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Wales Governance  
Centre

# Justice at the Jagged Edge in Wales

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**Canolfan Llywodraethiant Cymru, Prifysgol Caerdydd**  
*Wales Governance Centre, Cardiff University*

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## JUSTICE AT THE JAGGED EDGE IN WALES

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Wales Governance Centre  
Cardiff University



# Preface

## Acknowledgements

The authors would like to extend their thanks to Luke Nicholas, Guto Ifan and Cian Sion for helping to put this report together. We are also extremely grateful to Huw Pritchard, Laura McAllister, Rachel Minto, Ed Poole and Diana Stirbu for their advice and expertise. We must also thank Rhea Stevens and staff at the IWA for all of their help and support with the project.

Lastly, the authors would especially like to thank all those who kindly took part in this research. The accounts, experiences and reflections of those interviewed have played a majorly important role in shaping the report's findings and conclusions.

## About us

The Wales Governance Centre is a research centre that forms part of Cardiff University's School of Law and Politics undertaking innovative research into all aspects of the law, politics, government and political economy of Wales, as well the wider UK and European contexts of territorial governance. A key objective of the Centre is to facilitate and encourage informed public debate of key developments in Welsh governance not only through its research, but also through events and postgraduate teaching.

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## About this project

Cardiff University's Wales Governance Centre launched the *Justice and Jurisdiction* project in July 2018. It brings together an interdisciplinary group of academic researchers consisting of political scientists, criminologists, constitutional law experts and political economists to investigate the operation of the legal and justice system in Wales. The project is funded by a combination of the Economic and Social Research Council, the Welsh Government and Cardiff University.

As well as producing high quality academic outputs, the project will generate a series of reports intended to inform the work of Commission on Justice in Wales as well as encourage an informed public debate on the organisation and operation of the legal and justice system in Wales. Whilst the research team continues to benefit from comments and suggestions from our external partners, the programme itself has been conceived of and is being delivered wholly independently of them.

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## Executive Summary

This report represents the first systematic attempt to explore the functioning of the policing and criminal justice system in post-devolution Wales. The report explains the emergence of a distinct set of arrangements in Wales which sees the UK and Welsh Government's responsibilities overlap within the same policy space. In constitutional terms, this space is perhaps best characterised as a 'jagged edge' of intersecting competences and responsibilities. The consequences of these unique arrangements are explored in this report through the accounts of service providers and practitioners who are tasked with operating it. Some of the report's key findings are outlined below.

### 1. On the Jagged Edge: the justice system in post-devolution Wales

- Introduces the report locating it in the context of the Wales Governance Centre's work on the operation of the justice system in Wales.
- Discusses the anomalous nature Welsh devolution whereby the country's legal and justice systems remain part of an England and Wales unit despite the establishment of devolved legislature and executive (the National Assembly for Wales and Welsh Government.)
- Notes the ways in which the absence of a third institutional leg to Welsh devolution shapes the latest devolution dispensation as set out in the 2017 Wales Act.
- Points out that even in the absence of a Welsh legal jurisdiction and devolved justice system, the justice system in Wales is no longer identical to the English system. This is because of the ways in which so many areas of social policy that have a direct bearing on the justice system have been devolved.
- Argues that as a result of this division between non-devolved and devolved functions, in constitutional terms justice policy in Wales straddles a 'jagged edge' of intersecting competences and responsibilities.
- Underlines the comparative lack of research into or information about the operation of the justice system in the unique context of post-devolution Wales and sets-out (in brief) the methodology utilised in order produce this report.

- Explains the structure of the remainder of the report.

## **2. Mapping the jagged edge**

- In terms of the devolution settlement for Wales, policing and criminal justice are reserved matters and therefore the preserve of UK level institutions as part of their responsibility for the England and Wales legal and justice systems.
- In reality, however, the Welsh Government undertakes a wide range of complimentary activities in the most if not all of these reserved areas. Which means even
- Reflecting the interdependence of reserved and devolved powers and responsibilities in the area of criminal justice in Wales, a relative dense thicket of Welsh institutions have developed in order to help meet the particular challenges of operating in the Welsh context. We argue that these institutions may be conceived of as representing a de facto system of administrative devolution.

## **3. Intergovernmental relations and complications**

- Wales' relatively small size means that it is overlooked by UK justice officials in London who largely direct their attention towards the larger conurbations of England.
- Practitioners in Wales continually have to remind UK officials to take account of the Welsh context. The regular churn of officials and ministers in Whitehall add to the challenges facing service providers in Wales.
- UK policy documents may acknowledge the Welsh Government's responsibilities but often fail to reflect how the policy will work in practice.
- Insufficient consultation can undermine joint-working and intergovernmental collaboration. These problems have contributed to the development of de facto Welsh criminal justice agencies.
- The Welsh Government does not currently have sufficient "capacity" to take full account of policing and criminal justice issues in Wales.



- Silo working between Welsh Government departments and regular changes to Ministerial portfolios have contributed to the confusing arrangements for policing and criminal justice in Wales.
- Although the Welsh Government has historically been reluctant to take a lead on policing and criminal justice issues, it is now becoming more active in this policy space.

#### **4. The limits to joined-up policy making**

- The current constitutional arrangements prevent the Welsh Government from pursuing alternative approaches in policy areas it has responsibility for.
- The Welsh Government cannot adopt a 'whole-system' approach to tackling the root causes of offending because it does not control all of the necessary legislative and policy levers.
- As a "minor partner" in the England and Wales system, the Welsh Government has little influence over the trajectory of UK criminal justice policy.
- The challenges presented to those actively seeking to influence UK Government policy may lead to policy makers and service providers in Wales simply giving up on any campaign for change.
- A failure to influence UK Government policy means that the Welsh Government can end up implementing policies that it does not want.
- UK Government justice policy has already contributed to the demise of 'progressive' Welsh Government policy.

#### **5. The funding labyrinth**

- The funding arrangements for policing and criminal justice in Wales are a source of complexity for practitioners.
- UK Government funding for English-only services creates a sense of confusion amongst service providers in Wales. The police apprenticeship levy provides a clear example.

- The availability of different funding streams means there is a lack of consistency and co-ordination between services operating in the same policy space.
- Welsh Government funding is being used to support the UK Government in delivering policing and criminal justice services in Wales.
- Funding from policing and criminal justice agencies is also being used to “subsidise” devolved public services in Wales.
- The current devolution dispensation means that the savings generated from the Welsh Government’s ‘spend to save’ policy are largely being captured by the UK Treasury.

## **6. Scrutiny and accountability across the jagged edge**

- The House of Commons fail to take account of the distinct Welsh context to policing (Home Affairs Committee) and criminal justice (Justice Committee) in Wales.
- HM Inspectorate may often struggle to fully understand the distinct legislative and policy context in Wales.
- The National Assembly for Wales plays a significant role in scrutinising policing and criminal justice issues in Wales.
- The National Assembly is limited in its ability to scrutinise these areas.
- A lack of publicly available Welsh-only data often adds to the problems facing National Assembly officials.
- The complex nature of the devolution dispensation means that issues relating to policing and criminal justice are being missed by committees in Cardiff and Westminster.
- The Welsh Government’s Ministerial and departmental portfolios are unclear. This presents further challenges to Assembly Members and committee officials seeking to scrutinise the government’s role in the policing and criminal justice policy space.

## **7. Managing complexity: successes and limitations**

- The arrangements for policing and criminal justice are complex in all settings and jurisdictions. This includes areas of England that have recently benefited from city-region devolution.
- The complexity that exists in Wales can be “helpful” for UK justice agencies who wish to develop enhanced partnership approaches with devolved partners and public services.
- The establishment of a set of de facto Welsh criminal justice institutions is helping to overcome the complex policing and criminal justice arrangements in Wales.
- All-Wales strategies and forums are being developed by the UK and Welsh Government to take account of the distinct legislative and policy arrangements in Wales.
- Even though Welsh criminal justice directorates have been introduced to reflect the Welsh context, the current arrangements are precarious and only “temporary”.
- Some practitioners feel that the policing and criminal justice arrangements in Wales are substantially more complex than those existing in other jurisdictions.
- The complex nature of the devolved and non-devolved split in Wales is likely to become more complicated in future as UK and Welsh Government policies begin to diverge more widely.

## Chapter 1

### On the Jagged Edge: the justice system in post-devolution Wales

#### This chapter,

- Introduces the report locating it in the context of the Wales Governance Centre's work on the operation of the justice system in Wales.
- Discusses the anomalous nature Welsh devolution whereby the country's legal and justice systems remain part of an England and Wales unit despite the establishment of devolved legislature and executive (the National Assembly for Wales and Welsh Government.)
- Notes the ways in which the absence of a third institutional leg to Welsh devolution shapes the latest devolution dispensation as set out in the 2017 Wales Act.
- Points out that even in the absence of a Welsh legal jurisdiction and devolved justice system, the justice system in Wales is no longer identical to the English system. This because of the ways in which so many areas of social policy that have a direct bearing on the justice system have been devolved.
- Argues that as a result of this division between non-devolved and devolved functions, in constitutional terms justice policy in Wales straddles a 'jagged edge' of intersecting competences and responsibilities.
- Underlines the comparative lack of research into or information about the operation of the justice system in the unique context of post-devolution Wales and sets-out (in brief) the methodology utilised in order produce this report.
- Explains the structure of the remainder of the report.

#### 1.1 On the Jagged Edge: the justice system in post-devolution Wales

The justice system in post-devolution Wales represents something of an anomaly. As a result of the devolution process, there exist in Cardiff a powerful legislature and executive – the National Assembly for Wales and Welsh Government – that are directly accountable to the Welsh electorate. There is, however, no corresponding Welsh legal jurisdiction or justice

system. Rather, most (though not all) aspects of the legal and justice system in Wales remain part of an England and Wales unit that is the direct responsibility of the UK Government and the Westminster parliament, institutions that are accountable – by a different electoral mandate – to the electorate of the state as a whole. In this regard, the situation in Wales contrasts sharply to that pertaining in devolved Scotland and Northern Ireland, territories whose constitutional architecture is characterised by the classical *trias politica*: devolved legislatures and executives operate within separate Scottish and Northern Irish legal jurisdictions and justice systems.

The impact of the absence of a separate or distinct Welsh legal jurisdiction and justice system on the powers and responsibilities of the National Assembly for Wales and Welsh Government were much discussed at the time of the passage of what is now the 2017 Wales Act.<sup>1</sup> What has received far less attention until now are the practical implications for policy makers and policy practitioners of the fact that, in and for Wales, the justice system operates across set of policy areas for which responsibility is divided between London and Cardiff.

This comparative lack of attention is surprising. Simply put, even if there remains a singular England and Wales legal system and if justice is (almost entirely) a reserved matter that is also organised (ostensibly at least) on an England and Wales basis, the legal and justice system in Wales is *not* identical to the one that operates in England. So even if not formally separate, Wales is nonetheless a distinct policy space as far as the operation of the justice system is concerned. This because in both theory and practice, legal and wider justice systems cannot operate in isolation from broader systems and frameworks of social policy, which in Wales are largely devolved. So, for example, criminal justice policy for Wales intersects with and is indeed reliant upon mental health and drug rehabilitation services, housing, social services, the education system, and so on, much (though not all) of which are the responsibility of devolved institutions and operate differently from those found in England. But by the same token, devolved policy making in the areas of, for example, housing or mental health provision is also fundamentally impacted by justice policies being

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<sup>1</sup> We refer to the 2017 Wales Act in the next section

pursued by the UK government over which devolved institutions have little or no formal influence.

All of which means that in post-devolution Wales, absent a separate justice system, those charged with responsibility for conceiving and operationalising justice policy and wide areas of social policy are operating across a line between devolved and non-devolved responsibilities to an extent that is simply not replicated in the United Kingdom's other devolved territories. Line is, moreover, something of a misnomer for, as should already be clear and will be further illustrated in what follows, the division between non-devolved and devolved functions in the area of justice is far from straightforward or easily delineated. In constitutional terms, this space is perhaps best characterised as a 'jagged edge' of intersecting competences and responsibilities.

This report represents the first systematic attempt to explore the functioning of the justice system in Wales across this 'jagged edge' from the perspective of those tasked with operating it. It builds on previous work published by Cardiff University's Wales Governance Centre including:

- Huw Pritchard, *Justice in Wales: Principle, Progress and Next Steps* (September 2016)
- Robert Jones, *Imprisonment in Wales: A Factfile* (June 2018)
- Robert Jones, *Sentencing and Immediate Custody in Wales: A Factfile* (January 2019)

The current work is part of the 'Justice and Jurisdiction in Wales' project established by the Centre in September 2018 supported by a combination of the Welsh Government and the Economic and Social Research Council that has been designed to produce an additional series of reports. One report arising from this project has already been published:

- Guto Ifan, *Public Spending on Justice System for Wales* (2019)<sup>2</sup>

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<sup>2</sup> All the Wales Governance Centre's publications are available for downloading at <http://sites.cardiff.ac.uk/wgc/publications/>

More will follow. Together they are intended both to inform the work of the Commission on Justice in Wales but also, we hope, encourage a broader public debate on the operation and organisation of the legal and justice system in Wales.<sup>3</sup> Whilst the Commission on Justice in Wales is a focal point for our work and whilst we have benefited greatly from comments and suggestions from its members and staff – which we gratefully acknowledge – it is important to underline that this research programme has been conceived of and delivered wholly independently of the Commission by colleagues in the Wales Governance Centre. The Commission on Justice in Wales is not responsible for our findings nor does it necessarily endorse them.

The remainder of this Introductory Chapter will proceed in three stages. First, focusing on the absence of a separate Welsh legal and justice system, we will underline the unorthodox and indeed experimental nature of the constitutional design of Welsh devolution. Secondly, we will provide an overview of the research methodology employed in producing this report (an account that is supplemented by a more detailed Appendix). Finally, we explain the structure of the remainder of the report.

## **1.2 Devolution and constitutional experimentation**

It is almost certainly no exaggeration to say that the United Kingdom has more and more successful experience of implanting and nurturing systems of government world-wide than any other state in history. The extraordinary resilience and flexibility of the ‘Westminster model’ of government has been much commented upon and accounts vary as to its essential characteristics, not least because examples would now seem come in all shapes and sizes. But one of the most fundamental characteristics – so fundamental that it is often overlooked – is particularly pertinent when we consider the case of Wales: the ‘Westminster model’ system of government is built on a triumvirate of institutional branches that are all intimately interlinked yet remain separate; namely an executive, a legislature and a judiciary. These are the fundamental constitutional building blocks, as it were. Indeed, given that Montesquieu was effectively generalising on the basis of the English case when he developed his famous and widely influential doctrine of the separation of powers, it is plausible to argue that this

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<sup>3</sup> For details of the Commission on Justice in Wales see <https://beta.gov.wales/commission-justice-wales>

most fundamental characteristic of the Westminster model has become the institutional yardstick by which all modern constitutional polities are measured.

