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Commission on Justice in Wales
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

Commission on Justice in Wales – Call for Evidence

Dafydd Llywelyn – Police and Crime Commissioner, Dyfed Powys

Dear Commission,

The following submission of evidence is provided as a personal view on Justice in Wales. It is written from the perspective of an elected Police and Crime Commissioner (PCC), but in the context of 18 years personal experience of working professionally within law enforcement in Wales. The evidence should be considered alongside the verbal evidence previously provided with fellow elected PCCs, earlier in 2018. From the outset it is imperative to note that all four current PCCs in Wales fully support greater devolution in Wales both specifically for Policing and the wider functions within the Criminal Justice system.

The creation of Police and Crime Commissioners (PCCs) as set out in the Police Reform and Social Responsibility Act 2011 altered the constitutional structure for the governance of policing which had been in place since The Police Act 1964. These changes are relatively new and there continues to be a lack of understanding from the public and other bodies of the powers and responsibilities held by the office holder or PCC. In addition, changes in England, with Mayoral elections for some cities and the ability of PCCs to take responsibility for local Fire services, have further confused the governance landscape across England specifically. Current arrangements could be described as having three types of Police governance models with the Mayoral structures, Police & Fire PCCs and PCCs purely with responsibilities for Policing, with the latter being a description of the Welsh PCCs. This confusing landscape of governance and accountability has done little to change public opinion of the role and function of PCCs which in my opinion remains negative. Further to this submission the Association of Police and Crime Commissioners' (APCC) briefing document prepared prior to the House of Lords debate 28/06/2018 provides further detail in a summary format of the role and responsibilities of PCCs.

In Wales, partly due to the current devolution arrangements, no such widening of scope has occurred to the role of the PCCs, in particular in the taking over of the Fire Service. Recent announcements relating to the current arrangements under the Community Rehabilitation Company (CRC) contracts is likely to provide an opportunity to link with other commissioning by PCCs in Wales thus increasing further the scope and involvement of PCCs in this activity. Increased engagement and interactions have developed with Welsh Government during this current term of PCCs (2016-2020). For example, following the Wales Audit Office in Wales' report on Community Safety (2016) the Welsh Government established a Safer Communities Working Group with 2 of the 4 Welsh PCCs represented on the Group proactively tasked with reviewing and implementing a fresh approach to Community Safety in Wales. Quarterly meetings take place with Cabinet Secretaries from Welsh

Government to ensure the devolved and non-devolved nature of service provision work together where possible. Furthermore, in recent weeks in an agreement between the 4 PCCs, 4 Chief Constables and Welsh Government the inaugural Cross Party Working Group was held in the Assembly and a Policing Board for Wales with Ministers from Welsh Government is to be held later this year.

It is in the context of the greater collaboration as outlined above that the PCCs in Wales must, I feel, be seen as a critical role in any future developments for Police governance and Criminal Justice devolution in Wales. The PCCs in Wales, and their offices, could be utilised to support a transition period for the increased responsibility of Welsh Government. It must however be acknowledged that the current levels of competency, and critically capacity, in the Welsh Civil Service would need to be addressed to support this. I firmly believe the PCCs and the offices should be seen as significant leavers of power to instigate change however acknowledge that the 4 year electoral process could result in conflicting ideological differences being in post.

The following submission will address some of the issues facing the justice system in Wales and make the claim for greater devolution by responding directly to many of the questions posed in the terms of reference for the Commission hopefully addressing in some way the question 'why' devolution would improve arrangement in Wales for the people of Wales.

1. Problems and issues within the justice system in Wales

1.1 The current working environment within the justice system in Wales, from beginning to end, can be described as difficult. Central UK Government austerity measures and a strategic focus on reduced public spending have resulted in a system that is under significant pressure. Pressures are evident in the operational delivery of policing services, probation, courts and prisons with these pressures being manifested through evidence within Her Majesty's Inspectorate (HMI) reports, studies by independent think tanks and the media.

