

Compromise, Partnership, Control: Community Justice Authorities in Scotland

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Abstract

Community Justice Authorities (CJAs) were heralded on their inception as modernising Scotland's community justice system and resolving longstanding tensions between central and local government over community justice control, by encouraging partnership working and providing oversight at a *regional* level. However, they were largely unsuccessful and were quietly abolished barely a decade later.

Using data from two projects, we analyse the policy 'narrative' (Kaplan, 1993) of CJAs in relation to features of a changing political context – particularly the (re-)establishment of Scotland's national government, its shifting relationship with local government, and policy convergence and divergence with England and Wales. CJAs' origins in local/national compromise created constitutional flaws which constrained their operation and ultimately sealed their fate, but they nonetheless began to develop distinct identities and contributions which have been largely overlooked. The case of CJAs illustrates how evolving local and national political contexts shape the development of justice institutions.

Keywords:

Community Justice Authorities; Scotland; community penalties; partnership; local government; devolution

1. Introduction

That criminal justice policies are artefacts of their time, reflecting their political, social and cultural contexts (McAra, 2005), is a truism of comparative criminology and apparent to anyone who seeks to understand developments in penal affairs. Recent Scottish community justice reforms illustrate how broader shifts in penalty and governance weave with local specificities to produce an outcome unique to Scotland, but which also illustrates how a range of dynamics unfold in one jurisdiction.

Although not part of the growing body of comparative community punishment scholarship (see Robinson and McNeill, 2016), this paper shares with some comparative research a concern with how the development and organisation of penal institutions reflect changing nation-state identities and state-building efforts. Particularly important is the influence of central/local structures in the post-devolutionary landscape (Jeffery, 2006, McGarvey, 2002; 2012). We also draw on Lacey's (2008, 2012) argument about the role played by political (especially electoral) configurations in shaping the style of penal policy-making. The Scottish context partly reflects the reorganisation of governance in an emerging state with the creation of new structures and veto points (McAra, 2008, Munro et al, 2010), processes of policy convergence and divergence (Crawford, 2009) with England and Wales, and the evolution of previous administrations' legacies in changed political environments (Mooney et al, 2015). This context is *also* shaped by long-established pre-existing institutions, including legal and criminal justice systems (always separate from those of England and Wales) and the Westminster government (McAra, 2008).

Here we use the Scottish Government (2014a:1) definition of 'community justice' as

“The collection of agencies and services in Scotland that individually and in partnership work to manage offenders, prevent offending and reduce reoffending and the harm that it causes, to promote social inclusion, citizenship and desistance.”

Community justice includes Scottish criminal justice social work (CJSW), which fulfils a similar role to probation services elsewhere (McNeill and Whyte, 2007), but also many other agencies. Community justice shares with Community Safety and Community Planning an emphasis on interagency partnerships at the local level, and has partner agencies in common with both, but it is distinguished from these by its inclusion of the agencies of supervisory punishment.

The focus of this article is on two sets of reforms, leading respectively to the creation and then the abolition of Community Justice Authorities (CJAs) – eight regional, multi-level governance organisations charged with reducing reoffending by promoting partnership and allocating funding between local government, criminal justice and other agencies in their areas of Scotland. When they were created in 2005, CJAs were heralded as resolving the longstanding tension between local flexibility and central control in community justice, and were central to the then Scottish Executive's attempts to 'modernise' criminal justice and finally lay to rest concerns about coordination and efficiency. However, CJAs were made with deep constitutional flaws that prevented them fulfilling this promise; when they were dissolved by the 2016 Community Justice (Scotland) Act, few lamented their departure.

This article provides what we believe to be the first historical overview of these bodies, illustrating how, in their different phases, they embody and reflect the extant Scottish political context, and continued renegotiation over the control and ethos of community

justice in Scotland. We argue that ongoing power struggle between central and local government resulted in compromise during CJAs' creation, which then rendered them unable to function to their full potential. However, we conclude that they were ultimately able to find a role for themselves, albeit not the one intended for them.

Drawing on Kaplan's (1993) analysis, we use a narrative approach which traces policy from its inception, operation, to its cessation. Kaplan, following Ricoeur, argues that a full understanding of policy can only be achieved by understanding moments within a longer narrative, or plot, which "unifies into one whole and complete action the miscellany constituted by the circumstances, ends and means, initiatives and interactions, the reversals of fortune, and all the unintended consequences issuing from human action" (1984, in Kaplan, 1993:172). Our approach is based on two empirical research projects conducted by each author (Morrison, 2012; Buchan, 2017) in 2009-2010 and 2014-15, respectively. By focusing on the time shortly after the 'beginning' and shortly before the 'end' of CJAs, this paper places different 'moments' of CJAs into a coherent narrative. Analysis of policy is often driven by funded evaluations which can take a 'snapshot approach' and thus miss crucial elements of change and resistance; an understanding of the mechanisms of policy *processes* is crucial if we are to gather a true understanding of penal outcomes (see also Newman, 2002). The diachronic aspect of our combined research enables us to frame our argument about community justice reform and broader penal change within an analysis of policy processes which highlights change, resistance and connections to wider political developments.

