

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

| Present: | Commission members | Secretariat team |
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| <p>Dame Glenys Stacey (Chief Inspector of Probation) (GS)</p> <p>Sir Thomas Winsor (Chief Inspector of Constabulary and Chief Inspector of Fire & Rescue Services) (TW)</p> <p>Peter Clarke CVO OBE QPM (Chief Inspector of prisons) (PC)</p> | <p>Lord Thomas of Cwmgiedd, Chair, Simon Davies, Dr Nerys Llewelyn Jones, Juliet Lyon CBE, Sarah Payne CBE, Professor Peter Vaughan</p> | <p>Andrew Felton, Secretary to the Commission, Dave Gordon, Rhys Thomas</p> |
| <p>Question area: The roles of the inspectorate changing if the criminal justice system was devolved</p> | | |
| <ul style="list-style-type: none"> • GS: My understanding is that the statutory remit of the probation inspectorate would not change unless there is legislative change. Until then the Chief Inspector would still inspect probation and youth justice in Wales. There are three potential options: a dedicated inspectorate could be created for probation, a criminal justice inspectorate such as in Northern Ireland or the Chief Inspector of England could be asked to inspect as is done in smaller jurisdictions such as Isle of Man and Jersey. There are different models to choose from but whatever the model, you need a Chief Inspector with independence, knowledge and intellect. Inspectors need to understand what they are inspecting and how to inspect. • PC: Many of the issues Dame Glenys has mentioned are true of the prison inspectorate. There are potential three models in a devolved environment. Firstly, the status quo, secondly, a similar arrangement to Northern Ireland and thirdly, a fully devolved model with a self contained Welsh inspectorate. There are advantages and disadvantages to all three. The advantage of the status quo is that it works and we can bring a breadth of different experiences from different backgrounds and the ability to compare and contrast establishments as we inspect 140 institutions. We can undertake comparative work and establish how well a prison is performing. The model in Northern Ireland is that we visit at the request of the Northern Irish inspectorate. We assist with experience and knowledge gained from undertaking a large prison inspection programme and the Northern Irish inspectorate assist with local knowledge and expertise. Inspections are carried out by a team of staff from both inspectorates. A self contained model would have local context and understanding. Scale could be an issue as in Wales you have five prisons with no high security or women's prisons. Comparisons in Wales will be based on five local prisons and one open prison. That could lead to a lack of wider knowledge and the relatively small nature of Wales could lead to independence issues. The Optional Protocol to the Convention against Torture sets out the importance of independence and consideration should be given to how the independence of the inspectorate can be maintained in a smaller jurisdiction. It is not enshrined in law (which only recognises the role of the Chief Inspector) that the Prison Inspectorate is independent (although it is noted that the Chief Inspector can carry out unannounced visits) but we are independent through assertion by saying and doing what we need to carry out our role. • TW: The inspectorate would not change much if the criminal justice system was devolved to Wales. We inspect the Welsh forces in the same way as the English forces and I can't see that changing. The Home Secretary can commission us to inspect into specific areas and I would imagine the Welsh Government would want a similar power. We operate under six statutes and are answerable to six secretaries of state. Maintaining a single | | |

inspectorate means expertise, economies of scale and comparisons. There are inspectors who concentrate on Wales and Welsh forces get every bit as much of attention as any force in England. Differences in Welsh legislation need to be taken into consideration but up to now it has not created any issues. We prepare thoroughly before the inspection. The policing circumstance in Northern Ireland is unique and we inspect at invitation. The police in Northern Ireland are eager to be treated the same as forces in England and Wales. We use the same methodology to inspect them but we do take into account local issues.

- GS: The probation delivery model in England and Wales was to allow probation officers to innovate. This has not happened but whatever government policy is we have prepared a standard of what good probation looks like. We have completed inspection of the National Probation Service in Wales and we use those underpinning standards. You need to have underpinning standards whatever the policy is. Probation needs to be accountable that it provides rehabilitation, protection to public and victim engagement, Comparisons between one place and another is important.
- PC: The Prisons and Courts Bill made reference for the first time in law to the inspectorate (rather than just the Chief Inspector as is the current position) but the Bill did not pass. A devolved model could potentially recognise the entire of the inspectorate for the first time. At the moment we exist on a series of protocols and memoranda of understanding. This could be enshrined in legislation. The independence of the inspectorate could also be enshrined in legislation.
- TW: The inspectorate has no separate legal existence and I am not the accounting officer and therefore my influence on the budget is diminished. We are independent in terms of the content of report but before the 2011 the Chief inspector would consult the Home Secretary on the inspectorate schedule of inspections but now it much seek the approval of Home Secretary.

Question area: The model of inspection for the Fire Service in Wales be similarly applied to other inspectorates if devolution occurred

- TW: I am the Chief Inspectorate of fire services in England but not Wales. My knowledge of the Welsh system of inspection for the fire service is sketchy. It does have flexibility but it is really small. It is likely to work closely with us as the Scottish policing inspectorate does with us. The relationship with small inspectorates can become cosy and is one step away from capture. Once capture occurs then it is very difficult to apply the antidote. It is very important to maintain distance and detachment from those you inspect.
- PC: The third element to inspection and regulation is complaint. This should be kept separate.
- GS: It is difficult to spot capture. It is always an important consideration if you're empathising and sympathising with the area that you're inspecting. You would expect the entire recruitment panel to be independent and robust. Recruitment is more than just a panel interview: there should usually be a range of psychometric and other tests. Independence is essential but you also need the confidence of the Secretary of State so that you are not brushed off.
- PC: The selection process for my role had eight stages. There is an aspect of what I say as Chief Inspector that is sometimes controversial but it is helpful to get to the stage of life where you can be independent and say what you think. The penalty for that is the lack of diversity. If you have had different roles in the public sector then you have the experience to ensure that nobody tries to tell you how to carry out your role.
- TW: The dynamics with Secretary of State is important. The dynamics of the relationship can be very difficult when the Secretary of State has different views to you as I saw as rail regulator. Until my appointment, the Chief Inspector of Constabulary was always a former Chief Constable. They knew a lot about policing but there could have been a perception that they were biased. The inspectorate is now very different. When I was appointed the Home Secretary received 20,000 letters of complaint because I was not a former police

officer. There were several different panels and I ended up in front of a pre-appointment parliamentary panel. I made it clear that I would be completely independent from the minister.

