

CHAPTER 8

THE CRIMINAL JUSTICE SYSTEM

‘A DIVIDED MINISTRY OF JUSTICE’

- 1 The word ‘system’ in the expression ‘criminal justice system’ is misleading. There is no ‘system’ worthy of the name, only a criminal justice process to which a number of different Government departments and agencies and others make separate and sometimes conflicting contributions.
- 2 England and Wales have what some have called ‘a Divided Ministry of Justice’. There are three main Government departments - those of the Lord Chancellor, the Home Secretary and the Attorney General - variously responsible for two different criminal court structures and a number of national and local criminal justice agencies.¹ There are also the powerful influences on matters of policy and expenditure of the Prime Minister, assisted by his Policy Unit at Number 10 Downing Street, and of the Treasury. Other Government Ministries have departments with responsibilities for criminal policy and legislation and for the prosecution of offences within their remit, notably the Commissioners of Inland Revenue and of Customs and Excise, the Department of Trade and Industry, the Department for Work and Pensions, and the Department for Environment, Food and Rural Affairs. There are also others involved, notably the Youth Justice Board,² the newly created Criminal Defence Service and Victim Support,³ local authorities all over the country and many categories of individuals professionally or occupationally involved on a day to day basis in the criminal justice process, including legal practitioners and expert witnesses. The allocation of responsibilities between departments is somewhat unsystematic, but reflects certain underlying principles, including the independence of the judiciary and the separation of police from prosecutors. As the Public Accounts Committee has put it: “The criminal justice process

¹ note also the responsibility of the Chancellor of the Duchy of Lancaster for the appointment of magistrates within the Duchy

² established in September 1998

³ a national charitable organisation subsidised by government

... crosses and re-crosses organisational boundaries".⁴ In what follows I concentrate on the three main criminal justice departments and the main criminal justice agencies.

- 3 The Lord Chancellor is responsible for magistrates' courts and the Crown Court and, through the Legal Services Commission, a statutory non-departmental public body funded by his department, for the provision of defence legal aid in those courts. As I have said, he exercises his responsibility for magistrates' courts through general oversight and financial control of the Magistrates' Courts Committees. He appoints magistrates and, through the Judicial Studies Board, guides and assist the Magistrates' Courts Committees in their training. He sets performance targets, issues guidelines and directives, and monitors their performance. As I have also said, he exercises his responsibility for the Crown Court in a different way, through the medium of the Court Service. He advises the Queen on the appointment of the professional judiciary, many of whom sit in the Crown Court. In consultation with the Lord Chief Justice and the Presiding Judges, he is responsible for disciplining them when necessary. And, through the Judicial Studies Board, he trains them. He is also responsible for substantive civil and family (though not criminal) law, for court procedure and (through the Law Commission) for law reform. Of the current £12.8 billion annual budget for the criminal justice system, his department accounts for £1.6 billion.
- 4 The Home Secretary is the nearest we have to a Minister of Justice in the field of criminal law. He is responsible for the formulation of policy and initiation of criminal justice primary and secondary legislation, research projects and the collation of statistics. He oversees the 42 Police Authorities (though they have considerable individual autonomy), the Forensic Science Service, the National Probation Service,⁵ the Prison Service, the Prison Escort and Custody Service, the Criminal Injuries Compensation Scheme and central funding of Victim Support. His department takes £10.8bn of the over-all £12.8bn criminal justice budget.
- 5 The Attorney General has a general oversight of prosecutions and direct responsibility for the Crown Prosecution Service and the Serious Fraud Office, though these are managed by their Directors who are fully independent in the decisions they take with regard to the conduct of prosecutions. Between them, they have a budget of £0.35bn.
- 6 Funds are allocated to the various criminal justice services on a departmental basis. Each department submits an annual bid, which it negotiates and settles with the Treasury, and distributes its allocation among its agencies. In 2000,

⁴ Report of the Committee of Public Accounts, *Criminal Justice: Working Together*, 26th June 2000

⁵ as it is now called; see Criminal Justice and Courts Services Act 2000

for the first time, the three Ministers prepared a joint submission to the Treasury for the spending review (SR2000). The Permanent Secretary of each department is its Accounting Officer and, as such, is personally responsible and answerable to the Public Accounts Committee of the House of Commons for the propriety of his Department's expenditure. In 2000, again for the first time, the Permanent Secretaries of the Lord Chancellor's Department and Home Office, and the Director of Public Prosecutions jointly defended their conduct of and expenditure on the criminal justice system.

- 7 Over the last three years the three departments have taken significant steps towards some joint management of the system. In 1999 they jointly devised and published a three year strategic plan to 2002 and a business plan for 1999-2000. They have since issued joint business plans for 2000-2001 and 2001-2002 and a joint report on progress for 1999-2001. Notwithstanding these significant advances in working more closely together, at the time of writing the departments remain individually responsible for their own services, they separately submit and negotiate their annual bids for funding and, save for pooling about 1% of their joint resources,⁶ they continue to hold their own purse strings.
- 8 In parallel with these changes, the Government has established the 42 criminal justice areas, based on the geographical areas of police forces. The Crown Prosecution Service, the Probation Service and Magistrates' Courts Committees are now similarly organised and Prison Service and Court Service boundaries, though not coterminous, no longer cut across the criminal justice areas.
- 9 Each of the departments and of the various agencies has aims, policies and budgets broadly directed to the common end of reducing crime and the fair and efficient administration of criminal justice, but which, in their application, often conflict. These operational conflicts are inter-departmental and inter-agency, but they also occur within different managerial or geographical divisions of the same department or agency. They are, no doubt, the stuff of any large organisation or group of organisations, different parts of which endeavour to contribute in their own ways to a common end. Human nature is such that departmental loyalties engender sectional interests and, sometimes, mutual distrust. But where they arise in the administration of criminal justice, sharpened by firm budgetary and spending constraints, they can cause much harm – including injustice, distress, expense and inconvenience to defendants, witnesses, victims, jurors, legal practitioners and others involved in the process - and much inefficiency and wastefulness in the 'system' as a whole. Legal practitioners, whether for the prosecution or defence, have a critical role in all this; they can contribute to, as well as suffer from, such inefficiencies.

⁶ see para 23 below

Sadly, many submissions to the Review have illustrated the level of division between the main players in the criminal justice process, each focusing on the failures of the others and mostly making little acknowledgement of their own.

- 10 Since many of those facing criminal prosecution are guilty and seek to escape conviction or serious sentence, there are, realistically, limits to the co-operation that can be expected from them in the efficient running of the process. That is also true of those who are innocent and who, for one reason or another, distrust the police or the prosecution or the courts themselves. However, despite the ability of a dishonest, feckless or distrustful defendant to throw a spanner in the works, the overwhelming weight of submissions and other material put before the Review shows that the machinery of criminal justice is not working as well or as fairly and sensitively as it could, and that something needs to be done about it.⁷ It has also been well documented in the reports of a number of the reviews to which I have referred in the Foreword⁸ and in many other internal reviews and studies, the more recent of which are listed in Appendix III. The need has become more acute over recent years with ever increasing complexity of law and procedures, more work and higher public expectations fuelled in part by the entry of human rights into our system of law. The same is true throughout the common law world, from which I have gathered many reports of reviews such as this. The search, which I believe to be vital for a just and efficient system - one that will command public confidence - is for better case management in the widest sense of that expression.

- 11 It is at local level, where the criminal justice system is at work, that the administrative complexities and muddle of responsibilities have their most practical and visible effect. It is marked by a proliferation of inter-agency bodies with overlapping and, often, ill-defined functions. This multiplicity and confusion of roles have been widely criticised in the submissions in the Review and by those attending its regional seminars. For example, in Suffolk, as recently noted by the Strategic Planning Group, there are 34 different consultative, advisory or other collaborative bodies, often with overlapping terms of reference and/or involving very similar memberships. Such a conglomeration encourages a culture in which dialogue becomes a substitute for action. And where local agencies take the initiative in negotiating protocols setting out what each of them may expect from each other, the task is formidable. An example mentioned by the Public Accounts Committee in its 2000 Report⁹ is that of Nottinghamshire and Derbyshire, where 12 different agencies had adopted a protocol containing 82 agreements involving 249 services that various criminal justice agencies were supplying to others.

⁷ there are some notable dissenters; see eg Professor Michael Zander, *What On Earth Is Lord Justice Auld Supposed To Do?* 2000 Crim LR 419, echoing his similar objections to Lord Woolf's Civil Justice Reforms; see also his Note of Dissent to the Runciman *Royal Commission on Criminal Justice*, pp 223-233;

⁸ para 17

⁹ *Criminal Justice: Working Together*, paras 7 and 8

- 12 None of this is news to all those responsible for the administration of the criminal justice process or to those variously engaged in it. As I have said, the three main criminal justice departments have made considerable efforts in recent years to work better together, both in establishing common aims and in seeking to implement them. I shall mention the more important of them shortly. But, sadly, this ‘working together’, or ‘joined-up government’ as it is called, is not achieving results commensurate with all the enthusiasm and effort put into it. There is little over-all planning or direction, as distinct from pooling ideas, plans and schemes for co-ordination. There are a multiplicity of inter-departmental and inter-agency bodies at national and local levels. Mostly they have no authority or operational function. Sometimes they are uncertain of their role and/or of their relationship one with another. Often they have overlapping memberships and terms of reference, and spend much time reporting to each other on the same or similar issues. In addition, some members of these bodies, particularly at local level, have no authority to commit those whom they represent to whatever collective recommendations or decisions that might otherwise be made.
- 13 Paradoxically, the problems are often compounded by the many recent and current initiatives to improve the level of co-operation between the various departments and agencies. As Appendix III illustrates, there are pilot studies, working parties, steering groups and reviews all over the place. Sometimes they are conducted by one department or agency; sometimes they are joint ventures; and sometimes there is overlap between two projects. In some instances, as I have seen in the course of this Review, one department or agency may not even be aware of the other’s connected activity, a phenomenon not unknown even as between the Lord Chancellor’s Department and its executive agency, the Court Service.
- 14 The whole edifice is structurally inefficient, ineffective and wasteful - and the working of the criminal courts is but a part, though a focal part, of it. The basic problem lies in the shared, but also divided, responsibilities of the three Government departments for the system. Each, necessarily, must guard its constitutional independence and, in respect of some of its responsibilities, its function from the others, and have regard to its separate financial accountability to the Treasury and to Parliament. The Public Accounts Committee, in its 2000 Report, observed:
- “The most common constraints to effective local inter-agency liaison include conflicting objectives and priorities, which can prevent agreement.”
- “Independence of the various players in the criminal justice system is fundamental to justice. It is also entirely compatible with them taking joint responsibility for

achieving value for money from the substantial resources spent on criminal justice. Current performance in progressing criminal cases is not satisfactory and needs to be improved through more concerted joint monitoring and management of performance across the criminal justice system.”¹⁰

- 15 The limitations of my terms of reference do not include a possible re-ordering of the great Offices of State or re-distribution of certain of their individual responsibilities. I make only two observations. The first is that, in my view, the present division of responsibilities contributes significantly to the present inefficiencies and wastefulness in the criminal justice process. The second is that the way we do it is, as in so many other matters of public administration, largely a product of historical evolution. It does not have to be this way. It is axiomatic that over-all political accountability for investigation, prosecution and adjudication should remain separate. But beneath that level there needs to be a mechanism for securing some central direction and joint management of the achievement of shared objectives.

‘WORKING TOGETHER’

- 16 Apart from the judiciary, there are three main hierarchies and/or groupings of inter-departmental and/or inter-agency bodies concerned with the administration of criminal justice. For the purpose of identification I shall call them ‘Strategic’, ‘Operational’ and ‘Consultative’, though none of them truly justifies its name. For the purpose of bringing home the complexity, overlap of responsibilities and the absence of any single clear line of direction and accountability in the system, I set out in more detail than might otherwise be necessary the structure and relationship of the three categories.
- 17 Before doing so, I should mention the judiciary but – as academics might put it – only to exclude them from consideration as part of the main administrative structure. Apart from the Lord Chancellor, in his combined role of the Head of the Judiciary and Minister responsible for the courts system, the judges’ administrative role, outside issues of their deployment, allocation of work and general working arrangements, is indirect, consultative and persuasive. In this respect they are unlike many of their brethren in other common law jurisdictions in the Commonwealth and in the USA, who often have a significant formal role in the administration of their courts.

¹⁰ *ibid*, paras 7 and 3

- 18 Whilst the Lord Chief Justice, other Heads of Division,¹¹ and other senior judges, including the Senior Presiding Judge, have regular meetings with the Lord Chancellor to discuss matters primarily concerning the courts and the judiciary, they have no direct involvement in the planning or management of the criminal justice system as a whole. The nearest that the Lord Chief Justice has to any such involvement is when he is consulted from time to time by Ministers, usually the Home Secretary, on proposals for new criminal justice legislation. When this occurs, he in turn takes the views of a small body of senior judges and the Registrar of the Court of Appeal (Criminal Division). The Senior Presiding Judge has considerable involvement with national heads and local representatives of the various criminal justice agencies, but it is of an informal, ad hoc, though influential, nature. It is directed mostly at practical ways of improving co-operation between the courts and the agencies. Presiding Judges and Resident Judges have similar relationships with representatives of the various agencies at, respectively, circuit and court centre levels.

