

Criminal justice systems in the UK

Governance, inspection, complaints and accountability

by Richard Garside and Roger Grimshaw



**CENTRE FOR CRIME
AND JUSTICE STUDIES**

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Preface and acknowledgements

This report would not exist without the instigation of the Department for International Development, which became part of the reorganised Foreign, Commonwealth and Development Office during our work. We wish to warmly thank Justin Haccius for approaching us, explaining his ideas for the work, and keeping us to task with a blend of curiosity, engagement and passion. Alex Wilks has ably taken over that responsibility for the final stages.

Our valued consultants, Rob Allen, Dr Thomas Guiney and Professor Jo Phoenix, helped to scope out significant parts of the work for us in the early stages. Responsibility for the final content in this report, including any errors, rests entirely with us.

Though our knowledge of criminal justice has developed over a long period, the scope of the project

proved to be wider and more complex than we initially expected. It has led us into some parts of the criminal justice system with which we were not at first familiar. It took time for us to explore and gather necessary facts across the different UK jurisdictions. We have made our best efforts to source accurate information and to give useful references, but we would welcome corrections and clarifications from any readers with more precise and accurate knowledge. We aim to correct the document accordingly.

Finally, we will be glad if the report is received and used by the widest possible set of readers, both in the UK and abroad, and enables them to place UK institutions in a wider context.

Richard Garside and Roger Grimshaw, June 2022

Introduction

Overview

Criminal justice systems are under constant scrutiny; calls for improvement and change are never far away. Questions arise over how to uphold standards and implement change in line with the expectations of governments and citizens. This report outlines a number of key mechanisms currently available in the different jurisdictions of the United Kingdom.

Core themes

From a governmental perspective, criminal justice is often conceived as a system with component parts, in which cases flow from one part, say the police, onto prosecution, then the courts and finally, for some, probation or prisons. The main obligations of government may seem to be overseeing the passage of cases and finding ways to make it effective and consistent. For citizens in general, their expectations focus on the system's capacity to treat them justly, or to ensure justice is done.

In practice, government is often preoccupied with ensuring that the agencies themselves are fit for purpose. The question then is what mechanisms are available to ensure fair and effective oversight and accountability. From the citizens' perspective, the system as a whole may appear remote and difficult to influence, and it is the treatment they receive from the individual agencies with whom they are in contact that is more important.

If we wish to examine how criminal justice agencies' operations can be held accountable by governments and citizens, it is necessary to consider the workings of the different mechanisms which are established to fulfil such functions for each part of the system. For this reason, this report focuses on four key mechanisms within current systems: governance and inspection (broadly corresponding with the governmental

agenda); complaints and citizen accountability (emphasising the citizens' perspective).

Structure

Each of the four sections deals with one major agency: police; prosecution; courts; and prisons. The four mechanisms are addressed in each section, with detailed coverage of England and Wales, Scotland and Northern Ireland. Current institutional arrangements have been described, as well as their evolution, and the policy reasoning behind it. Case studies have been used in order to illustrate the particular challenges faced by institutions and how they have been approached. Where information was relevant, international benchmarks, such as those surrounding the National Preventive Mechanism, have been introduced.

Background to the report

The work represented in the report came about as a result of a commission by the former Department for International Development (DFID), subsequently incorporated as the Foreign Commonwealth and Development Office (FCDO), which provided funding. The probing questions posed by our contacts there led to a considerable process of reflection and dialogue, which helped to draw out key themes and identify relevant lessons from the case studies. Further contributions to our thinking were made by our expert consultants who brought a range of perspectives to the topics: historical, sociological and international.

The uses of the report

The substance of the report is descriptive in nature, though it also seeks to supply information that will help to highlight key issues relating to accountability and oversight mechanisms and institutions in the UK's

three criminal justice jurisdictions, as well as the relevant national and international standards.

It is important to recognise that criminal justice is not uniform across the UK, and no single model exists. However, it will be possible for readers within each jurisdiction, and from outside the UK or working internationally, to reflect on differences, commonalities and challenges, and to consider where they fit.

The resulting portrait of criminal justice systems in the UK is also intended to help identify challenges, areas of best practice and potential intervention points to inform future discussions around policy development, institutional reform and addressing citizens' expectations for fair and effective justice delivery.

Key messages

No gold standard

There is no single, UK-wide model for organising these institutions; no 'gold standard' arrangement.

- Three criminal justice jurisdictions, with different histories, structures and operations, cover the United Kingdom: England and Wales, Scotland, and Northern Ireland.
- Single national police forces, accountable to political appointees, in Scotland and Northern Ireland, contrast with a patchwork of local forces in England and Wales, accountable to elected police and crime commissioners.
- The *per capita* prison population in Northern Ireland is around half that in Scotland, and England and Wales.

The diverse UK criminal justice arrangements, the result of distinctive histories, cultures and politics, offer a variety of operational and reform options.

How change happens

Criminal justice structures and arrangements typically change slowly over time. Quicker and more radical change can happen at critical junctures, where political, social and cultural changes align.

- The criminal court system traces its origins back over 1,000 years, with gradual evolution punctuated by more rapid change as a result, for example, of Royal Commissions or major political changes.
- Different approaches have been pursued over time. The basic structures of the contemporary police service and prison system were laid down during the dramatic social, economic and political changes brought on by nineteenth century industrialisation and the rapid growth of cities.
- The political changes following the Good Friday Agreement prompted a significant reorganisation

of policing in Northern Ireland; a reorganisation that probably would not otherwise have occurred.

Criminal justice institutions tend to reflect the balance of forces in the societies in which they operate, with major changes influenced by broader political and socio-economic dynamics.

Inspection

The major UK criminal justice institutions, with the exception of the courts, face regular scrutiny by independent inspectorates. Responsibility for implementation of inspection recommendations rests with inspected bodies and the government.

- An outsider perspective is important to the effectiveness of inspections. A wide-ranging package of reforms to policing in England and Wales a decade ago included the appointment, for the first time, of a chief inspector without a policing background.
- Alongside inspection reports, inspectorates deploy other mechanisms to prompt action. In England and Wales, the prisons inspectorate can use an 'urgent notification' process to highlight significant failings.
- Good inspection can help in fostering incremental improvement; less so transformative change. A separate oversight commissioner was appointed to oversee the implementation of the major changes to Northern Ireland policing in the decade following the Good Friday Agreement.

Effective, independent inspection, informed by national and international protocols and principles, is a key feature of UK criminal justice institutions.

Complaints

Most of the UK criminal justice institutions administer formal complaints mechanisms, underpinned by

external review and appeal. The specific configuration of these mechanisms vary by jurisdiction and institution.

- The police in Scotland, England and Wales handle most complaints against officers, while complaints against the police in Northern Ireland are all handled by an external body.
- A developed system of external review and appeal, to bodies formally independent of the institution concerned, is a common feature of most UK criminal justice institutions.
- Defendants and witness can only complain about the conduct of a trial, rather than its outcome. There are also a developed set of arrangements for appealing against court verdicts.

Independent, formal complaints mechanisms foster legitimacy and accountability. Procedural justice – the sense that a complaint has been properly handled – is as important as the outcome.

Civil society

Beyond the formal mechanisms of inspection and complaints, a diverse and varied set of civil society groupings and institutions offer important channels for challenge, accountability and citizen engagement.

- Family and citizen campaigns, often stretching over a number of years, can prompt institutional change. The Hillsborough Family Support Group, and the Lawrence family campaign for justice, are examples.
- Strategic litigation and other legal challenge by civil society organisations are a regular feature.
- The role of media reporting in informing public attitudes and opinions has sometimes proved controversial. High-profile exposes have brought to light uncomfortable truths, for example, about prison regimes. The media have also been blamed for the public's unrealistic assumptions about prisons and other criminal justice institutions.

Civil society institutions play a vital role in ensuring independent monitoring and accountability, and mediating the shifting relationships between the justice system and the public.

International standards

UK criminal justice agencies are engaged in international systems that review and assess their practices against internationally agreed standards.

- To reduce mistreatment of people in custody, the UK National Preventive Mechanism (NPM) was established under the Optional Protocol to the UN Convention against Torture.
- The UK criminal justice system scores highly on the World Justice Project rule of law index.
- One test of a society's commitment to rights is the number of judgements in the European Court of Human Rights, which has published a table of violations for each European country from 1959 to 2017.

In order to effect change, international standards need to be embraced by governments, oversight bodies and civil society.

Police

UK police arrangements comprise a complex network of territorial and specialist forces. Under the centrifugal forces of devolution, divergent organisational patterns have emerged over recent years.

- 43 territorial forces cover England and Wales, contrasting with the single forces that operate in Scotland and Northern Ireland. Specialist police forces, such as the British Transport Police and the National Crime Agency complete a complex network of policing agencies.
- Operational independence of the police from political interference and control is an important principle of UK policing. This has been particularly important for recent policing developments in Northern Ireland, given the long history of sectarian conflict.
- Challenges around building trust in communities, particularly amongst racial, political and religious communities who may feel disproportionately subject to police attention, have been an ongoing feature in debates around UK policing over the years.

As the largest of the criminal justice agencies, the UK police have considerable power and influence within society, which requires fair and effective oversight and accountability mechanisms, the development of which is an ongoing process.

Prosecution

Prosecution services offer an impartial legal and institutional filter for the collection and presentation of evidence in cases before the criminal courts.

- Across all three of the UK jurisdictions, the prosecution function is formally distinct from both the police and the courts. This has been seen as important for ensuring independence and consistent decision-making.
- Alongside the main prosecuting bodies, specialist prosecuting bodies, notably the Serious Fraud Office, act as offence-specific investigatory and prosecuting services.
- Alongside public prosecutions, private individuals and organisations have recourse to private prosecutions. This has sometimes proved controversial, with criticism that it can be abused by powerful organisations.

Independent public prosecution arrangements play an important role in underpinning the legitimacy of the criminal justice system, embodying the principle that prosecutions should be neither oppressive nor tokenistic.

Courts

The criminal courts and criminal process are a relatively small part of much larger court system, with civil, rather than criminal, cases dominating.

- Criminal courts are divided between those that deal with serious offences (e.g. murder, sexual offences, violence) and those dealing with minor offences.
- Defendants have the right to legal representation, which, depending on the defendants' income, might be provided free of charge to them, through public funds (known as legal aid).

- There are formal routes for defendants to appeal a guilty verdict, or seek a review, though in practice these routes for appeal and review can be difficult, and slow, to navigate. The Supreme Court of the United Kingdom is the final court of appeal for criminal cases in England, Wales and Northern Ireland. The High Court of the Justiciary is the final court of appeal for criminal cases in Scotland.

The independence of the court system from direct political interference has been a cardinal principle of the UK justice system and is an important national and international standard.

Prisons

The prison systems across the UK organise their populations according to sex, age and security classification. Most prisons are in the public sector, with private prisons representing a small, though by international standards high, proportion of all prisons.

- Much of the prison estate across the UK was laid down in the nineteenth century. One quarter of the entire prison population in England and Wales is held in Victorian-era prisons.
- *Per capita* imprisonment rates in England and Wales, and Scotland, are high by European standards. *Per capita* rates in Northern Ireland are lower: half those of England and Wales, and Scotland.
- Tight budgets over a number of years have resulted in significant regime challenges, especially in England and Wales, and deteriorating infrastructure.

Given their closed nature, effective inspection and monitoring, and appropriate training and investment in staff, are critical for the safe running of prisons.

Police

1 Governance

Summary

| | England and Wales | Scotland | Northern Ireland |
|------------------------------|--|--|---|
| Governance body | 43 Police and Crime Commissioners and equivalent bodies ¹ | Scottish Police Authority | Northern Ireland Policing Board |
| Oversight of | One for each of the 43 territorial police forces ² | The single territorial police force: Police Scotland | The single territorial police force: Police Service of Northern Ireland |
| Appointed or elected? | Directly elected every four years by citizens in each territorial police force area. | Members appointed by the Scottish Justice Secretary | Members appointed by the Northern Ireland Justice Minister |

Evolution of current institutional arrangements

The standard accounts of police history identify a foundational moment, such as the creation of the Metropolitan Police and the local versions that followed. These were contrasted with the more militarized continental and Irish models, such as the *Dublin Police Act 1786*, which instituted an armed police force on the model of the French gendarmerie. The new, organised police were created by the *Metropolitan Police Act 1829* as a response to the disorders and threats associated with economic distress, and to demands for democratic reforms; demands that had been suppressed by troops in 1819, in the events known as the Peterloo Massacre (Lyman, 1964). The Home Secretary exercised oversight of the Metropolitan District. Justices of the peace would be responsible for making police regulations, subject to the approval of the Home Secretary. The role of justices of the peace in supervising the police, for example in the *County Police Act 1839*, reflected their established role in dispensing summary justice. In the boroughs, elected councils were obliged to appoint a watch

committee to supervise constables, under the *Municipal Corporations Act 1835*.

The *County and Borough Police Act 1856* required the establishment of forces under local governance, with the Treasury providing a proportion of funding. This Act, followed by the *General Police Act (Scotland) 1857*, created new police authorities throughout Great Britain.

The Victorian period witnessed the development of national administrative regulations in social policy and criminal justice: the *Poor Law Amendment Act 1834*; the various Factory Acts from the 1830s to the late nineteenth century, etc. Though local structures have persisted in some form, the machinery of central government prescription was established a long time ago (Cromwell, 1966).

