasury and Home Office performed a deft swerve in the face of a growing row over police funding. In November 2015 the government announced that police budgets would be protected from further cuts. In February 2016 the Ministry of Justice announced a rethink of its unrealistic plan to roll-out GPS tagging to tens of thousands of individuals under community supervision. Many of the U-turns came from the Ministry of Justice, as Mr Gove set about unpicking some of the ill-conceived policies introduced by his predecessor.

In Scotland, another Justice Secretary was pursuing a distinctive policy agenda that diverged in a number of ways from that of his predecessor. At the time of the 2015 General Election, Michael Matheson had been Scottish Justice Secretary for six months, following the reorganisation of the Scottish Government after the failed Scottish independence referendum. Early in 2015, he had scrapped plans for a new women's prison. Later that year he announced plans for a network of small custodial units for women prisoners. Scotland's high rate of imprisonment, he said in September 2015, was 'totally unacceptable'.

The Scottish Government consulted on proposals to limit the use of imprisonment for sentences of under one year. Legislation to overhaul community justice – the Scottish equivalent of the probation service – also made its way through parliament. On policing matters, a variety of controversies continued to dog the single Scottish police force – Police Scotland. During the period under review, the Chief Constable and Chair of the Scottish Police Authority were both replaced and a major governance review undertaken.

In Northern Ireland, the ongoing dispute between the Executive and the legal profession over legal aid remuneration rumbled on for several months before both sides reached agreement in early 2016. A long-term programme of prison reform also came to an end. Legislation to create the post of prison ombudsman, and to reduce the likelihood of fine defaulters being imprisoned, became law. Further work was undertaken to reduce the size of the court estate.

These, and other, developments in Northern Ireland unfolded against the background of a fresh crisis in the Assembly and Executive. The resulting 'Fresh Start' agreement in November 2015 was intended to address this crisis, strengthen the devolved institutions and confront the legacy of Northern Ireland's troubled past.

Speeches

Speeches

What leading politicians choose to speak on, as well as what they choose *not* to speak on, reveals much about the priorities of their governments. During the period under review, for instance, the Justice Secretary for England and Wales, Michael Gove, gave a number of speeches on prison reform. The only speech on criminal justice given by the Prime Minister, David Cameron, was, likewise, devoted to prison reform. Legal aid, on the other hand, featured infrequently in Mr Gove's speeches during the period under review. He gave no speech on probation. In her May 2016 'Priorities' speech, Nicola Sturgeon, the First Minister of Scotland, identified work with female offenders and tackling violence against women and girls as important priorities. She also pledged to 'protect the police budget in real terms'. No mention was made of extending the presumption against short prison sentences, despite the detailed work her government had just completed reviewing the options (see The presumption against short prison sentences). This section assesses four representative speeches given during the period under review.

The presumption against short prison sentences

Since 2011, Scottish courts have operated with a statutory presumption against imposing prison sentences of three months or less. If most short prison sentences were instead replaced with a community sentence, the thinking went, it would help to address Scotland's high prison population. The impact was, however, disappointing.

In September 2015, the Scottish government launched the *Consultation on Proposals to Strengthen the Presumption against Short Periods of Imprisonment*. It sought views on whether the statutory presumption should be extended to longer sentences. The Analysis of Responses report, published in March 2016, found 'strong support' for extending the presumption against short sentences. It also highlighted the 'clear view amongst respondents' that 'extending the presumption would not achieve the policy aim of reducing the use of short-term sentences unless steps were also taken to bring about changes in sentencing practices and/or there was a commitment to developing and resourcing robust and evidence-based community justice sentences'. By the time of the May 2016 Scottish elections, no new policy had been announced.

In his speech on 'The social value of justice', given in March 2016, the outgoing Northern Ireland Justice Minister, David Ford, listed as one of his regrets that he had not been able to get a consensus to legislate for a presumption against imprisonment for three months or less. 'This was met with significant opposition from some quarters', he said, 'who perceived this as "going soft" on offenders'.

Crying wolf

In one of the set-pieces in the Home Affairs calendar, the Home Secretary, Theresa May, delivered her annual speech to the Police Federation in May 2015. The police reform programme she had steered since 2010 had made the police more accountable, more effective and more open to scrutiny, she told her audience. It had also been done in the teeth of opposition from the Federation. More reform was coming. The Federation now had a choice: 'You can choose to protest, and continue to shout angrily from the side lines... Or you can choose partnership, and work with me to change policing for the better'. Mrs May also took time out to berate the Federation for 'scaremongering' about cuts to police budgets. Yes there had been cuts, but crime had fallen. Further cuts to police budgets were

on the way, she told her audience. The Federation should stop 'crying wolf' over this matter.

It was a good sound bite, though one swiftly pulled apart by the journalist Krishnan Guru-Murthy. 'Wasn't the whole point about the boy who cried wolf,' he asked Mrs May, 'that there was a wolf and the boy died?'. Mrs May's bullishness on cuts to police budgets did, indeed, belie a concern in government that there was a wolf. Later that year the government backed down and committed to protecting police budgets until 2020.

Beneath the bluster of the speech, the core of the reform programme Mrs May set out in her speech that day was notable. For many years, the government's mantra had been that public services needed to do more (delivery) with less (money). But this was not Mrs May's view. 'Reform over the next five years', she said, 'will mean working to understand and reduce the demand on policing'. The police would get 'the resources they need' to investigate 'underreported crimes such as child sexual abuse'. They should also stop trying to fill the gap left by the absence of other public services. Police officers were 'not social workers... mental health nurses, or paramedics'. Mrs May committed herself to reducing 'unnecessary demand on policing'.

The need for wholesale reform

In a keynote speech in October 2012, David Cameron spoke passionately about the failing prison system in England and Wales. 'We've tried just banging people up and it's failed,' he told his audience. 'I say: let's use that time we've got these people inside to have a proper positive impact on them'. His speech was part of a drive to promote payment by results in prisons and probation and what became the problematic 'Transforming Rehabilitation' changes to the probation service.

Mr Cameron returned to the prisons theme in a speech in February 2016. Prisons, were 'full of damaged people', he said. 'They are often miserable, painful environments. Isolation, Mental anguish. Bullying. Self-harm. Violence. Suicide. These aren't happy places'. And in a conscious dig at the famous Blairite sound bite, he stated that, 'being tough on criminals is not always the same thing as being tough on crime'. Mr Cameron also rejected 'the idea that prisons are packed to the rafters with people who don't deserve to be there'. And he described as 'nonsense' the proposition that 'tens of thousands of prisoners' should be released.

Prison reorganisation, not prison downsizing, was the challenge. Indeed, Mr Cameron declared himself 'passionate about building new prisons' to replace the existing 'ageing, ineffective prisons' that 'design in bullying, intimidation and violence' and are unfit for human habitation. 'Reform prisons' modelled on the academies and free schools programme would give greater autonomy to prison governors. Performance data and prison league tables would allow for comparisons between institutions and hold prison governors to account. The thinking behind Mr Cameron's proposals were well-expressed by Michael Gove, in what proved to be his last major speech as Justice Secretary, in May 2016:

> *The lesson of other public service reforms is that empowering managers at the frontline by giving them greater autonomy generates innovation. Proper accountability and scrutiny then identify which institutions and which innovations are driving the biggest improvements, so others can emulate them.*

Speeches

This vision sat squarely within the government's 'smarter state' thinking, set out by Mr Cameron in a speech in September 2015. Reform, devolution and efficiency were the three core principles of the smarter state, Mr Cameron argued in that speech. Reform involved the break-up of state monopolies and vested interests (the Prison Service, for instance). Devolution meant shifting power to frontline staff, such as prison governors, and 'rewarding them for delivering the right outcomes'. Efficiency included releasing the value of underused public assets to reinvest in new services (such as selling off old prison sites and using the revenue to build new prisons).

Fairer justice

A somewhat different vision for prisons in particular, and the justice system more broadly, was being developed by the Scottish Government. In September 2015, the Justice Secretary Michael Matheson set it out in a speech entitled 'Fairer Justice'. The most important priority for the Scottish Government, Mr Matheson said, was 'reducing the inequality that still scars too many communities in our country'. Tackling this inequality required collaboration across a number of public agencies and beyond. Those living in poorer areas, for instance, typically experienced poorer health outcomes. They also endured higher levels of crime. Both the health and justice systems were therefore 'responsible for dealing... with the consequences of social inequality'.

The implications for criminal justice policy more specifically was reform guided by 'the values of a modern and progressive nation'. There was 'no good reason' why Scotland's prison population should be so high. This required 'concrete action'. This need informed Mr Matheson's decision to cancel the building of a new women's prison at Inverclyde. Investment in 'effective and evidence-based community alternatives' was part of the challenge, as was bearing down on the overuse of short prison sentences. The aim was a Scotland 'with an appreciably smaller prison population and a Scotland in which we have redefined what custody looks like'.

It was possible to develop a smaller, less intrusive, justice system in Scotland, Mr Matheson said, which relied less heavily on imprisonment and other forms of coercion. There were practical steps that could be taken to make this happen. At the same time, this was not merely a criminal justice issue. The nature of the justice system in Scotland, Mr Matheson argued, was a symptom of a wider set of social problems that required concerted, government-wide action.

The social value of justice

In a speech in March 2016, the outgoing Northern Ireland Justice Minister, David Ford, spoke about the 'social value of justice'. Prior to the devolution of justice powers to the Northern Ireland Executive in 2010, the region had faced a democratic deficit, he argued. Legislation and policy was decided in Whitehall, not Belfast, with little by the way of consultation. Laws that 'were a cut and paste of solutions designed for elsewhere' were applied. 'It is hard to see how that system could encourage citizen engagement,' Mr Ford said, 'or encourage confidence in democratic institutions, or help to reinforce the legitimacy of our law enforcement organisations'.

Since 2010, the Northern Ireland political system had been 'coming to terms with the complexities of administering justice and understanding its

social value'. These two points – the complexities of administering justice, and the social value of devolved justice – were key themes for Mr Ford. The challenges of administering justice in a 'mandatory coalition', were great. Developing consensus among parties that had strong, and principled, disagreements with each other was difficult. But the social value of doing so, even when agreement was not forthcoming, was important. Given the history of civil conflict in Northern Ireland, a locally developed and administered justice system enhanced democratic accountability and helped to ground the institutions of government in the rule of law. 'Justice', he said, 'needs to be in the fabric, in the vocabulary, and in the values of society'.

