

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

Present:	Commission members	Secretariat team
PCC Alun Michael, PCC Jeff Cuthbert, PCC Dafydd Llywelyn, PCC Arfon Jones.	Lord Thomas of Cwmgiedd, Chair, Simon Davies, Professor Elwen Evans QC, 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.

Question area: What are the challenges and advantages for the Police Forces and Police and Crime Commissioners in Wales of operating in a devolved environment?

JC: I'm currently the chair of the All Wales Policing Group. Our evidence needs to be taken together with the evidence we previously provided in writing. We would also be quite happy to forward more comprehensive answers to these questions bearing in mind the time constraints today.

Having two masters in terms of strategic partnership work is not always convenient – we are coping with it, and comfortable in terms of our relationship with the Welsh Government. Members of the public are not concerned with whether the service is devolved or not.

In terms of money we work to the same regime as the rest of the UK. This year all of us have had to raise extra funds through raising the precept. Regarding the Apprenticeship Levy we are making some progress, but the matter does still need to be resolved.

AM: The first priority should be how to create the best system, rather than wonder what should be devolved and what should not. There have been a number of invisible successes including the All Wales Criminal Justice Board, which brings together partners, including Public Health Wales. England is now asking for a public health approach to crime - we have been looking at a public health approach to crime for years in Wales. The Welsh Local Government Association support developments for community safety. The probation service has been an enormously important partner too. The problem is that the Public Safety Boards (PSB's) and the Criminal Justice Boards are not linked.

I don't agree with the concept of two masters. Our masters are the public. We have two sets of administrators, and neither fully understand the dynamics in which we work.

AJ: Having two legislatures is the issue. The Violence Against and Women and Girls legislation is very forward thinking. We are doing already what the UK are now looking to bring in. The Wellbeing of Future Generation Act puts us in the lead here in Wales. In terms of finance over 50% of funding comes from Council Tax payers. In Merseyside this figure is only 20%. I can't see the Comprehensive Spending Review solving the issue this year, so we will put more of a burden on the local tax payer which is not right. It all boils down to the amount of band D houses are in a particular area. Areas with a smaller proportion of Band D properties (those suffering from deprivation) raise less funds.

DL: We mustn't lose sight of the fact that Wales has benefitted on the council tax cap. All of the Welsh Forces are in the quartile of having more funds coming from local taxation. This puts pressure on us to justify that the 50 – 55% is going towards national endeavour activities (such as the National Crime Agency).

I would wholeheartedly agree with there being two masters – the situation is working but relies on

good will. There are board's created which have no statutory footing such as the All Wales Policing Group – So when it comes down to raising funds, there are issues here.
The transformational funds which allow collective bids are top slicing funds, which should be split across Wales. These funded projects mainly have an England centric focus.

AM: We have also been handed a pensions black hole. Each force would take the contribution from serving officers, and use this to pay retired officers, and then claim the shortfall back from the Government. This has now been ended by the stroke of a pen, and could have a devastating effect on all four forces.

PV: Asked about the Welsh approach to youth justice and the 18 – 25 year old cohort of offenders.

AM: I represent the Commissioners on the Youth Justice Advisory Board (YJAB). The MOJ has taken custody away from the YJAB budget, which doesn't makes sense as there is incentive for lower levels of incarceration. The head of the unit was funded jointly by YJ and the MOJ. This has now changed and is a backwards step.

AJ: This is a backwards step. Youth Justice is not devolved, although all other aspects involving youths are. It needs to be devolved. At the moment we have a postcode lottery - the people who provide money and activities vary. We need consistency and equity around funding.

DL: There is a perverse scenario in that PCC's can provide additional funds to youth services – and we do. I send one hundred and eighty thousand pound through my office - in Ceredigion this accounts for 30% of their funding. However the danger is that PCC's can be seen as cash cows to fill the hole in funding gaps, or that other funders withdraw their funding. I'm an advocate of Restorative Justice and Youth Offending Boards – it has a positive impact on putting people outside of the Criminal Justice System, and out of the cycle of crime.

