

THE SOCIAL VALUE OF JUSTICE

David Ford MLA, Minister of Justice

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I am pleased to have this opportunity to reflect on the first full justice mandate, to think a little about the next one, and to offer thoughts on the social and political context for justice.

But let's first recognise that the justice system is about front line delivery and making a difference. Justice has a social value and I want to acknowledge the role of all those who work in the justice system. This is justice in action, keeping people safe, tackling harm, rehabilitating, supporting victims and administering the law. This is justice for everyone.

This is about citizens choosing to serve their community by taking on some of the most difficult jobs imaginable. That is why we must all speak out against the actions of a small number of people who would harm, maim or kill another human being because of the uniform they wear to work.

These six years have been marred by the devastation brought upon the families of Adrian Ismay, David Black and Ronan Kerr. Three superb public servants who were murdered in the line of duty by individuals who want to drag us back to the past.

The fact that we have a devolved justice system today flows from the ending of campaigns of violence, from political progress and from institutional reform. That can't and won't be undone, and I pay tribute to those in the justice system who daily face threats and intimidation and whose vocation leads them to serve their community every day. Public servants who understand the social value of justice, and want to be part of that.

The social value of justice is something we have in common with other jurisdictions across these islands. Justice is a core function of all the governments but, crucially, we are most certainly developing our own agenda. Devolved justice here in Northern Ireland has its own particular social value and I want to make three quick points about that.

I gave a speech in March last year at the Centre for Crime and Justice Studies in which I noted that we live in a devolution era. In that speech, I agreed with the proposition put forward by the Centre: that the three UK systems were being driven by different motivations.

For England and Wales, market building; for Scotland, nation building; and for Northern Ireland, a community building approach. Our justice system belongs to us, and the justice agenda can be developed

alongside other functions of our government, with our unique history and our own future potential in mind.

My second point is that, since 2010, we have seen politics coming to terms with the complexities of administering justice and understanding its social value. From my perspective this has been one of the more interesting things to observe. We have not imported into our system the traditional politics of turn left/turn right approaches on justice matters, and on many issues we have been able to deliver reform based on evidence of what works. Members of this audience already understand this and I believe we are seeing that understanding spreading into political thinking. This means we can look for common ground and workable solutions for our justice system.

That makes it even more disappointing that there have been occasions since 2010, particularly in the latter years of the mandate, when I could not progress with every desirable innovation due to increasingly restrained resources. There is powerful energy, enthusiasm and ingenuity in our community, and a real willingness to put new ideas into practice at a local level. I regret that I have not been able to resource everything that I would wish. The money simply isn't there. Even when presented with sound projects and proposals which would make things better and save money, shifting resources isn't doable overnight.

I have had to make some very tough decisions in terms of the DOJ's budget, but I have done as much as I possibly can to protect the front line, and to protect the community-building project. As a local Justice Minister, I have been able to determine priorities within the resources available. This has meant imposing quite dramatic cuts on the core Department, both in order to ease the pressure that straight allocation of cuts would have had on the front line, and to protect as far as possible our voluntary and community sector partners.

I have taken those decisions, hard as they were, because I understand the importance of justice delivery and of the social value which attaches to good justice outcomes. I can only imagine the impact if justice had not been devolved, and we were still in a direct rule situation, where, on the face of it, ideological thinking is as much a part of resource allocation as available finances. I am pleased that, under devolution, we do not have private prisons, and we do have a public sector probation service.

My third point is this. In times of decreasing resources, it is even more important to look at practice elsewhere and to maintain good relationships with justice leaders across these islands. I meet my Irish counterpart frequently, I meet the Scottish Cabinet Secretary formally at least once a year, and I meet the Secretary of State for Northern Ireland on issues of mutual interest such as the security threat. I have regular contact with Ministers from the Home Office and Ministry of Justice. Good relationships matter. They matter because good relationships help build co-operation and aid progress on matters of mutual interest.

Against that general overview of the social value of devolved justice, let's think back to the pre devolution era.

The term "democratic deficit" was much used. Orders in Council, drafted in Whitehall, barely consulted on, and debated in the loosest sense of that word. A process of delivering justice legislation that was surely deficient in terms of democratic ideals.