Alongside these specific reflections on the nature and challenges of the justice system in Northern Ireland, Mr Ford also made some points of more general significance. Those who end up in prison or other parts of the justice system, he said, generally had complex needs that had not been met 'before, during and after their time in the justice system'. These were 'not criminal justice issues'. They were 'matters of social justice'. Indeed, having emphasised the role a functioning justice system played in embedding democratic legitimacy, he also stressed the limits of the justice system:

> *As a society we rely on justice to provide solutions to intractable social issues. This isn't good enough. Let's find a way to bridge criminal justice and social justice. Society will be better served if we resolve rather than manage problems.*

Key speeches

20 May 2015 Theresa May	Speech to the Police Federation
23 June 2015 Michael Gove	What does a one nation justice policy look like?
17 July 2015 Michael Gove	The treasure in the heart of man - making prisons work
1 September 2015 Michael Matheson	Fairer Justice: A Vision for Scotland
9 September 2015 Theresa May	Speech to Police Superintendents Association
11 September 2015 David Cameron	My vision for a smarter state
10 November 2015 Theresa May	The purpose of reform
4 February 2016 Theresa May	Putting people in charge: future of Police and Crime Commissioners
8 February 2016 David Cameron	Prison reform
22 March 2016 David Ford	The social value of justice
12 May 2016 Michael Gove	Making prisons work
17 May 2016 Theresa May	Speech to the Police Federation

Legislation

During the period under review, the UK's parliaments and assemblies passed a number of pieces of legislation related to criminal justice matters (see Key legislation). This included the *Cities and Local Government Devolution Act* (see Devolution Deals), which opened the way for the merger of Police and Crime Commissioners and directly-elected mayors. The *Northern Ireland (Stormont Agreement and Implementation Plan) Act* included new provisions to monitor progress towards ending paramilitary activity. There was also legislation in both Scotland and Northern Ireland on mental health matters, including the treatment of those with mental health problems by criminal justice institutions.

This section examines four important pieces of criminal justice legislation: two from the UK parliament, and one each from the Scottish parliament and the Northern Ireland Assembly.

The Psychoactive Substances Act

The *Psychoactive Substances Bill,* promoted as providing for a blanket ban on so-called 'legal highs', was intended to make it illegal to produce, supply or offer almost any psychoactive substance.

In its *Psychoactive Substances* report, published in October 2015, the House of Commons Home Affairs Committee expressed concerns that the 'breadth of the definition might have unintended consequences'. In the same month, a letter from Professor Les Iverson, Chair of the Advisory Council on the Misuse of Drugs – an expert body that advises government on drugs matters – to the Home Secretary Theresa May stated that the legislation 'might be made more legally defensible by being defined in scientific rather than lay terms'. The government rejected the Council's advice. The Bill became law in January 2016. The legislation was delayed from being enacted in April, amid ongoing concerns about its ability to be enforced. *The Psychoactive Substances Act* formally came into effect in late May 2016. It applies to the whole of the United Kingdom.

The Policing and Crime Bill

The *Policing and Crime Bill* began its parliamentary passage in February 2016 and was still deep in the early stages of consideration by the end of the period under review. The majority of the provisions applied solely to England and Wales. The Bill placed a duty of collaboration on the emergency services and made provision for Police and Crime Commissioners to take over the running of fire services. This proved to be one of the more controversial proposals. It also included provisions to enhance the police complaints process and extend the powers of the Inspectorate of Constabulary. Other provisions included making the Police Federation subject to Freedom of Information requests, strengthening protections against the unnecessary use of police

Devolution Deals

The *Cities and Local Government Devolution Act*, which became law in January 2016, provides for elected mayors to be created for a combined local authority areas. It also allows for the mayors to take on the role of Police and Crime Commissioner. The Act forms part of moves to transfer the burden of imposing austerity onto local government. By the end of the period under review, 12, mainly new, combined authorities in England – consisting of groups of pre-existing local council areas – had agreed devolution deals with the government. This included Greater Manchester, where the mayor was set to assume a number of criminal justice-related responsibilities.

bail, and banning the use of police cells to detain under-18s in mental health crisis.

Community Justice (Scotland) Act

Community justice is the term used to describe what in other parts of the United Kingdom is referred to as 'probation'. Prior to the passage of the *Community Justice (Scotland) Act*, community justice was planned and delivered by eight regional community justice authorities. The Act, which gained Royal Assent in March 2016, codified the distinction between the role of the Scottish Government in setting national outcomes, and the local Community Planning Partnerships in planning and delivering local services.

The Act was controversial. The former Scottish Justice Secretary, Kenny MacAskill, described the legislation as a 'political fix between local and national government' and warned that it could lead to 'obfuscation if not disaster, as budgets tighten but needs expand'. Local authority representatives and Police Scotland were among those raising concerns over the adequacy of funding to make the new model work.

Justice (No 2) Act

The rather prosaically entitled *Justice No 2 Act* passed through the Northern Ireland Assembly between June 2015 and March 2016, gaining Royal Assent in May 2016. The Act reformed the enforcement of financial penalties, to reduce the likelihood of fine defaulters ending up in prison. It further placed the Prisoner Ombudsman on a statutory footing. Other provisions included increasing the maximum penalties for animal cruelty, creating new offences related to the possession of extreme pornography, and new arrangements for lay visitors to police stations.

Key legislation

Legislation	Date introduced	Status on 23 June 2016
UK Parliament		
Cities and Local Government Devolution Act	28 May 15	Royal Assent (28 Jan 16)
Northern Ireland (Stormont Agreement and Implementation Plan) Act	10 Feb 16	Royal Assent (4 May 16)
Policing and Crime Bill	10 Feb 16	In progress on 23 Jun 16
Psychoactive Substances Act	28 May 15	Royal Assent (28 Jan 16)
Scottish Parliament		
Abusive Behaviour and Sexual Harm (Scotland) Act	8 Oct 15	Royal Assent (28 Apr 16)
Air Weapons and Licensing (Scotland) Act	14 May 14	Royal Assent (4 Aug 15)
Community Justice (Scotland) Act	7 May 15	Royal Assent (21 Mar 16)
Criminal Justice (Scotland) Act	20 Jun 13	Royal Assent (13 Jan 16)
Mental Health (Scotland) Act	20 Jun 14	Royal Assent (4 Aug 15)
Prisoners (Control of Release) (Scotland) Act	15 Aug 14	Royal Assent (4 Aug 15)
Northern Ireland Assembly		
Justice Act	16 Jun 14	Royal Assent (24 Jul 15)
Mental Capacity Act	8 Jun 15	Royal Assent (9 May 16)
Justice (No. 2) Act	30 Jun 15	Royal Assent (12 May 16)

Police

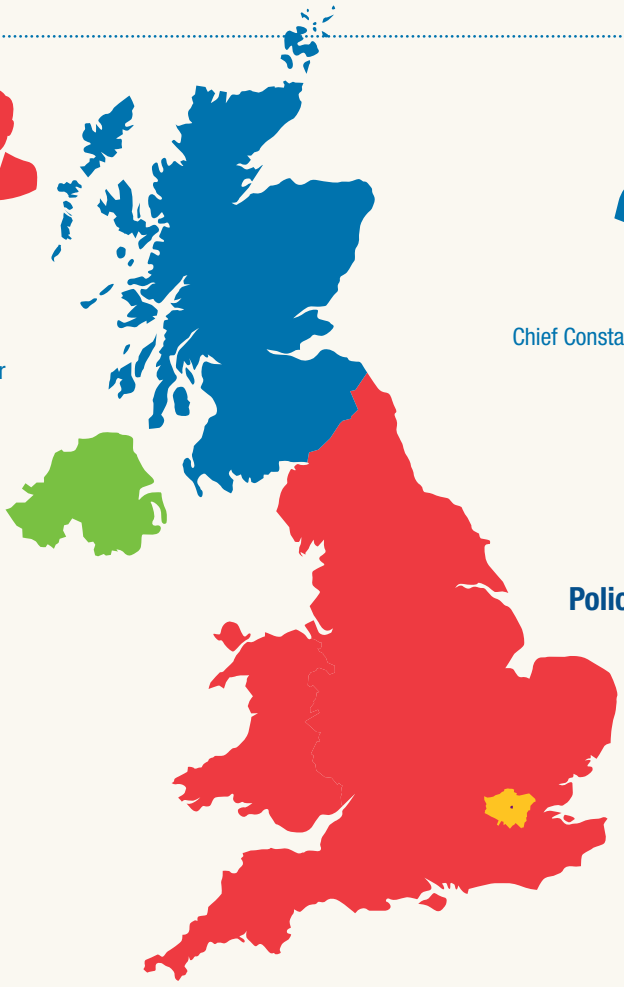
UK policing operates through a complex interlocking of forces and agencies. The 43 territorial forces in England and Wales sit alongside the single national police forces in Scotland and Northern Ireland. Overlaying the territorial forces is the shadowy National Crime Agency – sometimes referred to as the British FBI – with varying formal authority and power in the different UK jurisdictions (see Main UK police forces).

Here and in subsequent pages the focus is on the territorial forces and the National Crime Agency. To begin with, two policing developments that affected all UK jurisdictions: controversies over police spying activities and the various activities related to historic child sexual abuse.

Spying

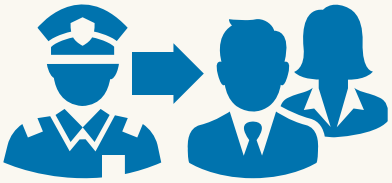
In England and Wales, the Undercover Policing Inquiry, chaired by Lord Pitchford, got underway in July 2015. The early stages of the Inquiry have been dominated by arguments over openness and transparency, including how much information would be made public and the release of police

Main UK police forces



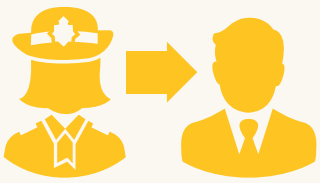
England and Wales (excluding London)

41 local police forces. Chief Constable reports to Police and Crime Commissioner



Police Scotland

Scotland's national police force. Chief Constable reports to the Scottish Police Authority

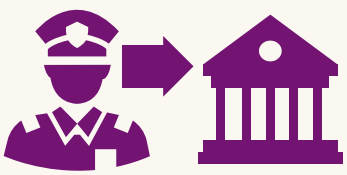


Metropolitan Police Service

Main London force. Commissioner reports to the Mayor of London

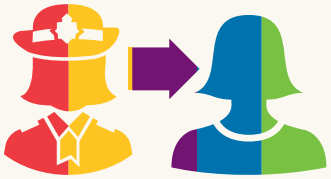
Police Service of Northern Ireland

Northern Ireland's single police force. Chief Constable reports to the Northern Ireland Policing Board



City of London Police

Policing the 'Square Mile'. Commissioner reports to the City of London Corporation



National Crime Agency

The UK's national police agency. Director General reports to the Home Secretary

cover names. In May 2016, Lord Pitchford ruled on issuing anonymity to officers on a case-by-case basis, rejecting the Metropolitan Police's request for 'blanket anonymity'. The Inquiry's reliance on the police to release information proved a sticking point. In January 2016, a police whistle-blower alleged that his colleagues purposefully destroyed some files held on Baroness Jenny Jones, the Green Party peer and a member of the body scrutinising the Metropolitan Police, to prevent her from discovering the full extent of their spying activities against her.

Across the border, Police Scotland was caught up in its own spying scandal. It was found to have accessed communications data to identify a journalist's sources without judicial approval. In November 2015 the Interception of Communications Commissioner, Sir Stanley Burnton, ruled that Police Scotland had breached the European Convention on Human Rights as well as the communications data code of practice.

