

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

| Present: | Commission members | Secretariat team |
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| <p>Barry Hughes, Chief Crown Prosecutor Wales (BH)</p> <p>John Edwards, Senior Policy Advisor CPS (JE)</p> | <p>Lord Thomas of Cwmgiedd, Chair, Simon Davies, Dr Nerys Llewelyn Jones, Sarah Payne CBE, Professor Rick Rawlings, Professor Peter Vaughan Sir Wyn Williams</p> | <p>Andrew Felton, Secretary to the Commission, Dave Gordon, Rhys Thomas</p> |

Question area: Greatest current and future challenges to the CPS in Wales

- Wales is one of 14 CPS area and we report to the headquarters in London. Wales is regarded as unique by the headquarters due to its cultural issues, legal requirements and relationship with the four forces. We have three offices in Cardiff, Swansea and Mold. We had eight offices but digital working has enabled us to increase efficiencies and to close offices while maintaining our effectiveness. The main office in Wales is in Capital Tower in Cardiff but also based there are 20 prosecutors who are working for the CPS in London. This method of remote working is made possible because the work files are digital. We recruit staff to work for London from the Cardiff office. We also have one of the 5 regional offices of the Specialist Fraud Division, and one of the 3 Fraud Centres based in Cardiff.
- We have a close relationship with the National Assembly and Welsh Government and we work closely with initiatives such as Future Generations. I sit on the All Wales Criminal Justice Board and my deputies sit on the four local boards.
- Some of the challenges are the same at the UK level and some are bespoke to Wales. Resources have been an issue and the CPS has faced cuts over the years. Digital working has been the key to enable the continuation of effective and efficient operations. Wales has been through the same challenges as those faced nationally and we've coped with the cuts through closing offices, working more efficiently using the digital platform to do so and by reducing staff numbers but we have maintained our operational effectiveness. There has been no real impact to the quality of our work. There has been a decrease of approximately 30% in our caseload from the police. We are down to around 30,000 from about 46,000 Magistrates' court cases but the work is more complicated, exemplified by the marked increase in sexual offences.
- Disclosure has been and remains an issue but we have recently published phase 2 of the joint CPS-Police National Disclosure Improvement Plan and I have agreed a pan Wales plan with the police forces. The enormous volume of information on electronic devices creates issues.
- Child sex abuse is another real challenge. We have a tranche of casework from a North Wales care home which has been dealt with by the National Crime Agency and a member of my staff has been working on it for seven years.
- Violence against women and domestic abuse is a concern. We have strategies in Wales to deal with this and I am the policy lead for this issue on the All Wales Criminal Justice Board.
- The fees that we pay to independent counsel are an issue, and something that we need to consider at a national level. There is a disparity of rates paid between the defence Advocates' Graduated Fees Scheme (AGFS) and the prosecution Graduated Fees Scheme (GFS), following the recent addition of £23M in funding for the AGFS. We will therefore undertake a national review of the GFS in 2019. Any changes must be affordable within the CPS budget.
- We were unable to recruit staff due to austerity for many years. This has now changed and

we are recruiting additional prosecutors and we aim to have a waiting list to call upon when somebody leaves. Last week I offered jobs to five out of six candidates, from diverse backgrounds.

- There was a variety of reasons why the candidates said that they wanted to work in Wales. Some are returning for family reasons, others like Wales after being on holiday here. We already I have a significant number of lawyers who went away to practice but returned to Wales. We have recently advertised for CPS advocates and one of candidates we appointed is a particularly experienced barrister. We had no applications from the local bar. When I was Chief in the South West of England I had people from Wales applying to join, but not from the local bar. One person who joined from the local bar in Cardiff a few years ago has been appointed as Queen's Counsel, and is a CPS pupil master. It is easier to attract defence solicitors, including partners, to join the CPS than the local bar. We receive significant interest from staff working for HMCTS and the Public Defender Service.
- The CPS has managed a significant reduction in funding and staff numbers in recent years. But the DPP and the Attorney General have both been clear that there is no scope for further cuts without an adverse impact on performance.