JC: I agree with my colleagues. We are successful in terms of steering people away from entering the Youth Justice System. In Wales the PSB's created by Wellbeing of Future Generations Act, are not applied directly to policing. We are statutory invitees - we have the advantage of discussing issues in community safety and this is recognised as a positive by our colleagues in England. We also have a growing increase in Welsh laws impact on policing. So, regarding lawful chastisement we've been asked to work and engage with Welsh Government in looking at this new legislation. We are keen to be involved in the PSB's but you can't guarantee that this will always be the case. We must also draw up Police and Crime plans for our areas. A PCC elected in the future may chose not to engage with the PSB's at all.

AJ: There is a disjoint with a number of the statutory boards in Wales And how they engage and interact. I try to work within the accordance of the Wellbeing of Future Generations Act. It also applies to procurement, and the amount of money we spend in the local economy.

AM: I don't share some of these concerns. By being statutory invitees we are still at the table. The PSB's are still a work in progress, although they have benefited from successful police leadership. It can depend on the personalities of those involved – relationships are an important thing. An awful lot of things that are required by legislation don't work as the relationships aren't their. Community Safety is very important. In our area the Community Safety Boards feed into the PSB.

Question area: What are the opportunities and concerns relating to the devolution of the police?

AM: Given that everything in policing is devolved either from the Chief Constable, or the policy and financial aspect from the PCC's, the other bits are the rubbing edges which we've already explained. The real problem is the lack of understanding how things work at a local level, and some of the financial issues – however it can be put right.

DL: The competence of Welsh Government is a concern. The funding of the civil service would need to be guaranteed, and ensure that the funding follows the functions from the Home Office. We'd also have to learn lessons from Scotland and Northern Ireland, regarding their relationships with nation bodies such as the NCA and the College of Policing. Welsh Government can't fund policing directly but do contribute directly to policing in Wales, through the School Liaison programme, and drug intervention – however there is a concern regarding the longevity of these funds, and we are now in a position where we are annually have to lobby for these funds.

JC: In an embryonic way we have a greater understanding of the needs of policing. This is recognised by Welsh Government. We have the second meeting of the Policing Board next week. It is a more structured approach than the previous ad hoc arrangement. We welcome the Welsh Government support for over five hundred PCSO's in Wales. Should policing be devolved there would need to be issues of capacity, knowledge and understanding addressed. The border between England and Wales is long and porous. The College of Policing would need to ensure a level of training on both sides of the border which is equal. Also the apprenticeship levy issue would be a threat unless it is resolved.

AJ: The main concern is around competency. I think a big bang approach is a danger – it would need to be gradual. If we're going to do this we need to look at the structure of management in Welsh Government.

JC: It's pleasing that the First Minister has taken responsibility for relations with Police and PCC's.

LT: In the UK the responsibilities for justice have a jagged edge between the Home Office and the MOJ. If you were to devolve policing in Wales would you have a justice minister with overall competence for Justice?

AM: the London division between the Home Office and the MOJ was the biggest mistake that John Reid ever made. We find the rubbing edges save money for the MOJ, and these savings do not come back to Wales.

AJ: In Scotland there is one Minister for Justice.

DL: There'd be no reason why other ministers couldn't then have smaller portfolio's; for example policing.

LT: What do you mean by capacity? Do you mean a lack of understanding, or that you need to build something up?

DL: There is a small team in regards to Community Safety and a small Home Office team. They are miniscule in terms of taking competence of policing in Wales. Even in the political party I am affiliated to there is a very old fashioned view of policing.

JC: A few months ago the previous Minister for Community and Public Services had a presentation on Serious and Organised Crime. He admitted he hadn't understood the impact of that Serious and Organised Crime had in Wales.

Question area: The role of the Police and Crime Commissioners in England differs from your role in Wales. What are your views on these differences, and do you have alternative suggestions regarding governance, and your engagement with the Welsh Government?

JC: To a large extent this has been dealt with. We have responsibilities for holding the Chief Constable to account, and gathering to money which is similar to in England. However the difference is that we have two governments to deal with. We don't begrudge that, as it is important. We are pleased that the Welsh Government has agreed to the creation of a board which will give clear strategic direction.

DL: Only some of the PCC's in England are looking at the Fire Service – it's a non starter in Wales due to the lack of coterminosity.

AJ: If I compare my role to that of Beverly Hughes in Manchester – she has a lot more power. I think we are missing out on the opportunity of gathering joined up thinking in Wales.