In other developments, in July 2015 the *Review of possible miscarriages of justice* report by Mark Ellison QC and Alison Morgan concluded that undisclosed undercover police activity made at least 83 political campaigners' convictions potentially unsafe. This was in addition to the 57 who previously had their convictions ruled unsafe. In November 2015, the Metropolitan Police finally apologised to seven women who had intimate relationships with undercover police officers, following a four-year legal battle by the women.

Historical abuse inquiries

Evidence of widespread institutional child abuse, including allegations of police complicity in at least some abuse, resulted in a series of inquiries across the UK.

The Independent Inquiry into Child Sexual Abuse in England and Wales formally opened on 9 July 2015. Justice Goddard, the Inquiry chair, described it as 'the largest and most ambitious public inquiry ever established in England and

Police

Wales'. Anticipated to report by 2020, the Inquiry would provide an overarching review into whether institutions in England and Wales had 'taken seriously their duty of care to protect children from sexual abuse'. To this end, 13 investigations were announced, including inquiries into members of parliament, local councils, and custodial settings. Dame Lowell Goddard was the Inquiry's third chair, following the resignation in 2014 of her two predecessors, Baroness Butler-Sloss and Dame Fiona Woolf. Her appointment was heralded as a 'fresh start'. It was not to last. She was to resign, in the summer of 2016.

Alongside the Independent Inquiry, Operation Hydrant, the police investigation into allegations of non-recent child sexual abuse in institutions, noted there had been an increase of 800 in the number of suspects it was investigating between May and December 2015. This included 302 people of public prominence.

The Scottish Child Abuse Inquiry into historical abuse in care settings was established in October 2015. Chaired by Susan O'Brien QC, the inquiry was anticipated to run for four years. The following July, Ms O'Brien resigned from her role, after she had reportedly 'revealed views... incompatible with the post of chair of such an inquiry'. Susan O'Brien said the comments she was alleged to have made had been taken out of context. In a related development, in March 2016, the Scottish Government announced legislation to remove the three year time limit on historical child abuse victims seeking damages.

Whilst two inquiries began, a third in Northern Ireland moved closer to its conclusions. Over 500 people made formal applications to speak to the Northern Ireland Historic Institutional Abuse Inquiry – which began taking evidence in 2014 – or to share their experiences through an acknowledgement forum. Following a one year extension, Northern Ireland's inquiry published its final report in January 2017.

Overview: England and Wales

In his 2015 *State of Policing* assessment, published in February 2016, the Chief Inspector of Police, Sir Tom Winsor, wrote that with 'increasing pressures on public services', such as 'housing, mental health, education and social services', the police are increasingly being left filling the gap. 'Society should no longer tolerate', he wrote, 'conditions in which these illnesses and disorders are neglected until they land at the feet of the police, in circumstances of violence, disorder and desperation'.

The sense that the police were doing too many of the wrong things and not enough of the right things had been of growing concern. As UKJPR5 reported, an assessment by the College of Policing, published in January 2015, found that 83 per cent of calls to the police in England and Wales were related to non-crime incidents. The provisions in the *Policing and Crime Bill* to ban the use of police cells for detaining under-18s in mental health crisis (page 11), was an attempt to push the challenge of mental health crisis management back onto local social and health services. Whether, after several years of austerity cuts, they and other public services were in a position to manage the problems the police had previously picked up was another matter.

The November 2015 Spending Review commitment to protect police budgets from further significant cuts was a pragmatic acceptance that, for the time being, the non-crime

Controversies

National Crime Agency

December 2015

'MORE KEYSTONE COPS THAN FBI'

Keith Vaz MP, Home Affairs Committee Chair

LIKE A 'DEATH CULT WEBPAGE'

Child protection expert on graphic images used to illustrate drug violence

Police Federation of England and Wales

March 2016

Four arrested in £1 million fraud investigation

Metropolitan Police

September 2015

27 ongoing investigations into police corruption over child sex offences

South Yorkshire Police

March 2016

Investigation into handling of Rotherham Child Sexual Abuse allegations

200 ALLEGATIONS

40 COMPLAINANTS

55 ONGOING INVESTIGATIONS

32 NAMED OFFICERS UNDER MISCONDUCT OR CRIMINAL NOTICES

34 NAMED OFFICERS WHOSE STATUS IS BEING ASSESSED

Police Scotland

July 2015

'ALLEGEDLY UNLAWFUL AND DISPROPORTIONATE'

United Nations report on stop and search practices

August 2015

'DELUSIONS OF GRANDEUR'

Ex-SNP leader Gordon Wilson, calling for break-up of the Force

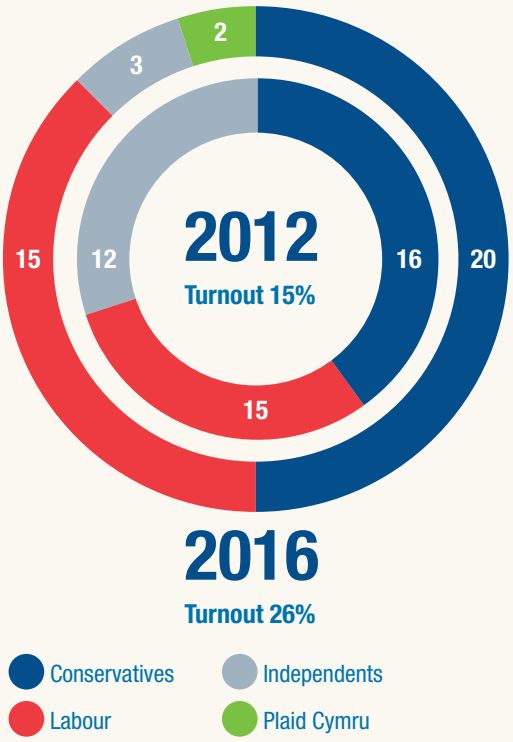
Police Service of Northern Ireland

October 2015

10 days public order and riot training in human rights abusing Qatar

Police

England and Wales Police and Crime Commissioner Elections



aspects of police work were likely to be a major part of their workload. It also drew something of a line under the fractious argument between ministers and the police over the bungled attempt to revise the formula for calculating the funding of local forces (see The police funding formula).

In July 2015, the Independent Police Complaints Commission annual statistics on deaths in police custody showed that there had been 17 deaths in or following police custody in 2014 – 2015. This was up from 11 deaths the previous year and was the highest figure for five years. In response, the Home Secretary, Theresa May established in July 2015 the *Independent review of deaths and serious incidents in police custody*.

Overview: Scotland

The death, in May 2015, of 31 year-old Sheku Bayoh was but one of a number of controversies to rock Police Scotland during the period under review. Mr Bayoh died from suspected asphyxiation on a street in Kirkaldy, while being confronted by several police officers. His family called for prosecutions and a wider public inquiry into deaths in custody.

Police Scotland, still dealing with the ongoing fallout over armed policing and stop and search (see UKJPR5), was to face several further controversies. In July 2015, the police took three

The police funding formula

The *Consultation on reform of police funding arrangements in England and Wales* was launched by the government in July 2015.

The eight week window for responses on a complex, contentious issue in which there would inevitably be winners and losers, drew criticism that the process was rushed. The proposed settlements for police forces under the new model were based on the wrong data. On 9 November 2015, the Police Minister, Mike Penning, informed the House of Commons that the government was suspending implementation of the new formula. Any changes will now not come into effect until the 2017–2018 financial year at the earliest.

In its December 2015 report on the abortive programme – *Reform of the Police Funding Formula* – the Home Affairs Committee recommended that the Home Office appoint an independent panel to assist the Home Office in formulating new proposals. 'We hope', the Committee observed, 'that with this expert input the shambles we have seen so far can be remedied.'

days to respond to reports of a crashed car on the M9 motorway. One occupant – Lamara Bell – still alive when found, died four days later in hospital. Several subsequent cases raised concerns over police response time (see Slow responders).

In the face of mounting criticism, the Chair of the Scottish Police Authority, Vic Emery, resigned in September 2015. He was followed, three months later, by the Chief Constable, Stephen House. Mr Emery was replaced by the chartered accountant and former media executive Andrew Flanagan. The former Deputy Director of the National Crime Agency, Phil Gormley, became the new Chief Constable. His tenure began amid controversy when it emerged that he had been the commander of the Metropolitan Police's Special Branch at the time when it included the Special Demonstration Squad. Members of the Squad had entered into long-term sexual relationships with several women while infiltrating protest groups.

Slow responders

July 2015: Police take three days to attend a reported car crash on the M9 motorway.

September 2015: Police take 20 hours to respond to concerns about an elderly couple in Edinburgh.

March 2016: Body of 36 year-old male discovered several days after concerns were first raised by a neighbour.

April 2016: Police take several hours to respond to concerns over a 73-year-old man in Edinburgh.

For some, the controversies besetting Police Scotland were down to an overly centralised structure. In August 2015, the former SNP leader, Gordon Wilson, said that an 'arrogant' Police Scotland should be broken up into four regional police forces. The *Review of Governance in Policing* by Andrew Flanagan, published in March 2016, stated that Police Scotland should be more responsive to local concerns and move away from a one-size-fits-all approach to policing.

Overview: Northern Ireland

Agreeing a process for addressing the truth and justice issues arising from the civil conflict remained an outstanding issue. The Legacy Investigation Branch (LIB) had been established as an interim measure to replace the disbanded Historical Enquires Team (HET) (see *The Coalition Years*). A report on the LIB by the Inspectorate of Constabulary – *A follow-up inspection of the Police Service of Northern Ireland Historical Enquiries Team* – published in June 2015, reported a more structured approach than had been the case during their previous, highly critical, inspection of the HET (see UKJPR4). However, the Inspectorate also noted that 'the lack of independence, both in terms of reality and perception' the LIB had from the Police Service of Northern Ireland was a continuing issue for many.

The establishment of the independent body envisaged by the 2014 Stormont House Agreement to take forward the work of truth and reconciliation – the Historical Investigations Unit – became log-jammed in a dispute over the disclosure of classified files. Meanwhile, the First Minister, Arlene Foster, blocked £10m of funding needed to clear a backlog of civil conflict-related inquests, claiming an 'imbalance in relation to State killings as opposed to paramilitary killings'.

Data dashboard

The three data dashboard charts offer an at-a-glance view of the key criminal justice data across the three UK jurisdictions at three points in time: the 2011/12, 2014/15 and 2015/16 financial years. This means criminal justice changes can be seen over a short and longer time period.

To make it as easy as possible to understand this mass of data, we have used a form of pie chart. These represent the magnitude of different data, relative to each other.