Strategic

- 19 The Ministerial group, which meets periodically, is chaired by the Home Secretary and includes the Lord Chancellor and the Attorney General. As I have said, in April 1999 the Group approved and published the first Strategic and Business Plans for the Criminal Justice System in England and Wales.¹² They set out the aims for the system as a whole, to which I have referred in Chapter 1 - in brief, the reduction of crime and the fair and efficient administration of justice. The Plans included ‘objectives’, ‘performance measures and targets’, and proposed ‘efficiency’ measures. The Ministerial Group also announced their agreement of a policy to align the geographical boundaries of the different criminal justice agencies, including Magistrates’ Courts Committee areas and those of the Crown Court, and services within the existing 42 police areas into criminal justice areas. The three departments and/or agencies for which they are responsible have their own formulations of broadly similar and complementary aims and objectives, but often with different and conflicting performance measures and targets.
- 20 The authors of the 1999 Strategic and Business Plans regarded them as the first “real attempt ... to manage the system as a whole” and as “the start of a developing process”.¹³ As I have said, in 2000 the three Ministers, for the first time, prepared a joint submission to the Treasury for the spending review (SR2000) outlining their plans for 2001 to 2004. Also, following SR2000, the three departments issued a joint Criminal Justice System Public Service

¹¹ the Master of the Rolls, the Vice-Chancellor and the President of the Family Division

¹² as part of SR 2000, the Government-wide Cross Departmental "cross-cutting" exercise; see para 6 above

¹³ paras. 2.2.4 and 6.1.1

Agreement, which is intended to encourage working together and consideration of joint priorities.

- 21 There is also what is called ‘the Grade 1 Trilateral’, which consists of the Permanent Secretaries of the three departments. They and their officials meet quarterly. They have no formal terms of reference. I understand that in September 1999 they sought to ‘refocus’ their meetings with a view to providing some strategic supervision, resolution of problems between departments and presentation to Ministers of policy choices. I have not been able to assess the effectiveness of this group, since its work has been disrupted in the course of the Review by the illness of one of its members. But, so far as I can tell, it makes little, if any, ‘strategic’ or other contribution to the planning or running of the system; it does not advise or even report to Ministers; and it does not communicate Ministers’ views to anybody. In short, I have not been able to discover what, if any, useful role this group performs in the over-all direction of the criminal justice system.
- 22 The Ministerial Group and the Grade 1 Trilateral are supported by the ‘Strategic Planning Group (SPG), which is composed of the Criminal Policy Directors and senior Finance Officers of the three departments, other senior officials, including a representative of the Treasury, a member of the Prime Minister’s Policy Unit and a policy adviser to the Home Secretary. It meets about every six weeks and until very recently was chaired by the Criminal Policy Director of the Lord Chancellor’s Department. Its terms of reference are:

“to carry out joint strategic planning and performance management of the criminal justice system as a whole on behalf of the Ministerial and Permanent Secretary Steering Groups¹⁴. In particular:

to prepare strategic and business plans which best deliver Ministers’ objectives within agreed resources;

to monitor and report upon the performance of the criminal justice system as a whole and recommend any corrective action necessary;

to ensure the principles of the new criminal justice policy development are followed; and

to ensure the recommendations of the Cross-Departmental Report are taken forward.”

As this wording suggests, and as I have already indicated, the SPG does not decide; it recommends - and the ultimate deciders are the Ministerial Group, seemingly acting without any intermediate advice or recommendation from

¹⁴ ie the Ministerial Group and the Grade 1 Trilateral, respectively

the Grade 1 Trilateral. It has no part in the departments', now jointly submitted, bids for funding. Subject to a small experiment to which I refer in the next paragraph, it has no responsibility for allocation of funds throughout the system. And, it has no structural relationship with any of the various local collaborative bodies at national or local level; nor has it any counterparts for the implementation of its strategic planning at local level.

- 23 A novel feature is the recent creation of a 'strategic reserve' drawn from the over-all criminal justice system budget for disbursement by the SPG on projects that would benefit the whole system, but only if all three Ministers agree. The initial allocation for this purpose is £525m, to be spread over the three years 2000-2002. In fact, the allocation has been reduced to about £400m as a result of the need to find additional resources for the Crown Prosecution Service, the courts and Probation Services to deal with extra work expected to result from a recent provision of additional funds for the recruitment of 9,000 more police officers. That leaves an average yearly sum of about £133 million available for joint disbursement against an average annual budget for the criminal justice system as a whole of £12.8 billion¹⁵ planned for the three years 2000 - 2002. As a joint planning and spending initiative, it is a welcome but tiny start. In the context of expenditure on the criminal justice system as a whole, it is difficult to see how the Ministerial Group on the recommendation of the SPG could realistically claim to be able to put this small joint allocation, which is in any event, limited to a three year period, to any significant 'strategic' purpose.
- 24 The SPG prepares bids to Ministers for use of the small unallocated reserve. It is supported by:
- an inter-departmental and inter-agency body responsible for developing co-ordination of the various criminal justice agencies' information technology systems, the Board of Integrating Business and Information Systems (IBIS);
 - 'champions' for some of the cross-cutting criminal justice system objectives, each of whom reports regularly to it and is supported by a project team; and
 - the Criminal Justice Joint Planning Unit (CJJPU), staffed and funded from the departments, which acts as a secretariat, produces plans for the criminal justice system and co-ordinates the activities of part of the consultative hierarchy, the Criminal Justice Area Strategy Committees.
- 25 Professor Sue Richards, an authoritative observer of and contributor to governmental thinking on the management of the criminal justice system, has recently completed a review of the joint planning and management arrangements.¹⁶ In it, she said that the diagnosis of many who contributed to

¹⁵ exclusive of the salaries of the judiciary, including District Judges (Magistrates' Courts)

¹⁶ *Review of the CJS Joint Planning and Management Arrangements*, 8th May 2000

her review was that the SPG "is not strategic and it does not plan".¹⁷ She identified the following "serious weaknesses".¹⁸

"... SPG does not provide strategic leadership for the CJS; ... its link into the performance of local CJS agencies (whose 'joined-up' performance is the key to achieving the aims and objectives set out by ministers) is too indirect to be effective; consequently, the management information currently available on the performance of the CJS at national and local level (as opposed to its constituent parts) is poorly developed...."

She described the Government's Strategic Plan as "a compilation of what different parts within the three departments are doing in support of their aims and objectives, rather than the instrument which drives the activity".¹⁹ The Government, no doubt mindful of such criticisms and of the direction of my Review, appears to accept a need to strengthen the SPG.²⁰

Operational

26 The National Trial Issues Group (TIG), which was established in 1995²¹ was until recently chaired by the Chairwoman of the SPG. It includes senior civil servants and officers drawn from all the main criminal justice departments and agencies and others involved in the system, including the Recorder of London, the Chairman of the Magistrates' Association, an MCC representative, the Chief Executive of the Youth Justice Board, the Police and the Secretaries of the Criminal Bar Association and Criminal Law Committee of the Law Society. It meets monthly.

27 TIG is not an operational arm of the SPG and does not report to it. As I have said, the two bodies have no structural relationship. Like the SPG, it is a creature of the three departments and its role is essentially as their joint planning and co-ordinating agent. Its responsibilities, which it exercises through sub-groups, pilot studies, instructions and guidance, are:

"to plan and co-ordinate measures to dispense justice fairly and efficiently at a national level by: ensuring just processes and just and effective outcomes, dealing with cases ... with appropriate speed, meeting the needs of victims, witnesses and jurors ... and respecting the rights of defendants and treating them fairly".

¹⁷ *ibid*, para 13

¹⁸ *ibid*, paras IV and 14

¹⁹ *ibid*, para 12

²⁰ *Criminal Justice: The Way Ahead*, CM 5074, (Home Office, February 2001), para 3.230

²¹ as successor to the Working Group on Pre-Trial Issues

- 28 TIG is supported by six specialist sub-groups, each chaired by a member of TIG, and also by local Trial Issues Groups (local TIGs) based on the 42 criminal justice areas. The breadth of TIG's work is well indicated by listing its sub-groups: the Case Management Working Group, the Joint Performance Management Strategy Group, the Manual of Guidance (guidelines on case files) Editorial Board, Tackling Youth Justice Delays, Reducing Delays Sub-Group and the Bail Issues Sub-Group.²² Each sub-group is chaired by a senior official and consists in the main of relevant departmental or agency representatives and, in a few instances, a Circuit Judge or a magistrate.
- 29 The core membership of local TIGs, each of which is usually chaired by a senior Crown Prosecutor, includes representatives of all the local criminal justice system agencies and, in two instances, a Circuit Judge. Their prime purpose is to agree action within their areas to ensure that trials are conducted efficiently and in a timely manner. Their terms of reference also reflect the Government's 'overarching' aims for the criminal justice system, requiring them within their areas to assist the system to achieve a number of objectives. These include: "ensuring just process and just and effective outcomes", "meeting the needs of victims, witnesses and jurors", "piloting new initiatives referred by TIG or agreed locally", "considering local criminal justice operational issues, including those referred to it by other groups locally", "keeping TIG and the local Area Strategy Committee informed of its work" and "identifying and sharing best practice".

Consultative

- 30 Assuming that the reader is still with me, I pass on to the consultative category. The Criminal Justice Consultative Council (CJCC) and its Area Committees were established in 1992, following Lord Woolf's Report into the 1990 Prison Disturbances,²³ with the object of fostering better communication between the main criminal justice agencies.²⁴ In the course of his inquiry Lord Woolf had been struck by the insular approach of the various agencies in the way they planned and organised their separate but closely inter-related parts in the criminal justice process. The CJCC's terms of reference²⁵ are:

"to promote co-operation within the criminal justice system so as to reduce crime and the fear of crime and thereby increase confidence in the rule of law" and "to advise

²² two working groups of the now disbanded Witness Care Sub-Group, the Vulnerable or Intimidated Witness Team and the Interpreters Working Group, will continue to report to TIG for their lifespans

²³ *Prison Disturbances*, Cmnd 1456, (HMSO, April 1990)

²⁴ announced in the White Paper, *Custody, Care and Justice: The Way Ahead for the Prison Service in England and Wales*, Cmnd 1647, (HMSO, September 1991)

²⁵ revised in April 2000 to reflect the new "overarching" aims for the criminal justice system.

government from time to time on matters of practical application in the criminal justice system”.

The CJCC has no structural relationship with the SPG or TIG and no managerial role. Its main work consists of considering and advising on reports and other information about the criminal justice system, arranging special conferences, general oversight of the Area Committees and identifying the national implications of their work. It has recently described its role as:

“to facilitate discussions and agree action across the criminal justice system. It provides a forum for senior officers of the criminal justice agencies (including Government Departments) and senior figures of the legal system to address issues of mutual interest and resolve problems through an agreed agenda”.²⁶

- 31 The CJCC’s inaugural Chairman was Lord Justice Rose, who was succeeded in October 2000 by Lord Justice Kay. Its membership includes very senior civil servants from the three departments and the various agencies, a Senior Circuit Judge, a District Judge (Magistrates’ Courts), the Director of Public Prosecutions, a Chief Constable, a barrister, a solicitor, a magistrate, a justices’ chief executive and others involved in various capacities in the criminal justice system. As its origin and name indicate, its function was intended to be consultative and advisory. It has succeeded in the prime task envisaged for it by Lord Woolf – getting the departments and agencies and all those involved institutionally or professionally in the criminal justice process to talk to each other. It has also made a significant contribution to long-term thinking and understanding of many important criminal justice projects.²⁷ However, it is not routinely consulted by Governments on their thoughts or proposals for reform of the system. Nor has the Council any standing responsibility, or staff or facilities, to monitor and recommend improvements on its own initiative. And, save for special conferences, it meets only four times a year for two hours at a time. Its coverage is necessarily patchy and its attention to practicalities limited. As its annual summaries of activities indicate, most of its time in meetings is given over to presentations on various topics, leaving only a short time for discussion and occasioning little follow-up.
- 32 The Area Committees largely replicate at local level the membership of the CJCC. Each is chaired by a local Circuit Judge, usually the Resident Judge of a main court centre. The membership consists, or should consist, of chief officers of the various local criminal justice and other agencies, including the Circuit Administrator, Court Service Group Manager, the MCC’s Chairman

²⁶ *Criminal Justice Consultative Council: Summary of Activities 1999-2000*, Annex A to Part 1

²⁷ see most recently, the report of its Race Sub-Group, chaired by District Judge Davinder Lachhar, of July 2000

or Justices' Chief Executive, the Chief Executive of the Local Authority, the Chief Constable, the Chief Probation Officer, the Chief Crown Prosecutor, and a number of others including a barrister, solicitor, member of the Youth Offenders Team and a local representative of the Witness Service or Victim Support.