Policing became a relatively stable zone of governance, in which local institutions were sustained under a central regime designed to reward efficiency through inspections. Funding from the centre was conditional on satisfying inspectors that a force was properly

managed. When the Royal Commission on the Police reviewed this history in 1962, it identified themes of governance surviving over a long period (HM Government, 1962). The Commission influenced the *Police Act 1964* (Jefferson and Grimshaw, 1984). Towards the end of the 20th Century, governance became more controversial, with a rise in social tensions and an outbreak of conflict in Northern Ireland, for instance.

Current institutional arrangements

It has been in the 21st century that decisive developments in governance have occurred in different parts of the UK. The creation of Police Scotland, with its resemblance to the unitary Swedish police model under a single police authority (Swedish Ministry of Justice, 2015), marks a major moment within the UK policing story. With its concern to bridge communities, the Police Service of Northern Ireland (PSNI) has owed much to international examples: the Independent Commission on Policing in Northern Ireland (ICPNI, see further below) consulted widely in the US and Canada, as well as South Africa, Netherlands, the Basque country and Madrid. The creation of police and crime commissioners (PCCs) in England and Wales in 2011 was influenced by models from the USA that highlighted the influential role of local mayors (Loveday and Reid, 2003).

Equally, developments in the coordination of police have created influential institutions at the professional and leadership levels. The National Police Chiefs Council (NPCC), a UK-wide collaboration, was established under the *Police Act 1996* (as amended). It evolved from the Association of Chief Police Officers, originally a representative forum, which for some years had become a vehicle for strategic coordination (NPCC, 2014). The College of Policing (COP) now sets professional standards, provides training and shares good practice across England and Wales. It was set up in 2012 as part of a wider reform package. Its formal status is as a company limited by guarantee. It does not currently have a statutory basis. Police Scotland College and Northern Ireland Police College perform training roles for the forces in Scotland and Northern Ireland respectively.

England and Wales

- PCCs were established by the *Police Reform and Social Responsibility Act 2011*, with the first elections taking place the following year.
- Prior to PCCs, local police authorities were responsible for each force, composed of local politicians and local independent members selected by the local police authority from a list approved by the Home Office. It was obligatory to have at least three independent members who were magistrates.

Scotland

- The Scottish Police Authority (SPA) was created by the Scottish government under the *Police and Fire Reform (Scotland) Act 2012* to oversee the newly established single police force: Police Scotland.
- Prior to that, eight territorial police forces across Scotland were overseen by the Scottish local authorities, which separately appointed Chief and Assistant Chief Constables, managed expenditure, and set out strategic aims.

Northern Ireland

- The Northern Ireland Policing Board (NIPB) was established by the *Police (Northern Ireland) Act 2000*, to oversee the work of the newly reorganised and renamed PSNI.
- Prior to the Act, the Police Authority for Northern Ireland oversaw the work of the Royal Ulster Constabulary (RUC).

Specialist policing functions

Alongside and overlaying the territorial police forces are several special police forces and functions:

- The National Crime Agency (NCA), sometimes referred to as the British FBI, works across the UK and internationally on serious and organised crime. The Director General reports to the Home Secretary.
- The British Transport Police polices railways across Great Britain. It is overseen by the British Transport Police Authority which includes a Scottish Railways Committee.
- The Civil Nuclear Constabulary, responsible for protecting civil nuclear sites and materials in Great

Britain, is overseen by the Civil Nuclear Police Authority.

- The Ministry of Defence Police is a civilian police force responsible for military sites. It is overseen by the Ministry of Defence Police Committee.

Set within the capital city, the London forces also hold particular national responsibilities:

- The Metropolitan Police hosts Counter Terrorism Policing, which oversees the UK's National Counter Terrorism Policing Network. It reports to the National Police Chiefs Council (NPCC).
- The City of London Police is the national lead force for fraud, and is responsible for Action Fraud and the National Fraud Intelligence Bureau. Its operations are linked to the Joint Fraud Taskforce, a partnership which includes government, industry, regulators, other law enforcement agencies and overseas organisations.

Case studies

Redesigning policing to promote community trust and legitimacy in Northern Ireland

The Independent Commission on Policing in Northern Ireland (ICPNI), under Rt Hon Chris Patten, was established in 1998 to develop proposals for “a police service that can enjoy widespread support from, and is seen as an integral part of, the community as a whole”. In the context of ongoing troubles in Northern Ireland, the then RUC had “resorted to methods of policing that... separated them from the community”, including in areas where the local residents were not hostile to the police. The RUC, the Commission argued, had “remained somewhat militaristic and hierarchical”, and “slow to move towards the culture of customer service, public consultation and openness, problem-solving community-based policing, and devolved management” (ICPNI, 1999: 123, 98).

The ICPNI report placed human rights and dignity at the heart of the new mission for what became the PSNI. The police were to move towards an approach based on cross-community trust and consent. After a period of serious conflict between the, mainly Catholic,

republican population and the, mainly protestant, unionist population, the new model challenged both the two main communities to reimagine their relationship with the police. Significant progress was made in recruiting Catholics but, while the two communities are approximately equal in population, 70 per cent of the police are still currently identified as protestant (SIPRI, 2019). Former combatants are now active in community organisations, which seek to build peace, mediating with police especially in zones where the two communities live adjacently (Branka and Guzina, 2014).

The reorganisation of the police in Northern Ireland was an outcome of a broader restructuring of politics in the province, leading to a decline in political violence. The new governance system represented by the NIPB, though carefully constructed to encourage consent and balanced representation from across the community divide, has arguably been dependent on the wider political changes established by the Good Friday Agreement. As a result, “accountability for policing by PSNI in terms of what it ‘does’, what it delivers and what it is responsible for on the ground remains far from clear-cut” (Topping, 2016).

Responding to changing priorities: PCCs in England and Wales; the SPA in Scotland

In England and Wales, the tensions between local autonomy and central management have played out over time through a series of distinctive police governance models.

The Police Act 1964 established the so-called ‘tripartite’ system. Firstly, the Home Office exercised a national oversight and coordinating function. Secondly, the local police authority (one for each territorial force) was responsible for ensuring an “adequate and efficient” police force in a given area. The third protagonist – the chief constable – was responsible for running the police force in a given area. However, there remained important ambiguities about the exact division of responsibilities (Jones, 1991).

The social and industrial strife associated with the economic crises of the 1970s and 1980s cast a new

spotlight on policing. During the 1980s, questions were raised over whether the local police authorities were properly scrutinising the police forces (e.g. Bradley *et al*, 1986; Newburn and Jones, 1999), leading to calls for greater democratic accountability; calls opposed by vocal chief constables and their supporters in parliament.

The doctrine of ‘constabulary independence’ was employed as a counterweight to the push for democratic accountability, summoning the spectre of politicians overriding the judgements of officers and interfering in the administration of justice. In addition, the period saw a growing self-confidence among the police in their legitimacy as public debaters and communicators. The Police Federation – the rank and file police association – was active in ‘law and order’ campaigns during the 1970s, speaking with a united voice.

The tripartite system was rebalanced by the centralising *Police and Magistrates’ Courts Act 1994*, which permitted the Home Office to set national policing objectives. Mainstream concerns had shifted towards seeking better police performance.

The creation of locally-elected PCCs in England and Wales has to some degree turned the dial back to local decision-making. This structure contains an important qualification of the powers of the PCC: the long-established principle that the chief constable retains ‘operational independence’, however ill-defined this might be in practice (see *Policing Protocol Order 2011*).

The Home Secretary retains statutory powers to direct police forces through the Strategic Policing Requirement (the national policing objectives mentioned above), which identifies force capabilities and countermeasures to national threats, ranging from terrorism to child sexual abuse (Home Office, 2015). Moreover, the Director General of the NCA can direct chief constables to cooperate on national tasks, creating a strong centralising tendency. In 2019, a National Policing Board (NPB) was created, chaired by the Home Secretary, bringing together ministers and a select number of policing leaders to provide strategic

oversight on priority matters, though without affecting existing statutory accountabilities (Home Office, 2021).

In Scotland, the merger of the eight territorial forces into a single force – Police Scotland – was a centralising project. This was true both in relation to Edinburgh’s relationship with the UK government, and its relationship with the influential Scottish local authorities, which previously superintended the work of the territorial forces. Police governance, via the SPA, was conceptualised in terms of the selection of members’ expertise by a responsible minister.

Meeting governance expectations

Based on the principles of the legislation, the governance arrangements in the three jurisdictions can be assessed in terms of their forms of accountability, their ability to plan and set performance standards, and their success in community engagement.

However, meeting specific criteria of accountability has proved to be challenging: PCC elections have seen variable voter turnout; the SPA has been deemed to be subservient to Scottish ministers (Malik, 2017); and the NIPB was accused of having been slow to engage with the Northern Ireland Human Rights Commission and the Police Ombudsman (Ellison, 2007).

The quality of PCCs’ Police and Crime Plans and Annual Reports are variable (McDaniel, 2017). The SPA has also been criticised for struggling to formulate an adequate performance framework (Malik, 2017). The Northern Ireland Audit Office has also criticised the NIPB for the lack of clarity of its performance standards (Topping, 2016).

Compared to the previous local police authorities, the PCCs have increased engagement with citizens (NAO, 2014), but local Police and Crime Panels were considered to lack sufficient credibility and ability to hold PCCs to account (CSPL, 2015). In Scotland, SPA engagement with local authorities and third sector bodies was found to have been under-developed (Malik, 2017). In Northern Ireland, the local Policing and Community Safety Partnerships were reported to lack adequate representativeness and ability for

critical engagement with policing (Topping, 2016), though others have offered a more positive assessment (CJINI, 2019).

On the evidence, the governance structures in the UK remain ongoing works in progress, each seeking to fulfil complex responsibilities, within the context of their national and local settings.

2 Inspection

Summary

| | England and Wales | Scotland | Northern Ireland |
|------------------------|--|--|---|
| Inspection body | Her Majesty's Inspectorate of Constabulary, Fire and Rescue Services (HMICFRS) | Her Majesty's Inspectorate of Constabulary in Scotland | Criminal Justice Inspection Northern Ireland Supplemented by HMICFRS |
| Lay monitoring | Independent Custody Visiting Association | Independent Custody Visitors in Scotland | Independent Custody Visitors |

Current institutional arrangements

Inspection bodies comprise both formal professional structures that scrutinise a wide range of policing functions, and more informal lay inspection arrangements in relation to police custody.

- An independent formal inspectorate with professional skills produces regular reports, focussing on areas such as efficiency, effectiveness and police legitimacy (e.g. HMICFRS, 2020). They report to parliamentary institutions, making it possible for relevant committees to use their information. Citizens are also recruited to make independent lay visits to places of custody.
- All bodies with powers of inspection, both formal and lay, are organised in the National Preventive Mechanism (NPM), required under the Optional Protocol to the UN Convention against Torture. NPMs are a significant vehicle for establishing internationally accountable inspection regimes (see Appendix).
- The extent to which inspection bodies should have powers to issue notices, warnings or enforcement

measures is a matter for debate internationally (Birk *et al*, 2015).

Case studies

Historical landmarks and processes of change

The first inspectors were appointed as a result of the *County and Borough Police Act 1856*. As the eyes and ears of the Home Office, inspectors could exercise influence over local arrangements. By the time of the *Police Act 1890*, much of the inspectors' efficiency agenda over the previous 30 years had been achieved, including the closures of small forces and adequate pension schemes for police (Cowley *et al*, 2006).

As the 21st century approached, inspections became more rigorous and demanding, in line with the growing emphasis on performance assessment across government. As part of the 2000 Spending Review, the Home Office and Treasury developed the first police efficiency plans, which were to be assessed by the Inspectorate. However, the Chief Inspector of Constabulary exercises no formal management or

leadership authority over chief constables and has no enforcement powers.

Pressure groups that sprang up in the late 20th Century to contest miscarriages of justice, and police treatment of minority communities and women succeeded in influencing modern inspectorates (Loader and Mulcahy, 2003). In addition, the establishment of the UK NPM, incorporating formal inspection mechanisms, has strengthened obligations to scrutinise police practice, and to heed inspection recommendations.

Adapting inspection to new requirements in England and Wales

For most of its history, the role of Chief Inspector of Constabulary for England and Wales, a post established in 1962, has been performed by a senior police officer with operational experience. Inspections tended to be focused on organisational and service matters.

The Chief Inspector between 2012 and 2022, Sir Thomas Winsor, was the former rail regulator, with no professional policing background. He had produced an influential two-part review report on police pay and conditions in 2011 and 2012 (Winsor, 2011, 2012). Winsor's appointment in 2012, firmly supported by the then Home Secretary Theresa May against considerable police opposition, signified a change of emphasis for the Inspectorate towards a model more distanced from the chief constables. His appointment

was part of a broader package of measures, including elected PCCs, intended to break up what was criticised, by May and others, as something of a closed shop of chief constables running policing in England and Wales (May, 2012). Theresa May also ended the Police Federation's Home Office grant.