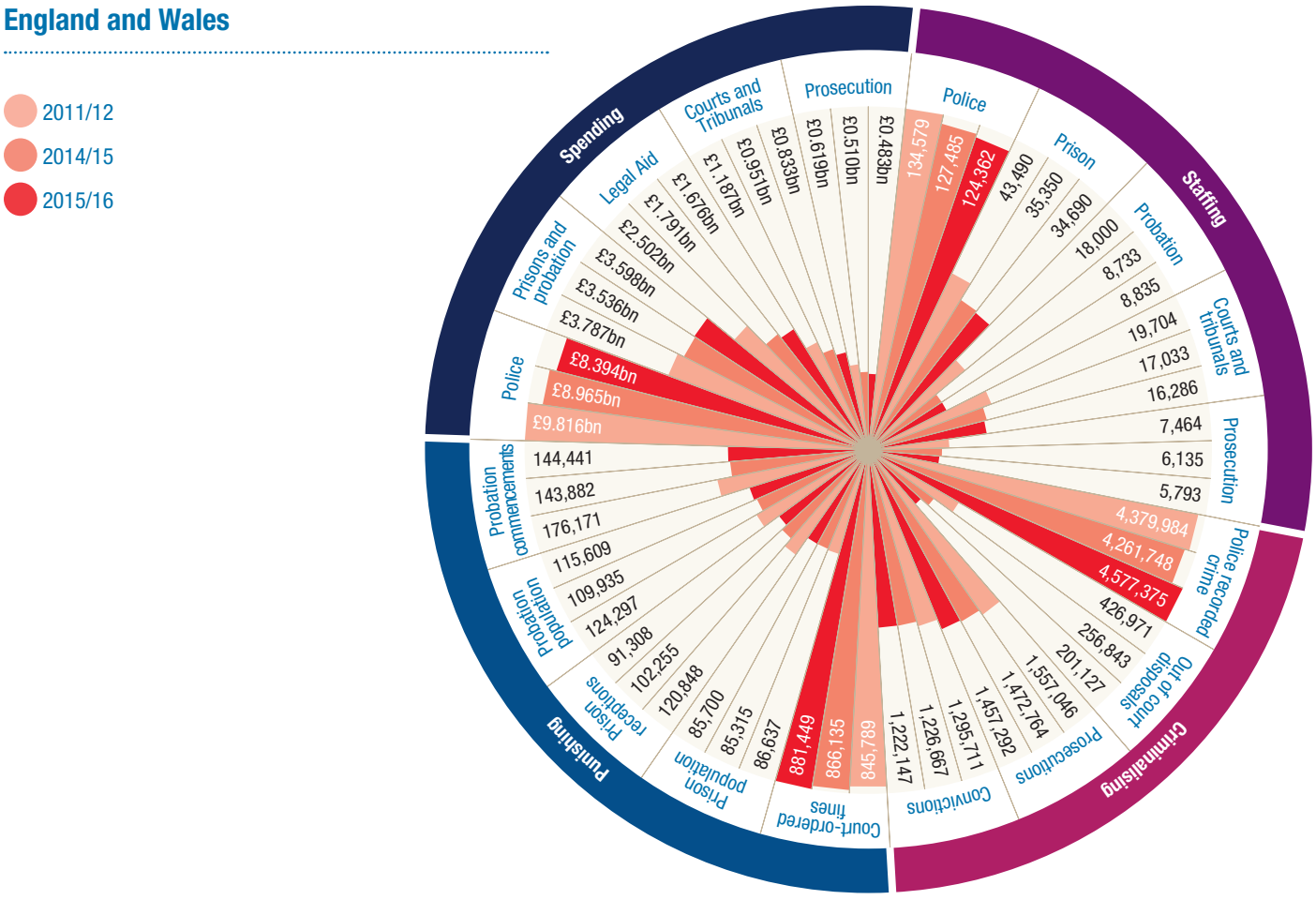
The charts for England and Wales and Scotland contain 57 'slices' of data, and the one for Northern Ireland contains 60 slices. All charts are divided into four domains:

- Spending: how much was spent across the different agencies and fields of operation (e.g. police, legal aid, prosecution).
- Staffing: how many people worked in the different agencies and fields of operation.
- Criminalising: the criminal justice caseload, from the point of an offence being recorded to the point of conviction.
- Punishing: the main outcomes from convictions: fines, community supervision and imprisonment.

The area of each slice represents the value of the indicator in a given year. Each slice is represented proportional to the other slices in its domain. For instance, the slice representing court ordered fines in England and Wales in 2015/16 (881,449) is around ten times the size of the prison population slice (85,700). The slices are not represented proportionally across domains, nor between the different jurisdictions.

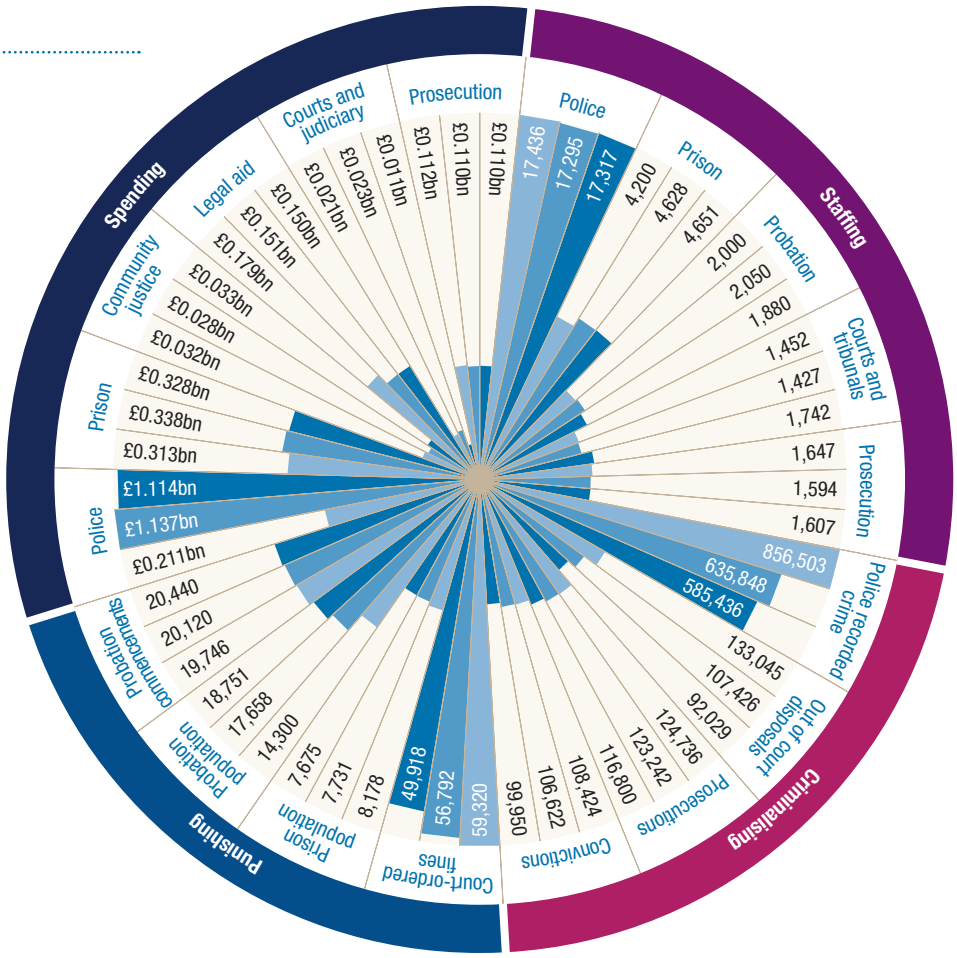
For more information on the data dashboard, see the technical appendix on page 38.

England and Wales



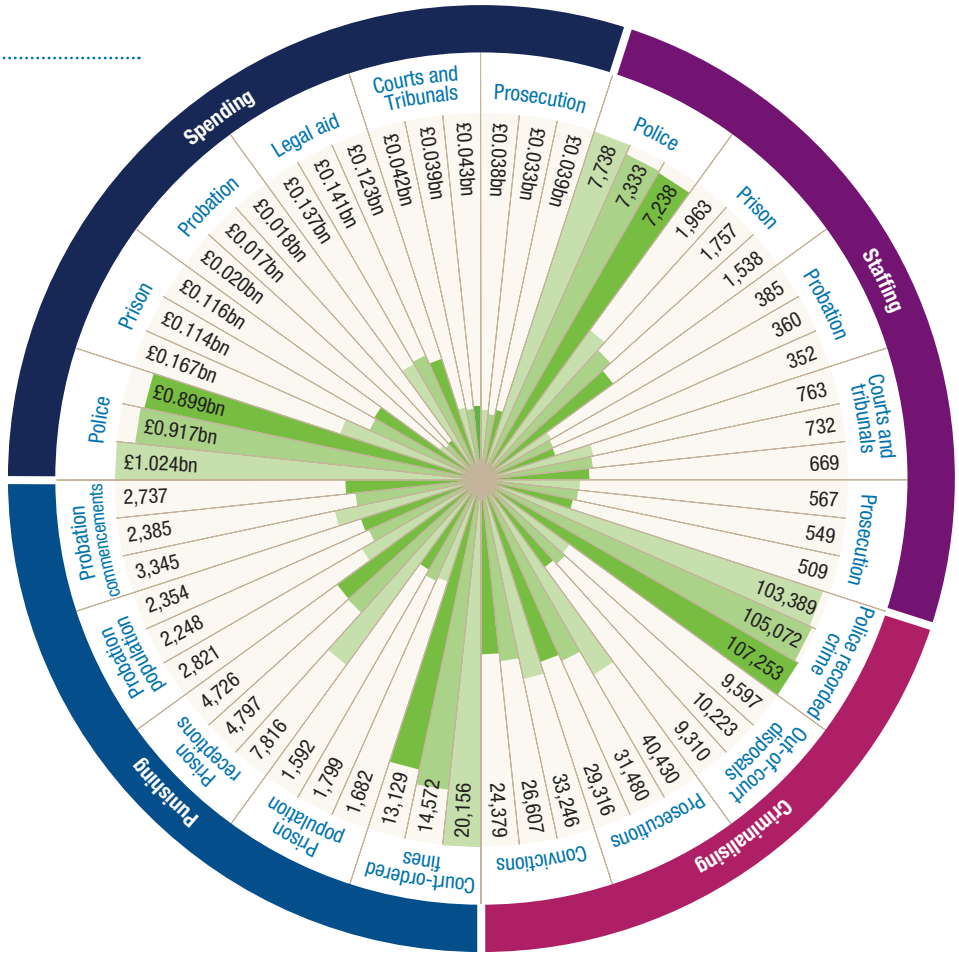
Scotland

2011/12
2014/15
2015/16



Northern Ireland

2011/12
2014/15
2015/16



Courts and access to justice

In December 2015 the Justice Secretary for England and Wales, Michael Gove scrapped the controversial criminal courts charge. Introduced in April 2015 by Chris Grayling, it imposed a sliding scale of charges – between £150 and £1,200 – on defendants found guilty in court. The scrapping of the charge was one of a number of decisions Mr Gove took, during his short stint as Justice Secretary, which reset, somewhat, justice policy after Chris Grayling's divisive period in office (see Dustbin of history).