- 33 The Committees are based on the 42 criminal justice areas. They have part-time secretarial assistance from the Court Service. When the CJCC was established in 1992, their role was to take forward its programme of work at local level. However, it was increasingly felt that they did not have a sufficiently clearly defined role. And, in April 2000, they were reconstituted as Area Criminal Justice Strategy Committees with model terms of reference requiring them to promote co-operation between agencies in support of the Government's over-arching aims of the criminal justice system, but to do so in a more interventionist way than their predecessors, the role of which was predominantly consultative. Thus, for example, they are now required to "develop the criminal justice strategy for the area, involving all criminal justice agencies", so as to "secure high level commitment to the strategy", to "ensure that national criminal justice policies are implemented locally" and to "refer initiatives on operational issues to the local TIG".
- 34 Although the Area Strategy Committees have had only a short time in which to identify and establish the practicality of their new remit of more direct intervention, many of them do not know quite how to go about it. It is also fair to say that some of the judicial chairmen are more effective in this role than others. The CJCC has recently issued a 'template' of guidance on the subject. Their task is complicated by their limited secretarial support and the fact that, even if they tried to do so, they could not act as a collective decision-making body. They have no joint executive authority to enforce or budget to fund any decisions they might make, since some of their key members have no authority to commit the agencies or bodies that they represent to any joint project. These include, importantly, local representatives of the Court Service, who have less autonomy than many of their counterparts from the other agencies, and the legal practitioner members who have no authority at all to commit their professional brethren to any common venture.
- 35 In recent years, frustration at the Committees' lack of effective executive role has in a number of areas led to Chief Officers sending their deputies to the meetings in their stead and has prompted them to form local Chief Officers' Groups at which they can make collective decisions and pool their authority and resources to implement them. In some areas they have gone further and formed what they have called local 'Criminal Justice Boards'.

- 36 Below the level of Area Strategy Committees there are also well-established inter-agency and disciplinary bodies to assist the day to day working of the courts. The most important of these are the Crown Court and Magistrates' Courts User Groups, the former usually chaired by the Resident Judge. They are particularly valuable bodies, capable of ready and practical improvement of the system at local level. It is notable that the Comptroller and Auditor General, in his National Audit Report of 1999, *Criminal Justice: Working Together*, found that "much of the practical cross-agency liaison in support of performance improvement" was carried out by such Groups.²⁸ There are also over 350 Crime and Disorder Reduction Partnerships, bringing together representatives of the criminal justice system with those of local authorities to plan local strategies and actions to reduce crime in their areas. The areas for which these Partnerships are responsible do not coincide with the criminal justice areas or, in consequence, with those of the Area Strategy Committees. Usually there are several within one criminal justice area and, they can also straddle two areas. However, their responsibilities extend beyond the criminal justice process.

NOT WORKING TOGETHER

The structures

- 37 As I hope I have now made plain, there is no formal link between the SPG, TIG and CJCC and their respective structures, though the recent past Chairwoman of SPG and TIG, the Head of Policy Group of the Lord Chancellor's Department, is also an ex officio member of the CJCC. The SPG has no operational arm, nationally²⁹ or locally, save through the individual departments who, in turn, are responsible for their representatives on TIG. And there are few signs of either the CJCC or TIG treating the latter as the former's operational arm. At local level the terms of reference of the new Area Strategy Committees, including that of referring initiatives on operational issues to the local TIGs, suggest that the latter are, in part, to be regarded as the operational arm of the Committees. But it seems that the idea has yet to catch on with the Committees.
- 38 The CJCC has a quasi-administrative relationship with the Area Strategy Committees, providing them with general guidance and in encouraging them to foster good practices and co-operation among the various local agencies. It is certainly not an effective agency for translating national plans and the

²⁸ Lord Chancellor's Department, *Crown Prosecution Service, Home Office: Criminal Justice: Working Together*, National Audit Office, HC 29 1999/2000 (1 December 1999)

²⁹ other than CJJPU in its generally supporting and secretarial role

means to implement them into local action. For example, it does not set or recommend national or local codes or targets of performance or how to monitor them, or indeed state whether any such codes or targets should be established at all. And the Area Committees, although expected to encourage the achievement of criminal justice system targets, are not required to report to the SPG or the CJCC on their progress to that end, only on their general activities. If, as appears to be widely accepted, some such common objectives are desirable, subject to necessary variation to suit local circumstances, it is unsatisfactory to leave to Area Strategy Committees what, if any, objectives they should set for themselves and, if they had the staff to do it, how they should monitor performance against them. As I have said, the Committees are generally uncertain about their newly acquired local 'strategic' role. And, if it were to become a major and effective part of their working, I could foresee potential conflicts for their judicial chairmen when administrative efficiency confronts judicial independence in securing justice generally and in individual cases.

- 39 In many respects the work of the CJCC and Area Strategy Committees overlaps with that of TIG and the local TIGs, and, as I have said, they often share some of the same personnel. Moreover, relationships between the CJCC and the Area Strategy Committees on the one hand, and TIG and the local TIGs on the other, are uncertain, in particular as to which system is driving the other. In my view, this replication of responsibilities and work at national and local level is inefficient, wasteful, often ineffective and confusing. A large number of contributors to the Review, including those involved in one or both systems at both levels, have characterised their meetings as largely 'talking shops'. My own examination of their work as part of the Review suggests that there is some truth in that description.
- 40 Thus, there is much in the way of attempted joint planning and co-ordination, but little or no clear line of over-all 'direction' or accountability in the criminal justice system. Part of the problem lies in the ill-defined relationship between, and functions of, the main three co-ordinating structures and the considerable overlap between them. Part lies in the lack of any over-all planning framework or timetable by reference to which planners at all levels and parts of the system can work. In summary there is no effective joint planning process; there is no significant joint budget; there are three separate joint bodies at national level; to the extent that the SPG has any directing or managerial roles, they are not mirrored at local level; and each local agency is individually accountable to its parent at national level, the nature of that relationship ranging from direct management to degrees of local autonomy. But, most of all, the problem lies in the focus on co-ordination rather than direction and management. If the Government truly intends "to manage the

system as a whole”, as the authors of its 1999-2000 Strategic Plan have suggested,³⁰ it should get on and do it.

- 41 Some argue that the present tri-partite system of strategic, operational and consultative bodies should continue and that the recent changes - in particular, the new Criminal Justice System Strategic and Business Plans, their oversight and implementation by the SPG and the new more ‘pro-active’ Area Strategy Committees - should be given time to establish and prove themselves. Others have urged that the system is inherently flawed and that consideration should be given to merging the strategic and operational systems to provide a single and clear line of ‘direction’, if not of management, for the criminal justice system as a whole. However, Professor Sue Richards has spoken for both sides of the divide in saying that *something* more needs to be done to provide a better system.³¹

“What was once seen as a major and radical step - CJS aims and objectives and a strategic plan - has now been put in place and it is important to take the next steps towards delivering the promised outcomes. Views will vary as to whether that involves improving the way the current system operates or changing the system. But the next step must be taken, whether bigger or smaller.”

- 42 There are questions as to the form that a national ‘directing’ body might take. For example, should it be an amalgam of the present SPG and TIG and their respective structures? Or should a differently named CJCC, or a body similarly composed and strengthened for the purpose, undertake the role, subject to Ministerial oversight? Whatever directive or ‘managerial’ solution might be adopted, many argue the need to retain a national consultative and advisory body along the lines of the CJCC, but untrammelled by quasi-administrative responsibility for local bodies, as a source of authoritative, principled and practical advice.³²

MANAGING CRIMINAL JUSTICE

A Criminal Justice Board

- 43 For all the reasons I have given, I consider that there should be a move to central joint direction and local joint management. The present medley of bodies with their ill-defined and overlapping roles and uncertain relationships

³⁰ see footnote 12 above

³¹ *Review of the Criminal Justice System Joint Planning and Management Arrangements*, para 43

³² cf. the Civil Justice Council established by the Civil Procedure Act 1997, s 6

should be replaced with a single line of direction and management, coupled with a separate and an appropriately used consultative system. As to the former, a single national body should plan and direct, rather than merely respond to and co-ordinate individual agencies' plans, as is now the case. It should have only such hierarchy nationally and locally as is necessary to inform it and to execute its directions. In particular, I see no need for separate 'strategic' and 'operational' structures. The overriding aim should be to relieve administrators from repetitious and wasteful meetings and give them more time to get on with their jobs. As to consultation, the Criminal Justice Consultative Council should be replaced by a more effective advisory body with a statutory remit.

- 44 Democratic accountability requires that ultimate responsibility for the setting of objectives and priorities and over-all allocation and expenditure of resources should remain with Ministers. Budgetary responsibilities are assumed to flow from political control and are subsumed within the broader topic of ministerial responsibility - finances follow departmental responsibilities. But the particular fragmentation of responsibilities for the criminal justice system between several Ministries and the wide acceptance that some of their functions should remain separate and independent of each other are perceived as an impediment to more joint management as distinct from greater co-operation. There is also the close financial control of the Treasury, which effectively gives it a decisive say in policy decisions and planning capabilities, and of the efficiency or otherwise with which adopted policies are implemented. The difficulty is in maintaining safeguards for the independence of different agencies and the interests of all involved in the criminal justice system. There is an innate tension between the functions of different agencies which cannot always appropriately be guided or overridden by broad aims such as those devised by the Government for the criminal justice system. As experienced academic commentators in this field have observed, it may be a necessary feature of such a system to maintain a degree of separation and checks and balances in the management of the various agencies and what is expected of each of them.³³ There is the further point that defendants and their lawyers, mostly publicly funded – and now the Criminal Defence Service – are also part of the 'system'. They too have important roles to play in its efficient operation as well as vital sectional interests in what it can do for them.
- 45 A belief that these difficulties should and could be overcome is encouraged by the Cabinet Office's Performance and Innovation Unit's acknowledgement in its January 2000 Report, *Wiring it up*, of the need to use more cross-cutting budgets and pooling of resources. Early in the Report it classified the disadvantages of the present system of government accounting:

³³ Raine and Wilson, *Managing Criminal Justice*, p 63

“Current structures and ways of working inhibit cross-cutting activity. 1.1. Current Whitehall structures and associated ways of working are highly effective in delivering many of the Government’s key policies and priorities, but they can also inhibit the tackling of problems and issues which cross departmental boundaries. There are a number of reasons for this:

- there is a tendency to take a provider-centred perspective rather than that of the service user;
- budgets and organisational structures are arranged around vertical functional lines ... rather than horizontal, cross-cutting problems and issues;
- systems of accountability (eg audit) and the way risk is handled can militate against innovative cross-cutting working ...”³⁴

Later, in a chapter devoted to the possibilities of greater flexible funding and its possible forms, it said:

“9.1 Much is said about the perception that there are major barriers to cross-cutting working in the way that budgets are allocated; the conditions that are attached to them; and the accountability structures associated with responsibility for seeing that money is spent wisely and for the purpose for which it was allocated. In practice, there is little evidence of insurmountable barriers; practical solutions can usually be found to get round most problems if there is a good enough reason for doing so, though this may involve a considerable amount of time and effort....

9.3 It is clearly important to maintain budget accountability while avoiding unintended or undesirable consequences. There are now few rules which prevent money being switched between departments The main barrier to the funding of cross-departmental policies – particularly between Spending Reviews – is different views about relative priorities; specifically, differing views about the relative priority of cross-cutting issues in relation to purely departmental objectives.

9.4 The key question is how to create the right sort of incentives for departments to spend money on programmes which are not their core business but which are central to the Government's over-all aims and objectives”.³⁵

³⁴ p 6

³⁵ *ibid*, pp 47 - 48

46 In my view – constitutional change or no – the apparent constraints of ministerial accountability and independence of certain functions one from another should not prevent Ministers, if they have the will, to devolve their authority into one body below ministerial level responsible to them for planning, funding and over-all direction of the criminal justice system. Such a national body, which could be called the **Criminal Justice Board**, should replace the existing Strategic Planning Group, Trials Issues Group and also assume such operational responsibilities as the Criminal Justice Consultative Council currently has. It should be the means by which the departments and core agencies provide over-all direction of the criminal justice system. It should be replicated at a local level by **local Criminal Justice Boards**, undertaking much and more of the work that is already undertaken by local TIGs, Area Strategy Committees and informal bodies of chief officers frustrated with the inadequacy of the present formal system.³⁶ It follows from my proposals that the present mix of ‘strategic’, ‘operational’ and ‘consultative’ structures would disappear, including the following bodies: the SPG, TIG and its sub-groups, the local TIGs, the CJCC and its Area Strategy Committees, Chief Officer Groups and, where they exist informal ‘Criminal Justice Boards’. Consideration might also be given to disbanding the Grade 1 Trilateral of the Permanent Secretaries of the three departments unless it can be found something useful to do.