Question area: The independence of the inspectorates be maintained in a smaller jurisdiction

- GS: At HMI Probation we have protocols agreed with the Ministry of Justice and HMPPS that maintain and protect independence. So for example, I can put whatever I want in an annual report, and determine our inspection schedule. The working protocols are very clear and transparent. I do think independence can be constrained if you don't appoint a Chief Inspector of the right ilk. The personal qualities of any Chief Inspector are very important. The main power of an inspectorate is the power of voice.
- TW: Independence needs to be legal and behavioural. The legal independence of the inspectorate of constabulary is not written down but what is not written down in fact give us independence. The ground of how we can be dismissed is pretty narrow. There are no political criteria that we are required to report. We have the power and obligation to publish whenever we want and we have significant power to see people or material. We have strong sanctions to punish people if they do not provide material or mislead us. No politician can tell us that we can't say something in our report. The Home Office has never tried to influence our report. You need a Chief Inspector of the right ilk with good nerves and courage.
- PC: We are an inspectorate and not a regulator. We inspect to our own standards of what we expect in prison and these are based on international human right standards. Our own standards and human rights standards are often at some variance to what the establishment has set up themselves. For example, prisoners should be entitled to one hour per day in the open air but this is not done in every prison. If we were a regulator we might be able to enforce that but we as inspectors can't. The prison service reject some of our recommendations due to them being different from their standards on overcrowding, time in the open air, time out of cell etc.
- GS: If you devolved the criminal justice system in its entirety then our standing and influence at HMI Probation would diminish. We have a small research team that can analyse our findings and evinced base for example, but it would be more difficult to maintain. We would be a diminished voice as well, speaking only in relation to England.. Regulation is very broadly about setting the bar and sees who reaches that but the purpose for inspection is the drive for improvement. All our methodology is to drive improvement were it is needed. Wales should consider what it wants from an inspectorate; show how things are or to also drive for improvement.
- PC: The ability to make comparisons across England and Wales does add to impact. By saying these are the worst conditions in England and Wales for the last five years does have an impact.
- TW: Inspected bodies want and deserve valid comparisons to those in the most similar situation. The critical difference between regulator and inspectors is that the regulation can change and punish. The inspectorate has the power of voice. As far as the police are concerned the operational independence of Chief Constables are precious and should not be jeopardised.

Question area: The benefit for Wales in having greater regulation, inspection and improvement arrangements in partnership with other agencies

- GS: We use broadly the same methodology to guide our decision making. This looks at size, scale and impact to guide our decision making. Annually we consult to find thematic areas and we consult on what we are thinking of doing. When we look at joint subjects together we look at the methodology together. One we are considering now is mental health and that will keep us busy for a few years. Some of the joint topics will take more time but we are not given extra resources. That is broadly how we decide on subjects as inspectorates.

- PC: The concept as in Northern Ireland is coherent but the ability to provide thematic expertise becomes difficult. An example of the benefits of joint working is the joint thematic between the prison and probation inspectorates on sexual offenders. We as prison inspectors could see what preparations are made for resettlement within prisons and colleagues in the probation inspectorate could see what was delivered in the community. There are definite benefits of working jointly but there are benefits of still having separate inspectorates. We are also required by statute to work together to minimise the burden of inspection.
- TW: The benefits of joint inspections are the breadth of experience. Child protection involves health, education, housing, policing etc. It was considered that the inspectorates in criminal justice should be merged but this did not happen. We do meet regularly.

Question area: Inspectorates understanding Wales

- GS: We have done more inspections in Wales than England, proportionately. Every time we inspect on a thematic subject such as sexual offenders we do come to Wales. I have Welsh speaking inspectors, the head of function is from Wales and we do media work in Wales. We are training local assessors that work within probation to come with us before going back to their area. We are about as integrated in Wales as we could be. All of us will have experience of inspecting jointly with bodies in Wales. There are a couple of things to consider. They are necessarily more resource intensive with a larger team needing to get familiar with roles and methodology. Also, simply scheduling the inspections is more cumbersome and expensive.
- PC: I come to Wales regularly to meet officials from Welsh Government. We inspect with Estyn and work closely with the Health Inspectorate in Wales, who also join us on inspections. All of our work in Wales is translated into Welsh. There are common aspects between local prisons in England and Wales. HMPPS has a director for Wales that we can raise issues with or we raise them with Welsh Government.
- TW: All our thematic inspections include a Welsh force and we are establishing a Welsh advisory group. The Welsh Government is asked to consult on our inspection schedule and we work closely with the Care Inspection in Wales, Estyn and the Health inspectorate. My staff officer is Welsh. The Police and Crime Commissioners hold the Chief Constables to account and have an obligation to respond within 56 days to our inspection report and they need to publish the actions they propose as the result of our recommendations or explain why not. We publish all our recommendations force by force.