Access to justice

Disputes over legal aid, covered in earlier UKJPR editions, continued during the period under review (see Legal aid disputes). In July 2015, lawyers in England and Wales began a boycott of criminal legal aid work. The boycott followed confirmation the that the government would be imposing the second of two planned cuts of 8.75 per cent in criminal legal aid fees and pressing ahead with two tier-contracting (see Two-tier contracting). The boycott was suspended in August 2015 following signs of a possible agreement to reverse the cuts.

The successful bidders for contracts for duty provider work, put out to tender before the 2015 General Election, were announced in October 2015. Legal action followed, after a whistle-blower claimed that the procurement process for duty provider work had been flawed. On 28 January 2016, Michael Gove informed the House of Commons that the government was abandoning two-tier contracting and would reverse the second cut in criminal legal aid fees. The decision, he said, was 'driven in part by a recognition that the litigation will be time consuming and costly... whatever the outcome'.

In Northern Ireland, a new legal aid fee structure, introduced in May 2015 to cut expenditure by £8 million, resulted in a nine month-long lawyers' boycott. A legal challenge against the new fees was rejected by the High Court in November 2015, though it ruled that some lawyers were not being

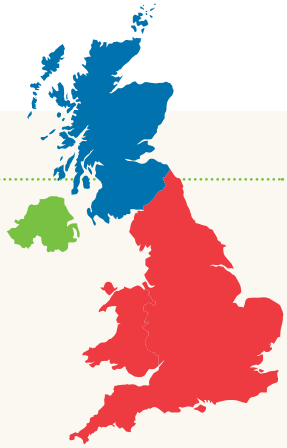
Dustbin of history

Chris Grayling's flagship policies binned by Michael Gove

Two-tier contracting

Proposals dating from 2014 divided criminal legal aid work into two 'tiers'. All providers who could demonstrate the requisite capacity and quality could receive legal aid funding to deliver so-called 'own client' work, where the suspect or defendant chose their own representative. A limited number of 527 providers would be able to deliver so-called 'duty provider work', where a legal representative was provided for the suspect or defendant in police custody or in court.

Legal aid disputes



- England and Wales
- Northern Ireland

February 2014
Two 8.75 per cent cuts to criminal legal aid fees and two-tier legal aid contracting announced.

March 2014
First 8.75 per cent cut implemented.

September 2014
Government acted 'unlawfully' in implementing legal aid changes, High Court rules.

November 2014
Government presses ahead with largely unaltered plans following rushed consultation.

March 2015
Court of Appeal dismisses legal challenge against government plans.

May 2015
New reduced criminal legal aid fees introduced.

Legal challenge launched and lawyers withdraw from new legal aid cases.

June 2015
Government confirms plans to press ahead with two-tier contracting and second 8.75 per cent cut.

July 2015
Boycott of criminal legal aid begins.

August 2015
Boycott is suspended.

November 2015
Legal challenge against duty provider contract procurement process launched.

High Court rejects legal challenge but rules that new fees are unfair.

January 2016
Government announces discontinuation of two-tier contracting and reversal of second legal aid fee cut.

February 2016
Dispute resolved following mediation between lawyers and Department of Justice.

paid fairly. By January 2016, the backlog of cases had reportedly grown to 800. 'We have witnessed the utter degradation of the justice system in England and Wales', said the Chair of the Criminal Bar Association in the same month. 'We will not participate in the downfall of the justice system in Northern Ireland'. The dispute was resolved in February 2016, when the Justice Department agreed to reduce the planned cuts to £5.6 million.

A long-term review of Northern Ireland legal aid – *A Strategy for Access to Justice* – was published in September 2015. It contrasted short-term approaches to finding savings – where 'there may be no alternative to scope and remuneration cuts' – with taking a 'more strategic approach'. The latter meant controlling costs while allowing time for 'wider justice reforms to have an impact'. A June 2016 report by the Northern Ireland Audit Office – *Managing Legal Aid* – found that expenditure on criminal legal aid had remained stable since 2011, at around £50 million per year, rather than falling as planned.

Victims and injustices

Across the UK's three criminal justice jurisdictions, work was undertaken to bring domestic policy in line with European Union minimum standards on victims of crime. In England and Wales, the *Code of Practice for Victims of Crime* came into force in November 2015, as did Northern Ireland's *Victim Charter*. The *Victims' Code for Scotland* was launched in February 2016.

Violence and domestic abuse was also a policy priority during this period. In December 2015, controlling or coercive behaviour in intimate or familial relationships became a new offence in England and Wales under the *Serious Crime Act 2015*. A Scottish Government consultation

Courts and access to justice

launched in December 2015 – *A criminal offence of domestic abuse* – proposed the creation of a similar offence.

The *Abusive Behaviour and Sexual Harm (Scotland) Act,* passed in March 2016, made provisions on revenge porn and harassment. A disclosure scheme for perpetrators of domestic abuse was rolled out in October 2015. In Northern Ireland, the Justice Department launched a consultation in February 2016: *Domestic abuse offence and violence disclosure scheme*. Tackling interpersonal violence and abuse was also the subject of strategies in all three jurisdictions (see Tackling violence and abuse).

A victim, or potential victim, left unsupported or unprotected might be one form of injustice. An individual wrongly convicted is another. One example is the legal doctrine of joint enterprise, under which individuals can be convicted and sentenced for an offence in which they only played an indirect role. Studies, including a report published by the Centre for Crime and Justice Studies in January 2016 – *Dangerous associations* – highlighted how disproportionate numbers of black and minority ethnic people were being convicted under joint enterprise. In a landmark ruling in February 2016, the Supreme Court found that the law had been misinterpreted for over 30 years.

Tackling violence and abuse

Scotland

Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls

June 2014

Women and girls

'Our aim is to prevent and eradicate violence against women and girls, creating a strong and flourishing Scotland where all individuals are equally safe and respected, and where women and girls live free from such abuse – and the attitudes that help perpetuate it'

England and Wales

Ending violence against women and girls strategy: 2016 to 2020

March 2016

Women and girls

'We will support a transformation in service delivery and a step change in social action to achieve a sustainable long term reduction in the prevalence of these terrible crimes, to help women and girls rebuild their lives, and to break the inter-generational consequences of abuse'

Northern Ireland

Stopping Domestic and Sexual Violence and Abuse in Northern Ireland 2013-2020

March 2016

Women and men, girls and boys

'A community in Northern Ireland that does not tolerate domestic or sexual violence and abuse. Prevention and early intervention are fundamental parts of raising awareness and reducing the incidence of domestic and sexual violence and abuse. Zero tolerance has to become the norm'

Court efficiency and estate reorganisation

The 'Transforming Summary Justice' programme, implemented across England and Wales, aimed to streamline magistrates' courts processes. From October 2015, the 'Better Case Management' programme began rolling out in 'early adopter' courts. National roll-out began in January 2016. The Better Case Management programme formed part of Sir Brian Leveson's *Review of Efficiency in Criminal Proceedings* (see UKJPR5), and placed a premium on robust case management; reducing the number of hearings; coordination among the various agencies and participants; and consistent compliance with procedural rules.

The 'Digital Case System' began a national roll out in March 2016, with a target for completion of four years. The aim was for case materials to be prepared and presented digitally by all parties. A June 2016 report by the House of Commons Public Accounts Committee – *Efficiency in the criminal justice system* – was sceptical. 'We have heard from Departments on numerous occasions about their ambitious plans to deliver improvements through big IT projects' the report noted. 'In our experience, these projects often suffer from delays and cost overruns'. They added: 'The criminal justice system is close to breaking point. Lack of shared accountability and resource pressures mean that costs are being shunted from one part of the system to another and the system suffers from too many delays and inefficiencies'.

Underpinning the assumptions around efficiency and digitisation, and contributing to their financing, was the ongoing closure and sale of the court buildings. Under plans published in February 2016 – *Response to the proposal on the provision of court and tribunal estate in England and Wales* – the government signalled its intention to close 86 court and tribunal buildings. The Northern Ireland Courts and Tribunals Services also planned to cut expenditure through court closures, which were estimated to be worth over £1 million a year in future savings. The outcome of a consultation – *Response and recommendations on the proposals for the rationalisation of the court estate* – was published in November 2015. Eight courthouses were recommended for closure. In February 2016, the Justice Minister, David Ford announced that five would be shut.

An Audit Scotland report published in September 2015 – *Efficiency of prosecuting criminal cases through the sheriff courts* – concluded that up to £10 million was being wasted each year through delays and repeated hearings. It also argued that the court system was facing greater pressures. This increasing complexity and churn was unfolding against the background of shrinking budgets. The report called for better case management and improved coordination between the different criminal justice agencies.

In February 2016, the Scottish Courts and Tribunals Service recommended a 'transformational change' in the direction of digital case management. The report, *Evidence and Procedure Review – Next Steps*, argued that the past, 'piecemeal' attempts at digitisation needed to be replaced by a more strategic and coordinated approach. Work should be undertaken, 'as a matter of some urgency', to develop a system to store evidence digitally. Work was also needed 'to reform criminal procedures to allow for a more streamlined, digitally-enabled justice process'.

Prisons

During the year following the 2015 General Election, close to 100,000 people were confined in nearly 140 prisons across England, Wales, Scotland and Northern Ireland at any given point in time. The UK rate of imprisonment – 146 prisoners for each 100,000 people in the general population – was the highest in Western Europe: twice that of Germany; one and a half times that of France. Across the UK, the size and rate of imprisonment varies (see Imprisonment in the UK).

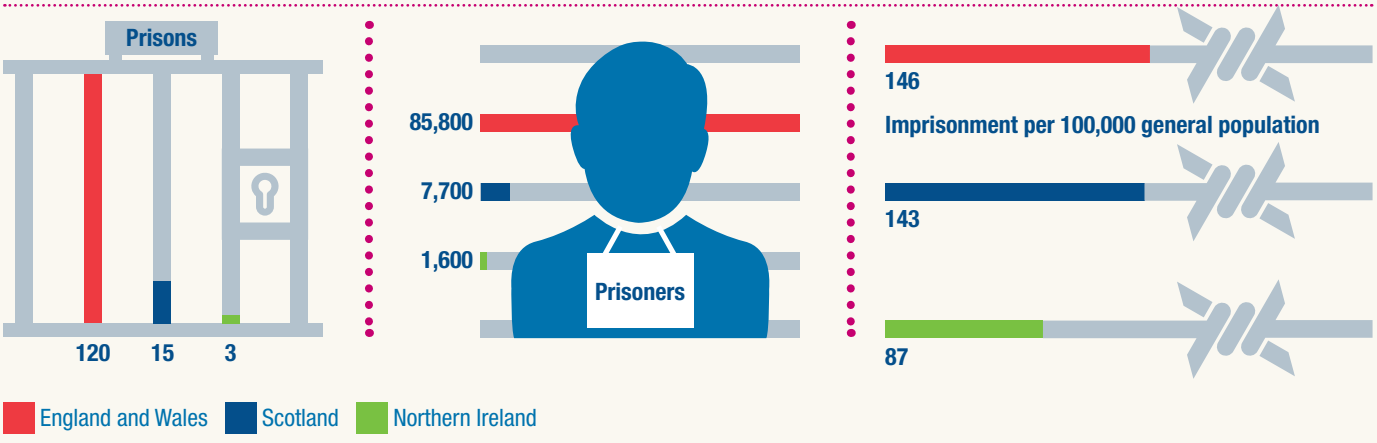
The prison systems across the UK were also much larger in the period under review than was the case only a decade earlier. A *Prison Population Statistics* report produced by the House of Commons Library in July 2016 noted that the 'prison population of England & Wales rose by just over 90% between 1990 and 2015... In Scotland this increase was 64%. Between 2000 and 2014/15 the prison population of Northern Ireland increased by 68%.' During the period under review, the Ministry of Justice in England and Wales set the ground for further expansion of the estate. In Scotland, the government sought ways to reduce the population. In Northern Ireland's much smaller system, the main priority was building renewal and regime improvements.