The policy process for that system was also remote from the problems the law was designed to solve. Often, the laws were a cut and paste of solutions designed for elsewhere, and - while they were broadly workable - they were not thoroughly grounded in local issues.

It is hard to see how that system could encourage citizen engagement, or encourage confidence in democratic institutions, or help reinforce the legitimacy of our law enforcement organisations.

And let's remember that, while our police and justice systems had transformed since the Good Friday Agreement, the way we did justice at a political and governmental level had not.

Let's also remember that justice, being the last of the major devolution pieces, joined the social and economic departments at a point where their agendas were already maturing. This is an issue, perhaps a problem, which we still need to address and I will come back to that theme.

So now we come to April 2010. Justice was devolved overnight at a legal and technical level.

We need to remember the state of some of the issues transferred to the new Department. An outdated prison system and a legal aid system in need of reform being perhaps the most obvious.

These issues had been left in the "too difficult" tray under direct rule. But I can say without fear of contradiction that there has not been a single issue in my Department that we have considered to be too hard to address.

Against this backdrop, in my first major speech as Justice Minister, in June 2010, I was absolutely clear on why devolution mattered. I was determined that the devolution of justice would not simply be a legal and technical matter, and that it could and must deliver benefits. I'd like to touch on three of those themes now.

First, devolution mattered because we now had a local Justice Minister, accountable to the Assembly, working within the Executive, and scrutinised by his Committee. This meant much more than a technical

adjustment to transfer the way business was done by the NIO to a new Department. It meant a new form of citizen engagement, more local interest and input, new approaches to consultation, and a radically different level of openness and transparency.

I want to note here the very positive and constructive relationship with the Justice Committee: scrutiny, absolutely, but good collaboration too on really important issues such as reform for the victims of crime. If you have not already seen it, please do read the Committee's report "Justice in the 21st Century." Innovative thinking under the leadership of Alastair Ross and Raymond McCartney, focusing on what works and the social value of justice.

The realities of local accountability also had to be real and meaningful within the new Department. Our track record on Assembly questions and Freedom of Information requests stands at 99% answered on time, and I have personally signed over 7,500 letters. I hope this shows something about how seriously I and my Department take openness and transparency.

Second, the opportunity for proper citizen engagement. I can't stress enough the importance I place on this. I and my officials have been out and about, listening and engaging with the community we serve. The Department has been at Belfast Pride and Mela every year since 2011. This matters. Citizen engagement is a devolution benefit and one we take very seriously in Justice.

We have also worked closely with the voluntary and community sector, and I am happy to pay tribute to them for all they do. I know that we haven't always been able to deliver all that they have advocated, nor resourced them to the degree that they and I would have wished, but I hope that they recognise the efforts that I have made to recognise and reflect the significance that I attach to their role in building social justice.

And the third devolution benefit – the opportunity to deliver significant reform. A prime example of which is tackling legal aid. I have been keen to enhance how we approach access to justice, but this cannot mean at any cost, and certainly not driven by self-interest or a desire to sustain antiquated practices and approaches.

To help develop a different agenda I commissioned the Access to Justice Review to bring forward proposals for reform, with a particular emphasis on alternative approaches to resolve disputes and secure value for money.

Initially, as a consequence of the financial constraints, the focus has of necessity been on reducing cost and I have concentrated on reducing fees and ensuring the right level of representation. Standard fees are now in place in criminal cases, and that approach will shortly be applied in family and civil cases. These

measures have helped to protect the scope of legal aid, and any adjustments will be where there are alternative delivery mechanisms or access to funds. While there are still pressures on the budget, without these reforms the pressures would have been greater.

I have also had a clear focus on reform for victims and witnesses. We must necessarily focus on preventing crime from occurring, reducing offending levels and assisting those previously involved in crime to forge a new way ahead. In the long term, that's how we will serve victims best.

Equally, we must ensure that help is provided to those unfortunate enough to become a victim of crime, and that they have the necessary support as they move through the criminal justice process. To this end my Department, in partnership with the Justice Committee, delivered a five year victim and witness strategy in June 2011. The focus of that was to improve access to justice as well as the experience of victims and witnesses. It also reflected core strands of the Justice Committee's inquiry into the services available to victims and witnesses of crime.