It is important to note that it is not only new states that Westminster has created in its own image, as it were, on the basis of this tripartite division between legislature, executive and judiciary. As we already noted, it is currently true of devolved Northern Ireland and Scotland. It was true of Northern Ireland between 1921 and 1972. It remains true for the various Crown Dependencies that circulate within the UK's wider orbit. And it is also true for the sub-state levels of Government that exist within a significant number of independent 'Westminster family' states, be they formally federal or not. In short, at both state or sub-state level alike, 'Westminster model' polities are constructed as a 'three-legged stool' – with executive, a legislature and judiciary combining to support the political system as a whole.

Considered against this background, since the establishment of the National Assembly for Wales in 1999, Welsh devolution can be conceived of as a series of constitutional experiments which have attempted to diverge from – or, more pejoratively, offend against – the fundamentals of this form of government.

Initially Welsh devolution was constructed as 'one-legged stool'. As every undergraduate student of devolution knows, for the first eight years of its existence there was no formal separation between the executive and the legislature in the National Assembly for Wales. Rather the Assembly was constituted as a single 'body corporate' with a cabinet grafted onto it. A misshapen piece of constitutional architecture that had not been envisaged at the time of the 1997 referendum but was rather a compromise or concession arrived at during the parliamentary passage of what became the 1998 Government of Wales Act.<sup>4</sup> It was a system that soon proved unworkable with the result that devolved politicians were forced to try to mark out a de facto division of powers between the National Assembly and what we now know as the Welsh Government. This division was formalised by way the 2006 Government of Wales Act. Since that legislation was enacted in 2007, in terms of both their structures and

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<sup>4</sup> For the authoritative academic account of the 1998 Government of Wales Act and the early years of devolution see Rawlings (2003). For an account of the evolution of schemes for Welsh devolution from the early 1960s to 2011 see Wyn Jones and Scully (2012).



internal practices, the Welsh Government and National Assembly look much more like orthodox 'Westminster model' institutions than they did when the National Assembly first met. Unfortunately, however, more than a decade later the legacy of confusion generated by the initial lack of separation lives on, with confusion about the roles of both bodies still a depressingly regular feature of Welsh public discourse.

Yet even after cleaving to the 'Westminster model' in terms of the organisation of and relationship between legislature and executive, in constitutional terms Welsh devolution remains – in essence – a 'two-legged stool'. There is no juridical equivalent of the devolved Welsh executive and legislature. Rather, as we have already noted, Wales remains part of the single England and Wales legal jurisdiction with its legal and justice systems the responsibility of the Westminster and Whitehall.

The current UK government's determination to maintain this 'two-legged stool' model of Welsh devolution is central to the architecture of Wales' latest constitutional dispensation, namely the 2017 Wales Act.<sup>5</sup> As discussed in more detail in Chapter Two this reserves to the UK level those powers that relate to justice and legal jurisdiction. This means that the list of reservations to the National Assembly's legislative competence is very much longer than, for example, the Scottish and Northern Irish equivalents. The effect of these restrictions is extended still further by the fact that presence of a clause that reserves to Westminster anything 'related to' this already extensive list of reservations. A feature of the legislation that many observers have argued is an inappropriate transposition into the Welsh context of a clause whose impact is much more muted in the original Scottish context.

In addition, the latest devolution dispensation incorporates a set of requirements for ministerial consents which demands that Welsh policy makers seek permission before introducing changes that have a knock-on impact on the justice system even in those areas of policy that are devolved and where effective policy making requires a means to ensure enforcement. The net result of all of this is a scheme of legislative devolution that is not only much more restrictive than its Scottish equivalent, but also – crucially – is significantly more

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<sup>5</sup> On the 2017 Wales Act see: Rawlings (2018) and Lewis (Forthcoming).

complicated. Which in turn almost certainly means a system of government that is less easy for citizens to understand or navigate.<sup>6</sup>

The eventual construction of the 2017 Act, as well as the controversy that attended its development, also serve to underline a fundamentally important point about the operation of the Welsh devolution dispensation absent a 'third leg'.<sup>7</sup>

For the past decade or so, academic commentators on Scottish politics have increasingly adopted terminology familiar from the study of federal polities where scholars have come to routinely differentiate between 'self-rule' and 'shared rule' (Elazar, 1987). To focus on self-rule is to consider the extent to which a given sub-state body is able to act autonomously in implementing policies, passing laws, allocating funding, and so on. Shared rule focuses on the extent of the influence of the sub-state level on the policies being pursued by the central state. Transposing this typology to the current context, the experience of the 2017 Wales Act would suggest that there is very little evidence that the UK government regards the legal and justice system in Wales as being in any meaningful way 'shared' with the Wales' devolved institutions. At least at the formal, constitutional level, the Home Office and the Ministry of Justice treat the England and Wales legal and justice system as – in essence – theirs. Whilst Wales' devolved institutions are allowed to operate within it, they may only do so in a closely monitored and constrained manner. To illustrate the point, we need only recall that ministerial consent works only in one direction. Whitehall can and does introduce changes to justice policy that have a considerable impact on devolved services in Wales; this without consultation let alone consent (as indeed will be illustrated in the following chapters.)

But of course, none of this is necessarily a problem.

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<sup>6</sup> The qualification here reflects the fact that it remains very early days in terms of the operation of the 2017 Act and we are not aware of any comparative research into respective levels of knowledge and understanding of the current dispensations in Wales and Scotland. Research into the situation that pertained in 2014/15 by the Wales Governance Centre's Jac Larner suggests that Scottish voters tended to be better informed about their devolved political system than their Welsh equivalents. It would seem wildly optimistic to assume that there has been any improvement in the relative position since then.

<sup>7</sup> The debates and arguments about the construction of 2017 Wales Act in the context of a determination to maintain a single England and Wales legal and justice system are well covered in Rawlings (2018). For the Wales Governance Centre's contributions to these debates see: Wales Governance Centre (2015) and Wales Governance Centre (2016).

Even if the 'Westminster model' is arguably the result of centuries of accumulated experience and wisdom, it is still possible that in the specific Welsh context, a two rather than three legged construction of devolution makes most sense. Not only that, but it is also possible that even absent formal 'shared rule' over the legal and justice systems that operate in Wales, central and devolved institutions will have arrived at a series of pragmatic accommodations in order to ensure that these systems work. Indeed, given what we have already said about the unavoidable interdependence of devolved and reserved services working across the jagged edge that exists, in constitutional terms at least, in the area of justice, we can be certain that accommodations of some kind are continually being negotiated and implemented between the two levels. Indeed, it has been the view of successive UK governments of various political stripes that current two legged construction model of Welsh devolution gives Wales, in effect, the best of both worlds.<sup>8</sup> On the one hand, Wales benefits from having its own devolved legislature and executive that can design and implement policies suited to the particularities of the Welsh context. But on the other hand, by maintaining the England and Wales legal and justice systems even in the context of devolution, Wales continues to benefit from the four and a half centuries of accumulated and successful experience embodied within them (e.g. Wales Office, 2013a).

The problem with this argument, however, and indeed the problem with any in principle argument either for or against the way that the justice system currently operates in Wales, is that we have limited information about its actual operation.<sup>9</sup> Political interest in the topic has been patchy. But even that eclipses the extent of academic interest in the area which, thus far, has been almost entirely confined to specific policy areas. No one has yet attempted a more systematic exploration of the operation of justice policy in the particular and indeed unique context of post-devolution Wales. Neither is there much evidence of civil society engagement with the operation of the justice system in Wales as whole rather than with certain aspects of its workings. Perhaps as a result of this lack of wider interest among

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<sup>8</sup> It is worth recalling that at the time of the parliamentary passage of what became the 2006 Government of Wales Act, the key argument of the then UK Government against a reserved powers model (as favoured by, *inter alia*, the Richard Commission) was that a reserved powers model of devolution required the creation of a separate legal jurisdiction such as the one found in Scotland. A development to which it was adamantly opposed. See Hain and Morgan (2005).

<sup>9</sup> Lord Thomas of Cwmgiedd told Members of the House of Lords Select Committee on the Constitution in 2016 that there has not been "sufficient appreciation" of the way that Welsh devolution has developed without a justice function (Lord Thomas, 2016: 17).

politicians, academics and civil society actors, even statistical evidence about the operation of the justice system in Wales remains at a premium, with basic information still having to be extracted through the use of Freedom of Information legislation. This research has been designed as a first attempt to fill this gap and produce the first analysis of the operation of the justice system across the jagged edge of devolved and non-devolved competences and responsibilities that currently exists in Wales.

### **1.3 Research methodology**

The comparative lack of interest in the operation of the justice system in Wales presents a substantial challenge. In an ideal world, we would have been able to compare, synthesise and otherwise build upon a rich and well-established body of research and commentary produced by those with specialist knowledge of all the various areas that fall under the wider rubric of justice. But in the absence of such a body of work, that simply hasn't been possible. While we can and do seek to build where possible on existing work, we have had to engage in extensive primary research in order to produce this report. More concretely, we have engaged directly and as extensively as possible with individuals charged with leadership roles in the current system on both sides of the jagged edge, seeking to learn about their lived experience of its operation. All of which has, of course, presented its own challenges. In this section we will seek to briefly explain the choices we have made in addressing them (we have also provided a more detailed discussion in Appendix 1).

The extent to which justice and wider social policy interacts has already been underlined. Proper consideration of the operation of every aspect of justice system in Wales would have been impossible given the time and resource constraints that we face. We have therefore chosen to reduce the scope of our enquiry and focused on those areas where the criminal justice system and social policy intersect most closely. In particular, we have concentrated on policing, probation, prisons and (to a more limited extent) youth justice. We have also engaged with those involved in the political scrutiny process for these areas. Clearly, even with this narrowing of scope, the research still remains very wide-ranging, nonetheless it has made the project more manageable for the researcher team.

Another key challenge we have had to consider in conducting research on this general area is the extent to which UK and Welsh Governments now have diametrically opposed views on the future of the legal and justice system in Wales. Whilst the former is committed to maintaining the England and Wales unit in its current form, at least since the publication of the Government and Laws in Wales Bill in March 2016, the Welsh Government has been committed to the establishment of a Welsh legal jurisdiction and the eventual devolution of the justice system (Welsh Government, 2016a). This commitment was subsequently repeated in the Labour party's 2017 general election manifesto. All of which means that consideration of the justice system in post-devolution Wales is unavoidable politicised and contentious.

In such a context, actors working within the justice system will undoubtedly have a strong incentive to parrot the 'official line' of the level for which they work. Indeed, it is not fanciful to suggest that they could potentially face sanctions if they do not (or at least, they might plausibly believe that this might occur.) All of which raises real doubts about the usefulness of evidence collected in this way. One obvious solution is to offer interviewees anonymity, which is precisely what we have done. Specifically, we have conducted 29 elite level interviews with people at operating in leadership roles within the justice system in Wales on both sides of the jagged edge, guaranteeing all participants that they will not be identified in this report. We have also conducted an additional focus group whose participants also agreed to be involved on the basis of anonymity.

Anonymous interviews are widely used in qualitative research and there are well established procedures to deal with the ethical dimensions that can arise. But the politicised and contentious nature of the operation of the justice system in Wales raises a further difficulty. Especially in a policy area in which even basic data and information is at a premium, the testimony of anonymous interviewees is unlikely to be enough of itself to convince naturally skeptical readers. To address this challenge, in the chapters that follow – and specifically in Chapters Three to Seven – we have supplemented interview data with references to relevant official reports, academic research, and any other sources of information and analysis that we have been able to identify. In short, we have sought wherever possible to triangulate interview data with other data sources. Clearly this cannot be the final word in terms of

triangulation. Evidence submissions to the Commission on Justice in Wales offer another rich source for those wishing to triangulate the accounts presented in the following chapters. As do the various Factfiles produced by the Governance Centre to which we have alluded as well as the analysis of the funding of justice services in Wales being produced by Centre colleagues. Yet our hope is that even as standalone document, this report will be considered more authoritative because of our efforts to contextualise our research findings.

#### **1.4 Structure of the report**

The remainder of this report is organised into six more substantive chapters followed by a short Conclusion.

In Chapter Two, 'Mapping the Jagged Edge,' we provide further context for the in-depth accounts presented in the following chapters. Specifically, we show how even in those areas of specifically reserved to Westminster, Wales' devolved institutions and the Welsh Government in particular, are nonetheless responsible for extensive complementary activity. This illustrates the point already underlined in this introductory chapter, namely that given the division of powers and responsibilities between the UK and Welsh levels of government as well as the inevitable links between justice and wider social policy, Wales constitutes a distinctive policy space within the England and Wales system. We also trace the development of group of institutions intended to meet the particular challenges of operating the justice system in the Welsh context. These institutions, we argue, may be conceived of as representing a de facto system of administrative devolution.

Chapter Three to Seven are our findings chapters and together form the core of this report. Drawing on our interview and focus group data, and triangulated with evidence from official reports, academic research and other sources, they deal in turn with five different inter-related aspects of the operation of the justice system in Wales. The main focus of Chapter Three, 'Intergovernmental Relations and Complications' is communication and relationship across the jagged edge. Chapter Four discusses 'The Limits to Joined-up Policy Making,' and specifically the way that the different priorities and policies being pursued on either side of the jagged edge limit the ability to 'join-up' the policy process. One notable example

discussed is the demise of the Welsh Government's much-vaunted policy on addressing the accommodation needs of former prisoners.

'The Funding Labyrinth', provides the focus for Chapter Five: namely the difficulties of negotiating the particularly complex funding environment that results from having multiple funding pots, offered by multiple departments, at both Westminster and devolved levels of government. Chapter Six discusses 'Scrutiny and Accountability across the Jagged Edge'. To what extent, we ask, have the Westminster and devolved levels developed the capacity to properly scrutinise and hold to account a justice system in which powers and responsibilities are divided in such complex ways? Complexity is the central focus of Chapter Seven: 'Manging Complexity: Successes and Limitations.' Here we discuss the attempts made to create an institutional infrastructure that is adapted to the particularities of the distinct policy space that is the justice system in post-devolution Wales. As well as discussing successes and examples of good practice in smoothing the jagged edge, we also show how many of those playing leadership roles in the current system believe that there are real limits to what can be achieved within the current constitutional dispensation.

## Chapter 2

### Mapping the Jagged Edge

#### The main findings in this chapter are:

- In terms of the devolution settlement for Wales, policing and criminal justice are reserved matters and therefore the preserve of UK level institutions as part of their responsibility for the England and Wales legal and justice systems.
- In reality, however, the Welsh Government undertakes a wide range of complimentary activities in the most if not all of these reserved areas.
- Reflecting the interdependence of reserved and devolved powers and responsibilities in the area of criminal justice in Wales, a relative dense thicket of Welsh institutions have developed in order to help meet the particular challenges of operating in the Welsh context. We argue that these institutions may be conceived of as representing a de facto system of administrative devolution.