1.2 The practical experience in mid and west Wales is one of increasing workloads both in terms of an increased number of case files across different agencies as well as a wider geographical coverage. It must also be noted that there is an increased complexity in cases due to the impact of digital technologies. Professionals working within a sparsely populated area have been directed to cover a wider area and those seeking services also have to travel further. As a result, I would advocate that access to services is the single most critical issue currently being experienced in many areas of Wales outside the large urban conurbations mainly in the South east (Cardiff, Newport, Swansea).

1.3 Decision makers, often looking to reduce costs have regularly centralised services and have withdrawn from less populated areas. The most obvious example within the justice system would be court closures. Within the Dyfed Powys Police area closures have resulted in there being no Crown Court provision for some time but most recently Magistrates Courts have also been closed in Carmarthen and Brecon resulting in 5 Magistrates Courts (Aberystwyth, Haverfordwest, Llandrindod Wells, Llanelli and Welshpool) serving the communities of the Dyfed Powys Police area.

1.4 Alongside the court closures there has also been a shift to centralise some Crown Prosecution Service (CPS) functions in line with the aforementioned changes to court provision. CPS

offices have closed within the Dyfed Powys Police area resulting in the loss of highly skilled jobs as employment opportunities for local residents, and there will be a socio-economic impact of losing such employment in the area. In this type of scenario posts are often relocated to larger regional offices and although there may be opportunities to work remotely or from home, in essence changes of this nature exacerbate much wider issues outside access to services, including the impact upon traffic volumes, the environment and the health and well-being of staff.

1.5 The impact of these changes on everyone from offenders, victims, witnesses as well as those working in the system is negative. Access to services has become more time consuming and costly, and the planning and logistical arrangements are also often more challenging. The lack of regular public transport links within rural areas also cause problems for individuals accessing services.

1.6 The locality of justice must not purely be discussed in terms of access and geography but also in relation to the longstanding belief and understanding that justice should be served in a timely manner, locally and by one's peers. The notion of justice being seen to be served locally has eroded due to the physical distance required to travel but also as a result of the plural nature of justice in Wales today. The plural or layered justice system with varying actors has resulted in a more complex justice system that I believe is not always understood by the public. The increased use of out of court disposal approaches and the transforming summary justice agenda can be seen to speed the process in cases with a guilty plea but we must assess the cultural shift towards processing only those cases with a strong prospect of a guilty plea or verdict against running a judicial process.

1.7 In addition to the statement above, centralised structures allow for limited local perspectives to arise and limit a natural variance from a standard approach or the impact of proportionality to be considered. In some communities impact and proportionality of incidents can be lost within a centralised or even digital judicial process.

1.8 I have reservations in relation to the use of technology within the justice system, in particular for young offenders. There is a danger that a simple 'click and convict' culture will follow for low level offences where significant by-products of a more traditional justice system are lost. Specifically, ensuring the offender understands the consequences of his or her actions and the personal implications such as future travel restrictions or employment opportunities are likely to be lost. Furthermore, the notion of public shaming and the reparation of the harm caused will not be possible in a truly digitalised process.

1.9 Further to the dangers of technology leading to a 'click and convict' phenomenon the impact of technology on the interaction of legal advice and how it is accessed must be considered. There is a risk to a process that is streamlined using technology that offenders lose an opportunity to access legal advice in a timely manner within that process. As a result, there could be a 'net widening' effect on low level offences not being routinely legally challenged therefore increasing further the guilty pleas and conviction rates.

1.10 A significant contemporary issue for all agencies at work within the justice system in Wales is the impact of digitalisation. New technology has impacted upon society in Wales as it has worldwide and this has resulted in an increased complexity in all cases with digital media impacting all aspects of the justice system.

