

**Commission on Justice in Wales  
Oral Evidence Session  
15 February 2019**

Present:	Commission members	Secretariat team
CC Matt Jukes (South Wales)  CC Carl Foulkes (North Wales)	Lord Thomas of Cwmgiedd, Chair, Simon Davies, Dr Nerys Llewelyn Jones, Juliet Lyon CBE, Sarah Payne CBE, Professor Rick Rawlings, Professor Peter Vaughan	Andrew Felton, Secretary to the Commission, Dave Gordon, Chris James Rhys Thomas

**What are the challenges and advantages for your Police Forces operating in a devolved environment?**

**MJ:** It's worth re-enforcing the evidence we gave last year. The nature of policing has changed dramatically in the last two or three decades. There has been a reduction in traditional crime and there are now areas of great complexity. The vulnerability of communities in South Wales is pronounced. Nine out of ten of the calls we receive will not relate to crime, but are public safety welfare calls; a lot of these around mental health issues (of 100 calls we receive in relation to mental health issues, 4% require the exercise of police powers). There is a tremendous shift in policing around issues of prevention and partnership. The vast majority of our work is looking at early actions in our community, schools, health boards, and local authorities. We are seeing opportunities from working within the devolved setting, examples of which include the work looking at adverse childhood experiences.

Identity and cohesion count 'Wales' makes sense to our communities as a coherent entity. Scale is a feature of this coherence. The proximity of the democratic and executive function assist – the regularity of our contact with senior figures in the Welsh public service also helps. There is something Scandinavian in the sense of the size and progressive intent in Wales. Central Governmental effort is going into other areas due to current issues. The push in Wales around prevention reflects the progressive intent in the Future Generations legislation.

We are not full members of the statutory Public Service Boards but we are very eager participants. I feel that we are very active participants in the Welsh public service. A great deal of policing is devolved anyway, in terms of the oversight provided by elected Police and Crime Commissioners and the operational independence of Chief Constables. This allows us to align to local partnerships without the need or requirement to secure Home Office direction.

There are some challenges. There are issues about divergence and structural tensions. Most of these are around policy and funding, for example, the apprenticeship levy has been an unhappy experience. In domestic homicide reviews, these are owned by community safety boards with the aim that wider partnerships learn how to prevent these incidents recurring. The oversight of these however goes to the Home Office, but the leverage to make such changes is in Wales in terms of healthcare and devolved functions.

I was looking at the "call for evidence" from the National Drugs Review. It states that the review will not address areas within the competence of devolved administrations. The review will not therefore address prevention and treatment issues as these sit with the Welsh Government but will deal with enforcement issues as these sit with the Home Office.

Neath Port Talbot and Swansea are in the top ten local authorities for drugs deaths in the UK. To exclude local services from the national review does not make sense. Whilst we do endeavour to make it work in a whole range of ways, the two Governments could work together more effectively - the apprenticeship levy and the issues around the Policing Board show that policing is stuck in the middle at times but is applying effort to resolve any tensions.

Both Governments could do better to help us serve the people of Wales. There should not be a situation where we can't get together in a room due to issues over the terms of reference. There is a limited Home Office resource in Wales. The individuals who are here have been splendid, but this requires a bigger resource to be allocated there. In relation to partners who also enjoy a degree of autonomy e.g. Chief Constables, CPS, we have been able to establish really positive relationships and I am impressed by the ambition and commitment of partners in Wales to work together.

**CF:** I would echo Matt's view. In the interim there is more that can be done. There needs to be understanding around responsiveness and accountability. On a local level accountability is as good in Wales as it is elsewhere. There are strong local partnerships which are more ingrained and more ambitious here. Also the relationship between the four forces is stronger here than I have seen elsewhere.

**PV:** The police are not statutory partners in Public Service Boards – is partnership working currently dependent upon personalities?

**MJ:** There have been points where the collaborative arrangements were based on the individuals involved however this is no longer the case. We are absolutely committed to the Welsh Language standards and we are bound in law to address this. By contrast Public Service Boards are different as we are statutory invitees, and it is therefore correct that we are not bound in law to participate and that we could step away. Similarly our early adoption of the Wellbeing of Future Generations Act.