Overseeing transformative change in Northern Ireland

The landmark report of Patten's ICPNI, referred to above, recommended the establishment of "an oversight commissioner with responsibility for supervising the implementation of our recommendations". The Commissioner, the report recommended, should be "an eminent person, from a country other than the United Kingdom or Ireland" (ICPNI, 1999: 105). The former Administrator of the United States Drug Enforcement Administration, Thomas Constantine, was appointed as the first Oversight Commissioner for Northern Ireland in 2000. He was succeeded by Al Hutchinson, former Assistant Commissioner of the Royal Canadian Mounted Police, in 2004. The Commissioner reported regularly to the UK Parliament on progress on the recommendations, until the expiry of the role in 2007.

The Northern Ireland Human Rights Commission was responsible for a series of reviews of human rights training for PSNI from 2000 to 2006. Such training was designed to counterbalance the emphasis on drill and firearms in the RUC's training, criticised by the ICPNI.

3 Complaints

Summary

| | England and Wales | Scotland | Northern Ireland |
|----------------------|---------------------------------------|---|---------------------------------------|
| Complaints body | Independent Office for Police Conduct | Police Investigations and Review Commissioner | Police Ombudsman for Northern Ireland |
| Head of service | Director General | Commissioner | Police Ombudsman |
| Power of appointment | Crown appointment | Justice Secretary | Crown appointment |

Current institutional arrangements

- In each of the UK jurisdictions, at least one independent body has oversight responsibility within a system of handling and investigating complaints against police.
- Only in Northern Ireland does an independent body, PONI, investigate all complaints against the police. In other regions, police forces are responsible for the investigation of less serious complaints and only the most serious matters are normally investigated independently.
- Overlaying these complaints bodies are the main governance bodies – the PCCs, SPA and NIPB – who in principle are the ultimate authorities for holding the police to account and for driving change.

Case studies

Evolution of the police complaints system in England and Wales

The first independent element was introduced in 1976, with the Police Complaints Board (PCB). Previously, forces dealt with complaints themselves, though the Home Secretary could request another force to investigate a serious complaint. The Police Complaints Authority replaced the PCB in 1985. In 1999, the Macpherson report on the police response to the death of Stephen Lawrence identified a lack of impartiality in investigation of complaints (Macpherson, 1999).

The Independent Police Complaints Commission (IPCC), the forerunner to the current IOPC, was set up in 2004. The IPCC oversaw police investigations into police conduct. It could also conduct some investigations itself. Additional powers for the new IOPC were introduced under the *Policing and Crime Act 2017*, prompted by a House of Commons Home Affairs Committee (HAC) report (HAC, 2013). The IOPC, for instance, can consider incidents that have not been referred by police forces, and decide whether and how they will investigate them. The great majority of complaints in England and Wales are, however, still dealt with by the police themselves.

A cautious expansion of independent investigatory powers has thus taken place. Independent expert evidence given to the HAC in 2021, however, draws into question the transparency of IOPC activity in relation to serious matters (Smith, 2021).

Much of the concern has been about the police use of force. The number of deaths in or following custody have tended to fall over the past two decades. Reviews by the IPCC may have had some influence on that trend. Since 2017, with the creation of the IOPC, forces have been obliged to report data about deaths in custody. However, HMICFRS has criticised failings in recording use of force (HMICFRS, 2021).

Changes in Scotland and Northern Ireland

In Scotland, a review of police complaints handling by Dame Elish Angiolini was published in November 2020 (Angiolini, 2020). Complaints are initially dealt with by police. The Procurator Fiscal has a responsibility to investigate crimes and can direct the Police Investigations and Review Commissioner (PIRC) to do so when the police are alleged to have committed a crime. Angiolini's review found that the independence and accountability of the PIRC were not clearly defined. It recommended that the PIRC should be made accountable to the Scottish Parliament and should be a Crown appointment. The current PIRC had advocated a comprehensive model of independent investigation of all complaints in place of the current system (similar to arrangements in Northern

Ireland). Instead, the Scottish Government proposed continuing the system, provided safeguards were introduced (Scottish Government, 2021).

In Northern Ireland, the creation of the Police Ombudsman for Northern Ireland (PONI) was strongly supported by Patten's ICPNI. The first appointee, Nuala O'Loan, was confirmed in 2000. The role faced significant controversy a decade ago, following a highly critical report by CJINI, which raised questions about the PONI's independence and handling of sensitive information. It resulted in the resignation of the then Ombudsman, Al Hutchinson, former Oversight Commissioner, who had taken over the Ombudsman role in 2007 (BBC, 2011).

4 Citizen accountability

Summary

A critical test of civil society effectiveness is that when normal systems of complaint and redress are perceived to fail, it is still possible for cases of injustice to be resolved by other means. Alongside formal avenues of complaint and scrutiny, a wide range of citizen-led and civil society routes are a feature across the UK. To be effective, citizen accountability relies on public freedoms to organise, including a free media to disseminate concerns, and a commitment across society to human rights and equality.

When a case is brought to international tribunals, it signifies that the limits of accountable justice in a nation may have been reached. One test of a society's commitment to rights is the number of judgements against a nation in the European Court of Human Rights, which has published a table of violations for each European country from 1959 to 2017 (ECHR, n.d.).

Case studies

'Super complaints'

Under the *Policing and Crime Act 2017*, a system of 'super complaints' has been created in England and Wales which enables non-governmental organisations

to pursue broad claims against the police. The system is administered by HMICFRS. Action on a super complaint is decided jointly by the IOPC, HMICFRS, and COP.

In 2019, for example, Hestia, a charity providing crisis support, submitted a super-complaint on modern slavery, claiming that many victims were not receiving the appropriate level of service and support by non-specialist police officers. The super-complaint was supported by the Victims' Commissioner.³ A report on their investigation, with recommendations, was issued by the three agencies responsible in May 2021.

Media reporting: old and new

The balance of power between police and journalists shifts over time, with officers often the source of critical stories.

- *The Times* is among newspapers continuing to undertake investigations in the tradition of the corruption exposés of the 1970s.
- *The Guardian* has played a role in exposing the activities of undercover officers.
- *The Daily Mail* directly accused suspects in the murder of Stephen Lawrence.

More recently, and as shown in coverage of the death of George Floyd in the USA, emphasis has turned to the circulation of images on social media. Viewers' perspectives influence their interpretation of images, creating room for discussion and debate, and, in some cases, forms of accountability. In 2009, mobile phone footage of Ian Tomlinson being beaten by an officer was an example of citizen journalism. It led to a formal apology and an out-of-court settlement of his family's compensation claim, by the Metropolitan Police, admitting that he had been unlawfully killed (Pearse and Weaver, 2013).

Public opinion and contact with the police

General survey measures suggest 60 per cent of the population have confidence in the police. In the UK, confidence in the police has stood around the central value in survey findings across Europe. Differing perceptions by sex appear to be relatively insignificant, though the crisis engulfing the Metropolitan Police in the wake of Sarah Everard's abduction and murder, and misogynist social messaging by Metropolitan Police, exposed in early 2022, may change this. It is contact with police, especially police-initiated contact, which risks negative perceptions. Perceived procedural fairness includes the citizen's 'voice': being heard and taken seriously. There is an international body of literature exploring the impact of quality of decision-making and interpersonal treatment on the public's sense of police legitimacy (Hamilton and Black, 2019).

The struggle for justice through civil society action

Prompted by police repression during the hunger marches of the 1930s, the National Council for Civil Liberties (now Liberty) was formed in 1934 to campaign against police actions which suppressed peaceful protest. The last decades of the 20th century witnessed a process whereby citizen groups formed to question and challenge police failings. Sometimes these have been motivated by particular incidents; sometimes by a more systematic dissatisfaction with police responses. For example, the Jimmy Kelly Action Committee was set up to seek justice for a man who died in 1979 after police contact. The English Collective of Prostitutes challenged the police and the Attorney

General over their attitudes to the Yorkshire Ripper case (Scraton, 1984; Bland, 1984).

The Hillsborough Family Support Group

After 96 deaths at a Sheffield football stadium in 1989, the Hillsborough Family Support Group (HFSG) was founded to seek accountability from those in authority on the day. The official report into the incident, published in 1989, criticised mismanagement and misleading information from the police. In 1990, the Crown Prosecution Service decided against criminal proceedings. In 1991 an inquest jury returned a majority verdict of accidental death. After a television dramatisation of the disaster in 1996, the Home Office considered representations by the HFSG and, in 1997, with a new government, a judge was asked by the Home Secretary to scrutinise the evidence. In 1998 they concluded there were no grounds to change the inquest verdict.

In 2000, the HFSG brought an unsuccessful private prosecution against two senior officers in charge on the day. After speaking at the 20th anniversary memorial service in 2009, the then Culture Secretary, Andy Burnham MP, pressed for disclosure of all documents relating to the disaster. After a meeting with the HFSG, the government established the Hillsborough Independent Panel, whose report led to a new inquest in 2016 (Hillsborough Independent Panel, 2012). The inquest verdict of unlawful killing vindicated the campaign, prompting further investigations and prosecutions. Campaigners subsequently advocated for changes to the law: firstly, to make lying or hiding the truth at inquests punishable by a prison term and, secondly, to allocate legal aid to bereaved families.

The murder of Stephen Lawrence

In 1993 Stephen Lawrence, a Black teenager, was fatally stabbed at a bus stop in a racist attack. The family's pursuit of justice extended over many years. There were allegations that the police had protected criminals linked to the attack. In 1997, the inquest gave a verdict of unlawful killing. Shortly afterwards, on 14 February, *The Daily Mail* published a front page accusing five men of the crime, under the headline 'Murderers'. The Lawrence family subsequently made representations to

the new Labour government, which set up a public inquiry chaired by former judge Sir William Macpherson. Its report in 1999 famously indicted the police as ‘institutionally racist’ (Macpherson, 1999). However, the inquiry could not be sure that collusion or corruption had infected the investigation.

In 2012, the Home Secretary commissioned a review by the barrister Mark Ellison QC, into possible corruption in the police investigation. In 2013 a former undercover officer Peter Francis claimed that he had spied on the Lawrence family, and the terms of reference of the Ellison review were expanded accordingly. In 2014 the Ellison review concluded that undercover police officers had indeed spied on the Lawrence family during the Macpherson Inquiry. Ellison also found that the Metropolitan Police had withheld evidence from the Macpherson Inquiry (Ellison, 2014). It found some grounds to suspect that at least one officer was corrupt, prompting an NCA investigation. In 2016, the IPCC concluded that a senior officer in the Metropolitan Police, who was alleged to have met an undercover officer spying on the family in 1998, had a case to answer for misconduct. Proceedings were not undertaken because of the officer’s retirement.

After previous failed prosecutions, a change in the law was made to allow a further prosecution in the same case, subject to there being new evidence. The legal change permitted a fresh prosecution and convictions in 2012 for murder against two men (Blueprint for All, 2019).

Reforming responses to female victims

The annual economic and social costs of domestic abuse have been estimated at £66 billion (Oliver *et al*, 2019). Official responses have often been criticised.

In 2010, a survey of professionals working on violence against women, by the women’s charity, Rights of Women, found that police responses were considered to be among the least effective (Rights of Women, 2010). In 2016, Home Secretary Theresa May ordered an inquiry into the treatment of domestic abuse cases and vulnerable victims, stating that victims were “still being let down” by the police. A wide-ranging five-year strategy was published later that year (HM Government, 2016). An

updated strategy was published in 2021 (HM Government, 2021). The *Domestic Abuse Act 2021* creates a new definition of domestic abuse, appoints a Domestic Abuse Commissioner to hold the justice system and other authorities to account, and provides new enforcement powers against domestic abusers.

Police-community relations

During the summer of 1981, the United Kingdom experienced serious disturbances in London, Liverpool, Bristol and Birmingham. Civil unrest was concentrated in deprived, ethnically diverse inner-city areas. The official report into the disturbances, by the senior judge Lord Scarman, concluded that the police had failed to adapt to the demands of a multi-cultural society. His recommendations were intended to promote the principle of ‘policing by consent’, by shifting the police towards community policing (Scarman, 1981).

In the intervening years, dissatisfaction with the police persisted. In 2010, a campaign against discrimination in stop and search, StopWatch, was launched, supported by diverse organisations, researchers, and activists. It was in the following year that another explosion of discontent occurred: the August 2011 disorders. A collaboration between *The Guardian* newspaper and researchers at the London School of Economics studied these events. It came to conclusions similar to Scarman’s in relation to failures in policing: “Of the 270 people interviewed, 85% said policing was an ‘important’ or ‘very important’ factor in why the riots happened” (The Guardian and London School of Economics, 2011).

Despite improvements in monitoring since Scarman, in every year between 2013 and 2019, Black Caribbean people were less likely than their White counterparts to have confidence in their local police. This history begins to explain why in 2021 the Home Affairs Committee made numerous recommendations for systemic change, which could help build a more representative and fairer police service. It also recommended greater oversight of stop and search, by HMICFRS and the Home Office, as well as the community (HAC, 2021). In this context, well-designed community oversight schemes appear to present ways to hold the police to account (Berry *et al*, 2019).