2. Good practice, innovation and difficulties in the justice system in Wales.

2.1 The Criminal Justice system in Wales relies heavily on strong positive professional working relationships between key stakeholders such as the Police, CPS, HM Courts and Tribunals Service (HMCTS), HM Prison and Probation Service (HMPPS), Local Authorities and others. This positive working environment has built over many years and in my role as PCC I feel this ethos of working together transcends from the strategic policy maker down to the local practitioner. This is coupled with a strong Welsh identity within most agencies although most of the agencies are non-devolved. I would describe this identity as an acknowledgement and desire from heads of service within Wales (devolved or non-devolved) to 'do things differently', be innovative and work together.

2.2 The impact of that agency identity as described above is that there is, in particular for Police Forces, a strong tangible link between local officers and their community. Although these links have eroded over recent times as resources are stretched, the protection of Neighbourhood Policing Teams and the role of the Police Community Support Officers (PCSOs) have retained this important link within Wales and the continued support for funding PCSOs by Welsh Government must be acknowledged.

2.3 In the context of devolved agencies working alongside non-devolved agencies the recently successful Police Transformation Fund bid by the four Welsh Police Forces and Public Health Wales has secured a £7Million investment in an Adverse Childhood Experiences (ACEs) project. This innovative approach to embed the ethos of understanding crime and anti-social behaviour from the perspective of the offender and its link to wider prevention activity I'm certain will benefit Welsh communities.

2.4 Welsh Government, from its Health budget, currently support the funding of Police Officers to directly engage within the education curriculum of young people in Wales. This valuable activity not only informs children and young people of Wales in relation to the dangers of substance misuse, healthy relationships and cyber related crime, it is also a vital tool in breaking down barriers between operational Police officers and the community. This is an example of a non-devolved public service being truly embedded in a devolved function providing direct support to education across Wales.

2.5 Collaboration between Police Forces is strong and there is an increased level of joint working and the sharing of resources within Wales. These relationships are over and above any practical national mutual aid arrangements and have been developed on a basis of the most efficient and effective services are delivered. There is a Joint Firearms Unit between the three southern Welsh Police Forces alongside a Regional Organised Crime Unit (TARIAN) and a National Extremism & Counter Terrorism Unit for Wales (WECTU). However, although this is a positive position issues have arisen in terms of governance and accountability for projects and it is apparent that current arrangements do not allow for full transparency or oversight of activity by PCCs. This is being addressed within the work of the All Wales Policing Group (AWPG) where the 4 PCCs and 4 Chief Constables currently meet quarterly.

2.6 Further to the operational shared working between Forces in Wales, Police and Crime Commissioners in Wales have sought to work collaboratively where possible with some shared approaches for Commissioned services and joint special grants applications to the Home Office. As

outlined earlier the ACEs project is an example of this collaboration and recent applications relating to knife crime youth interventions and domestic violence have followed.

2.7 Within the Dyfed Powys Police Force area a new victim and witness service (Goleudy) has been commissioned which although located within the Force organisational structures is independently commissioned from the PCCs (my) office. The funding for this service comes mainly from a Ministry of Justice (MOJ) grant but has been supplemented from an additional commissioning budget via the PCCs office to also include victims of anti-social behaviour. The Goleudy team are able to support victims and witnesses in a consistent manner, have access to all the relevant information required and I feel is an example of how the pooling of different budgets for commissioning can improve service delivery and was highlighted in as good practice in a recent HMI report.

2.8 Funding arrangements in general, not only for core Police Force funding or commissioned services but where there are special grants available or transformational funding opportunities, can be described as complex. There is a general 'marketization' of funding with the availability of special grants and transformational funding that has resulted in the requirement for business cases and sound evaluations which can be seen as a positive step. However, this funding (such as the Police Reform and Transformational Fund) is inevitably 'top-sliced' from all Police Forces across Wales and England and therefore results in the reduction of funding for core services. In addition, the funding arrangements for special grants and transformational projects can be relatively short term, 2 or 3 years, with the future burden left with individual Forces or a consortium of agencies and can lead to sustainability issues. It has also been highlighted publicly in recent weeks that a delay in decision making has resulted in a negative impact on implementation of projects.