You could imagine situations where a Police and Crime Commissioner, or a Chief Constable, could take a very short-term view of a situation, however legislative obligation is not the solution either as we know that health boards and local authorities are legally bound to work together but that commitment can vary.

**CF:** The intention of the Public Service Boards in Wales was to ensure that partners were better joined up on Community Safety. Law enforcement is now a small part of our role; we have a wider role in public safety and our lack of statutory status at the Board has not affected our commitment to the same.

**MJ:** One of the ways to signal policy intent is funding albeit that this is not the only way. Welsh Government is so far persuaded that it is worthwhile to fund the All Wales Schools Liaison Programme. Disappointingly they haven't taken the same approach to dealing with organised crime. Any funding into that area will not only be about addressing crime but also dealing with the public health issues. The apprenticeship levy involved lengthy conversations about the reserved, and non-reserved, areas. The levels of funding in the various programmes are not insignificant, and the work we are doing would not be as good without this funding. It is worth noting that Welsh Government funding helps us to provide a presence of Police Community Support Officers in the community and this is much appreciated.

**MJ:** Safe and cohesive communities go together. During the period of austerity there has been less crime in Wales than in comparative areas of England. I'm convinced that is due to the adoption of a preventative approach e.g. investing in Neighbourhood Policing and our work looking at adverse childhood experiences.

Regarding mental health; SWP go to a new incident every thirteen minutes.. By investing in mental health professionals in our control rooms we have reduced demand by thirty percent. Unfortunately we cannot bring our health partners to the table to help to fund this and there also isn't a direct role for Welsh Government in helping to fund this. We have mobilised a critical response in the local authority areas of Neath Port Talbot and Swansea to improve the problems there, which are being driven by county lines - we have used the Public Service Board to drive this work and to bring the partners together. However not all Public Service Boards are equal.

**RR:** Would you favour the All Wales Policing Board being set up on a statutory basis?

**MJ:** I would like to see a clear protocol between the two Governments in terms of working together, even within the current devolved settlement. The All Wales Policing Board should bring together senior leadership from both Governments.

It would be better if there was a statutory obligation for organisations in Wales to work with the Police on issues of mutual interest, and for both Governments to work together. If I think that if this is true for Public Service Boards at a local level, then it must be equally be true for a national structure.

**CF:** It was different in Merseyside. It's no different at a local level, but at a strategic level it does feel different. There are no real structural tensions on a strategic level in England. The purpose of the Board was to bring the partners together.

#### **Could policing be devolved separately from the rest of the criminal justice system?**

**MJ:** The answer is probably no as we would not want policing and Criminal Justice taking a different path, or a different pace, in terms of devolution. Scotland and Northern Ireland are different – Scotland goes back to 1707 (or 1998 depending on your views). They had a separate legal system for 300 years. Northern Ireland was progressed in a specific context and the transition to a fully devolved criminal justice system was funded through the Good Friday agreement. We have spent time meeting the Chief Constables of Northern Ireland and Scotland, and both are different to Wales. We see that our work with the criminal justice system works at different levels, so with the CPS we work closely early on (on pre-charge issues), in the execution of prosecutions together and then we work together in the prevention of recurrence or recidivism. There is already quite a bit of tension in criminal justice e.g. court closures, deep cuts to the CPS which can all cause systematic tensions – having this tension exacerbated by having two separate administrative jurisdictions and governance would not assist. We would however welcome greater autonomy e.g. keeping Welsh prisoners within Wales.

**CF:** We are a fundamental part of the whole process - we have excellent partnerships in Wales. If you were going to change key performance indicators within the Criminal Justice System this could cause greater diversity of approaches and not the best outcomes for the public.

#### **If policing was devolved in Wales, which UK wide functions do you think should remain reserved?**

**CF:** Lessons can be learnt from Northern Ireland and Scotland. We put boundaries in, but criminality doesn't respect them. Criminality is transitory, county lines are a key example where boundaries may be used for opportunity not otherwise.

The National Crime Agency has gone through some challenges in its birth and evolution – it would be difficult to replicate the NCA in Wales. The same applies to the Counter Terrorism Network. There are also practical examples around the National Police Air Service, the College of Policing, and the Independent Office of Police Conduct. The IOPC has evolved, providing a better service with a much stronger Welsh flavour. Why would we want to relocate some of these national bodies, when we would want to ensure that we continue to influence these and the wider national agenda through e.g. the

National Police Chiefs Council.