#### 2.1 Introduction

As discussed in the previous chapter, the policing and criminal justice policy space in Wales is subject to a unique set of constitutional arrangements. Even if formally reserved to UK level institutions as part of a single England and Wales system, the umbilical link between the justice system and the wider realm of social policy means that, inevitably, Wales' devolved institutions also play a vital role even in this ostensibly non-devolved area. One of the challenges facing those who would seek to understand the operation of the justice system in Wales is that the division of powers and responsibilities between both levels of government is complex. Adding to this complexity is the fact that, in each of these layers, different responsibilities are divided across different departments of government.



In order to set the scene for the detailed investigation into the operation of the justice system in Wales presented in subsequent chapters, this chapter attempts to map the location of the different powers and responsibilities across the 'jagged edge' that characterises the operation of that system. The discussion is organised into three parts. First, we focus on the UK Government's responsibilities for policing, youth justice, prison and probation services in Wales. In the second section, will provide a descriptive overview of the Welsh Government's activity in each of these ostensibly reserved areas. The third section of the chapter will consider the emergence of a set of institutions that seek to span the jagged edge of constitutional responsibilities by linking the Wales-focused activities of bodies that operate on an England and Wales basis to the realities of devolved power in so many other aspects of life in Wales.

## **2.2 Policing and criminal justice: the UK government responsibilities**

UK level institutions are formally responsible for policing and criminal justice in Wales as part of their responsibility for the England and Wales system.

Legislative responsibility resides in Westminster, not only in the more general sense that Westminster retains sovereignty even in devolved areas, but also in the more specific sense that Westminster legislates for the England and Wales legal and justice system.

That system is largely administered by the Home Office and the Ministry of Justice.

The Home Office's main responsibilities in the Welsh justice policy space are for policing, crime and drugs policy. These areas fall under the Ministerial responsibilities of the Home Secretary (See Figure 2.1). The Home Office works with a number of different agencies and bodies including the Independent Office for Police Conduct, the Advisory Council on the Misuse of Drugs, Police Advisory Board for England and Wales, Police Remuneration Review Body, Police Discipline Appeals Tribunal, College of Policing and HM Inspectorate of Constabulary Fire and Rescue Services.<sup>10</sup>

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<sup>10</sup> See Appendix Five for a complete list.

Subject to parliamentary approval, UK Ministers have authority to introduce legislative changes to policing, crime and drugs policy in Wales. So, for example, in recent years, the Police Reform and Social Responsibility Act 2011 led to the abolition of police authorities and the establishment of Police and Crime Commissioners in Wales. More recently, the Home Office introduced the Psychoactive Substances Bill in response to growing concerns over the effects of new psychoactive substances (The New Psychoactive Substances Review Expert Panel, 2014).

**Figure 2.1: Home Office Ministerial Responsibilities**

Title	Responsibilities
Secretary of State for the Home Department	Security and terrorism; Legislative programme; Expenditure issues
Minister of State for Security and Economic Crime	Implementing the strategic defence and security review; Counter-terrorism (including CONTEST; counter-terrorism work in prisons; Protect and Prepare; terrorist financing; counter-terrorism policing; international police co-operation; terrorism prevention and investigation measures, and individual use of disruptive powers; proscription of terrorist groups); Investigatory powers (including Investigatory Powers Bill; Data Retention and Investigatory Powers Act 2014 and Regulation of Investigatory Powers Act legislation); Communications data legislation; Communications capabilities development; Aviation security; Chemical biological radiological nuclear defence and science and technology; Programme management; Serious and organised crime strategy (including foreign national offenders engaged in serious organised crime); Criminal finance and asset recovery; Cyber security; Cyber crime (including fraud); National Crime Agency oversight; UK anti-corruption policy; Economic crime.

Minister of State for Policing and the Fire Service Minister for London	Police finance and resourcing; Police reform and governance; Police representative groups; Police pay and pensions; Police workforce; The Independent Police Complaints Commission; Policing and Crime Bill; Police integrity and transparency (including HM Inspectorate of Constabulary, police powers); Emergency services collaboration; Firearms; Single infrastructure policing; Crime statistics; National fire policy; Grenfell Tower victims work; Chief Fire and Rescue Adviser; National resilience and fire programmes; Localism and reform; Workforce pay and pensions and industrial relations; Extradition; Mutual legal assistance; EU criminal justice; Interpol; Foreign criminality; Security industry engagement.
Parliamentary Under Secretary of State for Crime, Safeguarding and Vulnerability	Victims of terrorism; Disclosure and Barring Service; Drugs; Alcohol; Crime prevention; Anti-social behaviour; Gangs, youth crime and youth violence; Knife crime; Wildlife crime; Child sexual exploitation and abuse; Female genital mutilation (FGM); Violence against women and girls; Missing people and children; Sexual violence, prostitution and lap dancing; Domestic violence; WEProtect; Internet safety.

*Source: Home Office*

Home Office ministers and officials also have executive responsibility for policy initiatives in this area. For example, in October 2018, the UK Government restated its commitment to improving responses to victims of hate crime and abuse by publishing an update to its hate crime action plan (Home Office, 2018). The Home Office (2018) also unveiled its *Serious Violence Strategy* in 2018 to help combat the increase in the number of violent recorded incidents in England and Wales.<sup>11</sup>

Home Office legislation and policy affecting Wales is subject to parliamentary scrutiny by the House of Commons Home Affairs Committee in Westminster. The committee has carried

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<sup>11</sup> The number of violent offences recorded by police in England and Wales increased by 19% between September 2017 and 2018 (ONS, 2019).

out a number of inquiries in recent years including work around the future of policing (October 2018), domestic abuse (October 2018), hate crime and abuse (May 2017), the college of policing (July 2016), and police diversity (May 2016). Welsh police forces are also subject to regular inspections carried out by HM Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS). Although HMICFRS is independent of government, all inspectors are appointment by the UK Government.

The Ministry of Justice is responsible for a wide range of agencies and organisations that are involved in the administration and delivery of criminal justice services in Wales. These areas fall under the responsibilities of the Lord Chancellor and Secretary of State for Justice as well as team of Ministers (see Figure 2.2). The Ministry of Justice's executive agencies include HM Prison and Probation Service, HM Courts and Tribunals Service and the Legal Aid Agency. The Ministry also works alongside a range of other bodies including the Parole Board, Criminal Cases Review Commission, Legal Services Board, Youth Justice Board for England and Wales, the Sentencing Council for England and Wales, the Law Commission, the Independent Advisory Board on Deaths in Custody, HM Inspectorate of Prisons and HM Inspectorate of Probation.<sup>12</sup>

Again subject to parliamentary approval, UK Ministers are responsible for legislation relating to youth justice, prisons, and probation services in Wales. For example, in 2013 the Ministry of Justice unveiled plans to overhaul probation services in Wales through the Offender Rehabilitation Bill. After receiving Royal assent in March 2014, the Offender Rehabilitation Act 2014 established a National Probation Service Wales and a Wales Community Rehabilitation Company that was formed to replace the Wales Probation Trust. The UK Secretary of State for Justice has also unveiled plans to transform the prison estate. The Ministry of Justice's (2016) *Prison Safety and Reform* White Paper outlined the government's commitment to build 10,000 new prison places in England and Wales by 2020.<sup>13</sup> The government's announcement follows the construction a 2,100 capacity 'super prison' in north Wales which opened in February 2017.

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<sup>12</sup> See Appendix Six for a complete list.

<sup>13</sup> The Ministry of Justice announced in March 2017 that it had chosen a site in Port Talbot as the location for a new prison.

**Figure 2.2: Ministry of Justice Ministerial Responsibilities**

Title	Responsibilities
Lord Chancellor and the Secretary of State for Justice	Oversight of all portfolios and Ministry of Justice strategy; Resourcing of the department; Functions of the Lord Chancellor; EU exit and international business; Judicial policy including pay, pensions and diversity; Corporate Services.
Minister of State for the Ministry of Justice	Prison operations, reform and industrial relations; Probation services and reform industrial relations; Sentencing (including out of court disposals); Public protections (including Parole Board, IPPs and Serious Further Offences); Foreign National Offenders; Extremism; Electronic Monitoring; Supporting the Secretary of State on departmental finances and transparency.
Parliamentary Under Secretary of State at the Ministry of Justice	Court services and reform (including Bills); Legal aid; Legal support and fees Administrative justice and tribunals; Criminal justice; Family justice; Supporting the Secretary of State on EU exit and international business; Shadow Commons minister for Lord Keen portfolio (except for Civil Liabilities Bill); Parliamentary Minister (SIs).
Parliamentary Under Secretary of State at the Ministry of Justice	Victims (including domestic abuse and domestic violence); Female offenders; Youth justice; Offender health; Coroners, burials, inquests and inquiries; Lammy Review; Race Disparity Audit (in relation to Ministry of Justice policy areas); Devolved Administrations (in relation to Ministry of Justice policy areas); Justice devolution; Human rights; Lawfare; Transgender offenders; Veterans (in relation to Ministry of Justice policy areas); Mental capacity and Office of the Public Guardian; Criminal Cases Review Commission; Criminal Injuries Compensation Scheme.

*Source: Ministry of Justice*

The expenditure, administration and policy of the Ministry of Justice is scrutinised by the House of Commons Justice Committee. In recent years, the Justice Committee has undertaken inquiries into Transforming Rehabilitation (June 2018), the experiences of young adults in the criminal justice system (June 2018), the disclosure of youth criminal records (October 2017) and the Ministry of Justice's proposals for prison reform (April 2017). Welsh prisons and probation services in Wales are also subject to scrutiny from HMI Prisons and HMI Probation. The Chief Inspector of Prisons and Probation are appointed by the Secretary of State for Justice and report to them on matters relating to prison conditions and the standard of probation services in Wales respectively.

### **2.3 Wider preventative approaches: Welsh Government**

Behind the formal reservation of powers, however there is much by the way of complementary activity by both the National Assembly for Wales and the Welsh Government. It is important to note that this is not simply a result of the devolution *per se*. Coincidentally, the late 1990s not only saw the establishment of devolved institutions in Wales, but was also a period in which the UK Government altered its approach to reducing crime and offending. Underpinning this change was a widely-held belief that the institutions of the criminal justice system *alone* could no longer adequately address the causes of crime and offending (Garland, 1996). Rather, other government departments *beyond* those whose specific remits cover the England and Wales criminal justice system also needed to play their part. For example, the Crime and Disorder Act 1998 requires local authorities to work in partnership with voluntary, statutory and community partners to reduce crime and offending (Gilling, 2007). Typical of the times, a report by the Social Exclusion Unit (2002) identified health, education, housing and substance misuse as key to reducing re-offending.

The UK Government's new approach was to have unforeseen consequences in Wales. Unveiled at a time when the National Assembly for Wales was established, the UK Government's move to spread responsibility beyond the traditional justice departments meant that many of the levers central to this wider preventative approach were held by newly appointed Welsh Ministers. In short, its responsibilities for health, education, housing, substance misuse, local government, social care, equalities and the Welsh language

ensured that the Welsh Government has had a formal role to play in the policing and criminal justice policy space. In the following section we attempt set out the Welsh Government's involvement in those areas reserved to the UK Government by the 2017 Wales Act.

**Figure 2.3: Reservations in Home Affairs (New Schedule 7A of the Government of Wales Act 2006)**

Home Affairs	UK Government Department
National security	Home Office
Special powers, and other special provisions, for dealing with terrorism	Home Office
Interception of communications	Home Office
Covert surveillance by persons exercising public functions	Home Office
The prevention, detection, investigation of crime	Home Office
The maintenance of public order	Home Office
Policing	Home Office
Police and crime commissioners	Home Office
Anti-social behaviour	Home Office
Modern slavery	Home Office
Prostitution	Home Office
Emergency powers	Home Office
The subject matter of the Rehabilitation of Offenders Act 1974	Home Office
Criminal records, including disclosure and barring	Home Office
Dangerous items (Firearms Acts 1968 to 1997, Poisons Act 1972, Knives)	Home Office
Misuse of and dealing in drugs or psychoactive substances	Home Office
Private security	Home Office
The sale and supply of alcohol	Home Office
Betting, gaming and lotteries	Department for Digital, Culture, Media & Sport



### 2.3.1 Home affairs

In the context of the list of Reservations set out in Figure 2.3.

#### **The prevention, detection, investigation of crime**

The Welsh Government is involved in some aspects of crime prevention through its community safety agenda. The main focus of activity in this area is the prevention of youth crime via the All Wales Youth Offending Strategy. Welsh Government funding has been directed towards youth crime prevention including through the Safer Communities Fund for a number of years (Cardiff University et al, 2009). The Welsh Government's direct involvement in adult crime prevention is less clear. However, The Explanatory Notes of the Wales Act 2017 point out that "although the prevention, detection and investigation of crime and policing are reserved – such that the Assembly cannot confer, impose, modify or remove functions on/of the police – the reservations under this section do not prevent the Assembly from conferring on a devolved Welsh Authority powers relating to the detection and investigation of an offence of a kind that could be created by a provision falling within the Assembly's legislative competence."<sup>14</sup>

In 2010, the Welsh Government launched a six-year integrated strategy to tackle violence against women in Wales (Welsh Government, 2010). Building upon its *Tackling Domestic Abuse: All Wales National Strategy* (Welsh Government, 2005), *The Right to be Safe* re-outlined the Welsh Government's (2010: 8) commitment to try and "change attitudes" towards violence against women in Wales. In April 2015, the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Bill received Royal Assent and became an Act of the National Assembly for Wales. The central aims behind the Act are to improve consistency in service provision across Wales and improve the quality of 'needs based' approaches to tackling domestic abuse and sexual violence.

In March 2016, the Welsh Government (2016b) launched a *National Training Framework* to help deliver the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act

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<sup>14</sup> Wales Act 2017 c.4 explanatory note. Section B5 - Crime, public order and policing (110). See – <http://www.legislation.gov.uk/ukpga/2017/4/notes/division/6/index.htm>

2015 across Wales. This framework re-emphasised the Welsh Government's commitment and support to changing attitudes towards offending behaviour in Wales. The criminal justice system is identified in the strategy as playing a central role in tackling violence against women up to 2021 and beyond. The Welsh Government's *Final Budget* for 2019-20 allocated £5m to this activity.

## **Policing**

Policing is a reserved matter but is a site of significant Welsh Government activity. The Welsh Government provides a component of the Police Settlement via the Revenue Support Grant and the distribution of National Non-Domestic Rates (NNDR; 'Business Rates'), which is a fully devolved tax. The Police and Crime Commissioners in Wales receive funding through Council Tax, which is a fully devolved tax (more below). The Welsh Government component of the 2019-20 Police Settlement was worth £143.4m (Welsh Government, 2019a).