Data collection comprised 56 interviews with criminal justice professionals (including CJA employees and third- and public-sector practitioners) and policy elites (including politicians and civil servants). Due to the overlapping topics of investigation, it is likely that some people were interviewed for both projects, and could offer different perspectives in different time frames – Morrison's interviews took place in the context of CJAs becoming established, while Buchan's interviewees could reflect on a longer period of CJAs' operational life and on their impending abolition. Each interview discussed participants' views and recollections of justice policy-making and implementation. Thematic analysis was used to weave together themes, which together form a policy narrative (Kaplan, 1993) of CJAs.

2. Creating the CJAs: devolution, political cultures and compromise

CJAs were created in the Management of Offenders Act (2005), but originated from Scottish Labour's manifesto proposal in the 2003 Scottish election to merge CJSW and prison services into a single agency, the 'Correctional Service for Scotland', similar to NOMS which emerged the following year in England and Wales. The process of creating CJAs reflects renegotiated power structures of central and local control; their final shape and constitution reflects their compromised nature. The creation of CJAs can be

understood as shaped by: a (particularly) Scottish concern at a national level with local authorities' governance of CJSW; the hubris and hyperactivity of the early years of devolution; and policy transfer and convergence with England and Wales. These themes are highlighted in the following discussion.

2.1 Governance and Performance of Scottish Community Justice

Since community justice services were placed within social work departments under local authority control by the 1968 Social Work (Scotland) Act, central government (the Scottish Office, and latterly the Scottish Executive/Government) has attempted to regain control over them. However, local authorities and social workers have tended to see local control as vital to maintaining a distinctively Scottish, welfare-oriented social work ethos – in contrast to what many see as the increasingly risk-focused, managerial approach found in England and Wales (see McNeill, 2005). Efforts to centralise community justice in Scotland have therefore invariably encountered significant resistance, primarily from Scottish local government who are responsible for these services (Morrison, 2015).

Pressure for centralisation can be attributed to concern about Scotland's rising prison population, and about local authorities' ability efficiently to manage and coordinate a service organised over many small geographical areas (Morrison, 2015). The 2003 proposal for the Correctional Service for Scotland stood in the shadow of the perceived failure of two earlier reforms aimed at addressing these same issues. The simultaneous introduction in the early 1990s of National Standards and ring-fenced funding for CJSW ensured financial security and higher standards, but enabled greater central control (McIvor, 1999, McNeill and Whyte, 2007). The National Standards stated for the first time that community penalties must “enable a reduction in the incidents of custody” (WSWG, 1991), providing a standard against which performance would ultimately be measured. Later that decade, CJSW services were grouped into 14 regional units (the ‘Tough Option’ groupings) to improve efficiency and coordination between local authority areas (Scottish Office, 1998), following further local government fragmentation and reforms in the mid-1990s (McGarvey, 2002).

However, following devolution, persisting concerns about coordination and efficiency which were shaped by a wider New Labour philosophy focused on partnership and ‘joining up’ services (see Newman, 2001), were united with a concern about the ever rising prison population, for which CJSW were held partly accountable. A former civil servant commented:

in 1999, we were certainly making no impression on the prison population ... In 1990s we had put in extra money, ring-fenced the money, but it still hadn't had the impact that we wanted it to have. So we were searching for other ways to improve the service, and very particularly to reduce the prison population.

The 2003 proposal for a unified prisons and community justice agency therefore reflected central government's ongoing frustration about local authorities' ability to coordinate

CJSW services, despite earlier reforms (Scottish Executive, 2004), and the rising prison population.

2.2 Post devolution policy-making: freneticism and policy transfer

Although created in response to perceived weaknesses in Scottish community justice, CJAs were also a product of new governance structures, which in the early years of devolution were eager to establish legitimacy and build political capacity (McAra, 2008). The single agency announcement and eventual legislation must be seen in the context of an Executive which favoured radical, structural and centralised solutions to perceived policy failings (see also McAra, 2007; Mooney et al, 2015). New political structures and increased legislative capacity allowed easier, faster and larger-scale structural change; new policy instruments enabled radical, structural changes via primary legislation, without consultation, in ways that would have been far harder before devolution (Keating, 2010; Munro et al, 2010). This took place in new policy venues in and around the newly established Parliament: unambiguously party-political policy-making spaces in which new electoral imperatives contributed to the politicisation of crime and the partial convergence of Scottish criminal justice policy with England and Wales – ‘detartanisation’ (McAra, 2008). As the former advisor to Ministers at the time commented:

Criminal justice is largely governable by Scotland, it largely belongs to Scotland and therefore it’s an area in which the Scottish Government can act. And it can act more freely, so it is a potential benchmark for devolution. Because you’re also dealing with a very young Parliament. We are an old nation with a young new form of democracy. We’re also quite impatient, which is a good thing – except when it leads to short-term decision making.