**MJ:** CT is global in its reach and is reserved to the UK Government even in Scotland. In terms of counter terrorism we have a history of a strong network and of relationships with Scotland and Northern Ireland. The National Crime Agency has a relationship with Police Scotland and a concordat is in place with Northern Ireland. I would submit that serious and organised crime and cyber-crime are also national issues. So you'd need strong relationships, frameworks and agreements for this to work. There is also a question of economies of scale. It is a matter of capacity and capability as with only 7000 police officers in Wales we are not big enough carry out the functions that national bodies do.

**CF:** I lead nationally for Witness Protection. We have signed a memorandum of understanding with the Police Service of Northern Ireland to ensure NCA involvement in Northern Ireland.

**MJ:** Most of those national functions could do better at acknowledging the Welsh context and taking this into account. I should have a flag under my desk to metaphorically wave during national meetings. North Wales Police is seconding a staff member to the College of Policing to increase their knowledge of Wales. The HMICFRS is endeavouring to improve on this and the Independent Office of Police Conduct (IOPC) have already done so.

**PV:** Should HMICFRS functions be devolved?

**MJ:** We are expected to operate in partnership but we are regulated or inspected in silos. The cases involve many issues and many partners e.g. issues involving mental health. There is a fundamental flaw in trying to understand one part of an incident. It needs to be seen as a whole system approach. Cases are complex, and the IOPC has no locus to question other bodies. The cases we have are not linear, they can be domestic violence cases where all the agencies are involved. So trying to just understand something without a one system approach it is not taking in the full picture. For example, a death of a person in custody – the Independent Office of Police Conduct is not mandated to look at those third party organisations that would have a story to tell. Even in the past 12 months the Independent Office of Police Conduct are developing a much stronger focus on learning and not an exclusively punitive approach.

**CF:** Mutual aid and existing collaborations need to still be in place e.g. NWP could not deliver a firearms unit without the collaboration with Cheshire. Additionally, the criminality in North Wales reflects the fact that criminality does not move up and down the country but rather from left to right – and as such the existing arrangements in place with the North West region are crucial for NWP to tackle issues including county lines, organised crime groups and serious and organised crime.

**CF:** Because criminality is moving we can base some of the infrastructure anywhere e.g. cyber-crime can be located anywhere so the units could be based perhaps in Cardiff rather than London. It doesn't matter where they are.

**MJ:** We already deliver in Wales part of the Counter Terrorism framework for the rest of the UK. Economically if you take something like cyber functions we offer a competitive option– our higher education institutions have a strong footprint so we would be well placed to deliver some of these functions here.

**Within Wales, what funding arrangements would best help meet current and anticipated future policing demands, in both the more densely populated and the rural areas of Wales?**

**MJ:** There are distinct issues with both density and rurality. In relation to the former, half of the Welsh population reside in ten percent of the landmass. There are a number of flaws in the current

arrangements. The funding formula from the Home Office is not fit for purpose. The principal distribution of funding is through the Police and Crime Commissioners who also raise money via the precept. This raises a structural and constitutional point about this model and whether this is the best way to distribute funding. There is a case about putting funding in directly at the different tiers to fund national and local services.

We police events which are economically good news for Wales. It comes at a cost of three and a half million pounds per annum to South Wales Police – that would put seventy more officers into our communities. We are not funded as a capital city. Sheffield is a similar size to Cardiff but only deals with a handful of the events that Cardiff deal with. I understand why Cardiff is promoted as a thriving European capital city however we would like to be funded as a capital city. We would like to be in a position where policing a capital city does not impact upon our other communities. The problem with the funding formula is that there will always be winners and losers.

**CF:** We are running on a twelve month budget basis . This makes it difficult when we are trying to forward plan and look at longer term changes. There are also issues around rurality. We need to move resources to urban areas to meet demand whilst also ensuring that we sustain rural resourcing. NWP have to buy in or commission specialist resources or ask for support from metropolitan forces usually Greater Manchester Police or Merseyside.

