

Criminal Justice Board

5 July 2018, 11.30am-1pm

Attendees:

- Lord Chancellor and Secretary of State for Justice (The Rt Hon David Gauke MP) - **JS**
- Attorney General (The Rt Hon Jeremy Wright QC MP) - **AG**
- Minister of State for Policing and the Fire Services (The Rt Hon Nick Hurd MP) - **NH**
- President of the Queen's Bench Division (Sir Brian Leveson) - **PQBD**
- Assistant Commissioner of the Metropolitan Police Service (Sir Stephen House) - **SH**
- Chief Executive of the Youth Justice Board (Colin Allars) - **CA**
- Director of Public Prosecutions (Alison Saunders) - **DPP**
- Chair, National Police Chiefs' Council (Sara Thornton) - **ST**
- Chair, Association of Police and Crime Commissioners (David Lloyd) - **DL**
- Director General, Justice Policy Strategy and Communications Group, MoJ (Mark Sweeney) - **MS**
- Director General, Justice Analysis and Offender Policy Group, MoJ (Justin Russell) - **JR**
- Director General, Crime Policing and Fire Group, Home Office (Scott McPherson) - **SM**
- Chief Executive, HM Courts and Tribunals Service (Susan Acland-Hood) - **SAH**
- Director, Family, Criminal and Justice Policy, MoJ (Melissa Case) - **MC**
- Deputy Director, Commissioning Operations (Kate Morris) - **KM**
- Deputy Legal Secretary and Head of Operations, Attorney General's Office (Michelle Crotty) - **MC**
- Justice and Home Affairs Adviser, Policy Unit, 10 Downing Street (Michael Livingston) - **ML**

Apologies:

- Home Secretary (Sajid Javid)
- Senior Presiding Judge (Lady Justice Macur)
- Victims' Commissioner for England and Wales (Baroness Newlove)
- Chief Executive, HM Prison and Probation Service (Michael Spurr)

Agenda item 1: Introduction

1. The Justice Secretary (JS) welcomed members to the meeting and gave a brief recap of the previous Board's discussions on reforms to pre-charge bail and compliance with the Victims' Code. The Victims' Strategy is expected to be published in September.

Agenda item 2: Disclosure

2. The Attorney General (AG) introduced a paper on his disclosure review. AG thanked all CJB colleagues who had contributed to the review and made it happen. The review addresses systemic challenges, including around the increase in volume of electronic and digital material.
3. AG stated that disclosure practices needed to adapt to the digital age. An average mobile phone would produce 5 million pages of paper if all the data was printed out; and it would not be practical for police officers to look through all of that material. We need an approach which is clear on what material may be disregarded and balances the need to disclose with information rights and privacy. AG said that the Criminal Justice Board (CJB) should maintain oversight of the proposed reforms to disclosure and welcomed the board's views on governance.
4. AG drew out three key findings. First, that although primary legislation continues to provide an appropriate disclosure regime, we require practical approaches to deal with the new challenges of volume data, which weren't envisaged when the legislation was drawn up. Secondly, that we need to front-load the process to ensure disclosure happens earlier to avoid cases proceeding unnecessarily toward trial, and to encourage guilty pleas, where appropriate. Thirdly, early and meaningful engagement with the defence.
5. AG highlighted two practical measures. These included a rebuttable presumption that certain items (that almost always do satisfy the disclosure test) ought to be disclosed. The intention is to consult on the list of things which the presumption should apply to, and AG welcomed the Board's views on that list. Also, the national roll out of Disclosure Management Document in all Crown Court cases. This is an example of good practice from specialist cases, and is already being trialled by the CPS in rape and complex cases. It focusses minds on the investigation and prosecution approach to disclosure, rather than a schedule of items.
6. The Minister for Policing (NH) said the Home Office were wholly supportive of the review and the Home Secretary would write to Chief Constables when the review is published. NH praised the joint working and candour in which the police had approached the challenges to disclosure and stated that the primary issue with disclosure was one of attitude. The Home Office is doing work to map technological solutions and engage experts on new solutions, he offered to share this with the CJB.
7. David Lloyd (DL) welcomed the direction of travel of the paper and raised the issue of the rights of the victim in the disclosure process, specifically the risk that too much of victims' personal information is disclosed in the process.
8. JS noted the points around victims' rights that Baroness Newlove raised in her letter to him. He was happy to share the letter with the board and offered to forward it to the AG's office so they could capture the points raised in the paper.