Prison building and estate renewal

In the November 2015 Autumn Statement, the Chancellor, George Osborne, announced a 'prison building revolution'. Nine new prisons were to be constructed, five of which would be open by 2020. The £1.3 billion programme was to be part-funded through the closure and sale of older prison sites.

The idea that new prisons could be financed through the closure and sale of old ones was not new. The coalition government sold off more than ten former prison sites between 2010 and 2015. But the complexities involved in the redevelopment of former prison sites meant that the sale prices were modest. This is the context for the announcement, a few weeks after the Autumn Statement, that Holloway women's prison in North London would close. Though not an old prison – it had been rebuilt in the 1970s and 1980s – it was occupying high value land in an expensive part of London. The buildings were not

Imprisonment in the UK



protected and they offered any potential developer a blank canvas on which to build. There was talk of the site fetching £200 million. The women were moved to other prisons during the first half of 2016 and the prison closed that summer.

In Wales, construction continued on the new Berwyn prison in Wrexham, planned to hold more than 2,100 prisoners. Berwyn was symbolic of the move towards fewer, larger prisons. But apart from the occasional new build like Berwyn, most additional prison capacity continued to be provided by extending and developing existing sites.

The Scottish Justice Secretary, Michael Matheson, promised 'concrete action' to deliver an 'appreciably smaller prison population' in a speech in September 2015 (see Fairer justice, page 10). The initial focus of this activity was female prisoners. He had already announced, in June 2015, plans for a new, small national women's prison with 80 places, to replace Cornton Vale, which held over 200 women. Alongside the national prison, five regional custodial units, each holding up to 20 women, were planned.

In Northern Ireland, plans to renew the existing estate were delayed by budgetary pressures and deadlock in the Executive. The redevelopment of Magilligan prison – estimated at £150 million – remained stalled. Plans, first announced in 2012, to reconfigure Maghaberry prison into three 'mini-prisons' – one for short-sentenced, remand prisoners and new committals; a second for long- and life-sentence prisoners; and finally a high security facility – were still ongoing during this period. Meanwhile, a new house block, for women nearing the end of their sentence who were working in the community, opened outside Hydebank prison in October 2015.

Policy developments

'Reform prisons' were the most eye-catching proposal in England and Wales during this period (see Reform prisons). Work on their roll-out had barely started by the time the Brexit referendum brought an end to Michael Gove's period as Justice Secretary. In governance terms, reform prisons were to be similar to academy schools. As he explained in the House of Commons in January 2016: 'I want to see governors... given more freedom within the state sector to do what they do best. Baldly, my model is one of academy principals or of the chief executives and clinical directors of NHS foundation trusts.'

Reform prisons were also to have education at their heart. The reform prison proposals sat alongside those of Dame Sally Coates, in her review of prison education published in May 2016. Dame Sally's review was one of two important reviews – the other being Charles Taylor's review of youth justice – commissioned by Mr Gove the previous September (see Under review). Mr Gove had also floated the idea of an 'earned release scheme' for prisoners who complete educational courses, in a speech in July 2015. No new policy was announced.

Reform prisons

Announced: May 2016.

Prisons:
Coldingley, High Down, Holme House, Kirklevington Grange, Ranby, Wandsworth.

Proposal:
Devolved responsibility for governors over budgets, contracts, education, regime, prisoner-family contact and resettlement.

Prisons

Michael Gove also closed down the controversial Just Solutions International, in September 2015. Just Solutions' commercial arrangements, with regimes with dubious records on human rights and the rule of law, led to criticism. In early 2015 campaigners launched a legal challenge, claiming that a bid to provide consultancy services to Saudi Arabia was unlawful. A National Audit Office investigation, published in January 2016, concluded that Just Solutions had made a net loss of some £1.1 million (see Just Solutions International).

In Northern Ireland the Prison Reform Programme formally ended in March 2016, after a four-year programme of work (see *The Coalition Years* for background). Thirty six of the 40 recommendations from that review had been signed off as completed. Looking ahead, the Northern Ireland Prison Service identified five strategic themes for ongoing prison reform (see Northern Ireland prison reform priorities).

Northern Ireland also took small steps toward allowing certain prisoners to serve part of their sentence in the community. Since June 2015, 'low-risk' prisoners in Northern Ireland can apply to

Under review

Two reviews commissioned by Justice Secretary Michael Gove in September 2015.

Unlocking potential: a review of education in prison
By Dame Sally Coates
Published: May 2016

Key points

- Prison governors responsible for commissioning education and judged on results.
- Shift in prison culture towards education, including recruiting 'new talent'.
- Broader range of education opportunities, including vocational and higher qualifications.
- Employers encouraged to support work in prison and employ ex-prisoners.

Review of the youth justice system
By Charles Taylor
Published: December 2016

Key points

- Replace Youth Justice Board with Youth Justice Commissioner, responsible for strategy, policy and delivery.
- Children's Panels to develop a rehabilitation plan for each convicted child.
- 'Secure Schools' to replace most existing youth custodial provision over time.
- Shift youth justice responsibility from Ministry of Justice to Department for Education over longer-term.

Just Solutions International

Ministry of Justice commercial arm
Set up: 2012

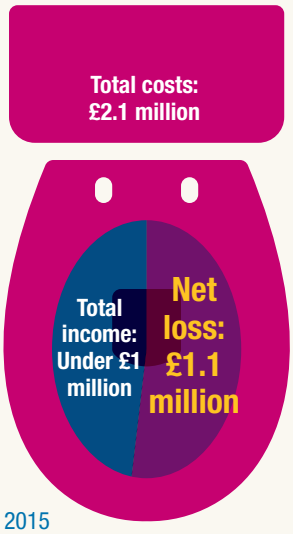
Controversial contracts included:

- Training Royal Oman Police officers
- Prison design in Libya
- Consultancy in Nigeria

Controversial planned work included:

- Prison consultancy in Saudi Arabia
- Prison consultancy in Oman

Closed down: September 2015



Northern Ireland prison reform priorities

From the *Northern Ireland Prison Service Annual Report and Accounts 2015-2016.*

"Prison Reform will continue for 10 years or more, overseen by the Prison Service Management Board, focusing on the five key strategic themes that have emerged from the Programme:

- leadership, recognising the importance of strong and effective leadership across the Service
- purposeful activity, equipping offenders with the necessary skills and experience to return to the community
- equality and diversity, looking at both equality of outcome for prisoners and a workforce that better represents our society
- a fit for purpose prison estate, with 21st Century accommodation central to all of NIPS plans; and
- partnership with healthcare, recognising that strong working relationships with Health colleagues, working to a common goal, are vital to work in prisons."

be released halfway through their sentence under the 'Conditional Early Release' scheme. Under the arrangements, up to 135 days can be served in the community rather than prison, in line with the Home Detention Curfew in England and Wales.

Moving in the opposite direction, and belying the Scottish Justice Secretary's expressed concern over Scotland's high prison population, legislation ending automatic release from prison at the two-thirds point for those serving sentences of four years or longer came into effect in February 2016. Such prisoners would also be subject to a minimum of six months post-release supervision. The move seemed likely to place upward pressure on Scotland's rate of imprisonment. The reach and powers of the Prison Inspectorate in Scotland were enhanced in August 2015, with the formal subsumption of the volunteer prison visiting committee system under the Inspectorate as the newly formed Independent Prison Monitors.

Special focus: Safety in custody

In November 2015, a report on an inspection of Maghaberry prison in Northern Ireland found that the institution was in 'crisis', with rising levels of violence and assault. The Chief Inspector of Prisons for England and Wales, Nick Hardwick, who was part of the inspection team, told a press conference that Maghaberry was 'the most dangerous prison I have been into throughout my time as Chief Inspector'. The report on Maghaberry was just one indicator of a worrying deterioration in prison regimes (see Suicide, self-harm and assaults in prison). Hardwick's successor, Peter Clarke, wrote in the Introduction to his 2015-2016 *Annual Report*, that 'the grim situation' in prisons in England and Wales had 'become even worse' and that prisons had 'become unacceptably violent and dangerous places'.

In May 2016 a House of Commons Justice Committee report, *Prison Safety*, called for an action plan to improve prison safety, including addressing the factors underlying rises in violence and self-harm. The Ministry of Justice had hoped 'that prison safety would stabilise', the Chair of the Committee Bob Neill, said. 'In reality it has deteriorated further and continues to do so.'

The Justice Secretary Michael Gove, in a letter to Bob Neill a few days after the Committee published its report, acknowledged there was a problem. Lack of safety, wrote Mr Gove, 'cause me

Prisons

considerable personal concern and I have no wish to minimise, excuse or divert attention away from the increasing problems'. He pledged £10 million of additional funding to address prison safety issues. But while many, including Neill himself, called for a reduction in prisoner numbers, Gove placed his faith in the reform prisons programme. The 'only way to reduce violence in our prisons', he wrote, 'is to give Governors and those who work in prisons the tools necessary to more effectively reform and rehabilitate offenders'.

Symptomatic of the lack of urgency on the part of government was its response to *Changing Prisons, Saving Lives*, the report of the Harris Review into self-inflicted deaths of young adults in custody, published in July 2015. The government response, on the last working day before Christmas in late 2015, was described by one critic as 'a deeply cynical way of releasing a deeply cynical response'. Nearly a third of the review's 108 recommendations were rejected. These included measures such as testing all cell light fittings to ensure they can't hold the weight of a young adult and placing a 'duty of candour' on state agencies following a death in custody.

Special focus: youth justice

Major controversy surrounding serious failings at two of the three G4S-run children's prisons in England during the year under review eventually led to the company deciding to sell its UK children's services business in 'an ongoing review of its portfolio.'

A joint inspection into Rainsbrook Secure Training Centre, published in May 2015, described the facility as 'inadequate'. Inspectors found that staff, including those in leadership roles, had

subjected children detained at the centre to racist comments, degrading and humiliating treatment, and had in some instances been under the influence of illegal drugs whilst on duty. Poor care was 'compounded by poor decision-making by senior managers', which in one instance led to a child with a fracture not receiving treatment for 15 hours. Concerns were also raised about delays in reporting serious incidents or in dealing adequately with staff misconduct.

MTCnovo was announced as the new contractor at Rainsbrook in September 2015. The charity, Article 39, noted that MTCnovo had no known experience of running establishments for vulnerable children. It also pointed out that MTC faced prisoner abuse allegations in the US.