Planning

47 A key responsibility for a national Criminal Justice Board would be the preparation of plans for the criminal justice system for ministerial endorsement. It is a matter for consideration whether the present system of rolling three year strategic and one year business plans,³⁷ often containing the same or similar bland generalisations and reports on work in hand, are satisfactory planning tools and whether the former are, in any event, for too short a period to be truly strategic, for example in the planning of information technology.³⁸ The process would have to be underpinned by a more systematic analysis of, and dialogue about, the individual objectives and targets of each department and agency than has occurred hitherto. At present, these are contained in Public Service Agreements negotiated individually by each department with the Treasury, which are then aggregated together into a plan for the system as a whole. This is the wrong way round. The Criminal Justice Board should, after due consultation with the Treasury, produce a plan for the system as a whole, from which each agency would then derive its plan.

48 Another defect is that the annual joint business plan for the criminal justice system has never been produced at a sufficiently early stage to inform or

³⁶ see para 39 above

³⁷ see eg *Criminal Justice System: Strategic Plan 1999-2002* (1999) and *Business Plan 2001-2002* (February 2001)

³⁸ see paras 92 - 114 below

influence each agency's preparation of its financial or business plan. For example, the 2001/2002 business plan was published on 26 February 2001, only one month before the commencement of the period to which it related, and far too late to make any difference to the plans of the individual agencies who would be responsible for achieving results on the ground. If the Criminal Justice Board is to provide strategic direction to the system as a whole, then it must ensure the system business plan is available in draft form by the end of October, and published at the latest by the end of November. This would give departments and agencies sufficient time to ensure that the system-wide targets were realistic, and that their own plans would contribute to their attainment, while still allowing the Board scope to adjust targets in the light of up to date information about performance. In short, the planning time-table should be structured so that national plans can inform local ones, as well as the other way round.³⁹

- 49 In addition to the problem of timing, a recent review of performance indicators across the criminal justice system,⁴⁰ showed that the existing collection of objectives is over-complex and lacks coherence. It has recommended the establishment of a smaller set of clearly defined joint targets to which departments and agencies should fit their performance indicators. If this work operates as a spur to action rather than a substitute for it, I agree. And I welcome the Government's recent commitment to ensuring that performance objectives do not clash.⁴¹ With all this in mind, an early task for the Criminal Justice Board should be to set, and to manage performance against, a consistent and practical framework of system-wide objectives looking at least five years ahead.

Budgeting

- 50 Once the plans have been set, the question arises whether the new Board should have a substantial operational budget. There are three possible options:
- to give the new Board both budgetary and management responsibility for all those areas of the system in which the agencies are required to act jointly or collectively in the achievement of targets and objectives;
 - to give it a central role in spending reviews by advising both Ministers and the Treasury on the achievement of joint objectives, preparing and submitting a joint criminal justice system budget and to assume direct management for local Criminal Justice Boards, leaving to individual departments their own

³⁹ a point made by contributors to a "Criminal Justice System Planning Event" organised by SPG on 11th December 2000

⁴⁰ *Inter-Departmental Review of Performance Indicators Across the Criminal Justice System*, (Criminal Justice Joint Planning Unit, February 2001)

⁴¹ *The Way Ahead*, para 3.227

budgets (except for an element held centrally by the Criminal Justice Board), and operational management; and

- as proposed in *The Way Ahead*,⁴² to increase only marginally the central funds available to a strengthened SPG, renamed the ‘Strategic Planning Board’, to invest on improvements for the system as a whole.

51 As to the first option, I believe that the possibility of a single budget for the criminal justice system has yet to be thoroughly examined. It was apparently considered, but rejected, in the 1998 Comprehensive Spending Review, partly on political grounds, partly because of concerns about the departments’ unpreparedness for such radical change and partly because of doubt as to whether it was necessary for the policy of closer collaboration that they were then contemplating. As the Performance and Innovation Unit, in its January 2000 Report noted, there are examples in Sweden, Hong Kong and New Zealand of how it might be done.⁴³ The general scheme of all of them is a policy co-ordinating structure, with substantial budgetary responsibilities, straddling departmental boundaries.

52 If such an examination were now to take place, it could include consideration of another rigidity in the present structure which impedes a more flexible approach to the problem, that of the separate responsibilities of police authorities and chief constables for local policing policies, priorities and decisions as to application of their individual funds. With such a fragmented police system, police budgets, unlike those of other criminal justice agencies, seemingly cannot be regarded as central government funding available, in part, for pooling to the advantage of the criminal justice system as a whole. Any move in that direction would, no doubt, call for a fundamental reconsideration of the relationship between central government and local policing. Maybe now is the time for it. Whilst the police must retain their separate and independent investigative function – just as prosecutors and the courts have their own distinctive roles in the criminal process – such separateness or independence does not seem to me to depend on local autonomy.

53 The pooling of criminal justice budgets would require, in the case of each department and agency, an exercise in demarcation between, on the one hand, activities and funds allocated to them that contribute to the planning and operation of the system as a whole and, on the other, those on which it is essential to preserve its independence of decision and action. In short, such a scheme would require substantial ‘ring-fencing’ of each of the criminal justice departments’ funds for ‘systems’ functions.

⁴² *The Way Ahead*, p 101, paras 3.230 and 3.231

⁴³ *Wiring It Up*, pp 19 - 24, paras 4.10 - 4.13

54 However, the boundary would not always be easy to draw and some administrative safety valves would have to be devised to overcome possible conflicts of interest or responsibility at national or local levels. That being so, a better course might be to focus more upon planning and monitoring the way in which resources are consumed and targets achieved, rather than upon creation of a pooled budget for its own sake. That was a concern of the Performance and Innovation Unit. In its January 2000 Report it advocated the need for greater flexibility of budgetary arrangements and said:

“Pooled budgets are ... neither necessary nor sufficient to ensure effective collaborative working. It is important not to think they are a panacea or the solution in most cases. Pooling a budget may just create a different more troublesome boundary in a different place. What is important is that there is a flexibility in the way that funds can be used and a clear, shared responsibility for delivering the outcomes ...”.⁴⁴

55 I recognise the force of that point and its obvious attraction to the departments in their present course of ‘flexible funding’ of the system. However, it is conditioned by two assumptions that themselves need reconsideration. The first is that collaboration rather than over-all direction and local management is the best way to plan and operate a criminal justice system of the size and complexity of ours. The second is a seeming reluctance to explore the possibilities for devising a more flexible system than presently available for accommodating ‘boundary’ problems of that sort. ‘Targets’, ‘objectives’ and ‘performance indicators’, when spread between a variety of departments and agencies, have ‘boundary’ problems too.

56 The task of managing an annual expenditure of £12billion across five major agencies and a plethora of smaller ones, each assailed by competing pressures and interest groups with their own cultures and ways of working, might prove too much, particularly as work starts from such a low base. There might also be a risk, in the allocation of funds under a shared budget, for the most powerful or more powerful departments to increase their power and pursue their own priorities at others’ expense. These are real difficulties, but if departments put aside any sectional interests and strive for a solution, they may be surmountable by the introduction of suitable constitutional safeguards. The working of the mechanisms for allocation of the present small joint reserve may suggest what forms they might take. In any event, I believe the option is worthy of serious consideration.

57 As to the second option, a central advisory role and management structure, with clear lines of accountability to a single body at the top would be

⁴⁴ *ibid*, p 49, paras 9, 8

required. That would probably be best achieved by vesting as much authority in a Criminal Justice Board as is consistent with the constitutional autonomy of the departments and agencies involved, but stopping short of giving it day to day accountability for the use of resources. Under such a scheme the Board, subject to ministerial agreement, would plan and be responsible for implementation of its plans through the medium of individual departments and agencies at appropriate levels. Ministers would remain jointly accountable to Parliament for the Board's performance. The Board, again subject to ministerial agreement, would participate in the annual bidding process by preparing and submitting a joint criminal justice system budget, but the budget would be administered on its behalf by the departments and agencies. Under this option, and if the concerns about the planning cycle that I have set out above are met, each department and agency would be responsible for translating over-all criminal justice system objectives and targets into achievable internal objectives and targets. Agencies and local managers would work to departmental objectives and performance targets derived from the criminal justice system plan. The Board would operate through a national and local administrative structure and through local Criminal Justice Boards⁴⁵ in securing implementation of its plans.

58 Whilst not awarding the Board complete financial control of the criminal justice system, such a regime would give it responsibility for planning and setting performance targets across the full range of criminal justice activities. This would meet the need for a simpler, more broadly based and potentially more effective line of over-all 'direction' at national and local levels, without the added complication of managing the resources for the whole system. The individual departments and agencies would retain their own budgets, although the new Board would take a formal role in periodic reviews of spending through advising Ministers and the Treasury on the achievement of joint objectives. Under this option, there would also be a strong argument for increasing substantially the pool of money held centrally in the strategic reserve for undertaking major system-wide projects.

59 The third option, the least radical of all, is the Government's proposal for "manag[ing] the system as a whole"⁴⁶ by strengthening the Strategic Planning Group, renaming it the Strategic Planning Board and concentrating on up to three national priorities each year. That could be the way to do it, though the critical question is what sort of strengthening, apart from introducing more senior personnel, it has in mind. From the rubric in its 'Way Ahead' policy paper under which it treats the subject, "Partnership and effective, joined up delivery", and the following suggestion, the answer appears to be 'not much':

"This Board could make sure the annual planning process took account of practitioners' views and was scheduled to

⁴⁵ see paras 73 – 77 below

⁴⁶ *The Way Ahead*, paras 3.230 and 3.231

give local managers time to make local plans and deploy resources.

Under this model, Ministers, on the advice of SPB - might set a maximum of three national priorities each year. Local areas would then account to the SPB for the delivery of these targets. Learning from experience elsewhere in local government and the public services, it would be important to develop effective incentives for improved performance, where appropriate, by for example rewarding success with additional funding or greater management flexibility”.

- 60 This option seems to me to fall a long way short of what is required. Although the Government talks of ‘strengthening’ the SPG through enhancing its role in the annual planning process, it is still unwilling to give the body any operational means of securing the various departments’ and agencies’ compliance with its instructions. Its weakness in such a role is well illustrated by the lack of effective control it has so far exerted over the IBIS project,⁴⁷ the Board of which is formally a sub-group of the SPG, but from whom it does not receive regular reports, and whose substantial programme of activities has rarely figured in its agendas or minutes during this Review. For a Strategic Planning Board of the sort the Government appears to have in mind effectively to ensure ‘direction’ as well as devise ‘strategy’, it would need authority to manage and monitor respective allocations including, as necessary, the power to re-allocate funds in response to changing priorities.
- 61 A curious feature of this option is the proposal for Ministers to set a maximum of three national priorities each year, upon which the attention of the Strategic Planning Board and its local network would concentrate. I acknowledge, by way of example, that much has been achieved over recent months by agencies working together to achieve the Government’s stated target for reducing the time taken to process persistent young offenders. But the Government’s proposal would, in my view, be likely to narrow the focus of the central body to the three priorities, and then only for a year at a time, thus denying it and Ministers the ability to take a strategic and long-term view of the criminal justice system as a whole. Ministers could well from time to time identify specific priorities for co-ordinated effort across several of the agencies and charge a central body with their achievement. But to elevate such tasks into the major function of a central co-ordinating body confuses target setting in specific areas with directions and management of the system as a whole.

⁴⁷ see para 95 below

- 62 In my view, the Strategic Planning Group's make-up, its terms of reference,⁴⁸ its lack of involvement in the bidding process for funds for the criminal justice system, its seeming inability to initiate over-all planning for the short or long term as distinct from respond to individual departments' and agencies plans, its lack of authority to manage as distinct from seek agreement, and its lack of any structural relationship with the hierarchy above, below and alongside it, all make it an inappropriate vehicle for the task. What is needed is a new body, which is not simply strategic. It is a body that should plan, bid for and allocate funds, direct and through a single administrative structure below it, manage those activities of the criminal justice system on which its justice, efficiency and effectiveness depend. Option three would, in my view, fall considerably short of this aim and I doubt whether option two would come close to it in practical terms. However, perhaps the best course would be to start by establishing a Criminal Justice Board with the remit I describe in option two and seriously examine for the longer term the first option, of the establishment of a system-wide budget for it to devise and administer.
- 63 Whichever system is chosen in relation to the future direction and management of the criminal justice system, there are three further areas in which greater central direction of the system is required.

Information technology

- 64 I urge below a different approach to the development of integrated information technology in the criminal justice system, going well beyond the IBIS project of independent, but linked, systems. This new approach, if adopted, would in its turn require a new project management infrastructure. As I have said, the IBIS Project Board functions as a sub-group of the Strategic Planning Group. I consider that this responsibility should be transferred to a central **Criminal Case Management Agency** responsible for the development of a fully integrated information technology system for the criminal justice system.⁴⁹ If ever there was an area that called for effective long-term strategic direction, funding and implementation by a single body, this is it.