9. The Director of Public Prosecutions (DPP) welcomed the review and senior leadership by CJB. She agreed with the front-loading approach but highlighted its implications for resources. Front-loading the system could impact the timeframe between arresting and charging. There is no point in Disclosure Management Documents unless they are engaged with by the defence, an issue the PQBD is aware of.
10. Although Sara Thornton (ST) agreed that oversight was necessary, she was concerned that a CJB sub-group has potential to overlap with the National Disclosure Improvement Plan (NDIP) board and forum which had already made significant progress and in which defence representatives are already engaged.
11. The President of the Queen's Bench Division (PQBD) welcomed the review and made the point that we are no longer operating in the analogue age and must be clearer, during criminal proceedings, about what the lawyers ask of the police. He welcomed JS' view that the defence should be involved in the conversation and that this could be achieved through a sub-group of the CJB, in whatever fora. He offered to nominate a judge for this.
12. Sir Stephen House (SH) said that early engagement by the defence is absolutely crucial.. There was a need to improve attitudes and the DPP and police leaders had shown strong leadership on this with one voice. Technological solutions and further police training was also necessary given the complexities of electronic and phone data.
13. AG would reflect on these comments and was keen that his review and the potential recommendations of the Justice Select Committee disclosure inquiry dovetailed. A whole system approach to disclosure would ensure fairness in the system and would also save trial costs and reduce pressure on resource, although he recognised the resource implications of disclosure improvement, not least investing in technology. A sub-group to take oversight and ensure progress on the recommendations was necessary but he had no preference as to which forum was used. The key point is the membership of that group.

Action 1: Justice Secretary to share Baroness Newlove's submission on disclosure and Victims' Rights

Action 2: Secretariat to consider with AGO forum for CJB oversight and progress of recommendations

Agenda item 3: Criminal Justice System devolution

14. JS introduced this item and thanked officials from the Ministry of Justice (MoJ), Home Office (HO) and the Association of Police and Crime Commissioners (APCC) for their work in bringing this paper together. He highlighted Manchester as a positive example of devolving responsibility locally, but noted that the rationale for further devolution needed to be clearly articulated, and that the essential safeguards and independence in the system must be maintained.
15. Kate Morris (KM) introduced the paper and explained that devolving responsibility aimed to improve outcomes in the system and reduce demand. The Board would need to look at boundaries for devolution, ensuring national standards are maintained and avoiding a *postcode lottery*.

16. It was stated by KM that female and young offenders would benefit significantly from a local approach. She raised concerns about the affordability and how the Board would go about implementing devolved budgets to local PCCs.
17. DL said that it is imperative that we have fast and fair justice with a joined-up plan and budget. He said that devolving responsibilities would galvanise local leadership, with the broad consensus of PCCs (31 of 40) being in favour of taking on more responsibilities.
18. DL said that we must maintain the independence of the judiciary. It was stated by DL that devolving responsibility would allow for greater engagement with offenders which should help tackle re-offending.
19. PQBD voiced his concern with PCCs' involvement with witnesses and judges, and reinforced DL's point that the judiciary should remain independent. The paper failed to make clear the boundaries of potential PCC involvement. There were clear areas where PCCs should not be involved, and other areas where it might be beneficial.
20. In response, DL stated that we need to look at when the police are gathering evidence and when the court proceedings start. The paper is not about holding judges to account.
21. KM agreed to look at the language of the paper and committed to continuing the open dialogue with the judiciary to incorporate their views.
22. AG agreed with PQBD. He agreed with DL's point on reoffending and added there are practical implications of devolving responsibilities; such as the misalignment between policing and rehabilitation areas, and who would therefore be held to account. He also queried whether PCCs were using the full extent of their current powers, and said that all Local Criminal Justice Boards should be chaired by the local PCC.
23. Mark Sweeney (MS) stated that boundaries are important so that balance within the system, including between defence and prosecution, is maintained. We need to clearly define and agree these and the MoJ would take forward for consideration at CJB.
24. NH said that devolution is usually the end of the process, but we need to question this. He agreed that we need to challenge PCCs on their current responsibilities, for example, there may be greater scope for them in reducing re-offending.
25. DPP also had concerns around the language in the paper. She said that there may be an issue with diversion, not just an issue of charging, and we need to be careful not to undermine the services currently being provided.
26. ST asked what consultation took place on the protocols. KM responded by saying that she is happy to take comments on the protocols. The endorsement of the protocols is looking at what is the best way of getting the most out of the current system.
27. JS thought the Board should look into the PCCs' role in reducing re-offending. The MoJ should continue to consider this overall issue, and should revisit in a few meetings' time. In the meantime, he asked that colleagues look at the protocols and indicate any comments or agreement to K.

28. NH rounded the point off by asking whether we need to get more info on the reality of what the PCCs are currently doing.

Action 2: SAH to provide data on timeliness for court proceedings in rape and sexual violence cases.

Action 3: The MoJ will look into defining the boundaries of PCCs, and return to CJB in two meetings time.

Action 4: The MoJ will continue looking at the role of the PCCs in reducing re-offending and will provide updates, where possible, at future CJB meetings.

Agenda item 4: Any Other Business and future CJB meetings

29. The Board agreed to discuss Common Platform in the context of Court Reform and the Crime Programme at its next meeting, disclosure, and to provide a progress update on pre-charge bail.