This has delivered a new Victim Charter, and the roll out of a Victim and Witness Care Unit providing victims with a single point of contact. Registered Intermediaries are now available to assist those with significant communication difficulties to give evidence to the police or at court, with almost 800 requests since the Schemes were introduced.

That look back to 2010 shows the benefits of devolution, but things can be better. I want to offer thoughts on how we might go even further in the next mandate. Building on the progress we have made to date, we can do more to ensure better citizen outcomes. I say this now because the next Programme for Government is a great opportunity to address further shortcomings in our system. Each Programme for Government can and should be better than the previous one, not just in terms of the scale of the ambition, but in terms of the way we govern and deliver.

Followers of the Scottish Government will be familiar with their outcome based accountability model, and also with the complexities of developing such a radically different approach. Within a single party government like Scotland's, it is still a challenge to break down silo delivery models. In our system, this will be harder still.

But try we must, because we are here to deliver outcomes for citizens. If politics is the art of the possible, then let's describe a possible future for our citizens and organise our resources and delivery systems around the outcomes we want to see.

In a mature outcomes model in a mandatory coalition, this will mean some compromise to do the right thing. It will mean supporting each other, and it will mean sharing resources more appropriately to get

the right solutions to very real problems. It can, if we are serious, further enhance the social value of justice.

That won't be easy. It won't happen in one go. And the realities of politics will mean some enduring differences of opinion on how we should achieve agreed outcomes. That's fine, that's democracy. But putting outcomes front and centre will be new.

We have to see the development of the next Programme for Government as a transformative opportunity. It cannot just be a process, nor will it provide all the solutions we need. But the next Programme for Government must truly link politicians, Government and Departments into solutions for citizens, and it must set a very high level of aspiration and confidence for Northern Ireland to achieve.

What should a different, outcome based approach mean for Justice? Put simply, a new approach focused on outcomes would give a Justice Minister a better framework for progressing the justice agenda. To give one example, the help he or she will need from other Departments to tackle offending behaviour, with related outcomes for victims and safer communities.

In my Department, we understand and embrace desistance theory. We have published our first Desistance Strategy. We know that people who have offended need family and other support. They need skills training and jobs, they need to be healthy and to have hope. They need somewhere to live and a sense of wellbeing. Just like all citizens, just like ourselves, people who offend have the same basic needs but these are very often magnified by acute mental health problems, educational under achievement, inter-generational offending, and addiction issues. We see these problems all too frequently, especially inside our prisons.

These are not criminal justice issues. But they are matters of social justice. In our prisons, offenders are people first, and almost all will rejoin our community. People who offend have a range of complex needs which are often not being met effectively before, during and after their time in the justice system. Some will be known to many, many state organisations and public sector bodies.

I realise it is a difficult political call to devote resources to those who have caused harm or who are at risk of offending. But if we want a safer community with less crime and fewer victims, then investing in helping people to stop offending is inevitable. Investing in people who often, in crisis, find themselves standing before a state organisation in need of help.

I am not suggesting system failure here: I know the tremendous work done by our teachers, health professionals and social workers. But I am suggesting that, together, we can do more and better. That in these situations of individual and family crisis lie opportunities to intervene, support and transform. A

person-centred approach, rather than a system-centred focus, would serve us well. The return on that investment is a safer community.

Justice does have its own role to play. The investment in the prison system has been vital in this mandate. It has placed rehabilitation at the centre of how we support people in custody back into the wider community. We have a new step down facility for women leaving custody which supports them and tests them before release. This is similar to the male equivalent "Burren House" which we opened in 2014.

The transition of Hydebank Young Offenders Centre into a College in April 2015 was an important milestone for our prison system. Through the partnership with Belfast Met and North West Regional Colleges, we are now investing in the present to build a better future – not just for those in custody but also the wider community they return to.

So what would a better justice system look like in practice if we take the opportunity of the new Programme for Government? I am going to outline three possible, and doable, innovations for the next mandate.

Firstly, there are models that we have been considering, known loosely as problem solving solutions. These would fit exceptionally well with outcome based accountability. Take an issue, really understand the levers for change, set a high ambition, work collaboratively, and have good indicators and measures against which to judge progress.