⁴⁸ see para 22 above

⁴⁹ see para 112 below

Research and development

- 65 There is a striking disparity between the annual expenditure of the three main criminal justice Ministries upon research. The Home Office has for many years employed a dedicated research team that commissions projects from outside academics and undertakes statistical and computer modelling of the likely effects of policy proposals. The annual cost of such research projects in the field of criminal justice is over £25m. In contrast, the total annual research budget for the Lord Chancellor's Department is less than £700,000. In my view, there is an obvious case for centralising research projects that affect the system as a whole and for making a Criminal Justice Board responsible for it. Such a system would make more sense than the present uncoordinated and sometimes overlapping research projects undertaken by different departments and agencies.⁵⁰

Equality and diversity

- 66 A number of studies have provided disturbing evidence of unequal or discriminatory treatment within individual criminal justice agencies, most recently Sir William MacPherson's finding of institutional racism within the Metropolitan Police.⁵¹ A significant barrier to eliminating such conduct is difficulty in determining how minorities are treated across the whole of the system – or even within individual agencies.⁵² Not only is there no way of tracking individual cases between agencies, but in many cases different definitions or recording systems make it impossible for such data to be combined in any useful way. An important and urgent task for a national body, such as the Criminal Justice Board I have recommended, would be to establish a system for assessing the impact of all aspects of the criminal justice system on potentially disadvantaged groups, and be prepared to set – and to monitor - challenging targets where present policies or practices are shown to have a discriminatory effect. The first step – which is at last under way – is to ensure that all the criminal justice agencies adopt the 16 point categorisation system used in the 2001 census.

⁵⁰ see Appendix 3 to the Report

⁵¹ *The Stephen Lawrence Inquiry*, Cmnd 4262 – I, (The Stationery Office, February 1999)

POSSIBLE MANAGEMENT STRUCTURE

Membership of Criminal Justice Board

- 67 The Strategic Planning Group comprises only senior civil servants from within the main criminal justice Ministries, the Treasury, a member of the Downing Street Policy Unit and Home Office policy adviser. Save for the inclusion of Government policy advisers, I consider that the membership of the new Criminal Justice Board should be similar. But I suggest that it should also include the Chairman of the Youth Justice Board, Chief Executives or officers of the various court and criminal justice agencies, a senior representative of the police and the Director of the Criminal Case Management Agency.⁵³ I also recommend that it should contain a small number of non-executive members with experience of high level management of large and complex organisations outside the criminal justice system.
- 68 I have considered whether the judiciary should be represented on such a body. On the one hand, it might be thought desirable that judges should participate in the joint management of the system and contribute to discussions of objectives, priorities and resources. Judges have shown, through their chairmanship both of the CJCC and the Area Strategy Committees, and membership of TIG and some of its sub-groups that they can contribute to the collaborative working of the various agencies, including the courts, without compromising their independence. Some might argue for giving a senior judge – possibly the Senior Presiding Judge – a seat on a Criminal Justice Board.
- 69 On the other hand, the role of the Board would be different from that of the TIG or CJCC structures. The Board would have a direct and visible role in formulating and advising Ministers on objectives for the criminal justice system and for planning, budgeting for, directing and, through its administrative supporting structure, managing their attainment. It would be constitutionally wrong and potentially damaging to the independence and integrity of the judiciary for a judge, however senior, to be involved in administrative activity of that sort. In my view, while there should be an open and clear line of communication and consultation between Ministers and the Board on the one hand and the Lord Chief Justice and other senior judiciary on the other, the judiciary should not be members of or represented on the Board.

⁵² Morgan and Russell, *The Judiciary in the Magistrates' Courts*, p 112

⁵³ see paras 112 below

Chairmanship

- 70 As I have said, the chair of the Strategic Planning Group has been taken by one of the senior civil servants as an adjunct of his or her existing role. This is a familiar enough pattern for an inter-departmental body in Whitehall, especially where, as in the case of the Group, it meets only infrequently and for short periods. But the role that I envisage for the Criminal Justice Board is significantly greater and more onerous than that undertaken by the Strategic Planning Group. In my view, for that reason and to avoid potential conflicts of interest, it would require a dedicated and independent chairman who could concentrate on and give continuity and momentum to the direction and management of the criminal justice system.

National administrative support for the Board

- 71 The new Board would need to be properly supported by a secretariat and an adequately funded administrative structure accountable to it. Its precise nature and membership would be for others to determine, having regard to the nature and extent of the Board's responsibilities. I pause only to express concern at the sort of scheme the Government, in its recent *The Way Ahead* proposals, put forward for "a strengthened" Strategic Planning Group's "strong, clear two-way communication and accountability between the centre and local areas".⁵⁴ Such a scheme would be "facilitated by the creation of a Performance and Innovation Directorate" led by a 'Director of Criminal Justice Performance', responsible for: commissioning modelling, research and management information, liaising with the inspectorates, offering expert advice to improve local delivery; and supporting long term strategic thinking and benchmarking. The Government also proposed that the new Directorate should itself be supported by a Practitioners' Panel to offer a 'frontline voice' to policy makers at the centre. To confine the Group to a strategic function of identifying a few national priorities each year⁵⁵ and then graft onto it such a mechanism is neither one thing nor the other. Such an approach seems to me to be unwieldy and bureaucratic. What is needed is a central body responsible for the planning, direction and operation of the criminal justice system and with the tools to do it, not some body without such powers engaging in more liaison, information exchange and monitoring. All the functions mentioned for the Government's proposed Directorate, to the extent that they are necessary, would be better included in the remit of a wider administrative structure under the new Board.

⁵⁴ *The Way Ahead*, para 3.234 et seq.

⁵⁵ see para 59 – 60 above

- 72 It seems to me that TIG and its sub-groups, suitably adapted to accommodate and implement the wide-ranging responsibilities of a new Criminal Justice Board, could provide the basis for an administrative structure accountable to it. Since its establishment in 1995, TIG has drawn in a wide range of those outside central government and the main agencies, and has brought a sharply practical focus to bear upon the problems with which it has been concerned. It has notable achievements, not least in demonstrating the improvements which can be made in the service provided to witnesses if all the agencies work together towards a specific common objective.

Local Criminal Justice Boards

- 73 The achievement of a greater sense of national direction and management of the criminal justice system would be a considerable step forward. Also needed are the means effectively to turn national plans and directives into reality at ground level. This is one aspect of the present system on which contributors to the Review have been particularly critical and in respect of which clarification and simplification of roles and lines of accountability are urgently needed. Under the umbrella of the Criminal Justice Board and its supporting national administrative structure there would still remain a need for local bodies of some sort to give effect to national planning and directives and manage the system at local level.
- 74 However, something needs to be done about the present range and proliferation of bodies at local level, as those within the system clearly acknowledge.⁵⁶ I have mentioned the emergence of local Chief Officers' Groups and, more recently, of local informal 'Criminal Justice Boards' or 'Criminal Justice Management Boards' as a symptom of frustration by local chief officers with the ineffectiveness of Area Strategy Committees as a mechanism for local joint planning or management. Those initiatives have been widely adopted and appear to be working well. Their development is not only a reflection of the administrative weakness of the Area Strategy Committees; it has accentuated it because of the tendency of many local agencies to send their deputy chief officers instead of their chief officers to the Committees' meetings. I should add, however, that these bodies have not set out to compete with the existing Area Strategy Committees and local TIGs, but to do what they cannot do and also generally to support their work.

⁵⁶ 2000 Spending Review: *Cross-Cutting Study of The Criminal Justice System, Report to Ministers*, Criminal Justice Joint Planning Unit, (May 2000), paras. 48 and 76.

- 75 Most recently the chief officers of the statutory criminal justice agencies in London have recommended a London Criminal Justice Board.⁵⁷ It would consist of the chief officers of the core statutory criminal justice agencies and its function would be to co-ordinate strategies and operations of those agencies in London with a view to achieving the Government's aims for the criminal justice system.
- 76 Such a formula has a number of authoritative supporters. For example, the Central Council of Magistrates' Courts Committees has said that it viewed with "some scepticism" the ability of the present non-statutory national and local bodies to implement the Government's plans. It suggested the establishment of criminal justice system boards consisting of key decision makers from the six core statutory agencies, together with some lay representation, who would govern and influence the criminal justice system locally within a set of national objectives, and who would be accountable to a national Director-General with powers of direction. In my view, the obvious and pragmatic approach would be to disband the present mix of overlapping operational roles at local level of Area Strategy Committees, local TIGs, Chief Officer Groups and informal 'Criminal Justice Boards', take the best from them and combine them into a single statutory board, known as a **Local Criminal Justice Board**. Each Board should be provided with a dedicated and properly resourced secretariat accountable to the national secretariat. As it would have a significantly greater executive role than that of the present Area Strategy Committee, it would be as inappropriate for a judge to be a member of it as it would for the judiciary to be represented on the national Board.
- 77 I see no need to be prescriptive about the membership of the local Criminal Justice Boards, as there may be different needs in different areas. However, as a minimum, the following should all be represented on each of the 42 Boards: the local managers of the Criminal Court, the Probation Service, the Prison Service and the National Health Service; the local Chief Constable; the local Chief Crown Prosecutor; representatives from the Youth Offenders Team, Victim Support, possibly, representatives of the local Bar and solicitors and at least two non-executive members. Where the Bar and local solicitors are not represented on the Board, adequate arrangements should be made for regular consultation with them. Each Board should elect its own chairman.

I recommend that:

- **a Criminal Justice Board should replace the Strategic Planning Group, the national Trials Issues Group and its sub-groups, and take over such responsibilities of**

⁵⁷ see Final Report of *The Taking London Forward* Task Group (June 2000)

the Criminal Justice Consultative Council as may be operational;

- **the Criminal Justice Board should be responsible for over-all direction of the criminal justice system, with a remit including, but not limited to:**
 1. **planning and setting criminal justice system objectives;**
 2. **budgeting and the allocation of funds;**
 3. **securing the national and local achievement of its objectives;**
 4. **the development and implementation of an integrated system of information technology;**
 5. **research and development; and**
 6. **combating inequality and discrimination throughout the criminal justice system;**
- **the Board should be chaired by an independent chairman and its membership should include senior civil servants from the three main criminal justice departments and the Treasury, the Chairman of the Youth Justice Board, Chief Officers of the Criminal Case Management Agency, the unified Criminal Court, Police, Prison and Probation Services, and a small number of non-executive members;**
- **the Board should not include a judge, but should consult regularly with the Lord Chief Justice and other senior judiciary;**
- **the Board should be supported by a secretariat and a national administrative structure accountable to it and be responsible for developing a system of information technology for the whole criminal justice system;**
- **local Criminal Justice Boards should replace the Area Strategy Committees, local TIGs, Chief Officer Groups and, where they exist informally constituted local ‘Criminal Justice Boards’, and should draw on their memberships;**
- **local Criminal Justice Boards should be responsible for giving effect at local level to the national Criminal Justice Board’s directions and objectives and for management of the criminal justice system in their areas;**
- **membership of the local Boards should include: local managers of the Criminal Court, the Prison Service**

and the National Health Service; the local Chief Constable; the local Chief Crown Prosecutor; the local Chief Probation Officer; representatives from the Youth Offenders Team, Victim Support, possibly representatives of the local Bar and solicitors and at least two non-executive members; and

- **each local Board should be provided with a dedicated and properly resourced secretariat accountable to the national secretariat, be provided with a joint local budget and should select its own chairman.**

ADVISING ON CRIMINAL JUSTICE

A Criminal Justice Council

78 Since its creation in 1992 the CJCC has been a pioneer in bringing the agencies within the criminal justice system together. But as Lord Woolf has recently said,⁵⁸ it has sometimes had to struggle with its role. This was inevitable given its mix of tasks as an advisory body and managerial forum providing leadership or central direction to the Area Committees. It and TIG both came into being in the early 1990s in response to a growing perception that there was a need for greater co-operation between the various agencies and organisations involved in the administration of criminal justice. As now constituted, the CJCC is an inter-agency group bringing together top level representatives from across the criminal justice system, with a broad remit to improve co-ordination. Although there is no formal link between it and TIG, the former being primarily advisory and the latter closer to operational, there is considerable overlap between their structures and functions.⁵⁹ As I have said, the inevitable consequences are duplication of effort and muddled lines of accountability.