A high-profile example of Welsh Government activity is its support for additional Police Community Support Officers (PCSOs). The funding of additional PCSOs (500) has been a significant Welsh Government commitment since 2011. The policy aims to ensure that PCSOs play "a pivotal role not only in making our communities safer, but in making them feel safer" (Welsh Government, 2011: 25). The 2019-20 *Final Budget* provides £16.7m for PCSOs (Welsh Government, 2019b).

A further example of the Welsh Government's involvement is its activity around schools and education. The Welsh Government allocated £1.98 million to restore funding for the All-Wales Schools Liaison Programme in its 2019-2020 draft budget. This programme is central to the Welsh Government's preventative agenda offering "vital support" to schools educating children on substance misuse and personal safety issues (Welsh Government, 2018a: 14). The programme receives match funding from all four police forces in Wales.

The Mental Health Crisis Care Concordat is an agreement which brings together Welsh Government, Police, NHS, the Welsh Ambulance Services, Local Authorities and third sector organisations to improve responses to people in crisis because of a mental health condition. One of the Welsh Government's commitments is to work along police to reduce the number

of people being detained under powers within section 135 and 136 of the Mental Health Act 1983 (Welsh Government, 2016c).

In 2016, the Welsh Government led a review of Community Safety Partnerships involving the Wales Audit Office, and created an Oversight Board for implementing the findings of the review in the form of a new Safer Communities programme (Welsh Government, 2017a). The National Police Chiefs Council and Police and Crime Commissioners were part of the Oversight Board and will be involved in implementing and delivering this ongoing agenda. The review of community safety partnerships highlighted a number of examples of partnership working between police forces and devolved services. These include the Swansea HelpPoint and the Cwm-Taf Multi-Agency Safeguarding Hub (with devolved public service providers located at Pontypridd police station) (Welsh Government, 2017a).

The creation of Public Service Boards (PSBs) under the Welsh Government's Well-being of Future Generations Act 2015 offers another mechanism for partnership working between devolved and non-devolved agencies. Although police forces in Wales are not official members of the Public Service Boards they are formally invited to attend meetings along with probation services in Wales.

In November 2018, the Welsh Government established a Policing Board for Wales. The Board's membership includes Welsh Chief Constables and Police and Crime Commissioners as well as Welsh Government Ministers and officials (Welsh Government, 2018b). The Welsh Government has also extended invitations to the Home Office, Ministry of Justice, NHS Wales and the Welsh Local Government Association. The Board reflects the Welsh Government's continuing involvement in the policing policy space as well as its commitment to working alongside reserved partners in Wales.

### **Police and Crime Commissioners**

While the Welsh Government directly provides £143.4m to police forces via devolved Local Government Finance, the Police and Crime Commissioners also raise money through Council Tax, which is a fully devolved tax. In the 2018-19 Police Settlement, the PCCs raised £127.8m,

which is additional to the Welsh Government funding distributed through Local Government Finance (Welsh Government, 2019a).

The Public Service Boards ensure that police forces and Police and Crime Commissioners have an opportunity to be brought into close co-ordination with devolved public services, primarily local authorities and health boards.

### **Anti-social Behaviour**

Anti-social behaviour is ostensibly reserved, but attempts to address it have long formed part of devolved Welsh housing policy (Delaney et al, 2014). Certain provisions within the Anti-social Behaviour, Crime and Policing Act 2014 relate to housing which falls under the responsibilities for the Welsh Government's Minister for Housing and Local Government (Welsh Government, 2016d).

A 2014 Welsh Government Policy and Practice Review into anti-social behaviour resulted in a four month pilot scheme to trial an anti-social behaviour risk assessment tool within the social housing sector (Delaney et al, 2014). Housing Associations are guided by the Wales Housing Management Standard for Tackling Anti-social Behaviour.

### **Modern Slavery**

Modern Slavery is reserved but tackling it is a priority for the Welsh Government through supply chain and procurement policy (Welsh Government, 2017b), and the appointment since 2011 of a national anti-slavery co-ordinator. Devolved public service providers including the NHS and Transport for Wales have obligations to tackle slavery under the (reserved) Modern Slavery Act 2015, whilst also interacting with the Welsh Government's devolved anti-slavery initiatives. Organisationally, the Police and Crime Commissioners also work with the Welsh Government to support the co-ordinator.

The Wales Anti-Slavery Leadership Group provides strategic leadership for tackling slavery in Wales and co-ordinates collaboration between devolved and non-devolved partners and the third sector. There are three sub-groups within the Leadership Group: The Wales Anti-

Slavery Training Subgroup; The Wales Threat Group for Modern Slavery; and The Wales Anti-Slavery Casework Review Group.

The Wales Anti-Slavery Leadership Group is chaired by the Welsh Government's Head of Community Safety. Other members including policing officials, Police and Crime Commissioners, Home Office, Crown Prosecution Service Wales, National Police Chiefs' Council, National Crime Agency, National Probation Service Wales and a range of third sector groups and organisations.

### **Prostitution**

The Welsh Government has provided funding to third sector organisations which provide support to sex workers and victims of abuse (Welsh Government, 2017c). The Welsh Government has also funded research into the relationship between sex work and substance misuse in Wales. The study was undertaken to help generate an evidence base upon which to develop future policy in relation to sex work and the use of drugs and alcohol (Sagar et al, 2015).

In its *National Strategy on Violence against Women, Domestic Abuse and Sexual Violence*, the Welsh Government (2016e) outlined its commitment to protect women and improve access to support for those involved in prostitution in Wales. But while the costs of assisting individuals is devolved, legislating and regulating sex work is reserved to the UK Government.

### **Dangerous items (Firearms Acts 1968 to 1997, Poisons Act 1972, Knives)**

The law regulating this area is reserved but education policy is devolved. The Welsh Government has produced guidance for schools on how to search children for weapons (Welsh Government, 2010). This comes after new powers to search for weapons were introduced in the Violent Crime Reduction Act 2006.

### **Misuse of and dealing in drugs or psychoactive substances**

The misuse of and dealing in drugs (as well as their classification) is reserved to the UK Government, but responsibility for addressing the effects of substance misuse is devolved (e.g. health and local government). The Welsh Government can and must implement a substance misuse strategy (more detail below), but has no influence over the supply or provision of drugs by individuals or groups into communities. The Welsh Government's Substance Misuse Action Plan received £26.4 million of funding in the 2019-20 Final Budget.

The Welsh Government's first drug strategy, *Tackling Substance Misuse in Wales*, was published in 2000. The plan was largely centred on the UK Government's own *Tackling Drugs to Build a Better Britain* strategy (Home Office, 1998) but included some additional provisions (Brewster and Jones, 2019). The Welsh Government's current strategy was introduced in 2008 and has led to a greater focus on harm reduction in Wales.

The Welsh Government's major commitment to tackling substance misuse amongst offenders began in 2004 through the launch of Transitional Support Service (TSS). TSS was specifically introduced to address the short fall in support for prisoners only serving short-term sentences (Maguire et al, 2000). TSS became a co-commissioned service between the Welsh Government and NOMS in 2011. That same year, G4S were awarded a contract to run the whole of TSS across Wales. Within its *Substance Misuse Strategy Annual Report*, the Welsh Government (2015a, p.21) announced that TSS would be "absorbed" as part of the UK Government's introduction of widespread changes to 'through the gate' provision led by the Wales CRC.

### **The sale and supply of alcohol**

Despite being central to the devolved substance misuse policy agenda, the UK Government controls the sale and supply of alcohol. The Welsh Government has pursued legislation to introduce minimum alcohol pricing in Wales. The Welsh Government's Public Health (Minimum Price for Alcohol) (Wales) Bill was approved by the National Assembly in June 2018 and received Royal assent on 9 August 2018. The Welsh Government's Health Secretary, Vaughan Gething, described the Bill as something that will help the government to "do more to address alcohol-related harms" in Wales (Welsh Government, 2018c).

### **Betting, gaming and lotteries**

Despite falling under the responsibilities of the UK Government, Welsh Ministers have an exception from this reserved matter to regulate the number of high-stakes gaming machine in a premises<sup>15</sup>.

Wales has been identified as having the highest level of problem gambling in the UK (Gambling Commission, 2016; John et al, 2017). A report by Wales' Chief Medical Officer in 2018 described gambling as "an emerging public health issue in Wales" and called for improved responses to help deal with the associated harms (Chief Medical Officer for Wales, 2018: 26). The report's conclusion was welcomed by the Welsh Government in a written statement by the Health Secretary who outlined the government's commitment to taking a public health approach to tackling problem gambling in Wales (Welsh Government, 2018d).

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<sup>15</sup> Wales Act 2017 (s.58). See – <http://www.legislation.gov.uk/ukpga/2017/4/section/58/enacted>

**Figure 2.4: Reservation in Justice (New Schedule 7A to Government of Wales Act 2006)**

<b>Justice</b>	<b>UK Government Department</b>
The legal profession and legal services	Ministry of Justice
Legal aid	Ministry of Justice
Coroners	Ministry of Justice
Arbitration	Ministry of Justice
The subject matter of the Mental Capacity Act 2005	Ministry of Justice
Public access to information held by a public authority	Ministry of Justice
Compensation for persons affected by crime and miscarriages of justice	Ministry of Justice
Prisons and other institutions for the detention of persons charged with or convicted of offences	Ministry of Justice
The management of persons charged with or convicted of offences	Ministry of Justice
The management of other persons required to be detained in a relevant institution	Ministry of Justice
Probation	Ministry of Justice
Escort functions and transfer of persons between relevant institutions	Ministry of Justice
Transfer to hospital of prisoners under sections 47 to 47 of the Mental Health Act 1983	Ministry of Justice
Transfer of restricted patients under section 79 of the Mental Health Act 1983	Ministry of Justice
Youth Justice (under section 37 to 42 of the Crime and Disorder Act 1998)	Ministry of Justice



### **2.3.2 Justice**

In the context of the list of Reservations set out in Figure 2.4.

#### **Legal Aid**

The Welsh Government has expressed an interest in the operation of Legal Aid in Wales and has criticised the potential impact of UK Government reforms on vulnerable groups, access to justice and the legal profession, arguing that changes to expert fees (proposed as part of UK Government policy) had an impact on the NHS' delivery of expert medical work (Welsh Government, 2013a).

#### **The subject matter of the Mental Capacity Act 2005**

The Welsh Government is responsible for implementing this Act where it interacts with health and social care. The implementation of the Act has been subject to a recent review by the Welsh Government in response to court judgements (Welsh Government, 2018e).

#### **Prisons and other institutions for the detention of persons charged with or convicted of offences**

The area of prisoner healthcare represents the Welsh Government's most significant set of responsibilities for prisoners in Wales. The responsibility for healthcare within public sector prisons was transferred from the Home Office to the Welsh Government in 2003. This included the transfer of funding from the UK Government to the Welsh Government based on a historic spend on prisoner health care within public sector prisons. In 2017/2018, the UK Government provided the Welsh Government £2.544 million for prisoner healthcare in Wales.

The responsibility for healthcare at public sector prisons in Wales was transferred from the Welsh Government to the Local Health Boards in Wales in February 2006. Primary healthcare at HMP Parc in Bridgend is provided by the prison's private operator G4S Care and Justice Ltd (G4S). All secondary healthcare services are delivered by the local health board.

The Welsh NHS is also responsible for promoting best practice. In 2012, Public Health Wales established the Public Health Wales Custodial Health Advisory Board (WCPHAB) to provide advice and support to the Partnership Boards responsible for prisoner healthcare in Wales. The WCPHAB offers support to the Welsh Government on policy development and the maintenance of prison healthcare standards in Wales. The WCPHAB is also responsible for providing the Welsh Government with an annual report to review developments within prison healthcare in Wales.

Part 11 of the Social Services and Well-being (Wales) Act places responsibilities on local authorities with a prison in their authority boundary. Local authorities are responsible for addressing the social care needs of all prisoners held in their area prior to their release. The process of identifying the needs of prisoners is undertaken by Wales CRC Resettlement Officers which is then transferred to the local authority (Welsh Government, 2015b).

The Welsh Government has a duty to address the mental health care needs of prisoners in Wales. Prior to the introduction of The Mental Health (Wales) Measure 2010, the Welsh Government's (2005a) *Raising the Standard* strategy had outlined its commitment to improving 'in-reach' mental health services into prisons across Wales (Welsh Government, 2005a). The introduction of The Mental Health (Wales) Measure 2010 now sets out the requirements for mental health services to prisoners in Wales.

After introducing its new mental healthcare strategy in 2012, the Welsh Government published guidance in May 2014 to provide support to those involved in the provision of primary and secondary mental health services in prisons (Welsh Government, 2012a; 2014). In 2015, the Welsh Government's suicide and self-harm prevention strategy identified prisoners as a "high risk" group in Wales (Welsh Government, 2015c: 19). The strategy recommended that Welsh prisons should be "priority places" where suicide prevention services are specifically directed as part of its wider commitment to improving public health across Wales (Welsh Government, 2015c: 23).

The power to "secure the provision" of education in Welsh prisons is the responsibility of the Secretary of State for Justice (Welsh Government, 2014a: 2). However, since 2009, Welsh

Ministers have been responsible for making the rules in respect of education, training and library services to prisoners held in Welsh prisons (Welsh Government, 2009,). These responsibilities, under section 47 of the Prisons Act 1952, were transferred to the National Assembly through a Transfer of Functions Order which came into force on 1 April 2009.

The responsibility for prisoners' housing needs fall directly within the Welsh Government's wider responsibilities for housing in Wales. The Welsh Government's first major commitment to providing housing support to prison leavers can be traced back to the Homeless Persons (Priority Need) (Wales) Order 2001 which included specific provisions for prisoners in Wales. This measure was introduced by the Welsh Government as a response to the problems often faced by homeless offenders upon their release from custody.

In 2005, the Welsh Government set up Prison Link Cymru to establish a national housing support system for Welsh prisoners. Its introduction formed a major part of the Welsh Government's efforts to assist the delivery of 'through the gate' housing support services to Welsh prisoners in preparation for their release. The emphasis upon 'local connection' within the Homeless Persons Order meant that 'through the gate' support provisions would be, at least in principle, made available to all prisoners from Wales regardless of where they were being held within the prison estate.

The provisions set out within the Homeless Persons (Priority Need) (Wales) Order 2001 were removed within the Housing Act (Wales) 2014. The measures included in the new Act have stripped away prisoners' automatic 'priority need' status and introduced a new priority need category for prisoners that is centred upon vulnerability as a result of being in custody. In December 2015, the Welsh Government launched a National Pathway for Homelessness Services for those in the secure estate. The National Pathway offers support to help local authorities implement the changes made by the Housing (Wales) Act 2014. The National Pathway has also been introduced to take account of the changes made to resettlement services in Wales by Transforming Rehabilitation and the role of the Wales CRC.