Question area: Current working relationship between then CPS and the police in Wales

- The relationship between the CPS and the police is governed by the Code for Crown Prosecutors and the Director's Guidance on Charging. The Code has recently been revised and it now takes into account disclosure issues, particularly the need to identify any such issues at an early stage. It also clarifies the range of advice we may give the police and the potential consequences for any failure to comply with the advice.
- The relationship with the police is critical for getting charging decisions right first time, which depends on the quality of the material received from the police. The relationship with the police is very positive in Wales. I have a good relationship with the four Chief Constables, as do the Deputy Chief Crown Prosecutors with the Assistant Chief Constables, and as do my staff at all levels with the police. There is a "can do" attitude which is stronger here than anywhere else I have worked, with a greater sense of collaboration. For example, I was the multi-agency lead for Transforming Summary Justice and we relied heavily on the police (and courts) for successful implementation. The success of the relationship between the CPS, police and courts in Wales is reflected in the performance of CPS Wales, which is a very high performing Area for the key TSJ measures.
- Postal charge requisitions have greatly increased since April 2017 with a commensurate reduction in the use of police bail. This introduces a number of challenges, with defendants demonstrably less likely to attend court. We shared data with the police about the impact and they have responded well in Wales. In South Wales the police dedicated resource to address the issues, and the situation has improved.
- We have positive working relationships with the Police and Crime Commissioners (PCCs) but I see them less often than I see the Chief Constables. The PCCs now chair all four local criminal justice boards and this is increasingly the pattern in England also. The boards vary in effectiveness across England and Wales. The local boards were most effective when central was available for a secretariat to complete work in between meetings. In Wales the PCCs now provide a secretariat.
- The CPS is flexible in its approach and can adapt to differences in approach by the 4 police forces. . For instance, we see fewer low level drug offences coming through for prosecution from the North Wales police force. The CPS' work is demand-led – we do not choose which cases to consider; we do not direct the police and we can only review cases referred to us by the police (with a very small number of private prosecutions), or those assigned by other investigative bodies. So if the police do not want to refer a case then we are not in a position to give advice on that case.
- The police also have a Victims' Right to Review Scheme but we are not involved with that,

as it is separate from the CPS' Victims' Right to Review Scheme.

Question area: Impact of a change in governance arrangement in Wales

- In the Wales Act 2017 justice is reserved to Westminster. It is difficult to give an answer about the impact of a change in governance without knowing what the governance arrangements will be. If there were a merger of investigation and prosecution in Wales, as in Scotland and much of Europe, the CPS would be a very different organisation. The same would be the case if the prosecution body was housed within Welsh Government. The CPS is independent but is superintended by the Attorney General. Any change in these arrangements would present a new challenge..
- More incremental changes would be easier to address. So, if there were a change in governance arrangements but CPS Wales remained independent of the police and Welsh Government, there would be less impact on us and we could adapt more easily. An example is the proposed change to Welsh law in removing the defence of reasonable chastisement in cases involving the physical admonishment of children. In responding to this proposal, we discussed the issues with the Welsh Minister and we were able to pull on the support of the assaults policy lead in London; we see no difficulty in adopting a slightly different approach in Wales. The number of cases a year that it is going to effect is probably in single figures. Another hypothetical example might involve something like a reduction in the legal limit for driving under the influence of alcohol, which would have an impact on a lot of people. But we would simply have separate guidance in England and Wales. Straightforward changes would not cause real difficulty.

Question area: Independence of the CPS be maintained in smaller jurisdiction

- The size of the jurisdiction will not necessarily affect the independence of the CPS. Independence is more likely to be influenced by the type of governance arrangements and legal system that are put in place. The key is maintaining our independence from the police and Government.
- The Code for Crown Prosecutors also helps maintain our independence, as all decisions are based on a set of principles, so that they are objective and impartial. Under the Code, prosecutors must always act in the interests of justice, unmotivated by any political considerations.
- There was a time when the CPS had prosecutors in the police station providing charging advice. That could have created independence issues but we had strong guidance and procedures in place. Our independence of police and other investigators underpinned the creation of the CPS, the rationale being that prosecution decisions should not be made by those investigating the case. This independence is part of our DNA. So the size of the jurisdiction should not create an issue of itself.
- If the DPP were superintended by the General Counsel in Wales, instead of the Attorney General, CPS' independence in Wales could be maintained in the same way as the Director of Public Prosecutions is independent of the UK Government, although superintended by the Attorney General. A formal protocol between the DPP and the Law Officers is currently being put in place in England and Wales, which maintains the DPP's prosecutorial independence and clarifies the relationships.
- I have a relatively senior member of staff whose role is dealing with the National Assembly, working pan-Wales on Welsh issues. My predecessors as CCP for CPS Wales appeared in front of Assembly Committees. I have not but I would be very happy to do so. I regularly meet with Welsh Ministers. I also meet with AMs and MPs.
- If devolution occurred but the legal system remained the same, the operational work on a day to day basis should have relatively little change.
- However, If prosecutions in Wales were severed from the national CPS there may be significant consequences. One consideration would have to be any impact on resources. Presently, if we have a serious terrorist offence in Wales it would be prosecuted from London by the Counter Terrorism Division. If we were severed from England we would not have access to that and growing our own division would be very difficult, because how do

you grow the experience if you do not have sufficient cases? You may need to buy in the expertise. Another potential impact could be access to the CPS case management system, which is a great benefit to CPS Wales. If one does not have access to a large digital business service it is inevitably more expensive. In Scotland and Northern Ireland they deal with terrorism cases themselves. There is no cross-border arrangement.