In this light, the 2003-05 reforms appear as an expression of a frenetic political context of capacity- and legitimacy-building, which favoured legislative reform and restructuring. However, the availability of new policy instruments did not *itself* mean CJAs would become the chosen policy ‘solution’, as close connections between New Labour governments in Westminster and Holyrood (Croall, 2006; Keating, 2010; McAra, 2007) also influenced the outcome. It was inescapable that the single agency proposal bore striking resemblance to proposals in the contemporaneous Carter Review which precipitated NOMS in England and Wales, and its language of ‘end-to-end offender management’ also echoed New Labour language from Westminster (Burke and Collett, 2010).

Although the single agency seemed to many in Scotland to be what one interviewee termed “a particularly English development”, and the advisor who proposed it “was seen to have close connections with London” (Mooney et al., 2015: 214), it was not in fact ‘lifted’ from England and Wales as a simple ‘policy transfer’. It was a product of a party mentality, shared between Holyrood and Westminster through connections made by an elite ‘policy community’ (Crawford, 2009) of key Scottish Labour ministers and advisors, who had also been important in the creation of New Labour in London. Scotland’s single agency proposal was mooted *before* the Carter Review; Scottish

ministers and their advisors emphasised that it was a *Scottish* proposal, and that it was in fact *Westminster* that was influenced by Holyrood.

They got it [NOMS] from us – I think you’ll find that a lot of what was implemented south of the border is bits of what had originally been suggested in our papers – so any suggestion that we copied NOMS is just not correct ... A lot of, particularly at the time that John Reid was the secretary [of State for Scotland], a lot of what he took forward was lifted directly from what we had been doing here.

Former Justice Minister, Scottish Executive

The Scottish proposal for a single correctional agency was shaped by new governance structures, a political capacity building project, and new opportunities to embed (shared) New Labour mentalities favouring centralisation, ‘modernisation’ and ‘end-to-end management’ (Newman, 2001), and a ‘toughening’ of justice (Downes and Morgan, 2007) and ‘punishment in the community’ (Robinson, 2008).

2.3 Veto Points and Compromise

The place of CJSW ‘between’ local and central government enabled by central ring-fenced funding and continued local ownership, accounts in part for the compromised nature of later reforms. Around 18 months elapsed between the single agency proposal and the White Paper *Supporting Safer, Stronger Communities: Scotland’s Criminal Justice Plan* (Scottish Executive, 2004) which led to the 2005 Act. This document made no reference to the proposed single agency or to further integration between CJSW and custodial services. Instead, the Executive promised to legislate to bring local authorities together into eight CJA groupings, and ensure co-operation with the Scottish Prison Service (SPS) via new statutory frameworks. We argue the reasons for this apparent reversal lie in two key factors which maintain Scotland’s distinct political context and drive policy divergence from England and Wales: its Parliamentary system (see also Lacey, 2012), and the power of its local government (Jeffery, 2006).

The partly Proportional Representation (PR)-based voting system of the Scottish Parliament makes coalition or minority governments relatively likely. Although Scottish (New) Labour led the Executive for its first two terms, their justice policy was tempered by their Liberal Democrat coalition partners (Lacey, 2012; Mooney et al, 2015). Following the 2003 election, the single agency proposal became a bargaining chip in policy negotiations between them. Without the support of the Liberal Democrats, who viewed it as too correctional and centralised, the single agency was untenable. As the Minister at the time reflected:

If you’re a Minister you also need to think about what you’re going to be able to get through Parliament, so you weigh up votes, it’s as basic as that. You can try and win hearts and minds but at the end of the day, you can win all the hearts and minds you like, but if you’re not going to get the legislation through...