The Welsh Government's *Financial Inclusion Strategy* for Wales 2016 emphasised that ex-prisoners were an important group as part of their wider efforts to provide financial support

to “vulnerable people across Wales” (Welsh Government, 2016f: 25). The Welsh Government’s strategy acknowledged the role that will be played within this pathway by Wales CRC Resettlement Officers. This includes a responsibility upon CRC officers in Wales to address any financial issues that arise when prisoners are given an initial needs assessment upon entering custody.

### **The management of persons charged with or convicted of offences**

The broad range of activities around offender management and re-offending are reserved, while the Welsh Government has made it clear that these activities create demands on devolved public services (Welsh Government, 2018f). While overall prisons policy is not devolved, the Welsh Government is pursuing its own distinct policy on reoffending, focusing on young people and women (see section 2.4). In June 2018, the Welsh Government announced its intention to end imprisonment for non-payment of council tax (Welsh Government, 2018g). This is an obvious entry into sentencing policy in that devolved policy area, and sits alongside the Welsh Government’s devolved responsibility for administering the Council Tax Reduction Scheme.

### **Probation**

The responsibility for managing offenders sentenced to a court order or those subject to pre-release or post-release supervision is reserved to the UK Government. The Welsh Government’s responsibilities for health, education, housing and substance misuse mean that devolved public services play a vital role in supporting offenders in the community. HMPPS’ Business Plan for 2018/19 acknowledged that “local community partners” in health and housing help to address some of the wider issues that impact on re-offending (HMPPS, 2018: 3).

In July 2018, the Ministry of Justice published its proposals to reform the structure of probation services in England and Wales. Its proposals included specific plans for Wales to reflect the Welsh Government’s legislative competence in areas such as health, housing and education and the “fundamentally different delivery landscape” that exists in post-devolution Wales (Ministry of Justice, 2018: 36). Unlike its proposals for probation services in

England, the Ministry of Justice intend to introduce an “alternative delivery model” for Wales that will see the National Probation Service assume responsibility for low, medium and high risk offenders. The Ministry of Justice (2018: 36) claim that its approach is designed to reflect the “distinct needs of Wales”.

The Welsh Government and Ministry of Justice published the *Framework to Support Positive Change for Those at Risk of Offending in Wales* in March 2018. The strategy establishes a set of shared priorities for reducing re-offending in Wales (Welsh Government & HMPPS, 2017).

In February 2019, the Welsh Government’s Minister for Housing and Local Government announced that it will be providing funding to locate Welsh housing officers within local probation services in Wales (NAW Debate, 13 February 2019).

#### **Youth Justice (under section 37 to 42 of the Crime and Disorder Act 1998)**

The Youth Justice system overlaps with devolved responsibilities across education, training and local government, and interaction with it is a responsibility of the Welsh Government’s Deputy Minister. A Wales Youth Justice Advisory Panel was established in January 2017 to liaise between Welsh Government and the Youth Justice Board (Welsh Government, 2017d).

The Welsh Government is involved in some aspects of crime prevention through the devolved Community Safety power. The main focus of activity in this area is the prevention of youth crime via the All Wales Youth Offending Strategy. Welsh Government funding has been directed towards youth crime prevention including through the Safer Communities Fund for a number of years (Cardiff University et al, 2009).

Youth justice cuts across many of the Welsh Government’s wider strategies and responsibilities. This includes its wider state vision to support all young people and children across Wales (NOMS Wales, 2006). This approach has been guided by the measures contained within the Children Act 2004 as well as the Welsh Government’s commitment to transform the way in which “the needs of children and young people” are met by service providers across Wales (Welsh Government, 2000: 3).

In 2016, amidst growing concern about the state of custodial institutions for children, the Chair of the Youth Justice Board called for the development of 'secure schools' to replace Young Offender Institutions and Secure Training Centre's across England and Wales. The Welsh Cabinet Secretary for Communities and Children immediately rejected the proposals and declared that the Welsh Government would seek to find "Welsh solutions" to the problems facing young people in the secure estate in Wales (NAW Debate, 14 December 2016).

## **2.4 The emergence of a *de facto* Welsh criminal justice system**

Even if in constitutional terms criminal justice is reserved, the practical realities mean that the UK and Welsh Governments are forced to work together, or at least interdependently, in this area. Over time, a set of distinct arrangements have been developed to meet the policy and wider operational challenges that arise in this context. In this final substantive section, we focus on the emergence of what might be termed a *de facto* Welsh criminal justice system analogous in some ways to the wider system of administrative devolution that existed in Wales before the establishment of the National Assembly.<sup>16</sup>

In 2006, a joint strategy between the National Offender Management Service Cymru, the Welsh Government and Youth Justice Board identified the need to take account of the "different Welsh perspective" that had emerged since devolution (NOMS Cymru et al., 2006: iii). In its evidence to the second part of the Silk Commission in 2013, the UK Government acknowledged that its own responsibilities for offender management "interrelate strongly" with those held by the Welsh Government (Wales Office, 2013: 63). A year later, the Ministry of Justice (2014: 8) outlined that "much of the work" being done to support prisoners leavers in Wales is being carried out by the devolved government.

Significantly, devolution has led to some quite fundamental changes to the institutional architecture of the criminal justice system in Wales. The UK Government has introduced a

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<sup>16</sup> The comparison is not exact in as much as the pre-1999 system of administrative devolution in Wales had a focal point in the Welsh Office which is not replicated in the current justice system. That said, the network of institutions is almost certainly more complete than that which existed prior to the establishment of that office in 1964.

number of Welsh directorates with “senior leadership” roles to help reflect the Welsh dimension to its policing and criminal justice activities in Wales (Ministry of Justice, 2017: 4). Welsh criminal justice institutions include HM Prison and Probation Service in Wales, Youth Justice Board Cymru, and a Home Office Team in Wales.<sup>17</sup> The role played by these organisations will be discussed in more detail in Chapter Seven.

**Figure 2.5 – De facto Welsh criminal justice institutions in Wales**

Directorate	Department	Responsibilities
HMPPS in Wales	Ministry of Justice	Prisons and probation
Home Office Team in Wales	Home Office	Policing, drug policy, immigration
Youth Justice Board Cymru	Ministry of Justice	Youth justice

According to the Ministry of Justice’s (2017) *Justice in Wales Working Group* report, the development of Welsh criminal justice institutions has also led to the creation of a number of Welsh-only justice forums. These include the:

- All Wales Criminal Justice Board
- Integrated Offender Management Cymru Board
- Wales Reducing Re-offending Pathways Group
- Wales Home Office Advisory Group
- Wales Youth Justice Advisory Panel
- Youth Justice Board /Welsh Government Strategy Implementation Board
- Police Board for Wales
- Justice in Wales Strategy Group

The Welsh Government’s review into community safety in Wales also identified a number of groups operating between the jagged edges of the UK and Welsh Government’s responsibilities within the policing and justice policy space in Wales. These include:

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<sup>17</sup> HM Courts and Tribunals Service Wales and Crown Prosecution Service Wales provide further examples

- Community Justice Cymru
- All Wales Doorstep Crime Partnership
- All Wales Anti-Social Behaviour Co-ordinators Group
- Advisory Panel on Substance Misuse
- (Rail) Wales Community Safety Partnership Group
- Wales Association of Community Safety Officers
- Wales Youth Justice Advisory Panel
- Wales Extremism and Counter Terrorism Unit
- All Wales Road Safety Monitoring and Evaluation Group
- Anti-Slavery Forum

(Welsh Government, 2017a)

The establishment of these various institutions, forums and groups add further weight to the report's central claim that Wales is now a distinct part of the England and Wales jurisdiction. Wales' distinctiveness has also led to the development of a number of joint All-Wales policies and strategies. In the area of youth justice, for example, the *All Wales Youth Offending Strategy* was co-produced by the Youth Justice Board and the Welsh Government (2004: 1) to develop a "national framework" for preventing youth offending in Wales. A decade later, the Youth Justice Board and the Welsh Government published *Children and Young People First* to re-outline its commitment to reducing the number of children entering the criminal justice system in Wales. This included the suggestion that a reduction in re-offending will be "best achieved" if devolved and non-devolved partners "work together" in Wales (Welsh Government and Youth Justice Board, 2014: 4).

*Joining Together in Wales* was published in 2006 by NOMS Cymru, the Welsh Government and the Youth Justice Board (2006: 7-8) to acknowledge the "considerable autonomy" that the Welsh Government has over "many of the mechanisms" to reduce reoffending in Wales. The emphasis on preventing future offences was central to the *All Wales Reducing Re-offending Strategy* published by IOM Cymru in 2014. The strategy was co-produced to align the UK and Welsh Government's visions for reducing re-offending in Wales. In March 2018, the Welsh Government published a framework designed to help support individuals at risk of



offending in Wales. The report was developed by the Welsh Government and the Ministry of Justice to improve services and build upon “the strong relationships” that exist between criminal justice organisations and devolved public services (Welsh Government & Ministry of Justice, 2018: 3).

A concordat between the Ministry of Justice and Welsh Government was published in June 2018. The agreement establishes a plan for future arrangements including “consultation and co-operation” between the Ministry of Justice and the Welsh Government (2018: 1). Further plans for were announced by the Cabinet Secretary for Local Government and Public Services who revealed that the Welsh Government is working alongside the Ministry of Justice to develop a blueprint strategy for youth offending and female offenders in Wales. Both of these strategies are expected to be published by the Welsh Government in 2019.

## **2.5 Conclusion**

Even if criminal justice is formally reserved, as this chapter has made abundantly clear, there is substantial complementary activity being undertaken in this area by the Welsh Government. In addition, this chapter has shown that a relatively dense thicket of institutions have developed to help meet the particular challenges that arise in the distinctive policy context that is devolved Wales. These institutions can be conceived of as representing a system of administrative devolution. In short, Wales is – inescapably and undeniably – a distinct space within the England and Wales criminal justice system. But it also by dint of this division of powers and responsibilities a particular complex space. This complexity is the subject of our first findings chapter.

## Chapter 3

### Intergovernmental relations and complications

#### The main findings in this chapter are:

- Wales' relatively small size means that it is overlooked by UK justice officials in London who largely direct their attention towards the larger conurbations of England.
- Practitioners in Wales continually have to remind UK officials to take account of the Welsh context. The regular churn of officials and ministers in Whitehall add to the challenges facing service providers in Wales.
- UK policy documents may acknowledge the Welsh Government's responsibilities but often fail to reflect how the policy will work in practice.
- Insufficient consultation can undermine joint-working and inter-government collaboration. These problems have contributed to the development of de facto Welsh criminal justice agencies.
- The Welsh Government does not currently have sufficient "capacity" to take full account of policing and criminal justice issues in Wales.
- Silo working between Welsh Government departments and regular changes to Ministerial portfolios have contributed to the confusing arrangements for policing and criminal justice in Wales.
- Although the Welsh Government has historically been reluctant to take a lead on policing and criminal justice issues, it is now becoming more active in this policy space.

### 3.1 Introduction

In this chapter, the accounts of practitioners and service providers are used to explore the uncertainty and confusion faced by those operating at the jagged edge between devolved and non-devolved competencies around policing and justice in Wales. The chapter begins by considering the extent to which that Wales and the devolved context is acknowledged by policing and justice officials in Whitehall. This includes a discussion about Wales' relevance in policy making discussions and the levels of consultation between UK and Welsh Government officials. In the second section, the chapter examines the Welsh Government's role within the policing and criminal justice policy space. By drawing upon the views of participants, the chapter considers the role that has been played by Welsh Government ministers and officials as well as the suggestion that "silo working" contributes to the confusion and uncertainty faced by practitioners in Wales.

### 3.2 Wales in Whitehall: 'They don't understand'

When prompted to discuss how Wales and the devolved context is dealt with by justice officials in Whitehall, a number of participants raised concern over the way in which Wales is treated. A clear theme to emerge out of the research was that UK government officials working for the Home Office and Ministry of Justice in London repeatedly fail to take account of the devolved context. These views suggest that the House of Commons Welsh Affairs Committee's (2010: 4) suggestion that departments in Whitehall have not "fully engaged" with the complexities surrounding the devolution dispensation in Wales remains relevant. For some participants, including Michael, officials based in Whitehall often appear uninterested in the problems that are raised by policy makers and practitioners in Wales.

**Michael:** I think in theory it should be possible to go to the Home Office or Department for Digital, Culture, Media and Sport and say, "This is a problem in Wales. Will you deal with it?" I just don't get the impression they get it. Like, they're not very interested.

*Substance Misuse*

Sion also expressed his belief that, as well as being potentially resistant to devolution, policing and justice officials in London may be indifferent to Wales and the devolved context.

**Sion:** The senior steering group of the comprehensive spending review assure me that they do understand the issue of the devolved public service. I can only take them at their word, but my experience is actually to the contrary. Whether that's a resistance by the senior civil servants at Whitehall to the whole principle of devolution, I suspect that's there to a degree, or just indifference, I'm not too sure.

*Policing and Community Safety*

Sion and Michael's views were supported by the accounts shared by other practitioners. For some, including Emma, Wales is often overlooked at Westminster due to its relatively small size within the England and Wales jurisdiction.

**Emma:** I don't think there is adequate consideration [of Wales]. If you look at youth justice statistics, Wales represents something like five percent of youth justice activity across England and Wales, so we're a small partner in the whole [system].

*Youth Justice*

The suggestion that Wales's size means it does not receive sufficient attention from Whitehall officials was also made by George. He explained that because of Wales' size the larger conurbations of England are likely to be higher "on the agenda" amongst officials in Whitehall. George suggested that this is more likely to be a problem for senior managers rather than police officers "on the street" in Wales.<sup>18</sup>

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<sup>18</sup> The suggestion that Wales is a "minor partner" within the England and Wales system is explored further in chapter four.

**George:** Wales is quite small when it comes to the whole of England and Wales policing. We're four forces out of forty-three. 3.2 million out of a population of England and Wales of some 60 million. So, we are quite small, and therefore perhaps we are not at the forefront of their mind. The bigger conurbations of London, West Midlands, Merseyside, etc., are the ones that they have more focus on, and us and some of the outlying areas are not as high on the agenda. So that does cause us problems.

*Policing and Community Safety*

This argument was developed further by Sian who explained that Home Office officials in London may feel that the "crime problem" in Wales does not warrant as much concern as other parts of the jurisdiction.<sup>19</sup> This point was made in spite of the fact that the Home Office relies heavily upon the Welsh Government and devolved agencies carrying out much of its work in Wales.

**Sian:** The counter to that is: do the Home Office care? Is there a big enough crime problem in Wales for the Home Office to get really upset about this? Is there a big enough immigration problem that the Home Office absolutely have to include Wales in everything that it does? Is there any real terrorist threat . . . from Wales, that they would worry about? . . . So that has traditionally been, 'We need you to do this, but if you don't do it, is the world going to end? Maybe not.'

*Policing and Community Safety*

The question of Wales' relevance within Whitehall was also discussed by Olivia who suggested that Wales' needs are better understood by officials working for Welsh Government.<sup>20</sup>

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<sup>19</sup> Research on policing has shown that policy is largely directed towards the 'problems' associated with urban and not rural areas (e.g. Mawby (2004) and Wooff (2015)).