**MJ:** In terms of collaboration we are all starting from different positions. In South Wales we are a bigger force than our neighbours. We maintain (at a cost) our specialist capabilities which are then exported from us. We get top sliced nationally to secure funds for transformative programmes but there can be inconsistency. There is probably a body missing in UK policing which can do this work.

We work very closely with the third sector – the ‘cliff edge’ funding is much more acute there. We get almost no capital funding (infrastructure and buildings for example) and Welsh Government cannot allocate us funding in this area. Welsh Government have however assisted in providing good resolutions on land parcels enabling us to have a presence in our communities. We need to ensure that this is a 21<sup>st</sup> Century presence.

### **What changes could strengthen police recruitment and retention in Wales?**

**CF:** NWP don't have a problem with recruiting, even with the low starting salaries. There is an issue for under-represented groups. I think we need positive discrimination and positive action. We need to recognise that, and we need to get into different areas. NWP currently has 2.6% BAME representation. I will have to go into Manchester and other universities to attract BAME recruits, and in doing so I will have to sell North Wales Police and Wales as a location.

**MJ:** We have a dedicated Representative Work Force Team, but the progress is slower than we would like. Economically, and also from feedback from our diverse communities, the higher education aspect of the police professionalisation agenda could make it a more attractive career as it is seen as ‘legitimising’ a career in the police. By offering employment together with a degree education we are also supporting social and economic mobility. Early indications are that the new process is encouraging greater diversity.

We know that not everybody wants to be a front line police officer, so we are looking at direct entry detectives. I can make this decision within my devolved remit.

I think we need to get right to the margins of permitted positive action. Northern Ireland have strived to achieve parity in their religious representation and I think that we need to look at and learn from their actions.

Also socially – there are particular communities we have made progress with, but other communities which have an educational disadvantage and deprivation – it would be good to engage with those people who are currently in schools by working with different communities. The legitimacy of policing impacts on various diaspora communities. We cannot fix social disenfranchisement at the point of

recruitment. Our police cadets are however a way of trying to engage at an early stage. We would want Welsh Government to focus on educational opportunities in these communities. We would like to be bold, to invest and to push the margins of positive action and to secure results through partnerships.

### **What are the challenges and opportunities for the Welsh Police Forces with the growing body of Welsh law?**

**MJ:** It's important not to overstate the divergence in criminal law. The divergence to date has been limited to the removal of the defence of reasonable chastisement and to smoking in vehicles with children. We will however have to deal with the issue of reasonable chastisement differently and carefully in conjunction with our partners. Having shared our experiences on cases, we think it will be potentially be relatively low numbers of cases and we would hope that most cases are already addressed under current powers.

**MJ:** We could do something with governance, but the underpinning of police powers – if these were to diverge, such as any change to the Police And Criminal Evidence Act - that would cause a big challenge as it is key to our interoperability. All of that said we can work within Scotland when required albeit that this is usually for specific issues e.g. public order.

**CF:** When we are deployed in territories e.g. Northern Ireland and Scotland, we can give officers training on any legal differences on a need to know basis, as usually this deployment is for a specific purpose, such as public order.

**MJ:** Take the drugs review – if a more liberal approach to drugs was recommended, it would be more problematic to manage any such divergence. I see a lot of positives in Welsh law for us such as the Future Generations legislation. The Future Generations work is looked upon enviously in England. We should be proud of a progressive piece of legislation that makes public bodies work together. The right infrastructure is needed for a steady and thoughtful path to any new draft legislation. We have different commitments to our English counterparts in terms of the Welsh Language but we are fully supportive of the intent, and whilst we may have raised issues of proportionality, we are striving to ensure compliance.

### **What are your views on an all Wales Police Force?**

**CF:** The discussion around policing structures has gone through the mill. Forty three police forces is too many when you look at the complexity in terms of size, scope and scale – that's my personal view. So that raises a question on Wales at this point. What I would say is that when I look at my criminality it bears no resemblance to South Wales, it comes from the North West. Existing arrangements in place with the North West region are crucial for NWP to tackle issues including county lines, organised crime groups and serious and organised crime. That makes me think one force is probably not the right answer, but I'm not sure that four is the right answer either. There is work ongoing about how we collaborate in joining up our systems. Certainly the geography between the forces makes things challenging.