Former Justice Minister

The second factor which made the single Correctional Service for Scotland agency untenable, was the power of Scotland's local authorities. These are more politically experienced than the devolved government and exert substantial power through their negotiating body, the Convention of Scottish Local Authorities (CoSLA) (Jeffery, 2006). They resisted the single agency proposal for two reasons. Firstly, on the basis that it would 'de-social work' CJSW in favour of a 'punishment in the community' model already in place in England and Wales (Robinson, 2016) (see Stoker, 2011, for local government's central role in the distribution of welfare). The second reason for local government resistance to the proposal was a broader concern that it would be the 'thin end of the wedge' for increased centralisation in the early years of devolution (Morrison, 2012). Though centralisation had begun to increase with New Labour in Westminster before devolution (McGarvey, 2012), the devolution settlement resulted in a step-change of scrutiny, regulation and accountability of local government under the first two terms of the Parliament via mechanisms such as ring-fencing and targets (McGarvey, 2002, 2012). Discussion around Scottish community justice reform thus became entangled in debates about political control, as well as the nature and organisation of community justice. Scotland is therefore a clear example of a jurisdiction whose penal policies were moderated by the presence of PR political systems (Lacey, 2008; 2012) and multilevel governance structures which necessitate negotiation and compromise (McGarvey, 2012).

2.4 Building Community Justice Authorities

In contrast to the speed with which the creation of NOMS followed the Carter Review in England and Wales (Burke and Collett, 2010), the creation of CJAs entailed lengthy negotiation, notably much of it *after* the 2005 Act. Once it became apparent that the single agency proposal was unworkable, the Executive had to formulate proposals in consultation and close co-operation with local government. Negotiation and compromise between the Executive, CoSLA, and (to a lesser extent) SPS, continued over the finer details relating to CJA structures and roles, and the difficulties CJAs were to face can largely be traced back to these compromises. The contentious issues surrounding CJAs (who is gaining control and at whose expense) were crystallised in debate around the role of the CJA Chief Officer, who would have responsibility for holding constituent local authorities to account and coordinating partnership working. Although the Executive successfully insisted that this role would be created and would be independent from local authority structures, local government lobbying resulted in reduced salary and status for Chief Officers (Morrison, 2012).

CJAs were a canvas upon which interested parties could project their intentions. They allowed local government and social work to claim victory over the retention of CJSW and the continued separation from the foreign professional cultures of SPS. On the other hand, central government to claim successful reform and greater control, and they also served as an ultimatum: a final point before full centralisation if local authorities did not make this work. As a government advisor at the time noted:

“Well, over to you then, get on with it ... it is also a bit of a win-win, because in a year’s time when you get to be re-elected, you can say ‘you know what guys? You made a complete arse of that so don’t even come near me with your objections, this is what we’re doing”

CJAs were also seen as having a potential community engagement role, to help build trust and awareness of justice issues. As well as partly motivating the development of ‘community’ approaches to crime control generally (Crawford, 1997: 63-83), lack of public awareness or engagement has been a particular issue for systems of community penalties (see Maruna and King, 2008). The more communitarian approach to public engagement found in discussions over CJAs is implicitly counterposed to a punitive, populist tendency associated with England and exemplified by the Casey report (Robinson, 2016: 37-9). However, it was never made clear *how* CJAs were to engage with local communities, and in practice their minimal profile limited their ability to do so.

The nascent bodies were a site of compromise and aspiration for a range of conflicting and competing demands: increased central control, assurance and accountability; continued local flexibility and ownership; increased partnership working (among local authorities and between local authorities and the SPS); and finally, community engagement and democratic local accountability. This was to be achieved not only by the prominence of elected local authority members within CJAs, but also by their meetings being open to the public, with minutes etc. freely available.

3. CJAs in operation: changing political contexts, functional compromise, and dissolution

3.1 CJAs and the New Political Climate

As products of their time, CJAs reflected changing relationships between central and local government, and the post-devolutionary political context. They were redolent of New Labour’s zeal for centralised end-to-end offender management (Scottish Executive, 2004), tempered by coalition politics (Lacey, 2012) and local partnership-based governance structures. Changing political contexts would continue bearing on CJAs with the election of the SNP in 2007. This administration aimed to reassert Scottish distinctiveness in criminal justice, and explicitly moved away from ‘detartanised’ (McAra, 2008) policy with a Westminster ‘feel’. Instead, reoffending and the prison population would be tackled by: collaborating with CJSW to improve the delivery of community sentences, replacing most community penalties with a single Community Payback Order, and legislating to end short prison sentences (Criminal Justice and Licensing (Scotland) Act 2010). However, as a minority government, the SNP would not be able to pursue major restructuring until their second term.