3. Access to services, Welsh Law and the Welsh language provision.

3.1 Access to services has been explored in some detail in section 1 of this submission and it is obvious that access to services in a rural area such as the Dyfed Powys Police area is a greater issue than an urbanised area with a better public transport infrastructure. For example, there are inmates at HMP Berwyn from the south of the Dyfed Powys Police area highlighting the difficulty for families and friends having to fund and travel vast distances with limited public transport infrastructure to support this travel.

3.2 Means testing for civil legal aid has been highlighted in a recent study as having a disproportionate impact on the poorest of communities and is an example of how access to services and advice has been affected negatively. Arrangements where individuals can access partial financial assistance is putting households under significant pressure and as household incomes are generally lower in Wales than in England it can be concluded that these changes will have a greater impact on Welsh households.

3.3 Offender Management within the community has increased significantly over recent years and the service delivery for multiagency staff travelling distances to undertake visits or to hold case conferences is often not factored in to comparisons of workloads and rudimentary ratios of case volumes per worker to compare workloads. The prison population is at a high level in comparison with other western European countries and as such an increased reliance on offender management has occurred although no specific uplift in Police or Probation service resources has followed.

3.4 Imposing Welsh Language Standards as set out in the Welsh Language (Wales) Measure 2011 has resulted in many organisations in the justice system placing a greater emphasis on Welsh language provision and the ‘Standards’ required within their area of operation. The post of Welsh Language Commissioner resulted in a specific drive and focus to be afforded to this work highlighting areas for improvement and identifying sectors within the justice system that perhaps had not afforded the same ‘rights based’ approach to language provision in the past. All Police Forces and PCC’s offices have worked in collaboration with the Commissioner in making significant progress and the Commissioner was also able to highlight the lack of provision in the prisons sector (Public & Private) in Wales recently.

3.5 The freedom to use the Welsh language and understanding that freedom within a professional and from an organisational service delivery perspective has improved considerably over the past decade. However funding pressures for translation services and the reliance on the ‘good will’ within organisations is a risk to this progress. I am a firm believer that the language must be seen and heard, actively promoting its use within an organisation not only on a personal or verbal level but if possible in the professional workings of an organisation. This described progress will be the next watershed in securing the future of the language. Considerable progress has been made in the continuum from primary to further and recently higher education with the creation of the ‘Coleg Cymraeg’ and the logical step will be to see professional bodies utilising the language within their internal structures with the use of simultaneous translation services seen as normal business.

3.6 The University curriculum within Wales, in general terms, lacks a specific focus on the divergent Welsh Law that has grown over recent years. It is a statement of fact that there is a considerable deficit in research relating specifically to Welsh justice issues. Although there are pockets of activity often led by individuals personally or by certain institutions, raw data is often held on an England and Wales basis to the point that researchers have difficulty in disaggregating data or are reliant on Freedom of Information requests (FOI) for the most basic of information. This issue of data availability and the investment made in researching specific issues relating to Welsh matters is critical to the future understanding and assessment of recent activity in Wales, not in the context of how are we different in Wales compared to England but in the context of how developments in Wales are comparing internationally.

3.7 From personal experience as an elected PCC, one of the most tiresome aspects of the role is to have to continually remind counterparts outside Wales that due to a Welsh legislature being in place “things are different in Wales”. There is a complete lack of understanding and appreciation to the devolved arrangements in Wales and very often the devolution of strategic direction or local governance as is being played out in Manchester is confused with the significantly different position in Wales.

3.8 The Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 is an example of the lack of understanding and appreciation of how things might be different in Wales with significant progress having already been made to legislate further in this area. The Home Office and Ministry of Justice could therefore be seen to be catching up the progress in Wales but with little acknowledgement of that progress. This experience is also replicated somewhat in developments within Youth Offending and the acknowledged impact of Adverse Childhood Experiences by many agencies in Wales.