Abbreviations

| | | | |
|----------------|---|-------------|---|
| CJINI | Criminal Justice Inspection Northern Ireland | NCA | National Crime Agency |
| COP | College of Policing | NPCC | National Police Chiefs Council |
| CSPL | Committee on Standards in Public Life | NPB | National Policing Board |
| HAC | Home Affairs Committee | NPM | National Preventive Mechanism |
| HFSG | Hillsborough Family Support Group | NIPB | Northern Ireland Policing Board |
| HMICFRS | HM Inspectorate of Constabulary, Fire and Rescue Services | PCB | Police Complaints Board |
| HMICS | HM Inspectorate of Constabulary in Scotland | PCC | Police and Crime Commissioner |
| ICPNI | Independent Commission on Policing in Northern Ireland | PIRC | Police Investigations and Review Commissioner |
| IOPC | Independent Office for Police Conduct | PONI | Police Ombudsman for Northern Ireland |
| IPCC | Independent Police Complaints Commission | PSNI | Police Service of Northern Ireland |
| NAO | National Audit Office | RUC | Royal Ulster Constabulary |
| | | SPA | Scottish Police Authority |

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Section notes

- 1 In the case of the Metropolitan Police, Greater Manchester Police, and the City of London Police, governance responsibility is exercised by the Mayor of London, the Mayor of Greater Manchester, and the City of London Corporation respectively. Also excluded are the non-territorial specialist police forces, covered in more detail below. The correct legal term for these governance institutions is 'local policing bodies'. See Brown, 2021.
- 2 With the exception of the City of London Corporation.
- 3 The Courts chapter includes an overview of Victims' Commissioner arrangements.

Prosecution

1 Governance

Summary

| | England and Wales | Scotland | Northern Ireland |
|-----------------------------|---------------------------------|--|--|
| Service | Crown Prosecution Service | Crown Office and Procurator Fiscal Service | Public Prosecution Service |
| Head of service | Director of Public Prosecutions | Lord Advocate advised by the Crown Agent | Director of Public Prosecutions for Northern Ireland |
| Power of appointment | Attorney General | The Queen, on the rec. of First Minister, confirmed by Scottish Parliament | Attorney General for Northern Ireland |

Evolution of the current institutional arrangements

In England and Wales, justices of the peace (JP) were empowered from the sixteenth century to prosecute felony offences. Judicial prosecution of offences largely ended in the nineteenth century, with the arrival of the new police forces, who took over the prosecution lead. JPs instead became involved in supervising the police as well as in adjudicating court hearings (Jackson, 2004).

In 1981 the influential Royal Commission on Criminal Procedure recommended an independent prosecution body in order to increase consistency of decision-making from the usual practice where the police hired private lawyers to prosecute cases at their direction (RCCP 1981). The Crown Prosecution Service (CPS) was created by the landmark *Prosecution of Offences Act 1985* and tasked with conducting most prosecutions. It belonged to a series of criminal justice reforms that were intended to restore trust in justice after well-publicised scandals, such as the Confait case, in which false confessions were obtained (Aleksov and Georgievska, 2018).

A comparative latecomer to the criminal justice stage, the early history of the CPS was beset by challenges and calls for change (Macdonald, 2008; Lewis, 2015). Its lawyers were poorly paid and its status was relatively low. From the beginning, it appeared to sit uneasily between the police and the courts. While responsible for most criminal cases, it lacked a monopoly upon prosecution and possessed no investigatory powers of its own, unlike special regulatory bodies such as HM Customs and Excise and the Serious Fraud Office.

A key reform was contained in the *Criminal Justice Act 2003*, which gave the CPS additional responsibilities to lead prosecution decisions and to guide the police, especially on charging decisions. Strengthening its powers had been a key recommendation of Lord Justice Auld's wide-ranging *Review of the Criminal Courts* in 2001 (Auld, 2001).

In 2010 a Revenue and Customs Division of the CPS was formed to prosecute tax and revenue offences. The Director for Public Prosecutions (DPP) exercises a separate

power in law as the Director of Revenue and Customs Prosecutions (DRCP). The prosecution of Customs and Excise offences by prosecuting authorities in public sector agencies (such as the Department for Work and Pensions) must have the consent of the DRCP (CPS, 2020a).

While some have criticised the CPS for being reluctant to prosecute some cases (particularly sexual violence cases), a recent assessment has argued it sets a relatively low bar for prosecution:

“The duty of the CPS is to send cases to court only where the chance of success is more likely than not. This preponderance standard [i.e. the chance of success is more likely than not] is lower than the prosecutorial benchmark of some jurisdictions and is well below the “beyond a reasonable doubt” standard set by the court itself. The evidentiary differential virtually guarantees that some cases will result in acquittals at trial” (Lewis, 2015).

In Scotland, the independence of the prosecutor is rooted in history dating back to the 16th century, when the Lord Advocate was authorized to prosecute in the public interest. From that time, lawyers, known as Procurator Fiscals, began to investigate crime and to prosecute in the Sheriff Courts. Unlike the CPS, prosecutors in Scotland carry out preliminary investigations, take witness statements and investigate sudden or suspicious deaths (Jackson, 2004). The wider scope of the Procurator Fiscal’s powers is displayed in the ability to administer fines and other sanctions as alternatives to court proceedings. Here, there are parallels with the powers of Scandinavian prosecutors, for example in Sweden, who operate financial penalties (Luna and Wade, 2015). The long history of the Crown Office in Scotland suggests that custom and practice influenced its development in a different direction from the system in England and Wales (Sheils, 2018).

In Northern Ireland, as in England and Wales, doubts about police prosecutions led to change. In the context of community conflict, and related concerns about the conduct of the Royal Ulster Constabulary, the *Report of the Advisory Committee on Police in Northern Ireland* recommended the removal of the police power to

prosecute in serious cases (ACPNI, 1969). While the police were allowed to charge, the changes meant that the DPPNI made decisions on prosecution (Jackson, 2004).

The Northern Ireland PPS, created in 2005, prosecutes in all cases investigated by the Police Service of Northern Ireland (PSNI). This change constituted a landmark reform, influenced by the 1998 Good Friday Agreement. The system that emerged after the Good Friday Agreement placed great weight on protecting the impartiality of prosecutors, separating them from the police investigation.

Current institutional arrangements

A widely accepted constitutional theory underpinning the functions of public prosecution services is that they should provide an impartial legal and institutional filter for the compilation and presentation of evidence in cases before the criminal courts. As well as professionally assessing evidence and deciding whether it is sufficient to prosecute a case, there is an expectation that they take into account the public interest in a prosecution (IAP, 1999).

In some jurisdictions, the public prosecutors’ roles and responsibilities are more extensive than in others, with some having a virtual monopoly on criminal prosecution, and in some cases being able to administer penalties in place of a court hearing. The role may involve taking witness statements or giving instructions to police, so that evidence is properly gathered and presented. These extended responsibilities imply that the prosecutor strongly embodies the interests of the state and its citizens in ensuring that prosecutions are appropriate, being neither oppressive nor tokenistic (Luna and Wade, 2015).

By contrast, in other jurisdictions, the public prosecutor has a more limited role and the right of private prosecution whether by organisations or private individuals remains significant. The history of prosecutorial systems in the UK has shown divergences in these respects, with Scotland having moved much earlier towards an enlarged role than was the case in England and Wales.

England and Wales

- The DPP is answerable to Parliament through the Attorney General, a government minister and one of three UK Law Officers.⁴ The Attorney General's role in appointing the DPP was enshrined in the Prosecution of Offences Act 1985.
- The relationship between the CPS and the Law Officers is set out in a Framework Agreement, which describes its process of accountability through a small Ministerial Strategic Board chaired by the Law Officers (AGO, 2020). The DPP makes prosecution decisions independent of political direction.
- The Attorney General is also responsible for the Serious Fraud Office (SFO), set up in 1987, which both investigates and prosecutes serious financial crimes.

Scotland

- The Lord Advocate is the chief legal officer of the Scottish government, an *ex officio* member of the Scottish Government, and the head of Scotland's prosecution service: the Crown Office and Procurator Fiscal Service (COPFS).
- The Lord Advocate is appointed by the Queen on the recommendation of the First Minister, confirmed by parliament, and is advised by the Crown Agent, who is the Chief Executive Officer and accountable officer of COPFS.
- The recent dispute in Scotland over the dual role of the Lord Advocate – as both head of the COPFS and a government minister – highlights how boundaries between judicial and political roles are blurred in practice (Cowan, 2021). At the heart of the matter was the principle of whether an elected politician should be in the position to influence decisions over prosecution.
- In contrast to the CPS, the COPFS has a virtual monopoly on prosecutions in Scotland. It prosecutes serious financial crimes, for example, rather than the SFO.

Northern Ireland

- The Director of Public Prosecutions for Northern Ireland (DPPNI) is appointed by the Attorney General for Northern Ireland (AGNI), which, unlike in England and Wales and Scotland, is a non-political position.

- The DPPNI heads up the PPS, which is a non-ministerial government department. Funding for the PPS is provided by the Northern Ireland Assembly.
- The *Justice (Northern Ireland) Act 2002* provides for the AGNI to consult with the DPPNI on any matters for which the AGNI is accountable to the Northern Ireland Assembly. However, the AGNI does not have oversight powers. The functions of the DPPNI are exercised by him or her independently of any other person (PPS, n.d.).

Case studies

The superintending role of the Attorney General

The DPP's statutory functions are exercised subject to the statutory superintendence by the Attorney General, as set out in the *Prosecution of Offences Act 1985*. The 'superintendence' role implies some measure of ultimate control, while giving the DPP considerable scope for independent decision-making. In 2007 a consultation document set out the conventional view held at the time:

"Although there may be some doubt whether in theory the Attorney General does have the ultimate power to direct the DPP to prosecute or not to prosecute in a particular case, it seems that in practice all holders of both offices have accepted that the Attorney General's power of superintendence of the DPP is such that, in the event of a stark disagreement, the Attorney General's view would prevail. However, we find it difficult to believe that, in such a situation, an accommodation between the differing views would not be reached without a formal direction" (AGO, 2007).

According to this official overview, the superintendence role of the Attorney General was regarded as extending to other prosecuting authorities, even where there was no formal statutory power. A report by the Constitutional Affairs Committee in 2007 recommended a reinforcement of the superintendence role (CAC, 2007).

2 Inspection

Summary

| | England and Wales | Scotland | Northern Ireland |
|-----------------------------|---|---|---|
| Inspection body | HM Crown Prosecution Service Inspectorate | HM Inspectorate of Prosecution in Scotland | Criminal Justice Inspection Northern Ireland |
| Head of service | HM Chief Inspector of the Crown Prosecution Service | HM Chief Inspector of Prosecution in Scotland | Chief Inspector of Criminal Justice in Northern Ireland |
| Power of appointment | Attorney General | Lord Advocate | Department of Justice |

Current institutional arrangements

Each prosecution service in the UK is subject to a dedicated inspection unit that is formally independent of government.

- Independent inspectorates with professional skills that produce regular reports, including performance assessments, and on governance and organisational matters. Inspectors make recommendations but are not regulators and do not have enforcement powers (HMCPSI, n.d.).
- Inspectors have identified the impact of resource budget reductions. This included recruitment problems in England and Wales and a backlog in prosecutions that pre-dated COVID-19. Inspections of rape procedures and of evidence disclosure were also cited as having revealed funding challenges (HMCPSI, 2021). In Northern Ireland, Criminal Justice Inspection Northern Ireland (CJINI) reported that the prosecution service was facing a relatively constant caseload with diminishing resources (CJINI, 2018).

Case studies

Evidence disclosure by the CPS

Evidence disclosure has posed some challenges for the CPS. In 2010, the case of environmental activists prosecuted for trespass on power station property highlighted problems in the handling of evidence that should have been disclosed to the defence. It came to light only at the instigation of an undercover police spy, Mark Kennedy, who offered to assist the defence (Burton, 2011).

The House of Commons Justice Committee published a critical report on CPS disclosure failings in 2018. It also called for remedial action by the police. The Justice Committee was concerned too about a general lack of resources (Justice Committee, 2018). According to HMCPSI, failures to disclose evidence have had a corrosive impact on the quality of justice, prompting a more systematic approach to assessing progress and improvement (HMCPSI and HMIC, 2017). In January 2018 the CPS, the College of Policing and the National Police Chiefs' Council published a joint National Disclosure Improvement Plan (NPCC, COP and CPS, 2018).

3 Complaints

Summary

| | England and Wales | Scotland | Northern Ireland |
|-----------------|------------------------------------|------------------------------------|---|
| Complaints body | Independent Assessor of Complaints | Scottish Public Services Ombudsman | Independent Assessor of Complaints for the Public Prosecution Service |
| Reports to | CPS Board and DPP | Scottish Parliament | DPPNI |

Current institutional arrangements

- A combination of an internal complaints process and the option of referral to an external assessor if the complainant is not satisfied.
- External assessors can only consider complaints related to the service provided, not to legal decisions made by the prosecution authorities.

Case studies

Responding to complaints

Following a review of CPS complaints handling in 2013, HMCPSI recommended the establishment of an external Independent Assessor of Complaints (IAC), drawing on the experience of Northern Ireland (HMCPSI, 2013). The CPS now has a three-stage process for complaints about its service: Stages One and Two are internal. If the complainant is not satisfied, they can approach the IAC. Matters reviewed by the IAC tend to relate to service standards and the conduct of CPS staff. The IAC is not empowered to deal with legal complaints (for example, about a decision whether or not to prosecute). The IAC recently identified failures by 'agent

prosecutors' (independent lawyers not employed by CPS) who were unfamiliar with CPS requirements (HMCPSI, 2020). The IAC often makes recommendations and, where it finds in their favour, may award payments to complainants. The Attorney General may also commission the IAC to conduct a specific review.

