

Commission on Justice in Wales
Oral Evidence Session
15th November 2018

Present:	Commission members	Secretariat team
Alun Davies AM, Cabinet Secretary for Local Government and Public Services Martin Swain, Deputy Director for Community Safety Rachel Maycock, Special Adviser	Lord Thomas of Cwmgiedd, Chair Simon Davies Professor Elwen Evans QC Dr Nerys Llewelyn Jones Juliet Lyon CBE Professor Rick Rawlings Sir Wyn Williams	Andrew Felton, Secretary to the Commission Dave Gordon Chris James Rhys Thomas

Opening remarks

- I have been a devolutionist all my life and sometimes we focus too much on Wales rather than how Wales fits into the UK. We should spend time discussing what we want the UK Government to do with the devolution settlement. Any settlement needs to be clear, stable, understandable and accountable. I come to my view on the devolution settlement in a pragmatic way, as a legislator and a portfolio minister. It is essential that people understand who is accountable and to have a stable constitution. I am clear that defence should not be devolved, but justice should be devolved. We currently don't have the stability we need and the devolution of policing and justice would help to address that.
- I previously didn't think the asymmetrical devolution arrangements in the UK were an issue, but I have changed my mind. When we discuss different policies on an inter-governmental basis, we usually agree where we have symmetry. After twenty years of devolution, a level of symmetry stabilises the UK and makes us able to understand each other's position. This has happened in agriculture and the environment. In a post Brexit world it will become more important as we will need to understand each other's responsibilities. It will make UK level decisions easier. Asymmetry may have been suitable twenty years ago, but after twenty years of devolution and governments maturing, having symmetrical devolution would help decision making at a UK level and therefore devolution symmetry is relevant.

Question area: Policy responsibility for justice and policing

- My responsibilities for justice and policing do not fit with my other responsibilities. Devolved government works best when there are clear lines and people know who is responsible for what. In some portfolios UK Ministers say they do not govern Wales but in others they do. Last week a UK Minister opened the S4C headquarters in Carmarthen and admitted he had never watched the channel.
- Devolution is not the panacea for all problems, but we can bring together all the services to create a holistic approach. The UK Government can't deliver policing, justice and penal policy in Wales as they do not have all the powers and responsibilities. It breaks my heart when I see what we do to women in Wales. The data on the numbers of women in prison are not huge, but the way we treat people is appalling. I was ashamed when I walked into a cell in Swansea prison. I do believe if we were able to assemble policy interventions involving health, education, social services, police, and penal authority then there is a greater chance that we would succeed.
- We are a channel of funding to the police, rather than a determiner of funding, and we also fund Police Community Support Officers. There is a UK Government Treasury memorandum of understanding that where an area is devolved funding is also devolved. I have not heard an argument that funding would not come with the transfer of powers. This happens on a semi regular basis and is well understood. We play no part in setting local precepts. This is a matter for Police and Crime Commissioners (PCCs).
- If justice was devolved we would do things differently. Prisons in Wales have not been designed to serve Welsh needs. Cardiff and Swansea need significant work. Presoed, Usk and Parc have not

been designed with Wales in mind.

- The sentencing structures do not help women. I want to see a series of women's centres where a punitive sentence can take place, but recognise that often women have been victims. South Wales Police are doing great work with social services helping vulnerable families. I would look at developing women's centres which are built to prison standards with security, but would be managed by government, not by the prison service, and be focused on rehabilitation. Prison is often the end result of a number of failings and prison moves them from being vulnerable to being failed. Rather than sending women to Eastwood Park for 28 days, we would send them for potentially three months to women's centres with their families if preferable to address their issues. The centres would be based close to their homes and would assist them in trying to turn their lives around. I would want to create a different penal policy in Wales. Women being sent to English prisons means they lose the support from family and others they require.
- There are small women's centres in Wales such as the North Wales women's centres whose staff go into Styal. It is very difficult for third sector services from Wales to reach these English prisons.
- The jagged edge does matter on the ground level as people need to look in different directions. Time is being spent overcoming structures. I can take a decision here and it can be implemented in most of my areas, but in justice and policing we can't do this and this causes failures. This is also an issue for the UK Government. They don't have the buttons to press either. This is not just a matter that the Welsh Government fails on, but also the UK Government. They can't deliver health, mental health and help with substance misuse to offenders.
- Doing things differently should not be the basis for devolution, but rather whether it is right constitutionally. I want to see more examples of policies such as through the gate services in Scotland. 52 of my Blaenau Gwent constituents are serving sentences in 20 prisons with 15 in England. How can through the gate services be delivered when people are serving their sentences so far away from their home? We do not have the power to integrate the services as they are looking towards different masters.
- The issue we have, and the Governor of Cardiff Prison mentioned this, is that justice is not prioritised by devolved areas, for example we will not go into courts in the same way as we would go into local authorities as they are not devolved. Another example is that Welsh Health Minister would not prioritise dentists in Welsh prisons. I maximise the funding I have on devolved areas. UK Ministers would have the same approach.
- PCCs are a form of devolution and I am interested in their work in forming policy with adverse childhood experiences. I am hugely impressed with how the police are working through integrating services, such as substance misuse and mental health being closely related. Through youth justice we are seeing the evolution of policy. We are bringing Chief Constables and PCCs around the table through a Policing Board, at the request of the police to work more coherently. It is interesting that it is coming from the police and not the politicians. This also works in more difficult areas such as serious organised crime where prevention work requires government input. The Home Office has not objected, but the debate is where the resources are coming from.
- The Youth Justice Board has a Welsh arm and the statutory Youth Offending Teams give Wales a different model with most of the partners being devolved, save for police and probation, so we can take a different approach. Custody has been removed from the Youth Justice Board and taken into the Ministry of Justice. We would like to have a women's justice board and women's offending teams to build on the success of youth justice reforms in Wales.
- Criminal justice resources in London and Manchester can be shifted to preventative work through the memorandums of understanding with the mayors, but this is not possible in Wales. If we had a similar model in Wales we would have custody budgets for prisons and we could take a different approach and shift budgets into prevention work. We could consider not having imprisonment for sentences under 12 months as in Scotland and there could be reinvestment of the monies in preventative services. We currently get no money for this and Wales doesn't receive the benefit of the shift in budgets. We save money for the Ministry of Justice, but we do not receive transfers of the savings.