<sup>20</sup> The subject of Wales' relevance within the England and Wales system is explored further in chapter four.

**Olivia:** I think it's also an issue of relevance, there's more understanding in Welsh Government around what it is that the communities of this area kind of want, need.

*Policing and Community Safety*

This point was reiterated by Craig who explained that shorter distances between Cardiff and other parts of Wales "makes it easier" for practitioners to engage with officials in Welsh Government than officials based in Whitehall. These views echo the UK Government's claim in 2014 that the transfer of justice responsibilities away from London to Greater Manchester would help to ensure closer engagement and "better co-ordination" between local services (HM Treasury, 2014: 2).

**Craig:** Cardiff is obviously a lot closer to west Wales than London is, and the geography makes it easier for people to engage with Cardiff than that it does with London. So, policing officially actually potentially feel closer to Welsh Government, purely because of the geography, than they do to the Home Office and the central agencies such as the National Crime Agency, as well. They feel closer to Welsh Government than they do to those agencies.

*Policing and Community Safety*

Beyond the geography, size and scale of Wales, a major theme to emerge from the research was that officials in Whitehall simply do not understand the impact of devolution on the landscape of policing and criminal justice Wales. This claim is not a new one. The need to improve the "working relationship" between Home Office and Welsh Government officials was included in the All Wales Convention's report in 2009 (Parry, 2009: 74). In 2010, following an inquiry into the treatment of Wales in Whitehall, the House of Commons Welsh Affairs Committee (2010: 4) concluded that it remained "unconvinced" that the Ministry of Justice has a "strong understanding" of the devolved context in Wales. According to William, Ministry of Justice officials openly admit that the overlapping responsibilities for areas of justice policy in Wales can make it difficult for officials to appreciate the Welsh Government's role in this space.

**William:** It's an area of policy that is just, you know, complex, because of the crossovers, which make it difficult.... The Ministry of Justice would probably say, "We scratch our heads about how to do these things in Wales because we're not responsible for them, so how could we do them." And they'll openly say that.

*Community Safety and Criminal Justice*

This viewpoint was also echoed by Richard when discussing plans to collate relevant devolved legislation in order to help Home Office officials in London appreciate the devolved context of policing in Wales.

**Richard:** The parliamentary liaison unit in Cardiff have been asked to pull together Wales-specific legislation, just to inform the Home Office, because they haven't got a clue. The Home Office in London haven't got a clue.

*Policing and Community Safety*

According to William some officials in Whitehall unable to distinguish between Welsh devolution and the devolution arrangements that have been agreed between the Ministry of Justice and certain mayors in England. This includes the transfer of justice responsibilities to the Greater Manchester Combined Authority and West Midlands Combined Authority.

**William:** I think the word 'devolution' is lost on a lot of people in Whitehall, if I'm honest. And in the Ministry of Justice, certainly, they get mixed up between the kind of devolution agreements they've got with mayors and the completely different context here [in Wales]. And I think the biggest thing is the fact they don't understand that in many areas there's a different legal framework and a very different policy framework.

*Community Safety and Criminal Justice*

In response to the perceived lack of understanding amongst officials in Whitehall, practitioners recalled having to remind UK officials that policing and justice policies must

take account of the devolved context. According to Sion, this includes having to notify UK officials that policies do not operate the same in Wales.

**Sion:** You often have to put your hands up and say, 'That's not quite how it's going to operate in Wales.' 'Ah, yes, yes, we know that.' So, the tensions are there.

*Policing and Community Safety*

Sion explained that officials in London need to be reminded that many of the “key partners” that Welsh police forces work with are devolved.

**Sion:** But it does mean that there has to be quite a lot of consultation, discussion, information provided – and particularly, reminding the London end that devolution is here in Wales, and that whilst policing is not devolved all our key partners are devolved, including the other emergency services.

*Policing and Community Safety*

Sarah outlined her experiences of having to prompt officials to include Wales in debates and policy development about community safety at an England and Wales level.

**Sarah:** Quite often you bring in Wales and it feels like you're having to remind people that Wales exists. I've been in that position and I know my manager has, and I've heard other colleagues say they have.

*Community Safety*

Ross emphasised the way in which officials in England have to be reminded that there is a “different world” with regards to substance misuse services in Wales.



**Ross:** You're always having to remind [people] that Wales exists. But it does exist in a different world to the rest of the English services.

*Substance Misuse*

Emma also talked of the "continual job" that she and her colleagues have to undertake in informing youth justice officials in London that the policy landscape in Wales is different to England.

**Emma:** At an official level, there is a continual job of saying, 'That's different. You can't say that's "England and Wales".' And, you know, really having to keep on top of that.

*Youth Justice*

According to Emma, this includes officials responsible for providing information and advice to UK ministers.

**Emma:** I think the other thing that's important is the officials who are advising ministers don't always appreciate that there is a difference. So, for example, staff [in Wales] have recently been reviewing the strategy documents written by colleagues in London, and they are looking at the dragonisation element. 'Well actually you've mentioned Ofsted, Ofsted doesn't cover Wales. We have something else, it's not quite an equivalent. This is what it looks like. So that responsibility won't exist here.' So for officials in Wales, whether in the Youth Justice Board or the Welsh Government, there's a continual job of raising awareness with your colleagues that actually things are different.

*Youth Justice*

For Jayne, the task of updating UK officials is made more difficult because of the regular "churn" of new staff in Whitehall. A recent report by the House of Commons Public Administration and Constitutional Affairs Committee (2018: 20) raised concerns over the

“rapid turnover” of officials in Whitehall.<sup>21</sup> According to Jayne, the churn of staff can often mean that Welsh Government officials spend a considerable amount of time and effort having to explain the Welsh dimension to newly appointed staff at the Home Office or Ministry of Justice.

**Jayne:** The problem that people find is that there’s such a churn with staff, particularly in Whitehall, especially in [the] Ministry of Justice, that you just about get to the point of explaining what is devolved and breaking that down into the four main themes and how that impacts on criminal justice and the services required to achieve good outcomes, and then they move on. And so, you have to start from scratch over and over again.

*Community Safety and Criminal Justice*

This argument was developed further by Sam who highlighted that, as well as new officials, a change of Minister can add to the difficulties facing staff in Wales. In a recent report by the Institute for Government it was revealed that three-quarters of the ministerial team at the Ministry of Justice were new appointments following the government reshuffle in January 2018. The Ministry of Justice also welcomed its sixth Secretary of State since 2010 (Freeguard et al, 2018).

**Sam:** If you have a change of Secretary of State, or ministers, it takes people a while to understand the complexities that they’re dealing with. As you know, that has happened more than is usual over the last couple of years.

*Community Safety and Criminal Justice*

As well as changes in personnel, Sam explained that decisions taken by UK Ministers to try and “work at pace” can often lead to the “Welsh context” being overlooked. This point was

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<sup>21</sup> The House of Commons Public Administration and Constitutional Affairs Committee explained that the nature of the civil service career path in Whitehall is largely responsible for this churn. A more detailed account of the “cult of the generalist” within the civil service in Whitehall can be found within Alex Stevens’ (2011) research on the use of evidence in policy-making in Westminster.

outlined when discussing the efforts made by the former Justice Secretary, Liz Truss, to deliver a change in prisons policy.

**Sam:** Liz Truss being [an] example – when she was Secretary of State for Justice – wanted a prisons change. She wanted to deliver that at pace. I really do think they struggled with the Welsh context at that time, because there was this desire to move at pace, there was this desire to have big change. And often in those things – and certainly in that case – the complete understanding of the Welsh context was lost a bit in the desire to move forward very quickly.

*Community Safety and Criminal Justice*

For others service providers, including Richard, the constant need to remind staff of the distinct Welsh policy context is evidence that Whitehall officials often see Wales as the same as England when designing policies.

**Richard:** There is no difference... Although they'll tell me, when I want to represent Wales... oh we'll invite you in and go Wales-specific, but there never are any Wales-specific issues. Everything that's discussed nationally about criminal justice applies equally to Wales and England.

*Policing and Community Safety*

According to Jamie, UK officials are likely to “perceive” that services in Wales are the same as those available in England.

**Jamie:** If they do have a viewpoint on what's going on in Wales, from a service perspective, I think it would be based on what they perceive is just going on in services in England.

*Substance Misuse*

This argument was echoed by Emma who suggested that it can often feel as though Wales has simply been bolted on to policy that has been designed to accommodate the needs of England.

**Emma:** When policy is being developed or officials in Wales get a White Paper or a government response – that level of document, which is giving an indication of the direction of travel – there's always a sentence that says something like, 'and consideration will be given to how this operates in Wales'. And it doesn't matter how far you go back and how many you pick up; you'll pretty much see that. So, policy tends to get set, but the Welsh bit always feels like the 'and Wales' afterwards at the end.

*Youth Justice*

Another example referred to by participants is the UK Government's decision to build 'secure schools' to replace Young Offender Institutions and Secure Training Centres in England. When the proposals were announced following Charlie Taylor's review in 2016, the policy was welcomed by the UK Government but immediately rejected by the Welsh Government's Cabinet Secretary for Communities and Children (NAW Debate, 14 December 2016). The policy is now being taken forward in England and not in Wales. For Emma, the unveiling of Charlie Taylor's plans provides yet another example of a justice policy straddling the jagged edge between the UK and Welsh Government's responsibilities.

**Emma:** So if we take Secure Schools as an example. Secure is a justice responsibility; school in Wales is a devolved responsibility. 'We'll have secure schools and we will work out how this is going to work in Wales.' So of course, the first thing that happens is an objection from the Welsh Government to a Secure School in Wales: they don't think it's the right model.

*Youth Justice*

For William, the Ministry of Justice's plans for 'secure schools' are a further illustration of its failure to take account of the fact that systems in Wales are "designed differently" to those in England.

**William:** In terms of legislation, they refer to and use legislation which doesn't exist in Wales. So, to give a practical example, on the youth side, the whole concept of Secure Schools is based on the academies legislation and the Care Act. Well, the Care Act doesn't exist in Wales, it's the Social Services and Wellbeing Act, and we don't have academies and never will because our education system is designed differently.

*Community Safety and Criminal Justice*

Jayne also argued that the UK Government's policy failed to reflect the distinct legal and policy context in Wales.

**Jayne:** This is one of the things that I keep on hearing about all the time from Ministry of Justice, making reference to Secure Schools as their principal [vehicle] for youth justice and ongoing education provision. They don't exist here. Similarly, Secure Training Centres. We don't have those here. And so therefore principles and commitments given to those do not align with the education provision that we have in Wales.

*Community Safety and Criminal Justice*

William gave a further example when discussing the Ministry of Justice's efforts to develop offender healthcare strategies in England. William explained that Whitehall officials simply instruct the Welsh Government to get on with its own policy where devolved responsibilities present a potential stumbling block to an 'England and Wales' approach being delivered.

**William:** Ministry of Justice will work with Whitehall departments and people like NHS England and Public Health England developing their strategic approach to the management of prisons and offenders. So that immediately doesn't take account of the devolved legal context in Wales or the devolved policy context in Wales. So, you've got a central government department saying, for example, 'We need better mental health support so what we'll create is mental health hubs, support hubs, in London, Birmingham, Manchester, which are acute support hubs.' But then they say, 'Health is devolved to Wales, so you just do your own thing.'

*Community Safety and Criminal Justice*

Rhys highlighted a similar set of concerns when discussing the recent Independent Review of the Mental Health Act in England and Wales. Once again, there were doubts about the extent to which that the review was seeking to look beyond what was happening in England. This includes the relationship between police forces and mental health services in Wales.<sup>22</sup>

**Rhys:** The interim review report came out, and I think there's eight lines about Wales which just says, "Wales will need to be considered on this." The review is about how the Act works in practice. Well, Welsh mental health services are devolved, which means that you can't measure them based on what England does. It has to be a review based on Welsh services. It shows a mindset which is: "We don't really give a shit. We do what we do. The guys the other side of Offa's Dyke can do what they want. We control anything that's important, so we're not going to give you powers on the mental health legislation".

*Mental Health*

Wider research around devolution has also shown that a lack of UK government consultation is problematic. A study by Keating (2005) found that officials in Whitehall often forget to

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<sup>22</sup> The final report was 321 pages long and included one reference to the 'Welsh Government' (p.32). Under a subheading of 'The position of Wales' the review acknowledged the Welsh Government's responsibilities for mental health services in Wales.

consult officials in Scotland and will publish policy documents without any attempt to consider the devolved governance arrangements. In 2017, the Ministry of Justice's (2017a: 4) Justice in Wales Working Group stated that engagement between the Welsh Government and Ministry of Justice remains "inconsistent" and that the "information flows" between the two government's does not "function effectively".<sup>23</sup> A number of different examples of this lack of effective consultation as experienced by officials in Wales were shared by participants. William recalled his concerns when the Ministry of Justice launched its Prison Safety and Reform White Paper in 2016 without any real consideration of the Welsh context.

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**William:** You had a *Prison [Safety and] Reform* White Paper that made a passing reference to Wales on page thirty-five of the document but didn't say how they were going to design a different prison system in Wales.

*Community Safety and Criminal Justice*

Reflecting upon the Welsh Government's response to the Prison Safety and Reform White Paper, Jonathan suggested that Wales appeared to be "add-on" to the Ministry of Justice's strategy.

**Jonathan:** [The] Welsh Government interpreted it [the *Prison Safety and Reform* White Paper], and I think with hindsight, rightly, as 'we're just a bit of an add-on, oh, and we'll have to do something about Wales'. And didn't do it. So, I think that is where things have fallen down, perhaps at Ministry of Justice level sometimes rather than HMPPS.

*Community Safety and Criminal Justice*

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<sup>23</sup> The Justice in Wales Working Group also reported that there is no concordat between the Ministry of Justice and Welsh Government. However, since the publication of its report the Ministry of Justice has published a concordat with the Welsh Government. See -

<https://gov.wales/about/organisationexplained/intergovernmental/concordindex/ministry-of-justice/?lang=en>

<sup>24</sup> The Prison Safety and Reform White paper makes reference to the Welsh Government on four separate pages (p.24, p.31, p.32 and p.37). Although the Welsh Government's responsibilities are clearly recognised, the strategy provides very little detail about how the plans will work in Wales.

Jayne also highlighted the problems presented to practitioners by the absence of any “consultation” or “co-production” when new justice strategies are developed in Whitehall.

**Jayne:** The main difficulties that are the lack of understanding of what is devolved and what isn't, but it's the lack of consultation and the lack of co-production. And this has been particularly the case in the last year with things like the Female Offender Strategy, the MOJ strategy, and most recently, the victim strategy.