3.9 In contrast however, recent developments to seek through new legislation in Wales a ban on 'reasonable chastisement by a parent' and introduce what is being labelled a 'Smacking Ban' highlights a lack of competence and capacity within the Welsh Government. Although the Police Liaison Unit within Welsh Government has made representation, details of how such a ban would be enforced or the impact and the potential for the criminalising of many parents has not been fully considered. This is a very specific example of how a new law within Wales will directly impact a non-devolved function and its impact should be fully considered prior to implementation.

4. Barriers to improvement and how can this be overcome?

4.1 The barriers to improvements within the justice system in Wales are numerous in practical terms if we accept the system as we know it today. It is understood that agencies working in a devolved and non-devolved environment can have different strategic priorities and the ideology driving key decisions is likely to be different. HMP Berwyn, built in north Wales, is an example of this where a particular strategic vision of a penal system building on 'super-sized' prisons clashes with the practical requirements of a Welsh Justice System and penal strategy. Although HMP Berwyn was implemented with consideration to inmates from Wales we now know that less than 25% of inmates are from Wales thus HMP Berwyn can be seen as an England and Wales project with limited thought as to how the facility adds value to the Welsh Justice system.

4.2 There is currently a constitutional imbalance within the National Criminal Justice Board serving England and Wales. My opinion is that there is no specific Welsh focus and therefore a lack of understanding to any divergence of strategic direction or the impact of the growing body of Welsh Law. During the last 2 years the All Wales Criminal Justice Board (AWCJB) has developed and made considerable progress and with all the relevant agencies represented a clear direction in terms of an All Wales approach has been forged. However, constitutionally the AWCJB is not set on any sound footing thus not allowing the political governance at Ministerial level to drive and shape activity. The AWCJB could be described as a meeting of the willing and able across the Criminal Justice in Wales but there is no legal framework for its actions to be prioritised and can result in a conflict between the England and Wales agenda and a Wales specific agenda. Furthermore, lead responsible officers are not fully empowered to make significant strategic or budgetary impactful decisions to transform the justice system in Wales. I would currently describe this work as striving to make improvements, identify best practice and prioritise shared activity as opposed to delivering any form of significant transformation.

4.3 In addition to the constitutional imbalance, there is a capacity issue which acts as a constant barrier to implementing transformational change in Wales. The capacity to undertake any major reform is not in place with all but a small proportion of research and policy officers working within the justice system being based outside of Wales. As a result, there is a lack of prioritisation and focus on Welsh issues and the opportunities that could subsequently be developed. An example of this would be the minimal Home Office resource in Wales with only a small team physically based in Wales with a purely Welsh focus. I would strongly advocate a transfer of an adequate resource by the Home Office in this instance to support the work of Welsh Government and Welsh PCCs in implementing wider reform. This transfer of resource should also be replicated within the Ministry of Justice in order to provide Wales' civil service with the required level of resources.

4.4 The reform of the criminal justice system in Wales currently relies on the good will and strategic prioritisation of those working in Wales but are often managed within a non-devolved agency therefore will not have a clear mandate for this activity. Although progress has been made in collaborating, innovating and creating a Welsh identity within most agencies, often due to individual personalities any transformational reform will need to be supported at Ministerial level currently at Westminster or greater devolution can be seen to be a catalyst for this greater reform.

4.5 The reliance as outlined above on personalities and individual endeavours must also be seen as a barrier with the danger of changes to key stakeholders negatively impacting on progress towards a shared vision for the justice system in Wales. Furthermore, many senior responsible officers are likely to be reluctant to advocate significant change as the current arrangements will often include their personal circumstance or known professional associates. We could pose the question in terms of reform whether Wales requires 4 Police Forces, 4 Police Commissioners and the dozen or so Chief Officers. However, these difficult questions relating to organisational boundaries, structures and staffing levels is unlikely to be instigated from within any particular service and in the example of policing, Police and Crime Commissioners in particular should develop this dialogue.