What should our high ambition be? Let's imagine a system which bridges criminal justice and social justice, cemented by a programme for government, and which starts with the outcomes we want to achieve. This is possible. One of the outcomes I want is that people who offend, and who have complex needs, are helped to resolve their issues, their addictions, and their offending behaviour. Even better: people who are at risk of offending behaviour will be helped before they find themselves in the justice system. The outcome here is not soft justice: the outcome here is a safer community, less crime and fewer victims. That's an outcome I believe is worth aiming for.

And so does the Justice Committee. I am very happy to pay tribute again to the Committee, for their innovation seminars and willingness to think beyond traditional ways of doing justice. Their work on problem solving chimes with my own views, and I see the next Programme for Government as being the vehicle for driving forward problem solving practices.

My second innovation idea concerns restorative practice, and we are actively working on this now. One of the successes of the Northern Ireland justice system is the use of restorative practice with young people. I am keen to explore the possibilities of restorative practice in the adult world.

We know that when victims are supported to engage with a person whose behaviour has harmed them, they often feel a sense of relief and gain an acknowledgement of hurt caused. By feeling a restoration of control, victims can be helped to move on from the fearful attitudes they experience as a victim of crime. When a crime is committed, a wave of consequences is felt beyond the immediate time and place of the incident - for the victim themselves, their wider family, the community and also for the perpetrator of the crime.

We should of course expect that the formal justice system will hold people to account for their behaviour. That is absolutely right. But I wonder whether a singular pursuit of punishment misses the opportunity for harm to be repaired, for reconciliation and for people to feel safer.

We have the opportunity, if there is the will, to decide that restorative justice principles should be second nature, not separate in nature, to our criminal justice system. What could this look like? In the first instance, it could help prevent crime and, by early intervention, promote community engagement and positive relations.

It could mean using restorative justice to deal with some crimes - a different, but no less effective, way of addressing offending - rather than putting people through the time and cost of the court process.

Within our prisons could we have a restorative culture - where every interaction is permeated by an ethos of rehabilitation? And for community sentences, could victims help shape what is required of a person under supervision?

I don't underestimate the political difficulties of this, but if we are serious about outcomes and problem solving, we have to be prepared to think and talk about transformative steps such as restorative practice.

Linked to that, my third innovation would see a total re-engineering of the way we talk about justice. It is a core function of Government, and the formal system, including essential punitive measures, is necessary. Citizens need to see the system operating properly and fairly in order to have confidence in justice. We should remember that people who offend also need to see procedural fairness; research suggests that this aids desistance too.

But we need to see the justice system in context. Most citizens do behave lawfully, and not just because the law tells them they should. Most citizens do not indulge in anti-social behaviour, or commit crimes, or cause harm. Most citizens actively balance their rights and responsibilities all the time.

Some do not. And some ordinarily law abiding citizens, often younger people, find themselves drawn into trouble at times of community tension. How do we promote a culture of lawfulness which recognises and encourages excellent social norms and behaviours? Can we create a dialogue about this, alongside the ongoing need to talk about crime and punishment? We need to look for ways to talk about lawfulness, to decide where and how it should be taught and modelled, and about how we will name and take on unlawfulness in all its forms, however minor or however difficult to deal with.

This is ripe for political debate, and all the participants at last year's political talks, including the British and Irish Governments, gave commitments to the primacy and centrality of peace and the political process; to the continued transformation of our society through democracy, inclusion, reconciliation, equality of opportunity for all and the absence of violence. At the start of the next Assembly, every MLA of every party will be required to pledge to upholding these commitments.

I would like to go further and deeper, to be in the territory of talking about lawfulness just as much as we speak about crime and harm. To actively look for ways to embed an ethos of citizenship, a shared community, and a culture of lawfulness across society. And to celebrate that when we see it in action.

I will leave for my successor the aspiration that, at the end of the next mandate, the Justice Minister will be able to say that we have a greater purchase on the notion of lawfulness and that we can see it in action throughout the community.

This matters, because confidence in justice and in the legitimacy of the justice organisations matters hugely in a democratic society. Our police service and other justice organisations spend significant time and resources tackling social justice issues, some of which are simply not suitable for formal justice solutions.