*Community Safety and Criminal Justice*

The Ministry of Justice's Female Offender Strategy is something that Welsh Government officials had been attempting to contribute to “for over a year” before it was published in June 2018.<sup>25</sup>

**Jayne:** The *Female Offender Strategy* is one that colleagues from Welsh Government had been asking for over a year to be involved in at the same time, rather than having what we've had in the past [where] lovely strategies have come out from colleagues in London, that have clearly been developed for months and months and months, and officials in Welsh Government get, in some cases, three hours to comment on them before publication.

*Community Safety and Criminal Justice*

Jayne pointed out that Welsh Government officials faced the same treatment when the Ministry of Justice launched its Victim Strategy in September 2018.<sup>26</sup>

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<sup>25</sup> The Ministry of Justice's (2018b) *Female Offender Strategy* makes reference to the Welsh Government on three separate pages (p.9, p.10 and p.41). Under a subheading of 'The Welsh Context' the strategy acknowledges the need for the Ministry of Justice to work alongside the Welsh Government in areas such as health, housing, substance misuse and accommodation.

<sup>26</sup> The Ministry of Justice's Victims Strategy makes only one reference to the Welsh Government (included in the Annex). The Ministry of Justice (2018c: 43) outline its commitment to work alongside the Welsh Government “to ensure the strategy represents all victims and recognises Welsh-specific progress and priorities”.



**Jayne:** The *Victim Strategy*, for example, that was MoJ Petty France owned, and that was quite a last-minute approach. And the *Female Offender Strategy* – the MoJ one – was definitely done in total isolation until the last minute when the Welsh Government were given an opportunity to comment.

*Community Safety and Criminal Justice*

The introduction of the Home Office's Serious Violence Strategy offers yet another example of a failure to properly consult with Welsh Government officials. According to Sian, concerns were raised by Welsh Government officials that insufficient attention had been shown towards the Welsh context prior to the launch of the strategy in April 2018.<sup>27</sup>

**Sian:** I'll give you another example. [The] *Serious and Organised Crime* [strategy], which is the one staff have been trying to do for six years . . . Painful, painful, painful. And they've got to a point now where the *Serious Violence Strategy* came out and the Home Office got some serious flack for that from the Welsh Government. 'You didn't engage us! We haven't got a problem with half of this stuff. [But] it doesn't mention the Welsh context in the strategy.' The Home Office did some engagement events. It wasn't the best they had ever done, but I think time was, you know, really racing past. Everyone was very upset about it. It was a big disaster.

*Policing and Community Safety*

For Craig, the Home Office's failure to properly consider Wales meant that the Serious Violence Strategy did not "fit" the needs of Welsh communities.

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<sup>27</sup> Reference is made to the Welsh Government on two pages (p.15 and p.60) within the Home Office's (2018) Serious Violence Strategy. A commitment is made to working alongside the Welsh Government but there is very little about how this work will proceed.

**Craig:** But that is a strategy [Serious Violence Strategy] that fits England. And it doesn't actually fit the whole of England. It fits the urban areas of England and London in particular, possibly Birmingham, Manchester, and a few other larger cities. So again, that doesn't fit what we would have in Wales. And we would have a completely different serious violent crime strategy in Wales, in my opinion. So, from the outset, none of that was taken into consideration, or very little was taken into consideration.

*Policing and Community Safety*

For Kate, the same problems were apparent when the UK Government introduced plans to overhaul probation services in England and Wales in 2013. Specifically, the Ministry of Justice's Transforming Rehabilitation agenda had failed to take into account the effects that devolved government would have on its plans in Wales.<sup>28</sup>

**Kate:** There are lots of incredible consequences to *Transforming Rehabilitation*, but it was not set up with an understanding of how devolved government works, in mind, and didn't have any concern for that. I think it just happened to have one Welsh CRC and that, you know, was it.<sup>29</sup>

*Community Safety and Criminal Justice*

John also highlighted that policies launched by the Home Office often fail to consider the "unique policing circumstances" that devolution has brought to Wales. This includes policies that overlap with the Welsh Government's responsibilities for substance misuse, education, health and housing.

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<sup>28</sup> These arguments are discussed further in chapter four in relation to the *National Pathway for Homelessness Services to Children, Young People and Adults in the Secure Estate*.

<sup>29</sup> The Ministry of Justice's (2013a) consultation paper on *Transforming Rehabilitation* did not include a single reference to the Welsh Government. The UK Government's response to the consultation in May 2013 contained just one reference to the Welsh Government: "The new public sector probation service will have a distinct identity for Wales, facilitating links and relationships with the Welsh Government" (Ministry of Justice, 2013b:25).

**John:** But the sheer fact is the Home Office is a big beast and there are other government ministries that issue policy and procedure that really has not taken account of the slightly unique policing circumstances of policing in Wales in a devolved space. Some of those examples would range from drug strategy through to education policies, through to health policies, through to homelessness policies, through to some funding opportunities that are closed to Welsh forces because certain functions are devolved.

*Policing and Community Safety*

As a response to the problems faced by practitioners in Wales, Jayne outlined the need for improvements to the way in which shared responsibilities for policing and justice in Wales are understood by officials in Wales and in Whitehall.

**Jayne:** Let's work out who has got what, and if you've got the secure estate and the management of, Ministry of Justice, as long as those premises are in Wales and you are reliant on Welsh Government services, or at least devolved services under the ownership of Welsh Government, how are we going to do this together? Because it just seems like it's almost retrofit. And considering what's at stake with those at risk of offending or those already within the custodial estate, that's too important to second-guess around.

*Community Safety and Criminal Justice*

Returning once again to the "churn" of new staff in Whitehall, Jayne argued that the failure to consult properly means that the Welsh Government are often forced to play "catch-up" when given very little time to contribute to a new UK justice policy.

**Jayne:** It would be really nice—and I think officials are still hopeful that this will come at some point—that Welsh Government officials will get a phone call from someone in the MOJ saying, “Ah, we’ve been commissioned to develop x, we know that it’s reliant on devolved services and we’d like to do it together.” Great. You know, it’s not, it doesn’t seem like an unreasonable [request], but again, when you’ve got this constant churn of people who still don’t really understand what devolution really means in principle when you’re developing document strategies, whatever, Welsh Government feel that they’re always on catch-up.

*Community Safety and Criminal Justice*

Jayne developed this point further to consider the consequences that this approach has for officials in Wales. The first scenario, according to Jayne, is that Welsh Government officials will have additional work to complete within a relatively short period of time to try and add the Welsh dimension to a policy.

**Jayne:** So, the Welsh Government are left with the choice of either going absolutely hell for leather, if they’ve got two days’ notice, which has happened in some cases, of burning the midnight oil and trying to come up with the best possible fit to contextualise it given that... they have four separate functions to consult with as well.<sup>30</sup>

*Community Safety and Criminal Justice*

As Jayne makes clear, the second scenario is that a short turnaround often means that UK justice policies are published without any acknowledgement of Wales or the Welsh context.

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<sup>30</sup> These four areas are Office of the First Minister and Cabinet Office; the Health and Social Services Group; the Economy, Skills and Natural Resources Group; and the Education and Public Services Group.

**Jayne:** And sometimes the Welsh Government will have the choice of really trying to retrofit something so it looks like it is truly an England-Wales approach, or they can't do it, in which case they have to publish it as 'England and Wales' and deal with the fallout of colleagues and stakeholders in Wales saying, 'Well, it's an England and Wales report. Where's NHS England in this? Where's the Health and Social Services Act in this? Where's . . .?'

*Community Safety and Criminal Justice*

Jayne added that the third scenario is that a short note will be inserted into the strategy to explain that the context to the UK Government's policy is different in Wales.

**Jayne:** Or the Welsh Government get a little paragraph on page ninety-two that says, 'Oh and it's different in Wales and we'll work with Welsh Government colleagues to sort it.' That doesn't help at all.

*Community Safety and Criminal Justice*

As a result of these failings, Jayne revealed that there have been instances where a lack of engagement and consultation has meant that UK Government policies have even run the risk of breaking Welsh law.

**Jayne:** Because some of the principles or recommendations set out in some central government, across the border, policies, strategies, call it what you will, there have been risks of them breaking Welsh law, as a result of it, which is why the early engagement is really important so that at least we can signpost it or see if we can unravel a little bit and re-stitch it to make sure that that doesn't happen. But when you've only got days, or in some cases hours, to respond, that isn't always possible. And none of us want that.

*Community Safety and Criminal Justice*

A failure to consult with officials in Wales may also lead to UK Government policies being blocked. Sian recalled how a failure to engage with Welsh Government officials almost led to the derailment of the Home Office's plans to introduce Police and Crime Commissioners in Wales. This prospect, according to Sian, is what now lies behind the Home Office's decision to recognise the "importance" of engaging with the Welsh context.

**Sian:** I think there have been a number of occasions where the Home Office now understand the importance of engaging to get things done, so it's more of a practical thing rather than a hearts and minds thing, I would say. It's not because they think, "Oh we're not doing this right, of course we must involve Wales in everything because it's the right thing to do." It's more about, "We can't get this legislation through because, you know, the England and Wales policing kind of bit will prevent us from doing quite a few things if we don't have consent on certain bits." Which is the experience they learned from the PCCs introduction, because the Welsh Government's Cabinet Secretary nearly derailed the whole thing.

*Policing and Community Safety*

Craig also highlighted the way in which the UK Government's failure to provide sufficient notification to Welsh officials can often be a source of major frustration and concern.

**Craig:** It [the Serious Violence Strategy] was just announced and landed. And that, unfortunately, is a trait of central government in London. Things will just get announced, unbeknown to officials in Wales. There's a relatively small window of engagement and opportunity to influence and provide advice and evidence to any changes in policy, strategies or direction of travel. And that again is very frustrating.

*Policing and Community Safety*

Similarly, Sian also explained that the launch of policies without prior notification can be "massively frustrating" for Welsh Government officials.

**Sian:** And I think the way that the Home Office work is often seen as being very much all behind closed doors. It's all very secret, they don't want to let anybody have any information, and the first that people find out about stuff is when it's actually announced or it's on the television.<sup>18</sup> And I think that's massively frustrating and I can see how that feeds a perception that either the Home Office don't know what they're doing in terms of Wales, or they don't care.

*Policing and Community Safety*

A further example raised was the Ministry of Justice's decision to announce that it had chosen a site in Port Talbot as the location for a new 'super' prison. Following the public announcement in March 2017, concerns were immediately raised and directed towards the Welsh Government about the possible implications of the decision on local residents and businesses. Jayne's evidence would suggest that the "information flows" between the UK and Welsh Government are still not functioning properly (Ministry of Justice, 2017a: 4).

**Jayne:** From what I understand, that was really not handled perfectly, with regard to announcing Baglan as a proposed site. The fallout that came out of that—so not the Welsh Government's announcement and not their decision, and not their choice, but certainly their problem...The Welsh Government were getting weekly communications from the same people [local residents]. It's so onerous. And of course, because it's not the Welsh Government's decision, choice, anything else, it's difficult to what they can realistically respond with, because it looks like they're passing the buck, but there was nothing else that officials could say.

*Community Safety and Criminal Justice*

For Sian, the fact that information is not shared by UK officials can sometimes reflect the pressures that Whitehall officials face as well as a lack of trust that UK ministers have in those who operate outside of the "closed circle of Whitehall". This kind of practice can often lead to Welsh Government officials being left disappointed when policies are launched or announced without any prior notification.

**Sian:** When you have got the papers running stories every five minutes about what the Home Office may or may not be doing, it's very difficult to trust, in Minister's eyes, outside of the kind of closed circle of Whitehall. So, there is a bit of that going on. And some of these big strategies have been launched at conferences, you know, as part of a speech. Nobody is allowed to see the content of those. And then, you know, out they come, and everybody goes, "Ah! What about Wales?!" Now, someone will have seen that strategy and made sure that it doesn't talk about just English things. But things slip through the net. And it's that lack of engagement, I think, that the Welsh Government find very, very difficult, because they see that as, you know, "the Home Office are just not interested".

*Policing and Community Safety*

According to Jayne, these kinds of failings can often result in a heightened a sense of "suspicion" and "cynicism" amongst Welsh Government officials. This, according to Jayne, is a consequence of the fact that neither the UK Government nor Welsh Government has full "ownership" over policing and justice policy in Wales.

**Jayne:** And that's not helpful, and it creates suspicion and cynicism, and I think that plays a large role in Welsh Government trying to get that ownership, because when there's a foot in both camps, or there's two different people chiming into the same area, this is where problems start. Because who has got the ownership? Definitely the Welsh Government's problem; not their making.

*Community Safety and Criminal Justice*

In chapter seven, the accounts of participants will be used to consider the efforts being played by UK justice agencies in trying to overcome some of the problems raised here. In the following section, however, the chapter will focus on the role being played by the Welsh Government in the justice policy space in Wales.



### 3.3 The role of the Welsh Government

Even if policing and justice are reserved matters, the devolved government is very active within the policing and criminal justice policy space. A very clear theme to emerge from the research is that the Welsh Government and devolved services are vital to the delivery of policing and criminal justice services in Wales. This point was made by Richard, Sion and George when discussing policing services in Wales.

**Richard:** Well every one of the police's partners in Wales, apart from probation and HMPPS, are devolved. So, your community safety partnerships, your public service boards, all that is basically devolved.

*Policing and Community Safety*

**Sion:** It's a bit of a no-brainer that if Welsh forces are to operate effectively in Wales on the basis of one public service, then they have to have an excellent relationship with the Welsh Government and the devolved public services.

*Policing and Community Safety*

**George:** I think it's important to know that, in effect, police in Wales are different from England as far as we've got—or the Chief Constable's have got—the master in the Home Office, because those are our paymasters, and the law of England and Wales is set in Westminster, but at the same time have to work very closely with Welsh Government and Welsh Government officials because a lot of partners, all of the partners that Welsh forces work with, are devolved and are run by Welsh Government.

*Policing and Community Safety*

Emma reflected upon the important role that the Welsh Government play in contributing to youth justice services in Wales.

**Emma:** But there's an additional element when youth justice services are working in Wales, and that's the relationship with the Welsh Government, and really working with them to help them to understand what is being done in terms of policy and legislation and how that impacts on Welsh Youth Offending Teams, if you like, and probably wider than Youth Offending Teams, on their stakeholders as well.

*Youth Justice*

Jonathan also outlined the importance of devolved public services when discussing probation services in Wales.

**Jonathan:** What is different is the sort of engagement with the outside world because most of the sort of, the levers that probation services need in terms of affecting change in people, things like housing, social services, substance abuse, etc. are obviously all devolved.

*Community Safety and Criminal Justice*

For John, the involvement of so many devolved agencies mean that policing services in Wales are required to operate "skilfully" and "stealthily" to take account of both the UK and Welsh Government's policies and priorities in Wales. As noted in chapter two, this includes areas such as mental health and schools in Wales.