Question area: Relationships with the UK Government

- Party politics stay at the door when dealing with UK Ministers. Wales is a distant country for many in Whitehall and there is a sense of suspicion about devolution and it is seen as a threat to the UK.

Today people are happy to work together and the relationship is not poor. The issue we have is that Wales is out of sight and out of mind. The civil service is at its best when a Minister tells civil servants what to do, but is not as good when they need to look around and see who they need to work with. They work within an English framework and structure. My day to day relationships with UK Ministers are good, I can talk to a UK Minister whenever I want, but we tend to find out about things late, are given one day to comment on a strategy and see a press release after it has been released. This is forgetfulness. Although the relationships are good and friendly, they are not relationships of equality and policy in Wales is poorly delivered by Whitehall as they do not understand Wales. The structure fails Wales.

Question area: Relationships within the justice infrastructure in Wales – UK Government agencies, local authorities, Local Health Boards and the third sector

- The relationships are good in Wales and with UK Government agencies. I speak to the inspectorates and regularly meet with HM Prison and Probation Service. I regularly speak to UK Ministers and officials have the same relationships.
- The argument against devolution with UK Ministers is that they think it makes sense, but the Wales Office would not be happy with it. I can think of many UK Ministers who find the constitution baffling. There has been a lack of vision with Welsh devolution.
- Colleagues in Westminster are resistant to the devolution of functions as they want to keep the power themselves. Colleagues in Scotland are aghast at the hoops we need to jump through. I really believe that we have a duty to make things work properly in Wales. I can take you to homes where whole families have been to prison. Getting the structure right must be a pre-requisite to get the system to work properly.
- The structures in Wales are not as developed as they should be, but they would improve after devolution. This has happened in other areas such as agriculture and education since devolution. The devolution of these matters is the evolution of a system. The third sector is a great example of how things have evolved in a Welsh context since devolution to fit a devolved environment.
- If I was a Prisons Minister, I would establish a capital budget and plan for decent facilities and services to assist people, with prisons close to families and where people can learn new skills. We can learn from other administrations across the world such as Finland and Iceland with work against substance misuse. We should be able to try these approaches in Wales and if we fail we are accountable.

Question area: Devolution of justice

- I have become a strong supporter of the devolution of justice, whereas I used to see this as an academic distraction. It is my experience of governing that has made me supportive. I see this not as a dogmatic approach, but as what the UK could be. Change occurs over a period of time. I don't see the devolution of these matters as a cliff edge, but an evolution. The structures and organisations will move to recognise a new reality as it changes.
- My priority would be to devolve policing, then service delivery and the jurisdiction.
- I take a pragmatic view in considering which justice bodies should be devolved to Wales. We already have inspectorates on a Welsh level. In relation to devolving other bodies, I would ask what is appropriate and right to support and sustain the governance of the country. The criteria for me would be expertise, capacity and accountability. I would not argue for the establishment of a Welsh nuclear inspectorate because of the lack of expertise. What we need to do is look at what is right for our country. I don't have a drive simply to create offices in Wales. A cross border body can still be accountable in Wales to a Welsh minister and to the National Assembly. I hope we will have structures to sustain the settlement and democratic accountability.
- We need a structure that works for Wales. At the moment we are failing future generations.