As a society we rely on justice to provide solutions to intractable social issues. This isn't good enough. Let's find a way to bridge criminal justice and social justice. Society will be better served if we resolve rather than manage problems. Problem solving approaches, a better commitment to the culture of lawfulness, and a wider range of diversionary and restorative practices would be more beneficial in the long run and would help maintain and enhance confidence. Let's capitalise on the social value of justice.

There is of course more for the Justice Department to do in the next mandate. Reforming the prison system is a work in progress. While much has been achieved, we have only reached the end of the beginning, and must continue on that journey.

The Prison Service has identified five key priorities in this next phase of reform – they are leadership, purposeful activity, building the fit for purpose prison estate, continued partnership with healthcare, and

a focus on equality for all prisoners and diversity in the workplace. These are challenging, but the work completed over the past six years means that the Prison Service is well placed to deliver the end to end transformational change we set out to achieve in 2010.

Reform of legal aid is not complete either: the second Access to Justice Review sets out options which, if delivered properly, will help maintain and enhance access to justice, but reduce costs. It will mean that those who can afford to do so will contribute to or meet their own costs, while ensuring that services continue to be available to meet the needs of the most vulnerable people. There will be challenges ahead and they will need continued resolve if they are to be tackled.

The Review went much wider than legal aid, and encourages us to look at the overarching framework for justice and dispute resolution. It prompts us to look at the structure of our courts, and how to improve the operation for all courts users. More importantly perhaps, it points us in the direction of keeping disputes out of court and encourages us to develop alternatives to litigation. This will be the challenge for the next mandate.

My Department is not just the Department of Criminal Justice. Every year thousands of citizens rely on courts and tribunals as forums for settling civil and family disputes. One of my early decisions as Minister was to increase the jurisdiction of the small claims and county courts, straightforward changes that made justice more accessible and more affordable. We have also begun work on tribunal reform, which I hope will gather pace in the next mandate.

My officials are also leading work with the judiciary and colleagues in other Departments to see how we can improve the processing of cases involving children taken into care. As a former social worker, I know cases involving families and children can be the hardest cases to come before a court.

In the next mandate, I anticipate that the design of the civil and family justice system and the structure and administration of our tribunals will be among the top priorities for delivering access to justice. But coming to court or to a tribunal is not necessarily the best or only solution in all cases. We need to find new and better ways to enable individuals to settle their personal disputes as efficiently as possible and move on with their lives. We are already interested in the opportunities which technology might afford for on line dispute resolution, where automated pathways support parties in reaching an agreed outcome. Mediation, in appropriate cases, is another way to achieve the same end.

There is more to do for children in the criminal justice system too. There is a big question to be answered during the next mandate: What should we do with those children who are the worst-behaved, who cause the most trouble in their communities, and the most hurt to society? Are our arrangements for punishing children working?

Or should we instead recognise that we all have a shared responsibility – not only to the children but to their victims – to get in early to address problematic behaviour before it escalates; to correct a course which, if unchecked, promises only ongoing misery to both children and their community; to treat them not as criminals but as children who require help, support and boundaries to enable them to realise their potential to grow into productive members of society.

I have written to my Executive colleagues seeking their support to turn the ambitious proposals I outlined in the Assembly on 14 March into action. Building on the Youth Justice Review, one of my final actions as Minister will be to establish an Implementation Group comprising senior officials from all relevant organisations and Departments, who will be tasked with developing detailed recommendations for consideration by the Executive and wider public consultation.

And there is, of course, the issue of the past. It was a huge disappointment to me as Justice Minister, for victims and the bereaved, and the wider justice family, that the ‘Fresh Start’ deal did not resolve this, despite huge effort on the part of many organisations and my Department.

Urgent resolution is needed. We know what we must do, and other political leaders have to get to grips with reaching a resolution. The cost – human and financial – of not resolving the past is simply holding us back.

If we can move forward on all fronts, including tackling residual paramilitary activities, then there is a real opportunity to make an impact. The report by the Three Person Panel together with the other measures set out in the Deal, can make a real difference to tackling organised crime and paramilitary activity. Progress on legacy issues in that context could release the police to deal with the present while providing an appropriate mechanism for addressing the past, for victims, families and the whole of our community.