4.6 There is currently an economic barrier for change with a lack of transformational funding available for specific projects in Wales. Current arrangements for non-devolved agencies is that any funding for transformational change is available on a Wales and England basis as opposed to a population share or 'Barnett' consequential funding opportunity being available for Welsh projects specifically that would allow opportunities for greater collaboration and progress to be made in Wales.

4.7 Police funding remains complex due to a funding formula that the Home office have attempted to change but had to withdraw in 2015 due to errors in the assumptions and calculations. Work is on-going in relation to the formula but no details have yet emerged on the future arrangements. Within the Welsh context there is a balance to be struck in ensuring Cardiff receives capital city status, in terms of its policing, which it currently doesn't get as well as ensuring the factors impacting rural communities is included sufficiently where service delivery can be more costly.

4.8 PCCs in Wales are responsible for deciding upon the level of Council Tax precept collected within each Force area. There is a differential of circa 10% between the lowest (Dyfed Powys) level raised on an average Band D property in Wales and the highest (North Wales). The amount of funding from the precept is also dependent on population and the housing stock therefore further complicating the funding position. Comparing Council Tax precept levels in Welsh Police Force areas and English Force areas shows that Wales relies on a greater proportion of funding via the local tax payer, currently approximately 50% of the funding.

4.9 Welsh Government provides additional funding directly to Police Forces, in particular and significantly for Police Community Support Officers (PCSOs). However, it is difficult to quantify the impact of Policing activity in devolved functions supporting professionals working in areas such as Safeguarding and Community Safety and concluding the net effect of funding from Welsh Government or Police Forces is difficult but increasingly there is a reliance on joint funding.

5. The impact and opportunities of devolution.

5.1 It is worth noting that there is a distinct difference in the language used to describe devolution, in particular when comparing the devolution of Policing in the context of PCCs, across England compared to the devolution settlement in Wales. This distinction is often misunderstood and can be misleading with the increased divergence of Welsh Law and separate legislature not being fully understood or acknowledged.

5.2 There is a lack of understanding in UK Government Department level and wider in Westminster of the Welsh context and distinct difference for example in culture and practically in terms of service delivery with differences in volumes and scale, as well as the different arrangements with the statutory responsibilities of devolved and non-devolved agencies.

5.3 In terms of funding it can be said that there are some positive aspects to the impact of devolution but it is evident that arrangements at UK level with the issuing of special grants and funding from the Home Office alongside the involvement of Welsh Government in specific funding opportunities can become confusing. Furthermore the development of joint funding or co-commissioning models further complicates the delivery of services and can fragment and have a negative impact on the supply model for service delivery. Current arrangements are often fixed term funding opportunities often referred to as pilots with no continuation funding post the initial stages.

5.4 A wider devolution settlement including justice and in particular policing would allow for further work to be undertaken to explore current funding arrangements. However a note of caution must be raised that any further devolution settlement must have the associated funding transferred also.

5.5 A significant opportunity for further devolution of powers would be the creation of a clearer strategic alignment within Welsh public services with an improved understanding of the legal arrangements providing greater clarity and distinction as well as ownership. This opportunity to develop innovative operating models not built on current embedded arrangements could be transformational. For example, it could allow for a distinct HMPPS strategy and programme of investment in a new modern penal system truly based on rehabilitation or a new operating model for Policing could be considered fully with new governance arrangements, moving away from elected PCCs with a greater Welsh Government involvement.

5.6 All opportunities to realign or remodel public services in Wales must take cognisance of the danger that and restructuring could be destructive to current positive working arrangements and relationships and the dangers of creeping centralisation. Devolution of powers from London to Cardiff must be followed by an innovative approach and shift in strategic direction in order to have a significant positive impact on the population of Wales.