Question area: Divergence between the law of England and law of Wales

- There has been very little real divergence in criminal offences. The numbers are very small and manageable. We have agreed that we will prosecute the new offences under the new taxation law and this would be prosecuted by the Cardiff office of the Specialist Fraud Division. .
- The CPS has taken prosecutions on from many government bodies over the last 10 years. We have shown that we are capable of prosecuting for different Government bodies and investigators, subject to different policy considerations.
- We have a memorandum of understanding with many organisations to ensure a consistent approach. For example, when it comes to offences from Natural Resources Wales we have an agreement on who will prosecute what offences. Another example is that we have a national protocol with the Service Prosecutions Authority and Ministry of Defence, to cover offences committed by members of the armed forces. In England we also have an agreement to prosecute for the Department for Education / Ofsted. In Wales we have not been asked to prosecute for Estyn, but we would be very receptive to investigative bodies who want to use our prosecution expertise.
- JE: If a government agency asks us to prosecute on their behalf, we need to check that we are able to prosecute, and we may require an Attorney General's assignment of powers in order to do so. We do not encroach on other bodies' prosecution powers and only consider taking on such work when they approach us, as other bodies may well want to prosecute themselves.

Question area: All Wales Police Force

- The CPS is able to work with 4 police forces in Wales but we could also work with a single Wales force.
- There are advantages and disadvantages for an all Wales police force.
- We can see a number of advantages, although these could be achieved either by creating one force or by collaborative working: For instance, there are currently now four computer systems and thus some inconsistency in operation. Another example is that a One Wales force could have one specialist Rape and Serious Sexual Offences Unit to mirror our Unit, which works across Wales with a variety of different investigative teams.
- A good example of collaborative working across the 4 forces, currently at the planning stage, is the virtual remand courts across Wales. These enable defendants to remain at police stations during the hearing. An example of a disadvantage of one All Wales police force is that some communities may feel distanced from their police force and local priorities may be overlooked.
- By way of comparison, we are more effective now as one CPS Wales Area, rather than when we were 4 smaller Areas. As a larger operation we take advantage of economies of scale.

Question area: Resources needed to make the court and tribunal system work for Wales

- We appreciate the challenges caused by court closures for all court users. The criminal justice system has changed greatly over the last five to 10 years. However, there has been a huge reduction in the volume of cases, which affects the viability of smaller courts in

particular. The Transforming Summary Justice initiative has improved the efficiency of the criminal justice system when it comes to dealing with volume crime. We are consulted on court closures and we adapt to any changes. Some of the plans of HMCTs are ambitious. A plan to have not guilty pleas entered online for cases going to the Crown Court is an example of this. One challenge is to ensure that case management is done as robustly online as it would be in a hearing in front of a judge, as securing early guilty pleas has so many advantages for all involved in the process.

- Technology is dependent on infrastructure. We will see young and vulnerable witnesses giving cross-examination evidence on video.
- CPS Wales uses a national cloud sever. Its speed has improved as a consequence. Another thing we've done to deal with the proliferation of multimedia evidence, such as CCTV footage and bodyworn camera video, is to move from using disks to using links in an electronic file. The CPS has invested in 'Egress', a computer system that enables us to upload footage to the cloud and then creating a link to that for court users. The ability to access the link and download the footage in court is dependent on the strength of the Wi-Fi. The more users there are, the more bandwidth is required. But we can overcome any difficulty by downloading the footage before we get to court.
- There needs to be greater use of video evidence. More witnesses should give evidence remotely. Court room Wi-Fi has been transformational for us.. We can update cases in real time in court using wifi.
- Pop-up courts have not happened in Wales or as far as I'm aware in England. There needs to be enough work to make them effective. In my view better digital facilities are preferable to pop-up courts. There are very good facilities in HMP Berwyn and that is one way forward. This may overtake the need for pop-up courts. There is a good technology facility for witnesses in Barry but it is under-used. This type of facility could be used for non-custody Magistrates' court trials.

Question area: Use of Welsh practitioners

- In the Magistrates Court we try to cover all the cases ourselves but when we need outside counsel we are struggling to get local practitioners to do the lower court work. In the Crown Court something like 95% of our external advocacy work goes to Welsh- based counsel. There is scope for more Queen's Counsel in Wales. Some of the more specialist prosecution advocacy goes outside of Wales.
- Some police employees do some motoring prosecutions in guilty plea cases. If not guilty pleas are entered then the case is passed on to the CPS.