79 One aspect of this confusion is that the CJCC, like the Area Strategy Committees which report to it, has begun to assume, or is expected to assume, more of an executive, as well as a consultative, role in developing and securing criminal justice strategy nationally and locally.⁶⁰ As such, their role is growing ever closer to that of TIG and its local TIGs. If my recommendations for the establishment of a Criminal Justice Board and supporting administrative structure are adopted, there is no place for such a

⁵⁸ speech to the Prison Reform Trust, 31 January 2001

⁵⁹ see Criminal Justice Consultative Council and the Trials Issues Group: Joint message from Lord Justice Rose and Joan MacNaughton (June 2000)

⁶⁰ see paras 30 – 36 above

mix and overlap of executive and consultative functions in the system. There is, however, an urgent need for a strengthened consultative structure at national level. The CJCC, as it is presently organised, is ill-equipped to undertake the wide-ranging and comprehensive consultative and advisory role that government needs and should ask for in its stewardship of our criminal justice system.

80 The limitations of the current system are highlighted by the Government's policy paper *Criminal Justice: The Way Ahead*. This document was stated by its authors to have three purposes: reviewing the current performance of the criminal justice system and drawing conclusions; setting out work in hand and for the future to prevent and address offending; and setting out work in hand and possible future developments to modernise the criminal justice system.⁶¹ Given such an agenda, many might have expected the Government to have made full use of the CJCC in preparing its proposals, for example by turning to it to assist in identifying the key issues and in framing a response to them which was proportionate, realistic and achievable. But, the Government did not consult the Council, apart from a brief presentation to it shortly before publication.⁶²

81 It is little wonder that the recent history of the reform of our criminal law and procedure has been characterised by yearly or twice-yearly short-term measures seemingly aimed more at reassuring the media than as properly considered stages of development of criminal justice policy. It provides a telling illustration of the need for a standing advisory body with a statutory power and duty to keep the working of the criminal justice system under review - capable of initiating proposals for change and to which the Government should be obliged to refer key issues for advice. Such a move would be of a piece with the view expressed by the Performance and Innovation Unit, in its January 2000 Report, of the need to consult more thoroughly and widely on the working of the system.⁶³ In my view, the CJCC should be re-composed under the chairmanship of the Lord Chief Justice or a senior Lord Justice of Appeal, and re-named the **Criminal Justice Council**. It should be composed of judges of all levels, magistrates, criminal practitioners, representatives of the key agencies and organisations involved in the criminal justice process and one or more distinguished legal academics specialising in the field, none of whom should be members of the Criminal Justice Board. Its functions should include the following:

- to keep the criminal justice system under review;
- to advise the Government on the form and manner of implementation of all proposed criminal justice reforms and to make proposals to it for reform;

⁶¹ *The Way Ahead*, p 16

⁶² a *Medium Term Overview of the Criminal Justice System* on 19th January at the Imperial War Museum

⁶³ *Wiring It Up*, p 7, para 1.6

- to provide general oversight of the programme and structures for introduction and maintenance of codification of substantive criminal law, procedure, evidence and sentencing that I recommend in Chapter 1;
- to advise the Government on the framing and implementation of a communication and education strategy for the criminal justice system; and
- for any of those purposes, to consult and/or commission programmes of research.

82 A model exists in the form of the Civil Justice Council,⁶⁴ which is chaired by the Master of the Rolls and includes judges, lawyers, Lord Chancellor's Department staff and others, and operates through a number of sub-committees. Its functions are to keep the civil justice system under review, to consider how to make it more accessible, fair and efficient, to advise the Lord Chancellor and the judiciary on its development, to refer proposals for changes to the Lord Chancellor and the Civil Procedure Rules Committee⁶⁵ and to make proposals for research. The needs of the criminal justice system are different from and more complex than those in the civil sphere, not least in the number of Government departments and agencies required to make it work and in the wide range of interests for which it provides. With suitable adaptations, it seems to me that such a body to keep the criminal justice system under review in a comprehensive, structured and measured way is long overdue. The range of bodies and interests involved in the criminal justice process whose experience should be tapped, either by representation on such a body or through its consultative role is such that its role, will be, if anything, more demanding.

83 The central role that I foresee for the Council would be as a standing advisory body on the criminal justice system which the Government is statutorily required to consult on all major legislative or other changes that it proposes for the criminal law and/or the criminal justice system, and which would itself initiate proposals for reform. These would be its twin and major roles in keeping the criminal justice system under review.

Codification

84 A key role for the Criminal Justice Council would be to lead the programme of codification of the criminal law in the four parts that I have recommended in Chapter 1. As to the Criminal Offences Code, it should liaise closely with the Law Commission as to how the work which has already been done in this area can be further developed and completed. The Council would also have

⁶⁴ created by the Civil Procedure Act 1997, s 6

⁶⁵ created by the Civil Procedure Act 1997, s 2

an important role to play in advising the Government on future law reform. Similarly, the Council should oversee the work of the other committees that I have recommended in Chapters 10 and 11 to codify the rules of criminal procedure, the law of evidence and sentencing law and procedure.

Communication and education

- 85 I have referred more than once to public ignorance of the workings of the criminal justice system. At local level, many of the criminal justice agencies and others, including MCCs, the Magistrates' Association and Crown Court centres, have taken commendable initiatives through court open days, mock trials, visits to schools and other events to increase public understanding of their work. A good example of this is provided by the guidance the Magistrates' Association provides through the Magistrates in the Community Programme.⁶⁶ Also, from August 2002, schools will have a statutory responsibility to teach programmes of study for citizenship as part of the national curriculum.⁶⁷ These are welcome moves, and the Criminal Justice Council should encourage and involve itself in those aims. In particular, the Council should be well placed to advise on a programme of public information and education about the criminal justice system.
- 86 The role that I propose for the Council is thus far wider than that of the Criminal Justice Consultative Council and would impose a significant workload on its members. If it is to be an authoritative and effective means of keeping the criminal justice system under review and of providing timely advice on it to the Government, it will need strong research and secretarial support.

Local consultation

- 87 The substitution of a Criminal Justice Council for the Criminal Justice Consultative Council would leave the question of what to do with the latter's satellites, the present Area Strategy Committees. Such consultative role as they have is, in practice, as limited as their new 'strategic' function is unclear. Though there are some notable examples of achievement on both fronts, they too have been characterised by many with experience of them as little more than talking shops. If, as I have recommended, the national and local TIGs become, either in their present or some suitably adapted form, part of an administrative structure reporting to the new Criminal Justice Board, there is little point in retaining the Area Strategy Committees for their recently

⁶⁶ MIC Guide (Magistrates' Association 2000)

⁶⁷ Citizenship: Key stages 3 and 4 (Department for Education and Employment/Qualifications and Curriculum Agency – 1999)

acquired and nebulous executive role of ensuring implementation of national policies and developing local ones. As I have said, to the extent that such a role is identifiable in practice, it is remarkably close to that of the local TIGs,⁶⁸ and also to those of the local Chief Officer Groups and informal Criminal Justice Boards. Accordingly, under the scheme I envisage, the Area Strategy Committees would pass their embryo local strategic management functions to the new local Criminal Justice Boards.

- 88 The strengthening of the consultative function at a national level should remove the need for institutional consultative activity at area level, which is not, as I have said, a prime activity of the present Area Committees. Such local consultation as the Criminal Justice Council would need to undertake could, it seems to me, be organised by its members individually through their own hierarchies. As to consultation by local bodies, the local Criminal Justice Boards should be well equipped, by virtue of their membership, to express informed views on local initiatives. And there are already various local sources from whom they or other bodies can seek views informally, in particular, the local judiciary and magistracy, representatives of the legal professions and court user groups. The highly regarded Court User Groups, which include consultative functions at court centre level, should, of course, continue with their valuable work.

I recommend that:

- **the Criminal Justice Consultative Committee should be replaced with a Criminal Justice Council with a statutory power and duty, and suitably equipped:**
 - **to keep the criminal justice system under review;**
 - **to advise the Government on the form and manner of implementation of all proposed criminal justice reforms and to make proposals to it for reform;**
 - **to provide general oversight of the programme and structures for introduction and maintenance of codification of substantive criminal law, procedure, evidence and sentencing that I recommend in Chapter 1;**
 - **to advise the Government on the framing and implementation of a communication and education strategy for the criminal justice system; and**
 - **for any of those purposes, to consult and/or commission programmes of research;**

⁶⁸ see para 79 above

- before initiating key proposals for reform of the criminal justice system, the Government should be statutorily obliged to refer them to the Council for advice and to take account of any proposals or advice tendered by it in response to such reference or of its own accord;
- the Council should be chaired by the Lord Chief Justice or a senior Lord Justice of Appeal and composed of judges of all levels, magistrates, criminal practitioners, representatives of the key agencies and organisations involved in the criminal justice process and one or more distinguished legal academics specialising in the field (none of whom should be members of the Criminal Justice Board);
- the Council should be provided with a properly resourced secretariat and research staff;
- such of the Criminal Justice Consultative Council's functions as relate to the development and improvement of inter-agency co-ordination of national policies and objectives should become the responsibility of the Criminal Justice Board and its administrative support structure; and
- the Area Strategy Committees should cease to exist.

JOINT INSPECTION

89 There are currently six inspectorates operating within the criminal justice system: the Crown Prosecution Service Inspectorate; HM Inspectorate of Constabulary, HM Inspectorate of Prisons, HM Inspectorate of Probation, HM Magistrates Courts Service Inspectorate and the Social Services Inspectorate. If my recommendation in chapter 7⁶⁹ is implemented, the Magistrates' Courts Service Inspectorate should be superseded by an independent inspectorate for the unified Criminal Court.

90 The Criminal Justice Ministers, in their 1998 Comprehensive Spending Review,⁷⁰ identified the need for better-integrated inspection across the criminal justice system. Amongst the areas they identified for improvement was the need for machinery to examine the relationships between the criminal justice agencies and to assess the effect of individual initiatives on the system as a whole. Although work has been done towards setting up such machinery,

⁶⁹ see para 117

⁷⁰ *Cross Departmental Review of the Criminal Justice System: Comprehensive Spending Review 1998*

progress has been slow, and joint working is still carried out on an ad hoc and relatively unstructured basis. A limited number of joint thematic reviews⁷¹ have been undertaken, and often an inspection team organised by one of the inspectorates includes an inspector from another organisation. But these arrangements fall far short of meeting the need for a properly integrated inspection regime across the whole criminal justice system.

- 91 An option of bringing the existing individual inspectorates together to create a single system-wide inspectorate would be unwieldy, would detract from the specialist work that they undertake and could undermine the important independent positions which have been established (sometimes with difficulty) by individual Chief Inspectors. Instead, they have been working towards the establishment of a Joint Inspection Unit which would instigate and co-ordinate a programme of cross-agency inspections and thematic reviews. It is disappointing that their attempts to secure resources for this unit have so far met with limited success (the proposal did not, for example feature in *The Way Ahead*, which argued for “more co-ordination” of inspection programmes without apparently proposing any additional resources for it).⁷² Some form of co-ordinating body is planned and may have been introduced by the time this report is published, but I consider that this work should be placed on a more formal and established footing. The need for a structured programme of joint inspection activity will become all the more acute if a Criminal Justice Board of the nature and with the functions I have suggested is introduced. To maintain its independence, the body should be under the collective control of the Criminal Justice Chief Inspectors and should report direct to Ministers. However, it would have to work closely with the new Board to ensure that the joint inspections have due regard to over-all criminal justice system objectives and priorities.

I recommend that a Joint Inspection Unit should be formally established under the collective control of the Criminal Justice Chief Inspectors and be given sufficient resources to instigate and co-ordinate a programme of cross-agency inspection.

⁷¹ *Lifers* (HMIP, HMI Prisons), *How long Youth Cases take* (HMIC, MCSI, CPSI) and *Casework Information Needs across the Criminal Justice System* (CPSI, HMIC, MCSI, HMI Prisons, HMIP, SSI)

⁷² *The Way Ahead*, para 3.233

INFORMATION TECHNOLOGY

Introduction

- 92 The present structural complexities and inefficiencies of the various inter-departmental and inter-agency bodies are not the only impediments to a better over-all direction and management of the system. Lack of common information technology is another and more fundamental problem. Each of the main criminal justice agencies has introduced, or is about to introduce, a system designed for its own needs,⁷³ and with varying or no ability to communicate direct its electronically stored information to other agencies that need it.
- 93 The criminal justice system is a document and labour intensive operation, most of whose administrative and management systems were developed at a time when the workload of the courts and lawyers was far smaller than today. Many of the systems are crude, paper-based, oriented towards the process of administration and not the community, and not all are able to cope with the increasing demands placed upon them. This causes high staffing costs, inefficiencies, error, delay, dissatisfaction and poor reputation. But the criminal justice system can instead be viewed as an information system - a network of millions of individual pieces of data, linked and related to each other in thousands of different and ever changing ways. Modern information and communications technology could transform the ways in which each agency undertakes its separate function in the speed, reliability and efficiency with which data are processed and also in the manner of management of a prosecution from charge to disposal. There are also the benefits that would accrue to the system as a whole in the integration of its information infrastructure.
- 94 That parts of the system are still, in the first decade of the twenty-first century, effectively relying upon manual systems to support some of their key

⁷³ Police: "NSPIS", Custody and Case Preparation (in progress); CPS: "Connect 42", provision of personal computers and an e-mail facility to lawyers and caseworkers (in progress), "Compass", a case management system (contract yet to be awarded); Magistrates' Courts: "LIBRA", (still partly in pilot and yet to be installed nation-wide); Crown Court: "CREDO" (yet to be introduced); National Probation Service: "CRAMS" (yet to be introduced) and "Copernicus" (yet to be introduced); Prison Service: "Quantum" (about to be installed)

tasks is a public disgrace. With over 25 million people in the world currently on e-mail, it is remarkable that one still cannot reliably expect to send an e-mail direct to a justices' clerk, to a Crown prosecutor or to a prison governor. It is one of the areas in which those contributing to the Review have been most critical. As the Public Accounts Committee recently noted.⁷⁴

“Information technology in the criminal justice system is being developed from a very low base. Basic details required by all parties are generally input separately by each agency, which is likely to lead to duplication, error and delay. And there is a lack of comprehensive basic data, for example on the time taken to get cases to court. The systems currently being developed must resolve, not perpetuate, these anomalies.”