In addition to complaints, there is an avenue for redress through requests for case reviews by CPS staff. The Victims' Right to Review (VRR) scheme allows victims the right to ask the CPS to review certain decisions related to the decision to start, or not start, a prosecution (CPS, 2021). A request for review through the VRR scheme will usually be dealt with and concluded by the CPS office where the original decision was made. For some cases, a further review mechanism within the VRR scheme may be available through the national CPS Appeals and Review Unit.

The SPSO, established by the *Scottish Public Services Ombudsman Act 2002*, acts as the external complaints assessor for COPFS. The IACPPS, established in 2005, performs a similar function in Northern Ireland.

4 Citizen accountability

Summary

Surveys suggest most people approve of the prosecution authorities. Most adults are 'very' or 'fairly' confident that the CPS is effective, with little difference by sex or ethnicity (ONS, 2020; PPS, 2021). Yet there remains a strong interest, in the media, parliament and wider society, in certain types of perceived failings in prosecution, such as low prosecution rates in the case of rape and sexual violence. Civil society groups typically focus on these issues, along with perceived unfair prosecution. The high costs of mounting, and defending, private prosecutions results in unequal access to alternative routes to justice. The emergence of innovative funding models, such as crowdfunding, to finance legal challenges and campaigning has become a feature in recent years.

Case studies

Private prosecution

Alongside the official prosecution authorities, other organisations also have the right to prosecute criminal cases, particularly in England and Wales. The Royal Society for the Prevention of Cruelty to Animals and the Royal Mail, for instance, pursue private prosecutions, using the right of any individual to bring a private prosecution under section 6(1) of the *Prosecution of Offences Act 1985*. The DPP has power under the same Act to take over private prosecutions. In some cases, the consent of the Attorney General or of the DPP is needed before the commencement of a private prosecution.

A long-running scandal, involving the wrongful conviction of post office workers, has reopened debate about the power of private prosecution in England and Wales. The post office workers were wrongly subject to private prosecutions for fraud by the Post Office over a number of years (BBC News, 2020). The scandal prompted an Inquiry by the Justice Committee into private prosecution safeguards, which called for monitoring of private prosecutions and for all such defendants to be informed of their right to seek a review from the CPS (Justice Committee, 2020). While the right to bring a private prosecution was significant,

the Committee also pointed to its disproportionate use by wealthy organisations, rather than, for instance, victims of fraud:

"The gap in the enforcement of fraud means that at present, wealthy organisations can seek justice via a private prosecution, but elderly and vulnerable victims of fraud cannot.... Overall, it is difficult to escape the conclusion that the organisational structure of the prosecutorial system in England and Wales is rather haphazard. An increase in private prosecutions is likely to make that situation worse".

A statutory inquiry into the scandal – The Post Office Horizon IT Inquiry – led by retired high court judge Sir Wyn Williams, began public hearings in February 2022.

Victims' Commissioners

The role of Victims' Commissioner for England and Wales was established by the *Domestic Violence, Crime and Victims Act 2004*. The Commissioner is appointed by ministers but is independent of government. Their role is to promote the interests of victims and witnesses; encourage good practice in the treatment of victims and witnesses; and to keep under review the code of practice for victims.

The Commissioner for Victims and Survivors was established in Northern Ireland in May 2008 under the *Victims and Survivors (Northern Ireland) Order 2006*, as amended by the *Commission for Victims and Survivors Act (Northern Ireland) 2008*. The role of the Commissioner is more tightly defined than the England and Wales Commissioner, focused in particular on promoting awareness of the needs of the victims and survivors of the civil conflict.

Prosecuting sexual offences cases

The handling of rape cases has been the subject of controversy, engaging civil society organisations, as well as a number of criminal justice agencies, including the courts.

In 2016, the CPS began an effort to make its decision-making more consistent, giving rise to suggestions it was weeding out weaker cases. Statistical publications from the CPS and the Home Office have been the source for differing interpretations about CPS policy and performance subsequently. The available data continues to be contested over whether or not it clearly identifies the CPS as at fault for a decline in rape prosecutions.

For example, CPS prosecution data in the year ending March 2020, for cases flagged at the outset as 'rape', shows there were in total 4,184 completed pre-charge decisions. In 1,867 cases, the decision was to charge and in 1,294 cases it was not to prosecute. Among the rest, as many as 996 cases (over a fifth of the total) were returned to the police and, for whatever reason, not proceeded with (CPS, 2020b).

An HMCPSI review confirmed that prosecutions were in decline, while allegations reported to the police were increasing substantially (HMCPSI, 2019). In the year ending March 2019 58,657 allegations of rape were made to the police. There were only 1,925 successful prosecutions. It was pointed out that referrals from the police to the CPS were also in decline. However, the report identified deeper systemic issues, which went beyond the CPS and the police.

"The CPS has been accused of only choosing easy cases to prosecute, but we found no evidence of that in our report. While the CPS needs to improve the way it works with the police, the CPS is only a small part of a larger systemic problem in the criminal justice process in dealing with complex cases."

Nonetheless, when further statistics were published in 2020, the Victims' Commissioner condemned the prosecution rate as "utterly shameful", urging the CPS to prosecute more sexual offenders (Baird, 2020).

Following a successful crowdfunding appeal, the End Violence Against Women Coalition, working with the Centre for Women's Justice (CWJ), started civil proceedings against the CPS for breach of human

rights. It accused the CPS of changing its policy on prosecutions of a serious sexual offence. Once again, statistics were at the heart of the argument. The claim was denied at a judicial review hearing in the Court of Appeal in March 2021. The Court accepted the DPP's case that the CPS had made no change 'in substance' to its policy when it was considering whether or not to prosecute a serious sexual offence (CWJ, 2021). In June 2021 Robert Buckland, the then Justice Secretary, issued an apology to rape victims for failures that led to low conviction rates and made commitments to improve matters (BBC, News 2021).

In relation to domestic abuse prosecutions, evidence also suggested that the CPS was dominated by targets and efficiency considerations, at the expense of allowing women to exercise a free choice about continuing as witnesses (Porter 2019). Again, inspection evidence pointed in a somewhat different direction. The Best Practice Framework for domestic abuse prosecutions, which brings together police, CPS and magistrates' courts, has been praised for securing convictions and supporting witnesses. In 2018 the CPS approved the national roll-out of the *Framework*. This work stemmed from the National Criminal Justice Board, chaired by the Justice Secretary (HMICFRS, 2019).

In Northern Ireland, public disquiet about failures in trials of serious sexual offences prompted the *Gillen Review* of law and procedures (Gillen, 2019). The PPS in Northern Ireland has committed to implementing its many recommendations. The Northern Ireland Department of Justice has also published an implementation plan for the Review (DOJ, 2020). In 2019, a thematic inspection by CJINI recommended some improvements in prosecutorial decision-making in cases of domestic violence and abuse (CJINI, 2019).

In Scotland, HMIPS found that COPFS should do more to support victims of sexual crime who otherwise had showed tendencies to withdraw from cases (HMIPS, 2020). The Scottish Parliament Justice Committee (SPJC) had previously reported mixed evidence about prosecution policies in relation to domestic abuse (SPJC, 2017).

Abbreviations

| | | | |
|---------------|--|----------------|---|
| ACPNI | Advisory Committee on Police in Northern Ireland | HMIC | HM Inspectorate of Constabulary |
| AGO | Attorney General's Office | HMICFRS | HM Inspectorate of Constabulary, Fire and Rescue Services |
| AGNI | Attorney General for Northern Ireland | HMIPS | HM Inspectorate of Prosecution in Scotland |
| CAC | Constitutional Affairs Committee | IAC | Independent Assessor of Complaints |
| CJINI | Criminal Justice Inspection Northern Ireland | IACPPS | Independent Assessor of Complaints Northern Ireland |
| COPFS | Crown Office and Prosecutor Fiscal Service | IAP | International Association of Prosecutors |
| CPS | Crown Prosecution Service | JP | Justice of the Peace |
| CWJ | Centre for Women's Justice | PPS | Public Prosecutor Service |
| DOJ | Department of Justice | PSNI | Police Service of Northern Ireland |
| DPP | Director of Public Prosecutions | SFO | Serious Fraud Office |
| DPPNI | Director of Public Prosecutions for Northern Ireland | SPJC | Scottish Parliament Justice Committee |
| DRCP | Director of Revenue and Customs Protections | SPSO | Scottish Public Services Ombudsman |
| HMCPSP | HM Crown Prosecution Service Inspectorate | VRR | Victims' Right to Review |

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Section notes

4 The Law Officers are the Attorney General (the chief legal adviser to the government), the Solicitor General, who deputises for the Attorney General, and

the Advocate General for Scotland, who advises the government on Scottish law.

Courts

1 Governance

Summary

| | England and Wales | Scotland | Northern Ireland |
|-----------------------------------|----------------------------------|--|---|
| Most senior judge | Lord Chief Justice | Lord President of the Court of Session | Lord Chief Justice of Northern Ireland |
| Appointed by | Judicial Appointments Commission | Independent Panel | Northern Ireland Judicial Appointments Commission |
| Executive body⁵ | HM Courts and Tribunals Service | Scottish Courts and Tribunals Service | Northern Ireland Courts and Tribunals Service |

Evolution of the current institutional arrangements

The criminal court system in England and Wales has its origins in royal justice, stretching back over some 1,000 years of legal evolution (Briggs *et al*, 1996). Some judges sat in London while others travelled the country. This system was established by Henry II in 1178 and became known as the 'assizes system'. Under this system, royal justices also travelled the country, operating to laws set in Westminster and thus overriding local laws and customs. Trial juries were introduced in the late 1100s, as was the office of coroner: tasked with investigating sudden and unnatural deaths, including homicide. The assizes system remained in place until 1971. Following a Royal Commission in the late 1960s (RCAQS, 1969), the *Courts Act 1971* abolished the assizes system, establishing a new Crown Court in its place.

Justices of the Peace (JP), the forerunner to the modern magistracy, emerged in the 14th century, consisting of members of the gentry charged with the keeping of

the King's peace. The role developed over the centuries, with JPs holding responsibility for investigating crimes (a role they later lost) and for many administrative matters – such as highways, and weights and measures – until the establishment of the modern system of local government from the 19th century on.

The Scottish court system pre-dates the 1707 Act of Union and retains many distinct features. The main criminal courts in Scotland, the Sheriff Courts, trace their origins to the 12th century. Sheriffs were royal appointments, typically powerful local lords. Over time, many of the posts became hereditary, with the Sheriff delegating his judicial functions to the Sheriff-Depute, a trained lawyer. Following the Jacobite rising of 1745-46, hereditary Sheriffs were abolished, with the Sheriff-Depute typically taking up the role of Sheriff.

The office of JP in Scotland dates back to the early seventeenth century. Its more recent formulation dates from the *District Courts (Scotland) Act 1975*. Further

reform under the *Criminal Proceedings (Reform) (Scotland) Act 2007* replaced the District Court with the Justice of the Peace court.

The modern Northern Ireland court system has its beginnings in the *Government of Ireland Act 1920*. Court developments in Northern Ireland broadly paralleled developments in England and Wales in the years that followed. The growing civil conflict from the late 1960s gave rise to some distinct innovations: notably the judge-only 'Diplock courts' for certain political and terrorism-related cases. While effectively abolished by the *Justice and Security (Northern Ireland) Act 2007*, judge-only trials for serious offences remain, in principle, a possibility in Northern Ireland.

Current institutional arrangements

Most court activity in all three jurisdictions is taken up with civil, rather than criminal matters. The criminal courts and criminal process are a relatively small part of much larger court system. For instance, according to the Solicitors Regulation Authority (SRA), there are around 150,000 solicitors across England and Wales. The Criminal Law Solicitors' Association currently has around 1,500 members. There are around 2,400 specialist criminal barristers across England and Wales, according to the Criminal Bar Association (CBA, 2022), out of a total of more than 17,000 practising barristers (BSB, 2022).

The criminal court system is broadly divided between courts that deal with serious offences (e.g. murder, sexual offences, violence) and courts that deal with minor offences. Defendants facing a criminal trial have the right to legal representation, which, depending on the defendants' income, might be provided free of charge to them through public funds (known as legal aid). Defendants who do not qualify for legal aid are expected to cover their own legal costs.

There are clear formal routes for defendants to seek a review or to appeal a guilty verdict, even if in practice these are difficult, and slow, to navigate. The Supreme Court of the United Kingdom (SCUK) is the final court of appeal for criminal cases in England, Wales and

Northern Ireland. It was established by the *Constitutional Reform Act 2005*, and began operating in 2009. Prior to the establishment of SCUK, the final court of appeal was the House of Lords.

The High Court of the Justiciary is the final court of appeal for criminal cases in Scotland. The jurisdiction of the UK Supreme Court over Scotland in relation to civil cases and some very specific matters related to criminal law is complex (SCUK n.d.).

England and Wales

- Trials for serious offences are conducted in the Crown Court, presided over by a professional judge with substantial legal training and practice experience. A jury of 12 members of the public decide on guilt or innocence. The judge decides on the sentence.
- Trials for more minor offences are conducted in the magistrates courts, presided over by a lay, unpaid magistrate, and no jury. Legally trained advisors are present to advise the magistrate on points of law.