A key development in the narrative of local/central government relations was the ‘Concordat’, a formal agreement between Scottish local authorities and the Scottish Government (2007), intended to ‘reset’ their working relationship. The Concordat

granted local authorities more budgetary discretion and funding, in return for freezing council tax (which the SNP manifesto had promised to scrap entirely). Local authorities also committed to perform against a set of national outcomes and performance indicators (McGarvey, 2012). Most ring-fencing of funding for local services was removed; notably, the block grant for CJSW was almost the only funding to remain ring-fenced (although reoffending was not included in the Concordat's indicators). Local authorities and social workers had no wish to return to conditions before ring-fencing, where 'generic' social work budgets had created "a classic opportunity for the operation of the doctrine of less eligibility" (Moore, 1978:39). A senior CoSLA member at the time observed:

You'd need to be careful about – I mean, local authorities will always say they want to end ring fencing and I want to end ring fencing, but I can also recognise that when you end ring fencing you run the risk of ... [long pause ...] council decisions being taken more in the interest of appeasement to public opinion than some of the hard realities out there – So, in an ideal world if people stick to their principles, then ring fencing – there's no place in that – but it's understandable why ring-fencing is still there and it's not unreasonable that something like CJSW offender management and punishment matters and so forth, it has to be there.

CoSLA official

Continued concern about the governance of community justice in Scotland therefore enabled ongoing control via ring-fenced funding and centralisation, refracted via CJA structures and shifting relations between central and local government (McGarvey, 2012).

3.2 CJAs: Key Responsibilities

Although undoubtedly a continuation of compromises over CJSW, the Management of Offenders (Scotland) Act 2005 was exceptional in creating a new type of institution, "a very strange body which no one would have designed from scratch" (Morrison, 2012: 196). Although their stated aim was to reduce reoffending in their regions, CJAs were not social work bodies and had no responsibility for 'frontline' services. Their responsibilities largely related to promoting cooperation between local authorities and other partners (Scottish Executive, 2005: 5), including by promoting good practice and information sharing. New accountability functions empowered CJAs to report CJSW and SPS to the Scottish Government for unsatisfactory performance.

Although still ring-fenced, CJSW funding was now allocated to CJAs, who had the vital task of distributing it between partners in their region. This was undertaken through regular spending plans, developed by CJA staff and then voted on by CJAs' 'official' members, councillors from constituent local authorities. This was partly to promote more equitable distribution of funding locally, and partly to promote local democratic accountability.

CJAs had limited success fulfilling these functions, primarily because of the compromises over structure and function following the 2005 Act. These issues were exacerbated by a difficult beginning, low public awareness, and longstanding concern

about a lack of leadership in Scottish community justice (Scottish Prisons Commission, 2008; Miller and McNeill, 2013). Elsewhere, this period saw the unfolding of a global financial crisis which would have far-reaching effects on justice policy (Commission on the Future Delivery of Public Services, 2011).

3.3 Partnership, Politics and Funding

Promoting interagency partnership was an important function of CJAs (Scottish Executive, 2005), particularly given the limited success of the joint boards in this respect (Morrison, 2015). CJAs managed large, diverse partnership groups, which as well as CJSW included SPS, police, courts, prosecutors, the NHS and third-sector providers (Audit Scotland, 2012). This complex mix of organisational aims and cultures sometimes proved challenging for CJAs, as in other community crime control partnerships (Crawford, 1997: 94-147; Hughes, 2007). Although ring-fenced funding was considered essential to maintaining levels of CJSW service (and remained so more recently – Scottish Government, 2013), it had disadvantages for partnership. CJA staff had difficulty convincing partners to commit resources when CJSW enjoyed secure (albeit limited) financing.

A problem *specific to CJAs* arose from the combination of partnership and accountability functions, creating a “schizophrenic identity” (Chief Officer). Social work departments were now ostensibly accountable both to their CJA and their council (Audit Scotland, 2012: 48). Even after the Concordat, CJAs’ accountability powers engendered scepticism from local authorities; Chief Officers, unwilling to jeopardise working relationships, never actually used them.

Chief Officers had responsibility (including time-consuming financial management obligations) but little power. CJAs had no financial levers over most partners, including SPS (a longer-established, organisationally simpler and more powerful agency); even their power over local authorities was compromised. The need for good working relationships meant Chief Officers had to *convince*, rather than force, partners to cooperate (see Hughes, 2007: 82-5). This was exacerbated by the Concordat, and the absence of reoffending rates from its indicators and targets:

“I think that the Concordat has been critical in that evolution. Because the new relationship between central and local government has taken us away from that issue of holding to account, and actually saying, we’re much more in a model of consensus”

former Chief Officer

Fairer distribution of funding between local areas was a longstanding concern for CoSLA (1998: 11) as well as an objective for CJAs. However, elected members were loyal to their constituencies before the CJA, so usually voted to protect local funding. Furthermore, only Fife & Forth Valley CJA followed the Scottish Executive’s (2005: 14) recommendation to weight representation or votes on CJAs by local authority population; others allocated votes evenly. Equal representation helped promote consensus and

prevent domination by populous areas (see Maybee, 2006), but entrenched resistance to redistribution.