- 95 All this is not to ignore governmental attempts to co-ordinate the planning and implementation of information technology throughout the criminal justice system. Since 1999 IBIS,⁷⁵ the inter-agency body that I have mentioned, has had the main⁷⁶ responsibility for that task. Based in the Home Office, its declared aims have been to identify what needs to be done to develop and implement ‘interfaces’ between the various systems, to provide “a basis for identifying opportunities” for harmonisation and processes to support automation of the interfaces, and to provide a “framework” for development and implementation of projects. IBIS has, to its credit, largely achieved its aim of introducing major public/private partnerships in each of the existing agencies, and in a form that enables them to communicate electronically. On the other hand, no-one could reasonably claim that it has achieved much in introducing order into the system, shackled as it is with those vague and modest aims and the disparate systems within its remit. In October 1999 it produced a medium-term strategic plan for the ensuing five or so years, to integrate information systems and to improve ‘business’ processes among the various agencies.⁷⁷ But that is largely based on what the individual agencies had already planned for their own systems. It is now engaged on an examination of the longer-term information needs of the criminal justice system and how satisfying them might require changes in the way in which it works. Most recently, the Government has commissioned both a high level technical review of the best means of joining the systems together and a ‘Gateway’ review of the IBIS project as a whole, and has earmarked £8 million for the programme of work that may result.⁷⁸

⁷⁴ *Criminal Justice: Working Together*, para 4 (vii)

⁷⁵ a sub-group of the SPG since 1999

⁷⁶ see also “PITO”, a project to improve links between police information technology systems and those of the CPS and magistrates’ courts

⁷⁷ *Medium Term Strategic Plan for Information Systems in the Criminal Justice System*, (Home Office, October 1999)

⁷⁸ *The Way Ahead*, para 3.266

- 96 It is commonly said that organisations should get their structures right first before planning their information technology and that the latter is no cure for an inefficient structure. But, as I have said, information technology has a potential, not only to improve existing structures and their working, but also to re-shape them to advantage. It is clear that such technology is capable of playing an increasing part in the shaping and operation of the criminal justice system. If it is to do so efficiently and to the best advantage, it too will need more central planning and direction than has been attempted up to now.
- 97 There are two formidable obstacles to improvement. First, the processes that make up the system are unconnected. Each agency maintains its own case files, though many of the items of information that they contain are, or should be, identical. As a case passes from one procedural stage to the next, data are copied (manually or electronically) from the records of one agency and passed on to the next. There is no single body monitoring or assuring the quality or consistency of the transfer, let alone managing the over-all progression of the case from charge to disposal. On the contrary, the way work flows through the system is dictated largely by the structure of each department and agency.
- 98 Second, within the field of criminal justice there are, or are about to be, six quite separate national information technology systems - Police, Prosecution, Magistrates' Courts, Crown Court, Probation and Prisons. Each is at a different stage of development, involves a different partner and/or supplier and management regime, is the subject of a different financial and contractual arrangement and has a different planning cycle. The picture is one of separate and different technology, data and management – six information technology infrastructures and applications systems supporting one criminal justice system.
- 99 There are severe limitations to such a fragmented system. Clearly, it involves much replication of effort. Data passing through it will be subject to constant change, either through the action of one of the agencies (e.g. the defendant is re-arrested on fresh charge) or because of an external event (e.g. a witness changes address). Such a change will typically come to the notice of only one of the agencies, who must then ensure it is effectively communicated to all of the others who need to know. Each of the other agencies needs a separate verification procedure and a means of ensuring verified changes are effected to its own file in a timely manner. At best the system is inefficient and wasteful. At worst it leads to the key agencies holding inconsistent information.
- 100 Looking at the criminal justice system as a whole, the constraints imposed are, if anything, worse. The progress of a case can be monitored only within each agency, and only by that agency for as long as it has it. Responsibilities for case management are dispersed, creating obvious discontinuities at the

point of transfer, and for buck passing when things go wrong. And there is no possibility of aggregating information about defendants, victims, outcomes or anything else across the system as a whole, because each agency uses its own definitions of the contents of its files.

101 The information technology system within each agency consists of six basic elements. Before I continue, it may help for me to define the terms I use to describe them:

- User interface is the part of the system which appears before the user on the screen and so controls the way in which information is entered and retrieved. Those needing electronic access to case information will include, not only each agency, but defendants and their representatives, victims, witnesses, and others involved or interested in the information;
- Enabling technologies are the hard-ware and soft-ware systems which enable the entry and retrieval of information – the ‘plumbing’, essential but so far as possible, invisible to the user;
- Data are the basic units of information – for example about crimes, defendants, victims, charges, outcomes, and release dates;
- Communications are the means by which data are transmitted around the system, and to those within and outside it;
- Case management, in this context, is the means by which each agency handles the individual cases for which it is responsible and the administration of the over-all caseload of each agency. In the criminal justice system this will typically involve, not only exchanging information in order to track and prompt the progress of a case, but also performing quality and data sufficiency tests; and
- Management information relates, not only to the current state of any particular case or cases, but more significantly to information about the progress of cases, including volumes, time-scales and compliance with specified success factors. The criminal courts are particularly weak in this area, as recently noted by Morgan and Russell.⁷⁹

Figure 1 shows how each agency may be represented in terms of this categorisation. And figure 2 extends this to represent the whole of the criminal justice system.

⁷⁹*The Judiciary in the Magistrates’ Courts*, p 113

Fig 1

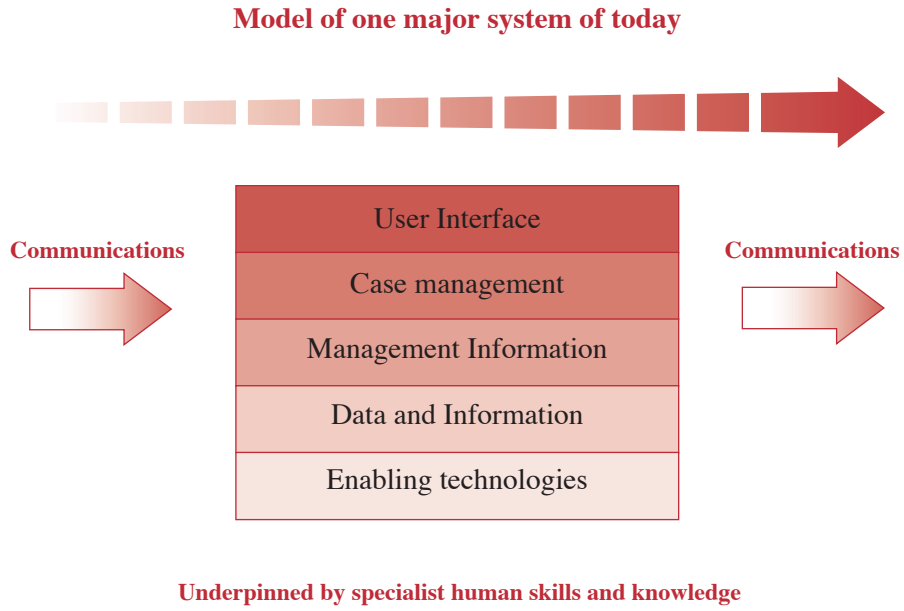
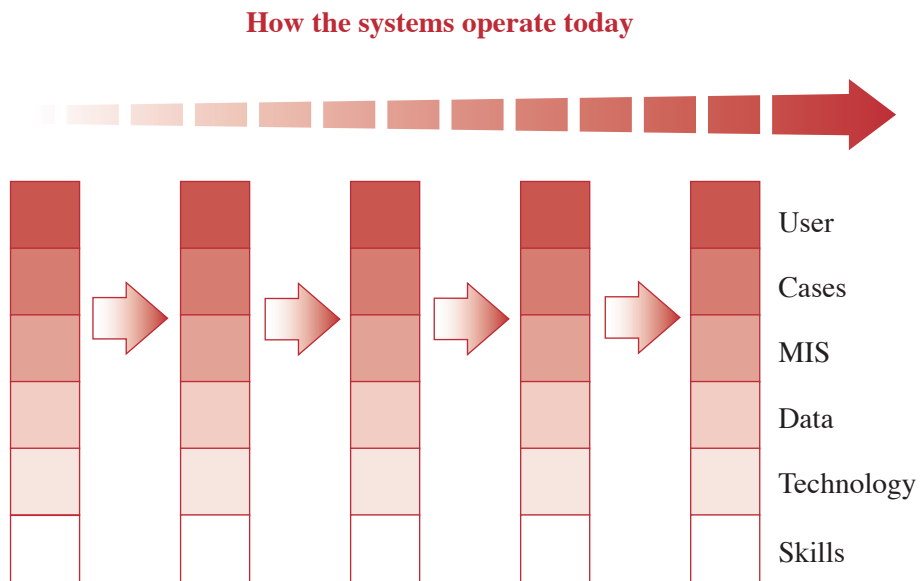


Fig 2



A unified system

- 102 As can be seen from the above, each of the six existing agencies has, over time, developed its own technological solutions to its own problems. But the fundamental question is whether the system is best served by having six separate ICT systems. For the reasons I have given, it is not. If one were starting from scratch the approach would be to develop one system, not half a dozen. However, in the current state of technology, there is no theoretical or practical reason why all these elements should not, over time, be unified into one system. The various agencies could continue to rely on their existing systems and developing interfaces. On the outside, there would be little change, since the enabling technologies would remain largely hidden from the user. Most of the transformation could be accomplished through modifications to the enabling technologies and by using internet applications to allow users to operate a common body of data.

The electronic case file

- 103 The fundamental principle of a unified system would be the sharing of data in an electronic file, rather than passing it between agencies. Once created, such a file should contain and record all documents and information about each particular case and be able to flow quickly and cheaply through the entire criminal justice system. Once one part of the system had finished its work on the case, the file would be accessible in electronic form to the next part – as an accurate, complete and up-to-date record, ready for attention by the next set of professionals. Each agency would use the shared file in its own work, updating it to reflect the changes initiated by others and amending it to reflect changes it initiated, or of which it became aware. Each piece of information would need to be entered only once. A prototype of such an approach has recently been piloted on the Wales and Chester Circuit and has clearly demonstrated its benefits in easing and speeding communication and in reducing duplication of paperwork.⁸⁰ In due course, provision could also be made for witnesses and members of the public to have internet access to such parts of the file necessary to inform them about the progress of and programme for cases. And defendants and their lawyers would be able to receive material to which they are entitled, and send information required of them under the pre-trial case management regime.

⁸⁰ *Dyfed Powys IT Project: Progress Report*, (Wales and Chester Circuit, July 2001)

A common language

104 In order to achieve a system of common electronic case files, the criminal justice agencies need first to agree a definition of the smallest unit of data from which they can be constructed. In simple terms, there is no point in providing linked technology if its users cannot understand each other's language. This is a highly complex task and one that TIG, the SPG and IBIS have been examining for some time. The difficulty is that one incident can give rise to a number of charges against a number of defendants, each of whom may already be involved, or may subsequently become involved, in other proceedings. The task is to find the lowest common denominator that will enable agencies to break down an existing set of charges and/or defendants into a smaller subject. As the Public Accounts Committee, in its 2000 Report has noted:

“Ambitions for closer joint working are being hampered by a lack of consistent definitions, such as what constitutes a criminal case. Investment in information technology will only be effective if the criminal justice agencies can agree to record data in a consistent way, and they should give high priority to completing this task.”⁸¹

In my view, the identification of a common definition for the lowest unit of data in the criminal justice system should be one of the first tasks for the Criminal Justice Board acting through and on the advice of the Criminal Case Management Agency, the establishment of which I also recommend.⁸²

A system-wide approach

105 The introduction of new technology enables improvement of a service, but often also changes its nature and that of the system it serves. Such changes are already under way in Victoria,⁸³ Ontario⁸⁴ and in various States in the USA.⁸⁵ I have already referred to the possibilities for victims and witnesses, potential jurors and others involved in the criminal process to use the internet to communicate information, for example, about their availability or needs, and to obtain information about the progress of cases. This has potential for speeding and otherwise improving pre-trial case management by enabling the prosecution and defence to use the same electronic file for communication between themselves and with the court – in a ‘virtual’ court hearing where appropriate. I say more about this in Chapter 11.