Scotland

- Trials for serious offences are conducted in the Sheriff Courts, presided over by a professional judge with substantial legal training and practice experience. A jury of 15 members of the public decide on guilt or innocence. The judge decides on the sentence.
- Trials for more minor offences are conducted in the Justice of the Peace courts, presided over by a lay, unpaid JP, and no jury. Legally trained advisors are present to advise the JP on points of law.

Northern Ireland

- Trials for serious offences are conducted in the Crown Court, presided over by a professional judge with substantial legal training and practice experience. A jury of 12 members of the public decide on guilt or innocence. The judge decides on the sentence.
- Trials for more minor offences are conducted in the magistrates courts, presided over by a professional District Judge, and no jury.

Case studies

Regulation of legal representation

The provision of legal services, such as prosecution and defence services, are overseen by various regulatory

bodies. In England and Wales, the Legal Services Board (LSB) acts as oversight regulator, under which a range of regulatory bodies sit. Separate regulators exist in relation to civil law matters (LSB, n.d.).

Legal regulatory bodies in England and Wales (criminal law)

| | |
|---------------------|---------------------------------|
| Oversight regulator | Legal Services Board |
| Solicitors | Solicitors Regulation Authority |
| Barristers | Bar Standards Board |

In Scotland and Northern Ireland there are currently moves towards establishing an oversight regulator function akin to the LSB in England and Wales.

Digital justice

Since the onset of fiscal austerity, the court system has been subject to considerable pressure to economise, demonstrated in court closures, changes to legal aid and new schemes of remuneration. In more recent times there has been a movement to create ‘digital justice’, reducing the need for and cost of repeated, in-person attendances at court. These developments highlight the importance of administrative management, support, and resources in determining the operations of the courts.

The advance of digital justice is creating tensions between swift resolution and fairness. In 2019, the House of Commons Justice Committee reported concerns that online automated fines for minor offences could breach the requirements of Article 6 of the European Convention on Human Rights (the right to a fair trial). The Committee recommended greater attention to the needs of vulnerable court users, particularly regarding adequate legal advice and support (Justice Committee, 2019).

Dilemmas about lay and professional judicial functions

The England and Wales jurisdiction has been described as “the greatest user of lay courts in the United Kingdom (if not the entire world)” (White, 2012). In Scotland, professionalisation has prevailed, relegating

the unpaid JP to the routine regulation of minor matters. In Northern Ireland, professional District Judges preside over the magistrates’ courts. Lay magistrates, a post created under the *Justice (Northern Ireland) Act 2002*, also perform a limited range of criminal justice functions, including sitting with a District Judge in court proceedings involving young people (JSBNI, 2017).

Though it is claimed that lay justice promotes community participation, the *Lammy Review* on the treatment of Black, Asian and minority ethnic individuals in the justice system criticised the lack of diversity and of working class recruits in the magistracy. Lammy called on the government to set targets for recruitment (Lammy, 2017). In a progress review published in February 2020, the Ministry of Justice (MOJ) stated that a more diverse magistracy remained a priority, but that recruitment should be based on merit, and that targets were not the right approach (MOJ, 2020). In early 2022 the MOJ launched a new magistrates recruitment campaign, “to make the magistracy more representative of the communities it serves” (MOJ, 2022).

Judicial independence

The independence of the judicial function from political influence is one of the cardinal principles of the court systems across the UK. The Act of Settlement 1701 established the principle of judicial tenure. Since then, removal of a senior judge from office is only possible with the agreement of both Houses of Parliament (CTJ, n.d.). More recently, the *Constitutional*

Reform Act 2005, which also established the SCUK, placed an obligation on ministers “to uphold the continued independence of the judiciary” and “not to seek to influence particular judicial decisions through any special access to the judiciary”.

The governments, executives, parliaments and assemblies across the UK do not exercise a formal

oversight function over the operations of courts, nor do politicians play a role in the appointment of judicial office holders.

The UK criminal justice system scores highly on the World Justice Project rule of law index, particularly in relation to a system free of corruption, and free of improper government influence (World Justice Project, 2020).

2 Inspection

Summary

| | England and Wales | Scotland | Northern Ireland |
|------------------------|-------------------------------|--|--|
| Inspection body | HM Chief Inspector of Prisons | HM Chief Inspector of Prisons for Scotland | Criminal Justice Inspection Northern Ireland |
| Lay monitoring | Lay observers | Lay observers | Lay observers |

Current institutional arrangements

In keeping with the principle of judicial independence, judicial decision-making and court procedures are not the subject of formal external inspection, though judicial decisions are subject to review and challenge through the appeals process. The executive bodies responsible for the running of the court system do, though, undergo inspection.

Until its abolition in 2011, HM Inspectorate of Court Administration (HMICA) inspected the system that supports the carrying on of the business of the Crown, county and magistrates’ courts and the services provided for those courts in England and Wales. The UK

government argued that wider inspection of court administration was unnecessary. Adequate oversight of court administration, it argued, was possible through a combination of robust management systems and external scrutiny from bodies such as the National Audit Office (MOJ, 2011).

Following the abolition of HMICA, responsibility for inspecting court custody areas, and the system for transporting prisoners to and from court, was transferred to HM Inspectorate of Prisons. A similar role is performed by HM Inspectorate of Prisons for Scotland and Criminal Justice Inspection Northern Ireland in their respective jurisdictions.

3 Complaints

Summary

| | England and Wales | Scotland | Northern Ireland |
|------------------------|---|------------------------------|---|
| Complaints body | Judicial Conduct Investigations Office | Judicial Office for Scotland | The Lord Chief Justice's Office |
| | Magistrates Advisory Committees | Judicial Complaints Reviewer | Judicial Appointments and Conduct Ombudsman |
| | Judicial Appointments and Conduct Ombudsman | | |

Common features

- Each jurisdiction has established systems for handling complaints relating to appointments to office, and conduct in office, subject also to forms of independent review.
- Complaints processes cannot be used to challenge legal decisions.

Case studies

Complaints about conduct

In England and Wales, the Judicial Conduct Investigations Office (JCIO) works under regulations established in 2014 (JCIO, n.d.). The JCIO considers complaints about the misconduct of a judicial officeholder, though not complaints about how they have exercised their judicial powers. Under the principle of judicial independence, the exercise of judicial powers can only be challenged in court.

Complaints about the conduct of all judicial officer holders in Scotland are made to the Lord President through the Judicial Office for Scotland. It has been for the Lord President alone to determine the arrangements for investigation.

In Northern Ireland, the Office of the Lord Chief Justice responds to complaints about judicial office holders' conduct.

The handling of judicial complaints is itself subject to review by an independent ombudsman in England and Wales, and Scotland (the Judicial Appointments and Conduct Ombudsman, and Judicial Complaints Reviewer, respectively). In Northern Ireland, the Lord Chief Justice conducts the review, or can appoint an independent complaints officer.

Miscarriages of justice

Following a conviction, defendants can seek to appeal the verdict, although the right of appeal was only formally established for England and Wales with the creation of the Court of Criminal Appeal in the *Criminal Appeal Act 1907*. Its establishment followed public outcry over high profile miscarriages of justice, including those of Florence Maybrick in 1889, and Adolf Beck in 1877 and again in 1904 (Cane and Conaghan, 2009).

Once all appeal options through the various courts have been exhausted, defendants have the option of applying for a review: to the Criminal Cases Review Commission (CCRC) in the case of England, Wales and Northern Ireland, or to the Scottish Criminal Cases Review Commission (SCCRC). The CCRC was established by the *Criminal Appeal Act 1995*, following the recommendation of the *Royal Commission on Criminal Justice* (RCCJ, 1993). The SCCRC was established by the *Criminal Procedure (Scotland) Act 1995*, as amended by the *Crime and Punishment (Scotland) Act 1997*.

The CCRC and SCCRC can refer cases back to the courts for a fresh appeal, if they judge that an individual has been wrongly convicted or sentenced. Neither body can unilaterally overturn the decision of the courts. Very few criminal convictions are referred to either the CCRC or the SCCRC. Only a handful of those result in the cases being sent back the courts on appeal. Between March 1997 (when the CCRC's work commenced) and March 2020, it had referred 692 cases back to the appeal courts, out of 25,531 referrals received. Between April 1999 and March 2020 the SCCRC referred 144 cases back for appeal, out of a total of 2,742 applications received (CCRC, 2020; SCCRC, 2020).

Adequate resourcing has been perennial theme. In 2015 the House of Commons Justice Committee recommended that the CCRC be given more resources (Justice Committee, 2015). A subsequent report by the all-party parliamentary group on miscarriages of justice likewise called for greater resources for the CCRC, as well as a range of governance and organisational changes to improve performance (APPGMJ, 2021).

4 Citizen accountability

Summary

Civil society institutions in England and Wales are more varied and greater in number than in the much smaller jurisdictions of Scotland and Northern Ireland. Established professional bodies play an active role in lobbying government and educating the public on behalf of their members. Significant independent academic and research expertise is available to be drawn on by government and public bodies. There is a fluid mix of policy, advocacy and campaigning organisations, from single-issue campaigns to more general public interest and educational work.

Case studies

Professional bodies

The Magistrates Association for England and Wales is a charity operating under a Royal Charter granted in 1962. It was originally set up in the 1920s to train magistrates. The training of magistrates is now the

Training and administrative guidance

Training and administrative guidance have become increasingly significant over recent years. Judicial training bodies in the UK also collaborate at an international level with bodies such as the European Judicial Training Network, the International Organisation for Judicial Training and the United Kingdom & Ireland Judicial Studies Council.

A key resource for the judiciary are the various guides and 'bench books'. In England and Wales, for instance, these include:

- *The Crown Court Compendium*, covering jury and trial management, summing up and sentencing.
- *Adult Court Bench Book*, providing guidance on conducting trials of adults.
- *Youth Court Bench Book*, providing guidance on conducting trials of defendants under 18.
- *Equal Treatment Bench Book*, providing guidance on equalities issues relating to the conduct of trials.

responsibility of the Judicial College. While the Association continues to provide training, its role has evolved into advocacy and lobbying on behalf of magistrates, as well as public education. The equivalent in Scotland, the Scottish Justices Association, is of more recent origin, having been formed only in 2007. The Lay Magistrates Association in Northern Ireland largely operates as a liaison body between the Northern Ireland Court Service and lay magistrates.

The Law Society of England and Wales was created in 1825 and established by Royal Charter in 1845. It is both the professional body for solicitors and, through the Solicitors Regulation Authority, the regulatory body for solicitors. The SRA was created by the Legal Services Act 2007, following a review by Sir David Clementi, which recommended that professional bodies should not perform both representative and regulatory functions (Clementi, 2004). The SRA is formally a board of the Law Society, while operating

independently of it. The Law Society of Scotland was established in 1949, the Law Society for Northern Ireland in 1922. Both act as the professional body for solicitors and perform regulatory functions.

The Bar Council was established in 1894 as a professional body for Barristers. It also performed a regulatory function until the establishment of the Bar Standards Board (BSB) under the Legal Services Act 2007. The boundary between the respective roles of the Bar Council and the BSB has times been unclear. In 2013 the Legal Services Board concluded that the Bar Council had sought unduly to influence the BSB on the question of Barristers' contractual terms. Barristers working in the field of the criminal law can also join the Criminal Bar Association, established in the late 1960s to represent their views and interests. In Scotland the Faculty of Advocates, and in Northern Ireland the Bar Council, perform both professional body and regulatory functions.

Women and criminal justice: failure to protect and tendency to punish?

The capacity of the legal process to address and reduce violence against women and girls is often questioned. The distinguished legal scholar, Catharine MacKinnon, has argued that the law tends to define rape from the male standpoint. "From women's point of view," she claims, "rape is not prohibited; it is regulated" (MacKinnon, 1989). More recently, and from a different perspective, the Victims' Commissioner for England and Wales, Dame Vera Baird, published research reporting the negative experiences of survivors, who were failed by poor communication and confronted by cross-examinations in court. It was concluded that the findings "emphasised how traumatic the court process can be" (Molina and Poppleton, 2020).

The courts have also tended to treat harshly those women who have killed violent partners following years of sustained victimisation. Kiranjit Ahluwalia was given a life sentence for murdering her husband in 1989. With the support of the civil society organisation, Southall Black Sisters, she succeeded in having her conviction reduced to manslaughter, on the grounds that she had suffered a decade of brutality from her husband. She

was freed in 1992 (Southall Black Sisters, n.d.). Her case was influential in the release of other imprisoned women, including Sara Thornton and Emma Humphreys in the 1990s (Justice for Women, n.d.a, n.d.b).

In a more recent case, Sally Challen killed her husband following years of being controlled by him. Initially convicted of murder, she successfully appealed for the conviction to be changed to manslaughter and was released in June 2019. The advocacy and campaigning group, Justice for Women, played a crucial role in her successful appeal (Justice for Women, n.d.c).