**MJ:** We agree that forty three forces are too many. Economics drive it. There is a balance to be achieved between localism and economic stability, and this is a separate issue to devolution. There is a cost associated with any change. Devolution and a single police force in Wales are two separate matters. There's a lot that can be achieved through collaboration for example serious and organised crime, counter terrorism, the joint firearms unit, as well as HR practices. There are economies of scale which can be achieved through collaboration. If you went to one force in Wales, it would make sense for the citizens of Wales but this one force could not stand alone. There's also a question of whether life in Wales goes from East to West or from North to South. I'm not sure that it would be the death of localism. Larger forces could achieve localism in the way that Scotland has done. Frankly in South

Wales Police, do the people of the Gower think they are the same community as those in Merthyr and Rumney? Local is where you are. We could be bigger and still ensure localism.

Also as regards Scotland – there is merit in taking a fresh look at their experience. It gets cited as a failure but I'm not sure that the evidence shows that. There have been great cost savings, and increased recruitment. They have saved the equivalent of the budgets of the three smallest forces that went into the arrangement.

The issue for me lies with national forces – notably the one to one relationship between the force and the Government needs something to mitigate against it e.g. the Policing Board in Scotland. The Napoleonic model of the police in France as state-owned is not what Peel intended for this country. We have something that we should be very proud of and it is imperative that there is a firewall to protect against any perception of the police being state-owned.

### **If you were able to redesign the criminal justice system in Wales anew what could policing and its connections with devolved public services look like?**

**MJ:** The governance is there to hold me to account, so it's not for me to design it. The South Wales Police experience has been a good one. We continue to function well with the Police and Crime Commissioner. Co-terminosity and closer alignment with other services could help – you don't need a Mayor to do that. The ability to pool budgets would assist, Degrees of policy flexibility and latitude are also important. If you took the Wellbeing of Future Generations Act and took that collective responsibility as a basis it could work. There are some advantages of Mayoral models.

We work together as joint emergency services. The structures of fire and rescue haven't changed much since the second world war albeit that they are more preventative in their focus. The ambulance service is under enormous pressure – and you could redesign the blue light collaboration to provide further opportunity for flexibility around designing roles e.g. the community responder model. I don't think that the Mayoral model removes tensions entirely. There are still tensions between the levels. The Netherlands national police force was based on municipal bodies and that still exists with co-operation. A minister cannot be in charge of the police, there needs to be a body between us and a Minister. We need the ability to investigate officials within any Government so our independence is key.

Lord Thomas: Why not make Public Service Boards and Community Safety Boards the same (legislation permitting)?

**CF:** There is a question of too many meetings and whether you need all the various boards in every local authority area. One example is children's safeguarding boards – we need to analyse the purpose of delivery. Some of these are a legacy of localism. The Public Service Boards which deal with local issues would be difficult to replicate nationally.

**MJ:** The problem is that partnership doesn't go up and down, but out and across. There can be a tension in policy points for example zero tolerance enforcement on knife crime, and a public health approach. There are too many meetings and not enough action. Public Service Boards should be the dominant boards.

**CF:** There are issues over capacity in Welsh Government. The Home Office team in Welsh Government is very very small. There would need to be sufficient capability and capacity within Welsh Government in order to influence both Welsh Government and the Home Office post devolution. The Home Office is working on a replacement for our current ESN radio system, which impacts on all blue light services and beyond. Wales is not currently mature enough to deliver this. At the moment we meet Ministers and do our best to provide advice. It's been important to provide technical support as there is no technical ability to do this within Welsh Government. There is a need for an interface between both Governments which is sufficiently well resourced as policing cannot provide the interface.

**MJ:** Clash of policy remains a key issue – both governments may have a different approach. Home Office officials have asked me in the past “why do you only ever talk to us about money?” My answer back was “that’s all you ever talk to me about.” There was a decision not to look at policy, however I’m heartened that they are now stepping forward into this space for example around serious violence. We can look back on relationships which were much more difficult. I recently went to an International Serious Violence Forum with experts across the world – this emphasised the need to have these conversations on a wider scale as violent crime is consistently increasing. The Home Office have the engine to have those conversations.