PV: You see three models developing. The Mayoral Model, the PCC in England, with the Fire Service, and the model in Wales with Governance from Whitehall and Cardiff Bay. Do you feel the poor relations?

AM: We feel we are the rich relations.

DL: I think we are talking here about full devolution powers – that's different to the Mayoral system. If I had to choose a model it would be full devolution rather than the mayoral model. If it was an incremental system then it should first go to the Mayoral model, something that's almost happening by stealth. We have a Policing Board in Wales, involving Welsh Government. There are issues around non attendance at the Policing Board by UK officials, the Secretary of State is not playing ball, and is telling the Home Office not to take part.

JC: I'd be happy to forward details about the issues we have had here. The mood music from the Home Office is better – they understand our intentions. There's some political illiteracy from the Secretary of State.

AJ: My understanding is the barrier is the Secretary of State.

PV: Asked about the devolved PCC model

JC: The model is to be developed. We can do good things; we have good relations in the policing world. If we have a similar approach in a devolved situation is a matter for discussion.

AJ: I suspect that WG would replicate a similar model to Scotland which in my opinion would be wrong. I'd hope they don't make the same mistake.

AM: I find it puzzling, we thought we'd killed in our evidence the necessity that there is a need to go to a single police force. But it would be a mistake to do this and put it in the same basket as devolution. That should be a matter for WG to decide.

LT: I think these are matters for the future

AJ: We are all in agreement that one police force would be a mistake.

DL: We shouldn't rush to the outcome without a period of transition. It could muddy the waters in regards to the devolution. People will think the two issues are intrinsically linked. It would be a detriment to the Commissions work. On a personal level I had been sceptical of the work of the PCC's. However I can now see powerful reasons for the PCC. The role of the PCC is positive in

terms of local accountability. The danger is though that although we currently have a collegiate view now, this could be changed in the future.

AM: Policing is a complex activity. There is a connection from the very local, to the issues such as counter terrorism and serious and organised crime. The scope of governance therefore needs to reach in both directions. That's where Scotland went wrong. Links to the local and street level are required. The advantage of four PCC's in Wales would be able to see four models and four ways of working rather than just one person stood in front of them. I believe in maintaining a multiplicity of forces.

AJ: The governance of the police force should be to improve the services for the local population. To have a governance structure run from the Capital may not serve the people of North Wales.

JC: We'd be happy to send the Terms of Reference of the Policing Board

AM: The policing board is different from the All Wales Criminal Justice Board which brings together the Welsh presence of leadership in criminal justice in Wales.

Question area: Could policing be devolved separately from the rest of the criminal justice system?

AJ: Criminal justice is perhaps more devolved than one would think, even though it may be de facto. We have a senior presiding judge for Wales for example. I do think that criminal justice system and policing should be devolved at the same time, however avoiding that big bang devolvement.

JC: Of the view that it would be better to do it together if possible. Big bang is an issue. Possible to do it but not necessarily the best approach.

AM: Given the extent to which the Police are now looking at vulnerability, prevention, and ACE's – it would be an anomaly not to have the funding of criminal justice in the same pot. There is an anomaly at the moment where our funding provides saving for other parts of the justice system. I'd start with youth justice and probation, then policing.

DL: I'd agree with Jeff – it would be possible to have an incremental and staged process – so possibly the preferred solution to avoid that big bang. I'd say that is true for the rest of the criminal justice system.

I'm concerned that digitalisation of the court process could have issues especially the eighteen to twenty five year olds who just want things over with rather than understanding the full consequences. The prison estate is also a concern. At HMP Berwyn at one time less than twenty per cent of the men were from Wales.

AJ: This is a good question. The pathway is not clear – we need to do more work, and have further consideration around this question.

AM: At the moment we have an issue with secure places in Youth Custody. I've campaigned against children being placed a long way away. We are back to that situation now. There is no interdependency between the financing of prevention and the cost of custody. That tears an element of preventative and interventionist work out of the devolved environment in Wales. That can't be right. The number of homes in Wales, which are attracting authorities from England to place, are also driving the numbers of missing children incidents in Wales.

Question area: How are relationships between the police and the Welsh Government working currently, and how do you think they could be improved?

JC: We have talked about this to a large extent. In the first round of the PCC's there was not a good relationship -that has improved, and the formation of the Policing Board brings a greater strategic direction. On the whole then good, but we always look for improvement.