Fairness and the campaign against joint enterprise

A campaign to reform a specific legal principle helps to clarify the challenges civil society organisations can face in achieving real change. Under the 'joint enterprise' principle, members of a group might be held equally culpable for a serious offence perpetrated by one of the group. The civil society group, Joint Enterprise not Guilty by Association (JENGBA), led a campaign over a number of years, culminating in a ruling from SCUK that courts in England and Wales had misapplied the rules on joint enterprise for decades, raising the prospect that many hundreds of defendants had been wrongly convicted. Research also suggested that the convictions discriminated against BAME accused, in particular by the prior attribution by the police of gang membership and gang affiliation, largely on the basis of race (Williams and Clarke, 2016). Despite the judgement, the backlog of historic joint enterprise convictions remains high, with a high bar being set in relation to any successful appeal. Recent research has also questioned the impact of the SCUK ruling (Mills *et al*, 2022).

Legitimacy and citizen accountability

Characteristic features of a criminal justice system more likely to command respect and have legitimacy with the public are that they are seen to be:

- Courteous: Victims, witnesses, suspects and defendants are treated fairly.
- Objective: Court procedures are seen as seeking to establish the truth.

- Proportionate: Sanctions and punishments are seen as proportionate to the offence.
- Effective: The courts and wider justice process are seen as effective in their response to crime and prevention of reoffending.

The legitimacy of the courts in the eyes of the public is not simply about abstract procedures or outcomes, but crucially about procedural fairness and being valued, independent of outcome. One study, for instance, argues that the public accept the legitimacy of courts to the extent that the courts show concern for members of the public, treat them fairly, establish the truth, and impose a punishment considered to be just (Tyler and Sevier, 2014).

Abbreviations

| | |
|---------------|--|
| APPGMJ | All-party parliamentary group on miscarriages of justice |
| BSB | Bar Standards Board |
| CBA | Criminal Bar Association of England and Wales |
| CCRC | Criminal Cases Review Commission |
| CTJ | Courts and Tribunals Judiciary |
| HMICA | HM Inspectorate of Court Administration |
| JCIO | Judicial Conduct Investigations Office |
| JENGBA | Joint Enterprise Not Guilty by Association |
| JP | Justice of the Peace |

Research published by the Home Office offers support to the claim that process matters more than outcome in shaping attitudes (Moorhead *et al*, 2008). Support and information for victims and witness has been introduced to reduce the risk of their not feeling prepared, or feeling intimidated. Survey results have shown positive results, suggesting that most victims and witnesses would be more likely to cooperate (Franklyn, 2012). For the most vulnerable, such as children, or victims of sexual assault, special measures such as video-link and pre-recorded evidence have been introduced.

Analysis of historical data series in Britain suggests that the crime rate influences the punitiveness of public opinion and the degree of confidence in the justice system (Jennings *et al*, 2017).

| | |
|--------------|--|
| JSBNI | Judicial Studies Board for Northern Ireland |
| LSB | Legal Services Board |
| MOJ | Ministry of Justice |
| RCAQS | Royal Commission on Assizes and Quarter Sessions |
| RCCJ | Royal Commission on Criminal Justice |
| SCCRC | Scottish Criminal Cases Review Commission |
| SCUK | Supreme Court of the United Kingdom |
| SRA | Solicitors Regulation Authority |

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Section notes

- 5 Headed up by a non-judicial chief executive officer, and overseen by a board.

Prisons

1 Governance

Summary

| | England and Wales | Scotland | Northern Ireland |
|---------------------------------|---------------------------------|-------------------------------|-----------------------------------|
| Political responsibility | Secretary of State for Justice | Cabinet Secretary for Justice | Northern Ireland Justice Minister |
| Government department | Ministry of Justice | Justice Directorate | Department of Justice |
| Executive body | HM Prison and Probation Service | Scottish Prison Service | Northern Ireland Prison Service |

Evolution of the current institutional arrangements

The current UK prison system was largely laid down in the nineteenth century. Indeed, 32 Victorian-era prisons are still in operation in England and Wales, holding some 22,000 prisoners, or one quarter of the entire prison population (Moran *et al*, 2021). Prior to the Victorian-era changes, the disorderly nature of prisons inspired proposals for better conditions, clearer rules and greater purposefulness. In the words of one historian, describing features of the eighteenth century prison:

“It was seldom easy to distinguish those who belonged in the prison from those who did not. Only the presence of irons differentiated the felons from the visitors or from the debtors and their families. The jail appeared to be a peculiar kind of lodging house with a mixed clientele. Some of its inhabitants lived in ease while others suffered in squalor” (McGowen, 1998).

Inspectors appointed under the *Prisons Act 1835* struggled to impose uniformity on locally administered prisons. The *Prison Act 1865* envisaged uniform prison conditions across England and Wales, as well as Ireland. The Scottish prisons were already subject to such regulation under the *Prisons (Scotland) Act 1839*. While civil society reformers such as Elizabeth Frye and Samuel Hoare had called for change, the administrative advantages of regulation were powerful impulses towards establishing it.

The *Prison Act 1877* centralised the running of prisons under the Home Office. The Home Secretary delegated powers to prison commissioners, supported by inspectors. A large number of local prisons were promptly closed. A parallel *Act* for Scotland sealed centralised control but with its own corporate identity: the Prison Commission for Scotland. In 1929, a Prisons Department took over control in Scotland, under the Secretary of State for Scotland. Prisons in Northern Ireland were overseen by the Government in London until the devolution of justice powers in 2010.

The *Prison Act 1898* was the first of a series which introduced many of the familiar features of prisons today, emphasising that prisons should be places of reform. Influential accounts argue that this was an expression of a centuries-long shift, involving the rejection of punishment as spectacle in favour of punishment as a means of fostering individual discipline and wider social order (e.g. Foucault, 1977; McGowen 1998). Separate establishments for young people were introduced in 1908.

Current institutional arrangements

Prisons across the three United Kingdom jurisdictions have similar institutional arrangements. Male and female prisoners, for instance, are for the most part held separately, though there are some exceptions. Female prisoners have very occasionally been held in the male estate if the female estate is not considered secure enough (in the case of terrorism offences for instance). Male prisoners who identify as women are sometimes held in the female estate, though policy in this area is evolving and remains controversial. Prisons are also classified according to levels of security, with a mix of high-, medium- and low-secure prisons. There is also separate provision for children and young prisoners.

England and Wales

- HM Prison and Probation Service (HMPPS) was accountable to the Home Office until 2007 when the Ministry of Justice (MOJ) was created and accountability shifted to that department.
- HMPPS is responsible for the running of prison and probation services across England and Wales. It manages all public sector prisons and the contracts of private prisons.
- The HMPPS Board directs and works with an Executive Management Committee and is responsible for all major strategic decisions.

Scotland

- The Scottish Prison Service (SPS) became an executive agency in 1993.
- It is responsible for public sector prisons and private sector prisons in Scotland.

- The Chief Executive is supported by an Advisory Board, comprising non-executive and executive directors.

Northern Ireland

- The Northern Ireland Prison Service (NIPS) is an agency within the Department of Justice (DOJ). Its main statutory duties are contained in the *Prison Act (Northern Ireland) 1953*.
- It manages the four prisons in Northern Ireland, all in the public sector.
- The Prison Service Management Board, chaired by the Director-General, includes non-executive members.

Case studies

UK prisons in international context

The three UK jurisdictions – England and Wales, Scotland, and Northern Ireland – vary in their per capita imprisonment rates, a pattern that can be seen across a number of Organisation for Economic Co-operation and Development (OECD) countries.

A number of explanations for this variation have been put forward. Prisons are only one way in which any society might manage certain ‘problem’ populations and individuals. Some argue that countries characterised by more market-liberal economic policies, and less extensive welfare states, tend towards higher *per capita* prison populations. Those countries more characterised by corporatist policies, and more extensive welfare states, tend towards lower per capita prison populations (Cavadino and Dignan, 2006; Downes and Hansen, 2006).

Other research suggests a relationship between levels of inequality and rates of imprisonment, with more unequal societies typically having higher rates of imprisonment (Wilkinson and Pickett, 2009). Countries with lower prison populations, others have argued, have political cultures less marked by party political competition on law and order policies, or a tendency towards a consensus/coalition politics, with higher levels of social trust and political legitimacy (Lappi-Seppälä, 2010; Loader, 2011).

Per capita imprisonment rates (2021) UK jurisdictions, selected EU-27 and OECD countries

| | Per 100,000 inhabitants |
|---------------------------|-------------------------|
| United States (high OECD) | 629 |
| Poland (high EU-27) | 192 |
| New Zealand | 164 |
| Australia | 167 |
| Scotland | 137 |
| England and Wales | 131 |
| Canada | 104 |
| Croatia (median EU-27) | 98 |
| Northern Ireland | 78 |
| Finland (low EU-27) | 50 |
| Iceland (low OECD) | 29 |

Source: Fair and Walmsley, 2021

The Council of Europe (COE) assesses imprisonment in member states according to a number of measures, including levels of overcrowding, suicide rates, and spending per prisoner (Aebi and Tiago, 2019). It defines 'high' as a "score between 5.1% and 25% higher than the European median value". It defines 'very high' as a score that "is more than 25% higher than the European median value". According to its assessment:

- Overcrowding (or 'density') is high in England and Wales and Scotland, and low in Northern Ireland.
- Suicide rates in England and Wales are very high (no comparable data were available for Scotland and Northern Ireland).
- The COE average spending per prisoner per day is €140. England and Wales (€127) and Scotland (€110) spend below the COE average. Northern Ireland (€180) spends above the COE average.

Balancing political oversight with operational independence

Though centralised governance should ensure consistency and effectiveness, challenges remain in defining and managing the interface between the government and executive agency, ensuring that funding is adequate, and maintaining a focus on equal treatment for all prisoners.

Centrally-set policy instructions and frameworks cover many parts of prison operations, with varying degrees of discretion delegated to prison governors, depending on the issue. The balance between centrally-determined and delegated decision-making can also change over time. In England and Wales, for instance, prison governors have had full autonomy over education provision since April 2019.

Previously this was determined centrally. This move followed a review of prison education by Dame Sally Coates in 2016 (Coates, 2016). A White Paper published

in late 2021 set out plans for greater governor autonomy in some areas (MOJ, 2021b).

The extent of the perceived political risk associated with prisons (e.g. riots, escapes, early releases) and the fact that crime and punishment regularly feature as issues of public concern, are among the factors that contribute to a greater degree of political interest in the operations of the UK prison services by the respective ministerial departments than might typically be the case with other executive agencies. In 2019, the House of Commons Justice Committee noted confusion in the respective roles and functions of HMPPS and the MOJ (Justice Committee, 2019).

Safety in custody

Prison staff have a duty to prevent violence, including sexual violence (HMPPS, 2021). Recorded sexual assaults in prisons in England and Wales are low, but have risen. In 2020, 239 incidents of sexual assault were recorded in male prisons, compared with 98 in 2000. Seventeen were recorded in female prisons in 2020, compared with 18 in 2000 (MOJ, 2021a). Self-report surveys also show higher numbers: three per cent of male prisoners (around 2,000 prisoners), and two per cent of female prisoners (around 80 prisoners), said they had experienced sexual assault (HMCIIP, 2020). Rape in British prisons appears to be relatively low, certainly in comparison to the United States. Transactional sex – not formally coerced, though not necessarily consensual either – remains an under-researched area (Stevens, 2017).

In England and Wales, records reveal large rises in violence and self-harm over recent years. Self-harm incidents grew from 25,165 in the twelve months to September 2011 to nearly 52,726 in 2021. Prisoner-on-prisoner assaults rose from 11,944 in the twelve months to September 2011 to 24,197 in 2018, before falling back to 12,579 in 2021 (MOJ, 2022a).

Cuts in funding and staffing since 2009/10 have arguably precipitated this crisis and recent attempts to restore staffing levels have only patched up the weaknesses. The Auditor General for Scotland and the Northern Ireland Audit Office have made similar observations about

systemic stress in their respective prison systems (AGS, 2019; NIAO 2019). The COE Committee on the Prevention of Torture has recommended a reduction in the prison population (CPT, 2020).

Equalities and diversity

Race is a protected characteristic under the Equality Act 2010. Racial disparities in criminal justice have been a particular focus for policy makers. The cross-cutting Lammy Review in 2017 found evidence of unfair treatment across the criminal justice system in England and Wales (Lammy, 2017). On prison, Lammy noted that around 25 per cent of adult prisoners, and 40 per cent of child prisoners, were black, Asian and minority ethnic (BAME). This was much higher than BAME representation in the general population. He also noted that BAME prisoners appeared to experience higher rates of victimisation by prison staff, and that there was a lack of diversity among prison staff.

Sex is another protected characteristic under the *Equality Act 2010*. The disparity in the size of the male and female populations has raised questions about the extent to which female prisoners are treated according to their specific needs and are disadvantaged by a system organised around the much larger male population. After the deaths of six women at Styal prison in 2002 and 2003, the Home Secretary asked Baroness Jean Corston to carry out a review of vulnerable women in the criminal justice system. She had led an earlier review of deaths in state custody (JCHR, 2003). Her report in 2007 recommended significant changes to custody arrangements for women, including the creation of small custodial units and the dismantling of women's prisons (Corston, 2007). The *Female Offender Strategy*, published in 2018, included a commitment to pilot up to five residential women's centres in England and Wales (MOJ, 2018).