“Real life is that people don’t act in a fair and rational way, and somebody comes along and says “well actually you should be losing that money because it’d be fair to the other local authority who did it”, they’re not going to say “oh right enough, so it is”, you’re going to make all the arguments to retain the money you’ve got because services are stretched anyway, it’s not as if anybody’s sitting on a pot of money.”

CJSW manager

Redistribution of funds would have demonstrated CJAs’ governance power over a local authority-controlled service, but their constitutional structure meant this rarely occurred. Votes were anyway largely a formality – area plans were typically agreed beforehand between elected members, assisted by Chief Officers; disagreements were rare and short-lived. The substantive involvement of elected members in community justice tended to be limited, despite CoSLA’s insistence during negotiations ahead of the 2005 Act that they would add local democratic accountability to the system, chiming with that afforded by the public nature of CJA meetings and documents (Morrison, 2012:198-203).

Nationally, the distribution of funding to CJAs continued using a formula devised in 1999 (Audit Scotland, 2012), following historic allocation rather than need. Within CJAs, local partners usually favoured local commissioning, preventing regional economies of scale. Despite their substantial budgets, CJAs had little scope to take the initiative in commissioning services.

Hasty functional and structural compromises during the creation of CJAs had created deep constitutional flaws. Accountability functions desired by central government created ‘tangled’ lines of accountability, and were practically unusable because CJAs relied on consensus and partnership. Local government succeeded in securing a voice, but elected members’ involvement has not necessarily increased democratic accountability, and their reluctance to scrutinise other councils hindered efforts to improve performance. Ring-fenced funding, although vital, sometimes created friction, and remained unevenly distributed because of CJAs’ constitutional flaws. These interconnected problems were exacerbated by a difficult initial period, in which CJAs had to set up their own arrangements and overcome ignorance and uncertainty. Local authorities were sceptical of what looked like an unnecessary additional layer of bureaucracy (Morrison, 2012:198-201), while geographical similarities between CJA regions and those covered by their predecessors obscured their different natures.

“But when CJAs came together formally, there was still an element of people thinking “well, it’s still like the old joint boards”, and I don’t think they really grasped at that early stage that in fact it was completely different organisations.”

Chief Officer

Divisions along the lines of the ‘Tough Option’ groupings persisted within some CJA regions. Staffing issues also affected CJAs in their early years – several Chief Officers had to leave for health reasons, while those from local authority backgrounds were sometimes seen as compromised. These factors hindered the development of a distinct institutional identity, although we argue below that CJAs partially overcame them.

3.4 Replacing the CJAs – Towards the 2016 Act

The decision to replace the CJAs took place under a majority SNP government (2011-16) committed, like New Labour, to restructuring public services, but in different ways, for different reasons. The SNP’s overall majority, a result the PR system of Holyrood was designed to prevent (Lacey, 2012), produced an administration without any coalition partners to temper their approach. As MacLennan (2016) argues, the SNP pursued restructuring partly to demonstrate their own legislative competence (and hence the self-governing capability of an independent Scotland). However it was also intended to mitigate the impact of austerity by making public services more ‘joined-up’, efficient and focused on prevention, as the Christie Commission (Commission on the Future Delivery of Public Services, 2011) recommended.

The highest-profile justice restructuring was the merging of eight police forces into a single national service in 2013. This was similarly driven by SNP state-building imperatives as well as austerity (Fyfe and Scott, 2013), but took a clear centralising direction. In police reform Scottish government felt emboldened to make radical structural reforms, but centralisation did not prevail in the thorny area of community justice.

The beginning of the end came in 2012 (only CJAs’ sixth year of operation) with two reports important in legitimising the SNP’s wider agenda of reducing reoffending and imprisonment while forging a distinctively Scottish approach to justice. The Angiolini report (Commission on Women Offenders, 2012) on women offenders discussed community penalties only briefly, but pointed to several problems – a “cluttered landscape” of service provision; short-term, inconsistent CJSW funding; a lack of accountability and leadership – as evidence in favour of replacing CJAs with a national service. Audit Scotland’s (2012) *Reducing Reoffending in Scotland* made no such recommendation but explored structural problems in detail, particularly the inflexible and (regionally *and* locally) inconsistent allocation of funding, noting further that CJAs’ performance had never been properly assessed.

The Scottish Government (2012) began consultation in November 2012, with three possible future models. An ‘enhanced CJA’ model was unpopular; CJAs had few supporters, their own official members naturally favouring local authorities. Debate focused on the other options: a national service similar to Angiolini’s recommendation, or a local authority model. Both would entail abolishing CJAs (Miller & McNeill, 2013). The national service would be separate from SPS and “social work-led”, with strong local links (Scottish Government, 2012). Although a continuation of attempts to centralise, this emphatically was not a 2003-style convergence with England and Wales. McNeill (in

Miller & McNeill, 2013) argued that centralisation could *preserve* social work values and place CJSW on an equal footing with other agencies.