DL: It's a positive one. But the dangers are if there are changes in political parties which could change that relationship. We will now have Mark Drakeford chairing at least one of the meetings annually, and Jane Hutt chairing the others. But there are some issues, such as the Apprenticeship Levy. So the formal structures are embryonic but developing.

AJ: I'd like to reserve judgement. Grants have previously been handed out for community safety – the PCC's and police need to be included in the big picture. Schools funding needs to be continued – I'll reserve judgement for now.

AM: The relationship has been bumpy but is moving in the right direction. Ministers spend time in a constituency so they are better at understanding issues and how they relate to policing. I was at a meeting of the Community Safety Board this week. Jane Hutt seems at one with the approach we have been taking. Everything is connected with everything else. It must all join up.

DL: The access to the Welsh Government is significantly easier than access to the Home Office. It's not just the about the geography.

Question area: Do you see a case for an all Wales Police Force?

It was decided that this question had already been answered

Question area: How does the increasing divergence of the laws applicable in England and in Wales affect the operation of the police? Would devolution of policing and / or other aspects of criminal justice make a difference?

JC: Issues such as lawful chastisement will become more common place as the years go on. There will be a link with the College of Policing in this regard, to ensure that the training and development work is there. The police and commissioners must be consulted with in a partnership approach.

AJ: I haven't seen any problems. We adapt to them. We must work within legislation in Wales. I would want more. I'd like to look at Drug Policy.

AM: Legislation can have all sorts of unintended consequences. The removal of lawful chastisement has removed a threshold. The strength of a Common Law system is it will change with culture. The Well Being of Future Generations Act means there is a framework – it's not defined – but that's a good law as it has the chance to grow. You can see the fragility sometimes in the debates in the single chamber environment.

Question area: If policing was devolved do you think there would need to be changes in the governance arrangements for such bodies as HMICFRS and the IOPC, and, if so, what alternative models would you suggest?

AJ: I'd hope we could devise a better model than HMIC. It should focus on outcome based models and look at qualitative outputs rather than quantitative. Where-ever the IOPC are based the work they do would be very similar.

DL: We have explored a shared resource in terms of appeals within Wales. From an IOPC point of

view there is an individual currently who understands the Welsh Coverage. But it's not purely a Welsh context. There would be an opportunity to have a divergent set up in Wales.

JC: In terms of the inspectorate it would seem sensible that if policing was devolved than you might want an inspectorate regime that converged more than policing and looked at public services in the round.

AM: You'd go further with joint thematics. A more joined up approach would work well. It would be good if you could have an inspectorate owned by all the UK Government and the four devolved Governments. There is a need to reel back some of the developments of HMICFRS so it's more focused on policing.

The IOPC need to have the tough engagement when things go wrong, but also need to inform better working from police. Perhaps there's something to be learnt from tribunals collegiate approach?

Question area: If policing was devolved, how would you envisage relationships with the College of Policing and the National Crime Agency (and other policing bodies) working?

AJ: The National Crime Agency is essential. It would be nonsense to set up our own structures. It comes down to capability and capacity and the level of activity they have.

DL: We are lucky to have WECTU; it's something that England is envious of. The same is true of our Regional Crime Team. I would prefer to have a Welsh College of Policing.

AM: I'm led to a similar conclusion to Dafydd. They need to understand the local issues, and the Welsh context. I think the College of Policing has a problem. I think that the appointment of Mike Cunningham has put it in a much more constructive phase. But it is remote, and is not owned by its members.

JC: On the College of Policing it is critically important that there is a defined body that sets the occupational standards. Since Mike Cunningham's arrival there's been a better direction of travel. We'd need to ensure that the standards of policing are the same, and at least as good in Wales as England. So they should stay as the guardian of the graduate entry route. There has to be a close relationship between the colleges providing delivery, the local forces, and the COP.

DL: The APP body such as the strategic command course is attended by Scottish Officers, so it can work across the boundaries. The whole training environment has become very plural, and it needs to define what the role is and should retract back towards APP and one or two significant training activities. The rest could be developed in force, or across forces with the sector who are now delivering training.

AJ: The training in Northern Ireland is a good mix.

JC: In terms of paying for the work we need doing we need to ensure that the issue of the Apprenticeship Levy is resolved.