In January 2016, a BBC Panorama investigation into Medway revealed disturbing conduct by staff, including choking, punching and other assaults on children held at the centre. There was also evidence of staff attempts to conceal abuse and falsify records. A number of staff were suspended, a police investigation was launched, and the Youth Justice Board temporarily stopped sending children to the prison.

A report published by the Prison Inspectorate at the end of January confirmed many of the findings of the BBC investigation, and made several recommendations, including that all Secure Training Centre staff in regular contact with children had body-worn cameras. In March, the final report of the Medway Improvement Board – established by the Justice Secretary to advise him on needed changes – expressed concern that 'the monitoring regime' at the Secure Training Centres 'appears to focus more on confirming contractual compliance than on meeting young people's needs'. It also noted that 'frontline managers have considerable authority but there is little regular oversight of their work'. In May 2016 the Ministry of Justice announced that the operation of Medway would be transferred to the National Offender Management Service by July.

A May 2016 inspection report on Woodlands, Northern Ireland's children's prison, raised concerns over 'its capacity to cope with significant challenges that lie ahead: staff resilience levels were low and there was uncertainty about the implications of recent alignment with the Northern Ireland Prison Service, the staffing review and budget cuts.' Inspectors also found that self-harm at the facility had almost doubled since 2010.

Reviews

Alongside the Taylor review of youth justice in England and Wales, which was ongoing during this period (see Under review, page 27), significant work was unfolding in Northern Ireland and Scotland in relation to youth justice matters.

In March 2016, the Northern Ireland Justice Minister, David Ford, announced the results of a scoping study on children in the justice system. The study proposed that the welfare needs of children and young people should be at the heart of the justice system. Second, it called for increased 'exit points' from the justice system for young people, to avoid needless recycling through the system. Third, it proposed a simplification of youth sentencing options and an emphasis on prison as a sentence of last resort. In Scotland, the government published a youth justice strategy – *Preventing Offending* – in June 2015. The strategy promised a 'whole system approach' to young people in trouble, with a focus on early intervention and diversion from the justice system.

Probation

Probation developments across the three UK jurisdictions during this period were divergent. There were some superficial commonalities: developments in relation to criminal records disclosure for instance (see Background checks). But in general, policy moved in different directions. In England and Wales, politicians, policy makers and practitioners were trying to make sense of the rushed privatisation of the probation service under the outgoing coalition government. In Scotland, legislation to reorganise probation delivery at a more local level was working its way through parliament. In Northern Ireland, there were no major changes of note to a generally respected probation service.

Background checks

In Scotland and Northern Ireland, individuals can apply to have convictions removed from records disclosed to potential employers, if disclosure is considered disproportionate to the role they are applying for and related to an old or minor offence. Only certain offences are affected by the schemes. The nature of the role applied for is also considered. In Northern Ireland, minor convictions received when under 18, with no further adult convictions, are automatically referred to an independent review body prior to issuing criminal disclosures. In January 2016, the High Court ruled that the criminal records disclosure scheme in England and Wales was 'arbitrary' and unlawful. The ruling came following a legal challenge by two people who claimed that their careers had been blighted by having to disclose convictions for minor offences to their employers.

Probation in England and Wales

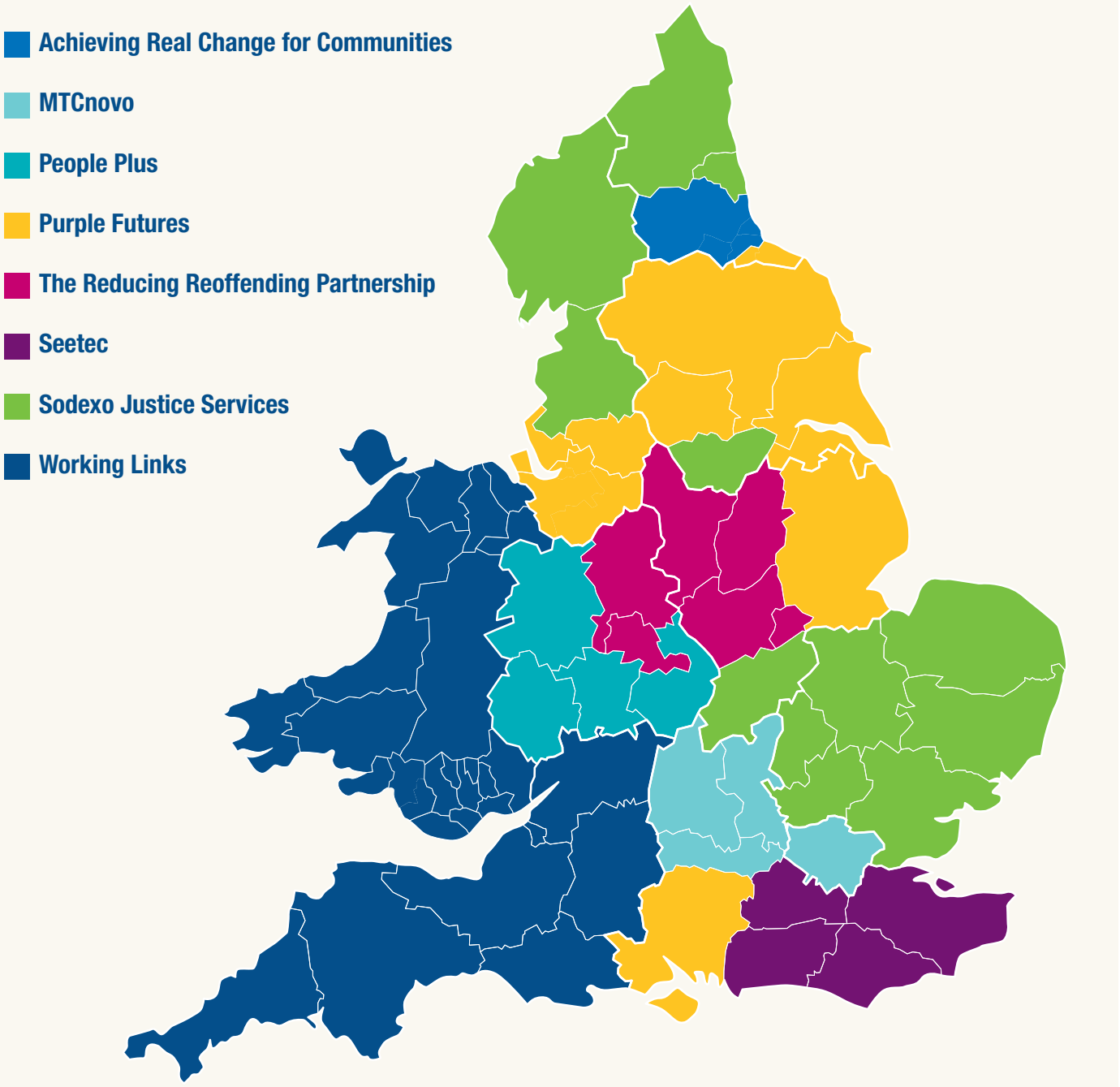
In his 2016 book, *Competition for Prisons*, Julian Le Vay, the former Director for Competition at the National Offender Management Service, wrote that the controversial privatisation of probation in England and Wales was 'like watching people doing their best to organise the perfect train crash'. Pushed through in early 2015 in the dying days of the coalition, the privatisation – known as 'Transforming Rehabilitation' – was a *fait accompli* for the incoming ministers, regardless of the private misgivings of some.

Following the changes, eight different corporate entities operated across 21 areas in England and Wales. It was something of a mishmash (see Community Rehabilitation Companies in England and Wales). They varied from single companies operating in one area – the employment training company People Plus in Warwickshire and West Mercia, for example – to complex consortia working across multiple areas: the Purple Futures consortium, for instance. Most of them had little or no experience delivering probation work at the scale required. A number of the relationships between the partners soured as expected work and income failed to materialise.

The Transforming Rehabilitation approach was premised on a split in the probation caseload. The National Probation Service would manage the relatively small number of 'high-risk' cases and court-related work. 'Low- to medium-risk' cases, the bulk of the workload, would be transferred to Community Rehabilitation Companies, the 21 private companies and voluntary sector providers under contract from the Ministry of Justice (see UKJPR 4 and 5).

When the new arrangements were reviewed by the National Audit Office, in an April 2016 report, *Transforming Rehabilitation*, concerns were raised over the long-term financial sustainability of the model. In particular, the report noted a large gap between the estimated caseload volumes the Community Rehabilitation Companies had used to cost their bids, and their actual caseload

Community Rehabilitation Companies in England and Wales



Probation

volumes. Four had caseloads one tenth lower than their estimates; eight had caseloads a fifth lower. A further three were falling short by a quarter and five had a shortfall of a third. The companies were paid according to the cases they managed. Fewer cases meant less money.

Whatever the short-term fixes, this would place long-term pressures on the companies, the National Audit Office observed: 'CRCs had proposed to raise significant levels of external debt to fund transformation activity and bridge their financial position during the first two years of their contracts. Lower than expected revenues increase the risk that CRCs may breach the terms of their debt facilities'. The extent to which reduced volumes would impact on reduced incomes remained the subject of ongoing negotiations between the Ministry of Justice and CRCs throughout the year under review.

As for the rationale for the Transforming Rehabilitation changes, the early indicators were not good. An October 2016 joint review by the Prisons and Probation Inspectorates – *An Inspection of Through the Gate Resettlement Services for Short-Term Prisoners* – found no evidence of the promised step change in provision for those leaving prison. Services overall were poor and there was little to commend in them, the Inspectors concluded.

Probation in Scotland

In Scotland, the equivalent of probation work is referred to as 'community justice' (see *The Coalition Years* for a comparison of the Scottish and England and Wales models). *The Community Justice (Scotland) Act* became law in March 2016, putting on a statutory footing a new model for the delivery of community justice services. A new national body, Community Justice Scotland, will oversee 32 local authority-based community justice partners. These 32 partners can either deliver community justice services themselves or commission external services to do so.

The Scottish Parliament Justice Committee's *Stage 1 Report on the Community Justice (Scotland) Bill*, published in November 2015, found no 'great enthusiasm for the exact model proposed in the Bill'. Writing on the Centre for Crime and Justice Studies website in December 2015, the former Scottish Justice Secretary, Kenny MacAskill, described it as a 'political fix between local and national government, but predicated on power rather than outcome'. The new model did not, for example, enable any movement of resources from prison to the community, a stated objective for the Scottish government. Indeed under the plans, resources for these disposals would be determined by local authorities' distribution of the Criminal Justice Social Work grant, an allocation which could potentially be at odds with a national government push for community disposals. The Justice Committee report also questioned whether the reforms would add to, rather than address, the 'cluttered, complex landscape' of community justice.

Probation in Northern Ireland

With legislative methods exhausted for achieving the Department of Justice's goal of the greater use of community sentences in the place of short-term prison sentences (see *The Coalition Years*), progress took place on a more piecemeal basis. An 18 month pilot began of the Enhanced Combination Order in October 2015. Branded a 'more intensive community order', it was aimed at diverting people facing up to a year in custody.