I would also like to mention some issues on which political agreement was not possible in this mandate. Issues which I regret. I regret them because they would have made a difference to criminal and social justice. I certainly do not regret bringing them to the table, debating them or being clear about the need for reform in these areas. What a shame there wasn’t the political will or sufficient bravery to tackle them.

In 2012, I proposed to legislate for a presumption against custody for those who would otherwise receive sentences of three months or less. I wanted a preference for community disposals instead. This met with significant opposition from some quarters who perceived this as “going soft” on offenders, despite the widely acknowledged value of community disposals in breaking the cycle of reoffending.

I can paint a similar picture in relation to the proposal in the Youth Justice Review that the age of criminal responsibility be raised from ten years old to twelve. Political opposition stymied progress, despite the overwhelming majority of respondents to the independent Review favouring an increase in the minimum age.

It is no secret that I have committed time and effort over a number of years to deliver a modest reform of abortion law. It is also no secret that I have been unable to deliver that reform. I regret that very much indeed.

However, at this time, the Executive remains unpersuaded that women should be able to access a termination of pregnancy in cases of fatal foetal abnormality. We seem to be in a situation where some feel that women can't be trusted to make the best decision for themselves in such tragic circumstances. For me, it is quite simply a case of doing the right thing and decriminalising tragedy.

I can only remain hopeful that, in the not too distant future, attitudes will change, and my successor will be able to complete the work I started.

My successor, whoever that is, will have a great opportunity in the next five years to build on our work so far. To continue with work in progress, like reform of the prison service. To continue to develop and deliver better services. To shape the next wave of justice reform. To look at issues such as sentencing, at issues such as the best way to organise and govern our resources and structures within the justice family. To seize the opportunities around problem solving, restorative practice and growing a culture of lawfulness.

To whoever has this opportunity in a few weeks time, I offer this advice: seize the opportunity, go for big change, stick to your values and commitments, and give political leadership. These were the essential ingredients in delivering so much in this current mandate and, as many people in the room this evening played a significant part in delivering the changes we have achieved, I'd like to outline some of the things of which we should, collectively, be most proud.

I have already mentioned reform for victims. We have increased public protection measures too. Violent Offences Prevention Orders, Domestic Violence Prevention Notices and Orders, and a new Child Protection Disclosures scheme are new features of our justice system. Aspects of these were developed jointly with the Committee and individual MLAs.

I have placed the Prison Ombudsman on a statutory footing.

New arrangements are in place for pursuing criminals engaged in trafficking. I have invested in support services for victims of hate crime.

No children have been in custody in Hydebank since November 2012. A leap of thinking, for which we note the valuable work of the Youth Justice Review. In 2010/11, 1 in 145 of our children were involved with Youth Justice Services and the figure is now down to 1 in 200 of our children.

In terms of reducing offending, proven one year reoffending statistics for youth and adult cohorts are now published. Latest figures for those dealt with by the justice system show a 6.2% decrease in the number of first time entrants to the justice system between 2012/13 and 2013/14.

For prisons and probation, we have Prisoner Development Plans for over 75% of people in custody; and the Inspire programme for women in custody has been rolled-out.

We have made in-roads on avoidable delay in the criminal justice system. There have been improvements in the youth and magistrates' courts, and we are making progress in the Crown Court.

Our new Forensic Science laboratory is open for business, enabling state of the art DNA technology to be introduced.

We have improved services to citizens. Over 90% of AccessNI applications are now made on line. And 75% of all types of certificates are now returned within 2 to 3 days of receipt of application compared to 7 to 10 days in previous years.

I have retained my focus on building a shared community. We have reduced DOJ peace wall structures by eight with parts of five others removed. Levels of anti-social behaviour have gone down by about 25% over the last 5 years.

I am enormously proud to have been the Justice Minister. I leave you with this final thought, of which I am even more sure now than I was in 2010. It is that while justice is a system, it is also an ethos. An ethos that should not only guide what we do, but how we do it.

Justice needs to be delivered with fairness and also with compassion. It needs to protect and it needs to offer second chances. Justice needs to be in the fabric, in the vocabulary, and in the values of society. I hope that devolution, and what we have done with it over the past six years, has made a genuine contribution to that.