⁸¹ *Criminal Justice: Working Together*, para 4(iii)

⁸² see para 112 below

⁸³ see *Technology and the Law*, Report of the Victorian Law Reform Committee (May 1999)

⁸⁴ progress is summarised at www.integratedjustice.gov.on.ca

⁸⁵ see, for example, www.integration.search.org

- 106 The achievement of such benefits would be expensive. It would require a substantial long-term investment in basic hardware and software and in training and other adjustment costs as each organisation moves to the new technology. And before these stages are reached, there would need to be a fundamental reappraisal of the core functions and responsibilities of each of the agencies within the system, taking account of the full potential for change that a common information base would make possible. The result might be that the system over-all would benefit from one or more agencies undertaking work that goes well beyond their own operational priorities.

Data quality

- 107 One vital area in which the need for system priorities to take precedence over individual agency targets is data entry and initiation. Whatever solution is found to the problem of the common language, it would be likely to require all police forces to record data about incidents, suspects, victims and witnesses in a new and standardised form designed for the needs of other agencies as well as for their own requirements. This could involve the collection of data, the relevance of which might not be apparent on initial investigation. Another example lies in the field of criminal record information, the quality of which has been a running sore in the system for more than a decade. The system of case allocation that I recommend in Chapter 7 will not work properly unless accurate antecedent information is available to the courts at the first hearing of the case. Another key priority for the Criminal Justice Board before new systems are implemented should be the establishment of agreed protocols for entry and standards of data.

Data security

- 108 A system of shared data based on a single case file raises issues of security. Much of the information held by criminal justice agencies is highly confidential. Details of offences, injuries suffered or witnesses' circumstances are often intensely personal. Some categories of evidence, particularly that gathered in relation to organised or international crime, is given in strict confidence, and its unauthorised disclosure would put at risk those who provided it. Information about individuals' criminal records should not be accessible except by those with a right to see it. Current methods of data handling allow each agency carefully to limit the range and classes of data passed to other agencies, and tightly to control the way it is then handled; but this could be achieved through one security system as well as with six. I mention all this, not because it is a technical impediment to the creation and use of a single case file, since access can be controlled, but to emphasise the

need for investment in suitable security technology and, thereafter, in continuing assessment of its adequacy. This would be another of the responsibilities of the Criminal Justice Board, acting through and on the advice of the Criminal Case Management Agency.

Constituents of the project

- 109 It would be a matter for Ministers, as advised by the Criminal Justice Board, to decide upon the programme for introducing an integrated system based upon a common case file. An early question would be how to make the transition from the existing six systems to one. This would require reconsideration of the individual long-term contracts each agency has with its information technology partner and/or provider. In my view, it should also prompt a re-evaluation of whether funding by way of a public/private partnership scheme offers the most effective or reliable way to establish and manage a unified system.
- 110 These questions are essentially ones of implementation, and therefore outside the ambit of this Report. However, it may be helpful if I set out the separate stages and elements of an integrated system as I see them. Each one of these would, in my view, form an individual phase within a progressive – not a ‘big bang’ - move to a unified system of information technology. Each would bring its own benefits. It would be for the Criminal Justice Board to determine whether the projects could proceed in parallel or sequentially and, if the latter, in what order. Among the factors it would have to bear in mind are the cost, the capacity of the system to cope with change and, given the variable record of central Government in introducing and managing large scale information technology schemes, the quality of project management expertise available. But I am satisfied that this approach would be a feasible way of introducing a unified system and that it would offer significant benefits to all those who use it.
- Case tracking - An initial stage would involve the introduction of a basic level of case management through the tracking of cases throughout the criminal justice system, and in setting and monitoring progression targets both at a system level and within each agency. The benefits which can accrue through setting targets for case progression have been illustrated by the work undertaken for cases involving persistent young offenders.⁸⁶
 - Management information - A second project would involve the production of system-wide management information. This would go wider than the data derived from case progression management, since it would involve the monitoring of aggregate outcomes – at each stage – for categories of offence

⁸⁶ see *Persistent Young Offenders: Best Practice*, (The Court Service June 2001)

and for categories of individual. Integrated quality and diversity monitoring would be a key aspect of this project.

- Unification of data - The fundamental building block of an integrated system would be unification of the basic data of which the system would be composed. Once the problem of the common language is resolved (and no progress would be possible under this heading until it has been), the project would fall into two phases: conversion of the data into the new standard; and merging the data into the new common case files. Successful completion of this stage would enable data to be shared between agencies, not passed from one to another.
- New categories of user - As I have suggested, an additional and important benefit of an integrated system would be that involved or interested persons outside the agencies (including members of the public and the news media) could send and receive information about cases over the internet. Thus, it should be available as part of the case-management process by defence lawyers and others, such as victims and witnesses to communicate relevant information about themselves or to enquire about the progress of cases.⁸⁷
- Case management - Once the above four phases were complete, the progress of cases and individuals through the system could be more efficiently controlled and monitored against defined quality standards over-all and for each agency involved. The Criminal Justice Board would have to determine how this could be done without compromising the operational independence of each agency. Figure 3 illustrates how it might work
- Unified enabling technologies - The final phase is optional. As I have said, most of the benefits of an integrated system could be achieved using existing user interfaces to gain access to a virtually unified case file via the internet. But, once all the previous five projects had been completed, it would be for consideration whether a unification of enabling technologies into a single criminal justice system of information technology would then be a desirable, and achievable, end. Figure 4 adds this final stage to the scheme shown in Figure 3.

A Criminal Case Management Agency

- 111 An essential feature of the integrated system I have described is that, once the problem of the common language is solved, there could be a staged transfer of data using web technologies, while allowing each agency to retain a necessary degree of control over its own processes and interfaces. The Criminal Justice Board should assume responsibility for this programme and, thereafter, the management, integrity and security of the data in order to ensure accessibility

⁸⁷ this is one of the targets of the Government's White Paper, *Modernising Government*, Cm 4310, (March 1999)

Fig 3

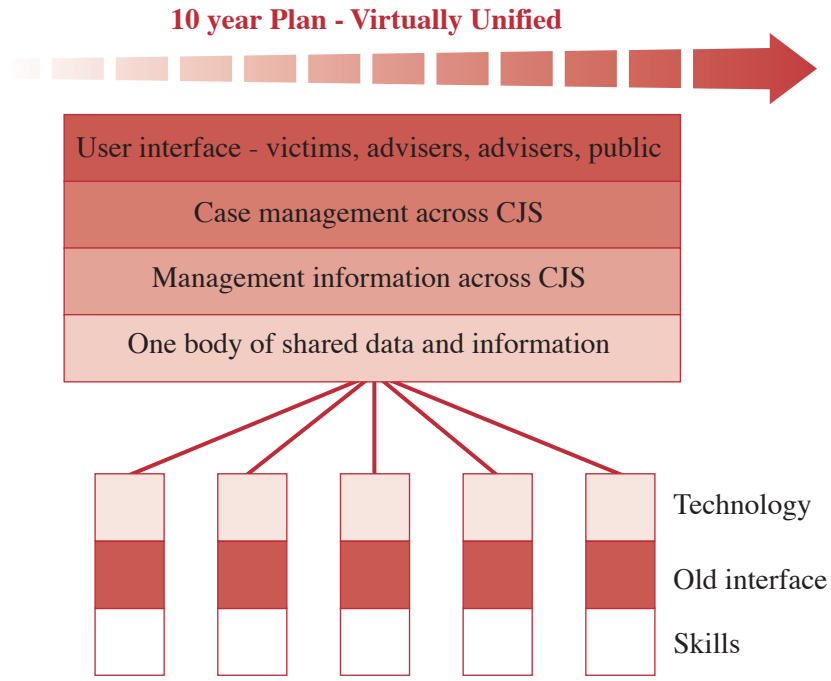
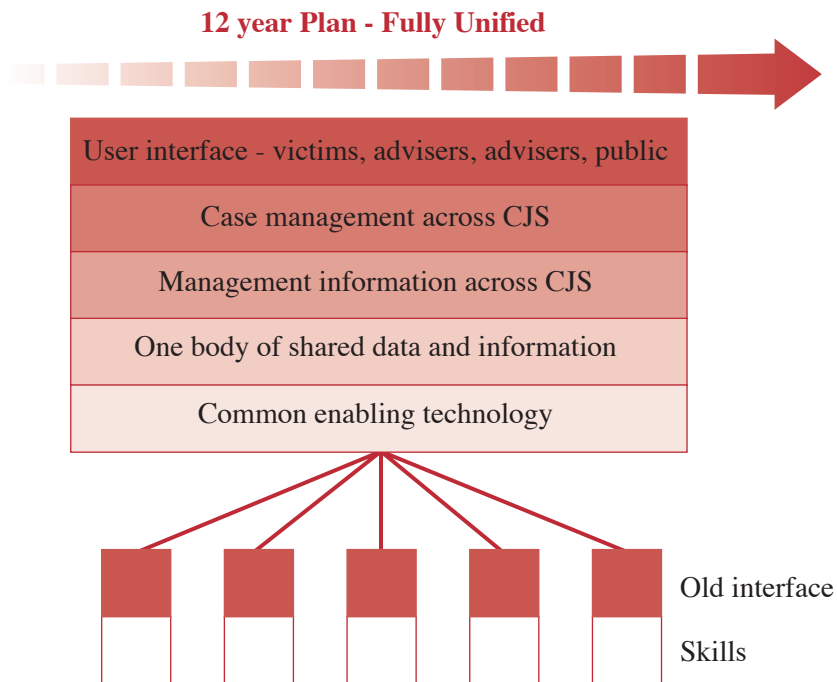


Fig 4



to all users of accurate, timely and relevant information. I believe that a special agency should be established under the aegis of the Board to:

- draw up a project plan and secure the necessary finance for it;
- manage its implementation; and
- progressively assume responsibility for managing those elements of the system that are to be centrally managed.

I therefore propose that a central Criminal Case Management Agency should be established for these purposes in place of IBIS, with a full-time Chief

Executive who would be a member of the Criminal Justice Board, and directly answerable to it.

Implementation plan

- 112 The implementation of an integrated information technology system across the whole of the criminal justice system would have profound implications for all those working within it. Issues of working methods, functions and security would have to be faced at a time in which procedural and structural reform would also be consuming significant management and operational resources. The difficulties are well expressed by a paper resulting from the collaborative reappraisal of the Information Systems and Sharing (IS&S) programme in Northern Ireland:

“The IS&S programme...is ambitious. It is seeking at one go to join together all the Criminal Justice Organisations to share information in a common form. The complexity of each task makes it very difficult to make meaningful progress. Each Criminal Justice Organisation is at a different stage of IS development, with the strategic direction for use of information systems within each organisation emerging or already set. There are no common criminal justice community security standards and no easy method to achieve a joined up CJS using a common infrastructure.”⁸⁸

⁸⁸ Northern Ireland Court Service, 1999

113 The solution that the authors of the Northern Ireland collaborative reappraisal recommend is for a feasibility study to be established, bringing together all those people with the operational experience to develop processes so that the system can be developed and simulated in a setting that presents minimum risk to any of the participating organisations. I believe that such an approach should also feature in the design of an integrated information technology system for our larger and more complex criminal justice system. A feasibility study of some kind would be prudent, provided that it does not become an excuse for further delay. Its establishment and the production of a costed implementation plan within a set time-scale should be among the first tasks of the Criminal Justice Board.

I recommend that:

- **the Criminal Justice Board should discontinue the IBIS project of linking up the six main information technology systems in the criminal justice system, and should instead, within a set timescale, produce an implementation plan for an integrated information technology system for the whole of the criminal justice system based upon a common language and common electronic case files;**
- **the implementation of such an integrated system should be organised in six projects, to run either in parallel or sequentially, namely:**
 1. **case tracking;**
 2. **management information;**
 3. **unification of data;**
 4. **extending the categories of user;**
 5. **case management; and**
 6. **unification of enabling technologies;**
- **a Criminal Case Management Agency should be established, to be accountable to the Criminal Justice Board for managing the implementation of the integrated system and, when implemented, managing those elements of the system that require central management, namely: production of system protocols and quality assurance of system data;**
 1. **management and monitoring of case progression;**
 2. **data standards for system management information;**
 3. **standards and protocols for access by victims, witnesses, defendants and their representatives;**

- 4. storage and maintenance of data;**
- 5. data security and control of access to data; and**
- 6. case management at the system level.**