The order combines a restorative approach with unpaid work and weekly probation supervision.

Electronic monitoring

In England and Wales, the coalition government had developed ambitious plans for upwards of 75,000 people under a court sanction to be routinely monitored via a new generation of GPS-enabled satellite tags. The plans developed alongside, and were intended to complement, those for the privatisation of probation. As the electronic monitoring expert, Professor Mike Nellis, wrote on the Centre for Crime and Justice Studies website in March 2016: satellite tagging 'was intended to transform the community supervision of offenders in England and Wales, even more so than the privatisation of the probation service, to which it had been, from the outset, a complementary, and possibly more important element in the Transforming Rehabilitation programme.'

Due to start in mid-2015, delay followed delay (see UKJPR 4). By the time of the General Election there had been little progress. In July 2015, the Justice Minister Andrew Selous admitted to parliament that there been 'significant problems' with the programme and that 'the new fully integrated service will not be ready for another 12 months at the earliest'. Insiders considered this revised timetable unrealistic. The following February another Justice Minister, Dominic Raab, informed parliament that the government was cancelling plans for a bespoke satellite tag in favour of an 'off-the-shelf' solution. Rather than an ambitious national roll-out, he also confirmed the government would be piloting satellite tagging at a few locations, with the tags being supplied by 3M. Police and Crime Commissioners in England and Wales also began trials for the use of GPS tags. Vera Baird, Commissioner for Northumbria announced a pilot for the tracking of domestic violence perpetrators.

The government's long-term plans for satellite tagging are currently unclear. The existing radio-frequency tags (used to enforce curfews, but which did not track a person's movement) continued to be used, managed under contact by Capita.

In Scotland, work was ongoing during this period in developing options for satellite tagging. The government there had agreed a deal with G4S back in 2012 for the company to supply the technology (see UKJPR 3). But satellite tagging was controversial and had not been rolled out. As in England and Wales, during this period, radio-frequency tags remained the only system routinely in use in Scotland.

Electronic monitoring, whether radio frequency or GPS-enabled, has in general been treated in England and Wales as a stand-alone technology, delivered by private sector contractors with little connection to probation work. In contrast, the debate in Scotland during this period shifted more towards integrating electronic monitoring with community justice delivery. An 'Electronic Monitoring in Scotland Working Group' was set-up in August 2015 to develop a Scottish approach. It submitted its report to the Justice Secretary, Michael Matheson in the Spring of 2016.

Electronic monitoring remained relatively insignificant in Northern Ireland. Radio frequency tagging have been available to enforce curfews since 2009. In November 2015 *The Irish Times* reported that around 1,200 are tagged each year in Northern Ireland, almost all of them as part of the enforcement of bail conditions.

Coming up: Between Brexit referendum and another General Election

The 13 month period reviewed in this edition opened with the General Election and closed with the Brexit referendum. UKJPR7, due out in early 2018, takes the Brexit referendum as its starting point. It will conclude with another notable political event: the June 2017 General Election.

From General Election to Brexit referendum to General Election again in little over two years: this has been an unusual period in UK politics. Add to this the collapse of power-sharing in Northern Ireland in January 2017, and it is clear that the context for criminal justice policymaking across the UK has become unpredictable and turbulent.

Changes at the top

The fallout from the Brexit vote was the proximate cause of much of this turbulence. The introduction to this edition pointed to the continuity in the main decision-makers across the three jurisdictions between the 2015 General Election and the Brexit referendum. The period to be covered by UKJPR7 – between Brexit referendum and General Election – has been marked by change, rather than by continuity. In England and Wales, the resignation of David Cameron and subsequent Conservative Party leadership election resulted in a new Prime Minister, Home Secretary and Justice Secretary. The incoming Home and Justice Secretaries – Amber Rudd and Liz Truss – struggled to project the same authority in their new roles as their predecessors had done. Liz Truss in particular attracted criticism. In March 2017 the outgoing Lord Chief Justice, Lord Thomas, told a House of Lords Committee that she had been 'completely and utterly wrong' in failing to defend the judiciary against media attacks.

David Ford, Northern Ireland Justice Minister since the devolution of justice powers in 2010, stood down in May 2016. His replacement, Claire Sugden, was criticised by Mr Ford in July 2016 for endorsing a 'vague' plan to deal with paramilitary violence. She faced further pressure, late in 2016, to launch an independent investigation into allegations of corruption in the so-called 'renewable heating scheme'. The failure to find an agreed way forward to investigate the alleged corruption was the catalyst for the collapse of power-sharing and fresh elections in March 2017.

Regardless of any inexperience, shortcomings or mistakes by the key players during this period, the unpredictability of the post-Brexit referendum policy context has made the formulation of consistent and coherent justice policy much more difficult. Many of the perennial policy challenges – the state of imprisonment, the role and purpose of policing, an efficient and fair prosecution process, to name but three – remain. The capacity of the political class to respond to these challenges in two at least of the three UK jurisdictions – England and Wales, and Northern Ireland – has been disrupted by the fallout from the Brexit vote. Scotland has been something of an exception. The First Minister and Justice Secretary – Nicola Sturgeon and Michael Matheson – have remained in post. The political context for justice policymaking in the period between the Brexit referendum and the June 2017 General Election has been correspondingly more predictable.

Brexit and budgets

A detailed assessment of justice policy developments between the Brexit referendum and the June 2017 General Election will come in UKJPR7. Here the general context of criminal justice policymaking is considered. Two challenges – the implications of the Brexit vote and the ongoing budget squeeze – have been determinative of much else during this period.

On Brexit, the immediate effect in England and Wales, in terms of justice policy, was to bring an end to the short tenure of Michael Gove as Justice Secretary and the rather longer tenure of Theresa May as Home Secretary. Mr Gove may have been on the winning side in the Brexit war. He lost out in the subsequent peace and returned to the backbenches. Theresa May, on the losing side in the Brexit war, went on to become Prime Minister. In the subsequent months, as the new government came to terms with the implications and complexities of the Brexit challenge, much justice policy development went into stasis.

Work began on a possible second independence referendum in Scotland. But for the most part, criminal justice policymaking has continued as before. For instance, the new national body responsible for coordinating community justice – Community Justice Scotland – launched in April 2017 as planned. Work to integrate the operations of the British Transport Police in Scotland with Police Scotland is ongoing.

Northern Ireland has been the criminal justice jurisdiction most significantly affected by the Brexit referendum. The reasons for the collapse of the power-sharing Executive in January 2017 are complex. The Brexit vote was part of it. The prospect of a 'hard border' between the north of Ireland and the Republic, and the possible threat to the Good Friday peace agreement on which devolution was founded, has created great turbulence. At the time of writing, devolution is currently on hold. It is unclear when the institutions of devolved government in Northern Ireland will be re-established.

The ongoing pressure of austerity budgets – both in terms of the demands placed on criminal justice and other public services, and in terms of the capacity of those agencies to discharge their responsibilities – is the other main theme of the period between the Brexit referendum and the General Election. To pick just one example, police forces across the United Kingdom are facing major gaps in their budgets. In Scotland, this is likely to lead to a reduction in the number of police officers, for the first time in some years. In England and Wales, the challenge of reducing demands on police time, which Theresa May highlighted when still Home Secretary (see page 9), has become increasingly critical.

Criminal justice in unconventional times

The events covered in this edition of UKJPR mark the end of a period of 'conventional' criminal justice policymaking assessed by this and earlier editions of UKJPR back to the 2010 General Election. Criminal justice policymaking since the Brexit referendum has unfolded in a far more unpredictable and turbulent context. This new policymaking context is currently being established. It will be assessed by UKJPR7 and subsequent editions.

Technical appendix

References

To avoid the unnecessary clutter of a detailed scholarly apparatus, this report contains no references or footnotes. Sufficient detail on the titles and publication dates has been included to enable most readers to track down publications referred to in the text.

Data dashboard

Data

All data used in the charts is collated from official administrative sources. This includes annual reports and accounts and official statistical releases.

Care was taken to produce comparable indicators across jurisdictions that had the same units of analysis and were measured over the same time period. However, directly comparable data was not always available. Some staffing figures are different measures of labour time (full time equivalents or whole time equivalents) and some are actual numbers of people employed (headcounts). Most indicators are measured over financial years, but some were only available for calendar years. For measures at a single point in time, like prison population or staffing levels, averages over the whole year are used wherever possible.

Some agencies and functions have different names in different jurisdictions even though they refer to the roughly the same thing. In England and Wales, the main prosecuting authority is the Crown Prosecution Service. In Scotland, it is the Crown Office and Procurator Fiscal Service. In Northern Ireland, it is the Department of Public Prosecutions. Prosecution spending and staffing data refer to these agencies in the relevant jurisdiction. Community justice in Scotland is equivalent to probation in the rest of the UK.

All spending data included in the charts refers to central government expenditure on criminal justice. Figures are total managed expenditure which includes resource, capital and annual managed expenditure. Expenditure is adjusted to real terms.

Definitions

Prison receptions are the number of people entering prison in a given year. Scotland did not have current data on prison receptions.

Probation commencements refer to commencements of a period of court-ordered supervision in the community.

Discrepancies

Some indicators register very large changes that represent institutional reconfigurations rather than real changes in quantity. The political implications of such changes should not be overlooked.

The establishment of Police Scotland in 2013/14 brought together a range of funding from across the justice and local government portfolios. The jump in police spending refers to this change, rather than a notable increase.

In February 2015, a large proportion of the probation service in England and Wales transferred to private ownership. As a result, the Ministry of Justice is no longer responsible for managing their staffing. Only information on staffing in the National Probation Service is available for the years 2014/15 and 2015/16. The huge reduction in probation staffing does not indicate a huge reduction in the actual number of staff available to perform this function, although there is anecdotal evidence that the private probation companies have laid off staff.

More detailed footnotes to the data and a full list of original sources is available in data files from our website: www.crimeandjustice.org.uk/project/uk-justice-policy-review

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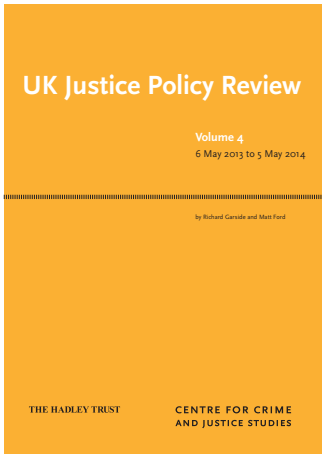

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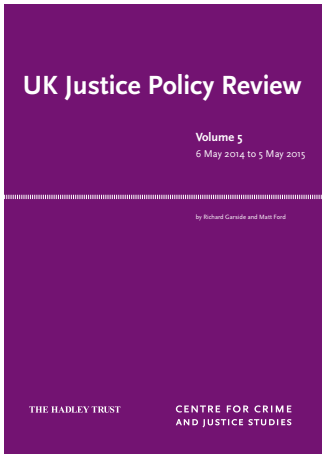

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