The first round of consultation closed next April, with support split between the two options (Scottish Government, 2013). Respondents saw a national service as a source of leadership and direction, but favoured local decision-making, delivery and partnership; local control was seen as key to preserving ‘Scottish’ social work values, particularly after the substantial loss of local accountability entailed by the police reforms (Fyfe and Scott, 2013). The decision announced in April 2014 (Scottish Government, 2014a) was *yet another* local/national compromise, a hybrid ‘Option D’ which would abolish CJAs, transfer their strategic responsibilities to new local partnerships, and keep CJSW delivery local. Meanwhile, a new national body, Community Justice Scotland (initially Community Justice Improvement Scotland – Scottish Government, 2014b:15) would provide national leadership, promote good practice and raise the public profile of community justice.

Legislation began in May 2015 and the Community Justice (Scotland) Act passed in March 2016. The new system is now in place, but many features of it resemble the problems of the previous one: compromised origins, complex patterns of local delivery and unanswered questions about accountability. The former Justice Secretary who initiated the reforms later remarked: “those who fail to learn from history are condemned to repeat it” (MacAskill, 2015).

CJAs enjoyed little public awareness during their brief lifespan, and were not particularly successful in performing their official functions. The restrictions in which they operated reflected relations between national and local government, which shifted dramatically following the 2007 election. Decisions around the replacement of CJAs were shaped not just by central/local compromise but also by the SNP response to austerity, and its effort to emphasise distinctively Scottish approaches to justice. But although they were a canvas on which aspirations, conflicts and compromises were projected, CJAs belatedly began to develop an identity of their own.

4. Drifting and Finding a Niche

Hasty constitutional compromises, and ongoing scepticism from local authorities, contributed to a situation in which CJAs experienced significant uncertainty over their roles and functions and had difficulty establishing distinct institutional identities. However, practitioner accounts in both authors’ research suggest that CJAs were able partially to overcome these initial problems. The position of CJAs partly ‘outside’ CJSW gave them distance that encouraged more innovative thinking – ironically, given that this positioning limited their ability to carry out their *intended* functions.

“CJAs were able to take a different perspective to local authorities, in that they were able to – and maybe it’s a question of duties and responsibilities, in that criminal justice social workers are so under pressure in terms of budget, in terms of fulfilling statutory obligations. CJAs were able to take that step back and look a

bit more broadly, and think a bit more creatively, and that's where some of the answers are found, you know?"

Third sector manager

These accounts indicate a relatively stable 'middle period' for CJAs, beginning 2-3 years after they started operating (and thus bookended by both authors' research), when they had had time to "bed in" (Commission on Women Offenders, 2012: 81). During this period, CJAs began to develop distinct institutional identities. These were based on what CJAs *could* do within constraints imposed by their compromised constitutional arrangements, not what they were *meant* to do, and to reflect the priorities and interests of Chief Officers. Interviewees emphasised the importance of Chief Officers in 'bedding in' and forging an identity. Staff changes in the early years appeared as drivers of development and professionalization, particularly the appointment of new Chief Officers who were seen as both competent and properly independent of local government.

"But the CJAs when they started were – they were set up with a degree of optimism but really for the first two years of their life they did absolutely nothing, they didn't get the cooperation from local authorities, no one was quite sure what they were doing, and by and large they were chaired – or their principal officers were local authority people, almost without exception. What happened two or three years ago, I think, was that a number of those people stood down and were replaced by effective civil servants... And suddenly the CJAs, as a result of that the CJAs became a lot more open, they became a lot more accessible, they started thinking broader."

Third sector manager

Although they never exercised their accountability powers, and had limited impact on the allocation of funding, CJAs had more success developing partnership arrangements and bringing together different providers (Audit Scotland, 2012). This is likely to be partly the result of wider cultural shifts towards partnership working in Scottish public services (e.g. Commission on the Future Delivery of Public Services in Scotland, 2011), but it is notable that CJAs managed this in spite of the aforementioned obstacles to partnership working. The sceptical tone of the Angiolini report, particularly its assertion that "we could not find any evidence of regional services that Community Justice Authority member local authorities have commissioned together" (2012:83) was viewed with indignation by some CJA staff:

"I don't think it was accurate in everything that it said. For example, it said "we could find no evidence of joint working across boundaries", well if anyone had asked the CJAs we could have given them a handful – more than a handful – of examples of services that were operating across local authority areas and across CJA boundaries."