In Scotland, the 2012 Commission on Women Offenders, echoing the spirit of Corston, recommended the creation of community justice centres in which criminal justice social workers, nurse and addictions workers would support women (CWO, 2012). It also determined that the main prison for women in Scotland, Cornton Vale, was not fit for purpose. A new

system of custody for women is currently under development, including a new national facility on the rebuilt Cornton Vale site, catering for 80 women. Alongside this, five regional community custody units across Scotland, each housing up to 20 women, are planned. If achieved, this will, in addition to improving conditions, reduce the total women’s prison capacity by around one third.

With the exception of mother and baby units in some women’s prisons, children and juveniles are not accommodated alongside a parent in UK prisons.

Prison reform in a post-conflict situation

In 2010, the Hillsborough Agreement devolved policing and justice in Northern Ireland to the

Northern Ireland Assembly. A fundamental review of prisons chaired by Dame Anne Owers, formerly Chief Inspector of Prisons for England and Wales, was carried out. It attempted to forge a strategy for change consistent with international standards.

The review noted that the prison system of Northern Ireland had been “conditioned by the experience of the Troubles” and “events in prison play out in the community and vice versa”. The report called for a “fundamental change and transformation” of the Northern Ireland Prison Service, one that reflected human rights standards and promotes prisoner rehabilitation (PRT, 2011). Though broadly welcomed, implementing an ambitious transformation programme has proved challenging.

2 Inspection

Summary

| | England and Wales | Scotland | Northern Ireland |
|------------------------|-------------------------------|--|--|
| Inspection body | HM Chief Inspector of Prisons | HM Chief Inspector of Prisons for Scotland | Criminal Justice Inspection Northern Ireland HM Chief Inspector of Prisons ⁶ |
| Lay monitoring | Independent Monitoring Board | Independent Prison Monitor | Independent Monitoring Board |

Current institutional arrangements

Inspection bodies are comprised of both formal professional structures that scrutinise a wide range of prison operations and more informal lay monitoring arrangements.

- Professional, independent inspectorates undertake infrequent but in-depth inspection visits (which can be unannounced), produce reports and follow-up on implementation. Inspectors make recommendations but are not regulators and do

not have enforcement powers.

- Citizens are recruited to the voluntary, lay monitoring boards, which conduct regular, short monitoring visits.
- The UK’s National Preventive Mechanism (NPM) is made up of 21 members. NPMs are a significant vehicle for establishing internationally accountable inspection regimes (see Appendix).
- In England and Wales, and in Northern Ireland, lay monitors are formally separate bodies. In Scotland, the lay monitoring function was subsumed under the

Inspectorate in 2015. An MOJ consultation, launched in August 2020, proposed this so called ‘Scottish model’ as one option for the Inspectorate and Monitoring Boards in England and Wales (MOJ, 2020).

Case studies

Challenges of enforcement

The formal Inspection regime is capable of shedding light on the closed workings of prisons. Today’s prisons inspectorates produce numerous reports each year, including on individual prisons, on cross-cutting issues, and an annual report.

Inspectorate recommendations are variably implemented. In his 2019 – 2020 Annual Report, HM Chief Inspector of Prisons (HMCIP) remarked that “For the past three years, a greater number of our recommendations have not been achieved than achieved. Therefore, it is good to see that this year, for the first time since 2015–16, a slightly higher proportion of our recommendations have been achieved than not” (HMCIP, 2020). Some have argued for increased enforcement powers for the inspectorates, and for a move towards more of a regulatory function. Others argue that this risks eroding the principle of political responsibility for what goes on inside places of detention.

In England and Wales there were 1,398 lay prison visitors, who had carried out 49,469 prison visits in the course of 2019-2020 (IMB, 2020: 35). Annual reports from the individual lay Independent Monitoring Boards (IMBs) highlight significant issues. The Minister for Prisons responds to each annual report. The current IMB National Chair is Dame Anne Owers, former Chief Inspector of Prisons.

Urgent notification process

Inspectorate reports are generally published some months after an inspection visit is made. To encourage more timely action when an inspection identifies a situation of particular concern, an Urgent Notification Protocol came into force in November 2017 in England and Wales. It allows for the HMCIP to notify the Justice Secretary of urgent concerns immediately following a prison inspection and it obliges the Justice Secretary to report publicly, within 28 days. A longer-term action plan for sustained improvement is then published along with the inspection report. Since coming into force, and at the time of writing, the Urgent Notification Protocol has been invoked nine times, most recently in August 2021.⁷

In April 2019, HMCIP introduced an Independent Review of Progress process. This allows the Chief Inspector to assess prisons’ progress in implementing recommendations from previous inspection reports.

3 Complaints

Summary

| | England and Wales | Scotland | Northern Ireland |
|------------------------|---------------------------------|---|---|
| Complaints body | Prisons and Probation Ombudsman | Scottish Public Services Ombudsman Lord Advocate | Prisoner Ombudsman for Northern Ireland |

Current institutional arrangements

- The United Nations *Standard Minimum Rules for the Treatment of Prisoners* requires systems to allow complaints to external bodies, in addition to internal procedures (United Nations, 2015).
- Independent Ombudsman bodies investigate complaints by prisoners who have exhausted relevant internal complaints procedures and remain dissatisfied with the outcome. Around a third of complaints investigated by Ombudsman bodies are currently upheld.
- Ombudsmen also investigate deaths in prisons, except in Scotland, where investigations are undertaken by the Lord Advocate.

Case studies

Legislative clarity

The Prisons and Probation Ombudsman (PPO) in England and Wales is appointed by the Secretary of State for Justice after recommendation by the House of Commons Justice Committee. Currently the role has no statutory basis. This stands in contrast with Scotland and Northern Ireland, where the Ombudsman has been placed on a statutory footing, under the *Scottish Public Services Ombudsman Act 2002* and the *Justice Act*

(*Northern Ireland*) 2016 respectively. The MOJ has consulted on a number of possible changes, including placing the PPO on a statutory footing (MOJ, 2020).

Procedural fairness and adequate resourcing

Few prisoners welcome a period in prison, but being treated fairly and feeling that complaints are taken seriously is known to be a factor enhancing the legitimacy of prison regimes. Complaints systems have evolved in tandem with regimes. In response, particularly to the *Lammy Review's* findings on racial disproportionalities in prisons, a new Prisoner Complaints Policy Framework has been devised for England and Wales (MOJ, 2022b).

A lack of trust in and legitimacy of internal prison complaint systems can result in complaints being escalated to Ombudsman offices. In at least one jurisdiction – Northern Ireland – the Ombudsman's office is dealing with a significant backlog of unprocessed complaints.⁸ The Council of Europe Committee on the Prevention of Torture report, referenced above, stated that prisoner complaint forms, including complaints concerning staff violence, had gone “missing” and that a number of complaints had received no proper response (CPT, 2020).

4 Citizen accountability

Summary

Organisations and individual campaigners can pursue claims of maltreatment and injustice to prisoners in several ways, including through the media and via organised campaigns. Citizen accountability depends on public freedoms to organise, and a free media that values human rights and equality. However, the closed nature of prisons creates obstacles. A number of press and media outlets investigate injustice, but access to prisons for journalists has been limited. Failures to gain satisfaction from formal avenues, such as complaints, leads to civil society campaigns, some family-based. Official inquiries may be established in response to civil society campaigns. In some cases the issues raised lead to proposals for legal and institutional reform.

Case studies

The case of Zahid Mubarek

The family of 19-year-old Zahid Mubarek began a campaign for justice after he was murdered by his racist cellmate in 2000. It took a public inquiry and an official report in 2006 to establish the failings that had led to his death (ZMI, 2006). The Inquiry found over 186 failings across the prison system and made 88 recommendations. In a subsequent thematic review of the implementation of the recommendations, HMCIP found that “implementation of these new processes has been inconsistent” (HMICP, 2014).

The Zahid Mubarek Trust was set up in 2009 to campaign for criminal justice reform and remains active today.

Media reporting, public attitudes and social relations

Given their closed nature, knowledge about prisons is low among the general public, a problem arguably exacerbated by some inaccurate coverage of sentencing and prison conditions in the news media, televisions and films. Media outlets have, though, also played an important role in highlighting problems, including through undercover investigations. For example, in 2017, an undercover investigation by the BBC in a male adult prison broadcast scenes of prisoners under the influence of drink and drugs. The programme also found little evidence of effective rehabilitation (BBC, 2017). Inspectorate reports are also regularly covered in the media, although, typically, reporting tends to focus on criticisms. IMB reports have been used by the national press to highlight issues within individual prisons (e.g. Alexander, 2020).

Broader social arrangements and political-economic factors also shape public attitudes and perspectives on prisons and prisoners. The relationship between political agendas, prison policies, and the public appetite for greater punitiveness, across numerous jurisdictions, has been explored in some depth (e.g. Pratt *et al*, 2005). Explanations for a supposedly 'punitive turn' in UK policy-making often point to the early 1990s, when the tacit understanding among politicians that penal policy should not politicised, allegedly gave way to populism and punitiveness (see Garside, 2020). A related argument has explored how low trust in politicians and experts, and shifting party-political allegiances, "makes it harder for governments to resist a ratcheting up of penal severity wherever key voters become concerned about crime" (Lacey *et al*, 2017).

Abbreviations

| | | | |
|---------------|--|-------------|--|
| AGS | Auditor General for Scotland | JCHR | Joint Committee on Human Rights |
| BAME | Black, Asian and minority ethnic | MOJ | Ministry of Justice |
| CJINI | Criminal Justice Inspection Northern Ireland | NIAO | Northern Ireland Audit Office |
| COE | Council of Europe | NIPS | Northern Ireland Prison Service |
| CPT | Committee on the Prevention of Torture | NPM | National Preventive Mechanism |
| CWO | Commission on Women Offenders | OECD | Organisation for Economic Co-operation and Development |
| DOJ | Department of Justice | PPO | Prison and Probation Ombudsman |
| HMCIP | HM Chief Inspector of Prisons | PRT | Prison Review Team |
| HMCIPS | HM Chief Inspector of Prisons for Scotland | SPS | Scottish Prison Service |
| HMPPS | HM Prison and Probation Service | ZMI | Zahid Mubarek Inquiry |
| IMB | Independent Monitoring Board | | |
| IPM | Independent Prison Monitor | | |

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Section notes

- 6 A protocol with CJINI provides for HMCIIP to inspect prisons in Northern Ireland. https://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/02/Protocol_with_CJI_NI_2009.pdf.
- 7 See <https://www.justiceinspectorates.gov.uk/hmiprison/inspections?s&prison-inspection-type=urgent-notification>.
- 8 Private communication to the authors.

Appendix:

The National Preventive Mechanism

The Optional Protocol to the UN Convention Against Torture requires the establishment of National Preventive Mechanisms (NPMs) with powers to visit places of detention and to report to the authorities.⁹

The primary purpose of the NPM is to prevent torture and other cruel, inhuman and degrading treatment or punishment by regularly monitoring all detention places across the UK. Its remit extends to diverse forms of custody. It works to establish and share best practice across its members and reports annually on its activities.

As at December 2021, 92 states have become parties to OPCAT and another 13 are designated as signatories. There are 68 NPMs in various countries around the world. In a number of jurisdictions, such as France and Germany, the NPM is a separately constituted body. The UK NPM is unusual in being the umbrella body for a large constellation of existing agencies (over 20 of them) engaged in the inspection and monitoring of places of detention.¹⁰

- The agencies are spread across the jurisdictions of the UK.
- The agencies monitor conditions in police and prison custody as well as in places of detention run by health service and welfare organisations.
- The agencies include organisations of lay visitors as

well as regulatory bodies and professional inspectorates.

The secretariat of the UK NPM is currently provided by HM Inspectorate of Prisons. This loose structure is arguably a strength: the combination of the various NPM member-bodies could be seen as enhancing its collective influence.

The UN Committee Against Torture, in a wide-ranging report on its visit to the UK in 2019, congratulated the NPM on the collective scale of its activities but raised concerns about

- the lack of resourcing of NPM bodies and
- the lack of domestic legislation to underpin the NPM¹¹

A Ministry of Justice consultation, launched in August 2020, included proposals that the NPM be placed on a statutory basis. The Committee requested legislation setting out the powers and functions of the NPM, its roles and responsibilities, and recognising its independent chair and secretariat. It asked that the statutes which underpinned the missions of constituent members include reference to their NPM obligations. In its response to the Committee's points, the UK government referred to the results of the consultation and stated it would respond in due course.¹²

Section notes

- 9 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>.
- 10 See a list of members, see: <https://www.nationalpreventivemechanism.org.uk/members/>. For an overview of the UK arrangements, see Grimshaw, R. (2016), Preventing Torture in the UK: A report on the National Preventive Mechanism, London: Centre for Crime and Justice Studies (<https://www.crimeandjustice.org.uk/publications/preventing-torture-uk>).
- 11 United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2021), Visit to the United Kingdom of Great Britain and Northern Ireland undertaken from 9 to 18 September 2019: recommendations and observations addressed to the State party https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2021/06/CAT.OP_.GBP_.ROSP_.R1.FINAL-VERSION_SPT-report-to-UK-govt-3.pdf.
- 12 UK Government (2021) *The UK's response to the Subcommittee on the Prevention of Torture and Other Cruel Inhuman or Degrading Treatment or Punishment's visit report from October 2020*. <https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2021/06/annex-B-uk-response-to-spt-visit-report-1.pdf>.

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