Chief Officer

From the 'middle period', CJAs applied their unique perspective to take active roles in promoting more innovative thinking about criminal justice, usually in partnership and in

spite of very limited resources. Examples included the ‘Community Conversations’ initiative developed by South West Scotland CJA (Murray, 2014), which aimed to promote public engagement and understanding about community justice, and the Learning and Innovation Workshops run jointly by Edinburgh Napier University and Lothian and Borders CJA. Particularly relevant in terms of partnership was the involvement of CJAs in several high-profile Public Social Partnerships (PSPs – see Strachan, 2014), especially the Low Moss PSP which included two CJAs, SPS, the NHS and Turning Point Scotland (Turning Point Scotland, 2015). Several CJAs used additional funding for women’s offending services, made available following Angiolini (Commission on Women Offenders, 2012), to develop and test women’s community justice services in their regions (Dryden and Souness, 2015).

Ultimately, though, this regional focus, and a financial regime that little discretionary spending power for CJAs, prevented these projects being expanded or publicised nationally. A lack of performance management scrutiny of CJAs (Audit Scotland, 2012) also made it impossible to gauge the effects of these innovations, or the success of any CJA activity in reducing reoffending (ostensibly their overarching aim).

CJAs had contributed to embedding partnership working within the criminal justice system (Audit Scotland, 2012:30), in line with the same post-Christie (Commission on the Future Delivery of Public Services, 2011) agenda that partly drove the decision to replace them. It was nonetheless clear by 2013 that CJAs would be abolished, and by the time of Buchan’s (2017) fieldwork, CJA staff were focused on ensuring their projects could continue under new arrangements which partly build on their progress in partnership working.

Many CJA staff interviewed saw abolition as a missed opportunity to harness their expertise and skills, and develop more innovative approaches, but the ‘niche’ which the CJAs began making for themselves remained circumscribed as a result of the compromises during their creation. CJAs were not an unqualified failure, but were not able to evidence enough success to forestall the third phase in their life – a long transitional period which ended with the closure of the CJAs in April 2017.

5. Conclusion

By drawing on two sets of empirical research, several years apart, to develop a policy narrative (Kaplan, 1993) about CJAs, we have considered their short history in the light of changing relationships to key contextual elements which are separate, but which have coincided and connected in changing ways.

The relationship between Scotland’s central government (controlled first by New Labour, then the SNP) and its longer-established and powerful local government, often characterised by difficult compromises and reflected in some features of party politics, has shaped the development of CJSW. Although CJSW has been part of local government since the 1960s – a structural feature seen as emblematic of a distinctively Scottish ‘welfarist’ criminal justice (McNeill, 2005) – it was the introduction of ring-

fenced funding and national standards which made the system's *structure* a political issue subject to repeated renegotiation, including the 2005 Act which created the CJAs.

While it is as a central/local “fudge” that CJAs were most prominently criticised, they also reflected and were affected by wider developments. At different times, changes of government and intra-party conflicts within Scottish Labour played into local-central dynamics, with New Labour dominating central government, while local government remained a traditional Labour stronghold, until the SNP victory in 2007 which led directly to the redrawing of local-central relations by the Concordat (with further implications for CJAs).

This occurred in the context of Scotland's newly devolved national government and Parliament, which brought new veto points and an apparently more consensual style of governing, based on partial PR and committee discussions, (McAra, 2008; Keating, 2010) which served to mediate New Labour correctionalism (Lacey, 2008; 2012). A further development driving the creation of CJAs was political interest, particularly from New Labour, in local multi-agency crime control partnerships. (Crawford, 1997; Hughes, 2007) However, CJAs faced obstacles to successful partnership working not shared by these other multi-agency approaches.

Ultimately, compromises over functions and structure left CJAs with deep flaws and conflicts which seriously hindered their ability to function as intended. But despite, and partly *because of*, this flawed arrangement, CJAs and their staff began to adapt to their position and use it to contribute in innovative ways to the reducing reoffending agenda. Nonetheless, CJAs were promising targets for a majority SNP government keen to articulate a ‘distinctively Scottish’ set of penal policies, as part of a wider state-building project, (Mooney et al., 2015) while also making significant structural reforms to public services in response to austerity.

Narrative is essentially ‘past’ because we cannot know the meaning of events until they have occurred (Kaplan, 1993). The story of CJAs has ended, but the other stories – community justice reform, local and central governance, state-building in post-devolutionary Scotland, public sector austerity – have not. The political context continues changing, and the latest reforms are unlikely to be the last. CJAs did not and could not resolve the tensions that produced them, but by examining them diachronically, we have shown how criminal justice can reflect and refract policy imperatives in rapidly changing political landscapes and a post-austerity climate.

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