**John:** We operate in an interesting space currently, whereby we are a non-devolved function funded bilaterally between the Home Office and Police and Crime Commissioners through the local precept, but heavily regulated by a UK framework around Home Office and HMICFRS (Her Majesty's Inspector Constabulary Fire and Rescue Service). However, we find ourselves increasingly working in a space whereby demand – eighty-five percent, or up to eighty-five percent, of what comes through our 'Demand' door currently is non-crime or crime-related. So, we find ourselves as a non-devolved function operating very, very heavily in the consequences of the devolution public sector space. So, we have to, by definition, then, operate skilfully and stealthily across two governments, twenty-two local authorities and a number of other key partners.

*Policing and Community Safety*

This argument was developed further by Craig who suggested that many of the "levers of power" needed to address the problems that police in Wales respond to are devolved. This led Craig to suggest that the Welsh Government are arguably "more relevant" to forces in Wales than the Home Office.

**Craig:** Because what I would say is [that] Welsh Government is more relevant to the police than the Home Office, ironically, and Westminster. Which is, you might think, "Well hold on, they're non-devolved, so that is bizarre that you think that Welsh Government is more relevant." And the reason it's more relevant is that when you think of the levers of power in terms of anything, if we talk about in terms of crime and disorder, when we talk about crime prevention, you're immediately talking about education. When you talk about the reduction of substance misuse harm, which again is a devolved function, you're straight into the health budget. So, all of these devolved functions which are the big levers and powers that need to link as part of the jigsaw of the work of what the police service are doing, and the wider criminal justice, relies on Welsh Government. I'd go as far as to say it relies on Welsh Government potentially more than it does something non-devolved.

*Policing and Community Safety*

An important theme to emerge from the research was that despite the Welsh Government's active role in this space, concerns remain about the Welsh Government unwillingness to get involved with policing and justice. For Sarah, although things have improved in recent years, Welsh Government officials have long demonstrated an unwillingness to engage with policing and justice issues that are perceived to be "non-devolved" despite the overlap with many aspects of devolved government.

**Sarah:** There is a change, and there is a bit more of a commitment, but it's like you constantly have to justify back in to Welsh Government that they can do this and look at it and be allowed to look at it, as women in the criminal justice system. So, you straightaway have that barrier, as well as all the other barriers you have that. And I remember years back, a colleague saying to me that one of the ministers had said, "That's nothing to do with us because it's a justice matter." ... That's central government, that's justice. It's nothing to do with devolved issues in Wales. Now, that was only a few years ago. It's changed massively since then, I would say. But, the fact that that's recent history, it shows that we've still got quite a way to go.

*Community Safety*

This point was developed further by Jonathan when discussing a colleague's experience of approaching a Welsh Government official almost a decade ago. Jonathan recalled that the subject was immediately dismissed because the approach had come from a non-devolved justice agency.

**Jonathan:** And that has not always been the case. And I won't name names, but I can remember a situation a few years ago when one justice agency were trying to sort of have conversations about housing and it was "Absolutely not, that's not a... you're a non-devolved agency. What's the conversation about?" And that was probably ten years ago, but I mean that's not a, that's not a million miles away, is it?

*Community Safety and Criminal Justice*

The apparent lack of interest shown by the Welsh Government was also highlighted by Ross when recalling the experiences of a colleague who approached a Minister to discuss substance misuse services for those affected by the criminal justice system in Wales.

**Ross:** I remember you would go to Welsh Government and talk about the criminal justice element of the work that is taking place and they wouldn't be interested. Literally. I went to see the Skills Minister, or the Deputy Skills Minister, and he just wasn't interested. "Well that's the responsibility of the justice department to provide training for those people". But they're in Wales, and they're treating Welsh people, so actually we do need to get real to their issues. He just basically said, "No. I've got too much on my plate. This is not a priority."

*Substance Misuse*

The treatment of policing and criminal justice as non-devolved issues has seemingly contributed to a lack of understanding amongst Welsh Government ministers and officials. This is in spite of the fact that the Welsh Government has been active in this policy space for a number of years. For George, the lack of understanding shown by Welsh Government officials is partly down to an insufficient level of engagement with policing officials when Welsh Government policies are being developed.

**George:** They're not sighted on policing and criminal justice and the issues and unintended consequences and procedures, and that's where there could be better—or there is a lack of understanding, or perhaps thinking that they understand but don't actually fully understand—and they could engage a lot earlier in their thought process when writing manifestos that early.

*Policing and Community Safety*

A failure on the behalf of Welsh Government officials to engage fully with policing officials was also recognised by John. While acknowledging that the non-devolved status of policing is likely to have contributed to the neglect shown by Welsh Government officials, John

reiterated the need to improve levels of engagement in light of the fact that so much of police work in Wales is reliant upon devolved services.

**John:** I think one of the challenges police in Wales have got, and it's incumbent on them as a police service, really, to do more, is that—Welsh Government, at the moment, are unable to demonstrate competency and deep understanding of policing issues. Now, you can argue: why should they? Because police are not devolved, they're nothing to do with them, you could argue, so why would they need to understand them. But, for the very fact that Welsh forces operate wholly on their patch with most of what we do having an impact on or carrying out because of devolved functions, then they really should know an awful lot more about policing.

*Policing and Community Safety*

For John, the Welsh Government's failure to engage with policing officials is partly due to its "immaturity" as a relatively new institution. Unlike the Home Office, which has more than two hundred years of experience tackling policing and community safety issues, John felt that the Welsh Government is "still growing".

**John:** And I think that's just immaturity on the part of the Welsh Government establishment, you know? It's still young, it's still growing. It perhaps doesn't have the—how can I put this—the engrained culture of consulting with police forces and policing in the way that the Home Office for two hundred and thirty plus years.

*Policing and Community Safety*

In response to this gap, John explained that police forces in Wales are doing more to "engage" with Welsh Government officials to try and overcome the current "gap".

**John:** And that's something that we've recognised in recent years and are trying to do more to engage Welsh Government, both informally and formally, particularly government ministers, to get that deeper understanding of the here and now challenges we face, and also to allow them to understand the deeper longer-term issues should policing ever be devolved to Wales. Because there's currently a gap.

*Policing and Community Safety*

For Richard, the Welsh Government's decision to stop funding for certain policing activities is a clear example of its failure to fully understand policing in Wales.

**Richard:** They give money to Welsh Police and Community Support Officers. So yeah, there's quite a lot of grant money that comes from Welsh Government, although they are cutting back on it. They used to give money to Tarian, which is the Regional Organised Crime Unit, and then they cut that back... But I'm not exactly sure that they realise the impact of [this], because they're obviously looking at stopping a lot of this money and re-diverting it somewhere else. So, I'm not sure whether they understand the impact of what they're doing.

*Policing and Community Safety*

George also raised concerns about the "unintended consequences" of decisions taken by the Welsh Government for police in Wales.

**George:** They understand that policing is non-devolved. They understand that in criminal justice. What they don't understand is the impacts. If Welsh Government ministers, or Welsh officials, spoke to policing and criminal justice before publicly announcing certain things, it could save a lot of time, effort and potential embarrassment, because some of the things that they announce become very difficult with unintended consequences.

*Policing and Community Safety*

One example of the ‘unintended consequences’ raised by practitioners was due to the unveiling of the Welsh Government’s plans to remove the defence of reasonable punishment (c.f. ‘smacking ban’). For Sian, the decision to pursue this policy demonstrates that Welsh Government officials have not considered the potential consequences that its policies might have for police in Wales.

**Sian:** But the smacking thing, I think, is genuinely [because] they don’t understand the impact of this. So, I don’t think it’s a tactic; I think it’s a genuine lack of understanding that this will be very difficult for the police in Wales.

*Policing and Community Safety*

Sian also raised concerns about the evidence base used by Welsh Government officials to come up with the policy. In particular, Sian felt that the ban has failed to consider that policing in Wales is very different to those in other jurisdictions.<sup>31</sup>

**Sian:** There’s lots of big consultations in Wales, which is great and I am sure the Home Office wish they had the time to do that sort of thing. But, on this one, they’re looking at New Zealand, and they’re looking at, I think Northern Ireland possibly? And so, well they’ve done it, so here’s the evidence. Like, Woah, hang on, no. What about the evidence in Wales? Because you’ve got a police force that operates out of UK Government, out of England. That’s not... you know, Northern Ireland has got its own police force; I’m pretty sure New Zealand has got its own police force. And it’s that sort of thing, that sort of level of detail, that’s going to cause problems here.

*Policing and Community Safety*

As well as the practical challenges facing police forces in Wales, Sian explained that the policy might lead to a potential conflict between the Home Office’s and Welsh Government’s

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<sup>31</sup> For more information on the benefits and limitations associated with comparative criminal justice research see Tonry (2015).



priorities for policing and community safety in Wales. This possibility was described as the “major issue” surrounding the introduction of the ‘smacking ban’ in Wales.

**Sian:** The Home Office don’t really care. But they will care when the police come to them and say, “We’re spending our whole time sorting out all these accusations of smacking because the Welsh Government have done this massive advertising campaign saying, ‘You can’t do this anymore!’ so everyone on the street has gone, ‘Oh, I’ve just seen someone...’” You know, that sort of thing is what worries the Home Office. So, it’s not necessarily the divergence of law, because I think the Wales Act allows them [Welsh Government] to do this anyway... But it’s more about the practical application of it, and how that would then impact on a police force that is not theirs. And if the Home Office want them [Welsh police forces] to be focusing on serious and organised crime, and they’re focusing on—I mean, this is an extreme example—but they’re focusing on all of this and all their resources are targeted that way... You know, how does that affect what the Home Office has as its priorities, which they won’t be able to deliver against? So, it’s a push-pull. And I think that’s... that’s the major issue around that.

*Policing and Community Safety*

Another explanation for the Welsh Government’s problems is that it does not currently have the “capacity” or “competency” to take full account of policing and criminal justice issues in Wales. A paper submitted to the UK’s Changing Union Project in 2013 identified that a lack of capacity within the Welsh Government civil service was a “real issue” against the backdrop of cuts to budgets and staff numbers at a time when its responsibilities have increased (Nicholl, 2013: 40). The number of staff employed at the Welsh Government has fallen by 7% since the second part of the Silk Commission’s report was published in March 2014 (Welsh Government, 2018h).<sup>32</sup> For Craig, the Welsh Government’s perceived lack of competence is largely attributed to the fact that only a limited number of civil servants are available to work on policing and criminal justice issues.

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<sup>32</sup> From 5,798 in March 2014 to 5,385 in September 2018. The Full Time Equivalent fell by 7.7% from 5,501.1 in March 2014 to 5,068.4 in September 2018.

**Craig:** The gap within what I've talked about is the competency level, that's the only thing, and a capacity issue. So, although Welsh Government, at the very high level, understand the non-devolved functions they haven't got the depth of competency and capacity to then get engaged and involved in it, and aligned to that then is financing. So, they don't have what would be required in terms of civil servants and back office functions to really get engaged and involved in it.

*Policing and Community Safety*

Sam developed this argument further suggesting that the current policing and justice team in the Welsh Government is "overstretched".

**Sam:** If you really do want a policy ambition from Welsh Government side now, on the justice space, I think the two or three people that they've got doing it are just overstretched.

*Community Safety and Criminal Justice*

Emma was clear in her belief that Welsh Government officials need to develop and improve their knowledge and expertise on youth justice practice in Wales.

**Emma:** I think they would need to increase their capacity or look at something like a joint team, where you've got their existing knowledge of how their functions operate, if you like, and you've got, you bring in some expert advice to that, so that ultimately you upskill everybody in terms of their knowledge and experience, and you know, that's in terms of how processes operate as well as the youth justice system.

*Youth Justice*

Significantly, it was also suggested that the lack of capacity within Welsh Government can lead to a set of additional pressures being placed on policing and criminal justice services in Wales. According to Craig, police services across Wales have been required to step in to help develop the Welsh Government's "internal competence" on policing and community safety.

**Craig:** The police end up having to be the individuals that drive that relationship because there isn't the capacity, in effect, within Welsh Government, to be fully engaged. And some of the conversations we've been having, on a very practical level in relation to resources, is the relationship between the resources, then, that we put in to Welsh Government around some of the building, I guess, of their internal competence around law and order issues and criminal justice issues.

*Policing and Community Safety*

Because so many of the Welsh Government's responsibilities for policing and criminal justice are spread across different government departments (see chapter two), concerns were also raised by participants about the effects that silo working has on its performance within the policing and justice policy space. These concerns add to existing research which has shown that fragmentation between government departments can impede upon the successful delivery of services or to joined-up approaches to policy (Hunter and Perkins, 2014; Ling, 2002). According to Harry, the nature of the Welsh Government's organisation means that officials in some departments are often unable to "reach across" into other areas.

**Harry:** As far as Wales is concerned, I think the main problem for me is the fact that if you talk to officials in Welsh Government—and I emphasise officials because I'll come back to the question of ministers—the problem is that the whole organisation is very flat, and people, if you talk to them about one aspect, they won't be able to reach across. They'll know the importance of it; if you talk to somebody in housing, they know the importance of health, they know the importance of local government, whatever it may be. But it's a very flat set of silos.

*Policing and Community Safety*

For Ross, the "silo mentality" that exists within Welsh Government is something which adds to the complexity of the jagged responsibilities for policing and criminal justice in Wales.

**Ross:** And I think that's where I have more optimism that in Wales we can see the bigger picture, but in Wales we still have this silo mentality which I think we have to sweep away, really.

*Substance Misuse*

The argument was also outlined by Anthony who suggested that silos are present at a local government and national government level in Wales.

**Anthony:** We tend to operate in public services, whether that's at government level or local government level, in silos. We tend to think in silos. Professionally, we behave in silos, you know?

*Policing and Community Safety*

According to Harry, siloed relationships between government departments can cause all kinds of difficulties for Welsh Government officials who are tasked with the job of joining-up the different bits of policy. Within the sphere of policing and community safety, for example, policy making can encompass local government, health, education, housing and substance misuse.

**Harry:** I think it's a great irony that on the one hand, by having a devolved administration and having ministers with narrower responsibilities so they're able to get to grips with that narrow brief, the officials that sit below them find it difficult to join up the bits.

*Policing and Community Safety*

Craig also explained that this approach can often cause "delays" and be a rather "ineffective" way of working out policing and community safety problems.

**Craig:** It's a problem because it delays communication, it delays progress, and again, coming back to working in silos, it's probably very, very inefficient, and can be quite ineffective at times.

*Policing and Community Safety*

The difficulties created by silo working were also stressed by participants when discussing the organisation of Welsh Government ministerial and departmental portfolios. According to Craig, the lack of consistency between ministerial portfolios is something that has blurred the lines of communication between criminal justice practitioners and policy leads within Welsh Government.

**Craig:** And policing officials even meet, on occasions, in different rooms with different ministers. So, I can recall a colleague meeting with the Minister from an infrastructure point of view because of road policing and road safety and other matters in a completely separate meeting to some of the other ministers... Is it clear in terms of those lines of sort of communication to policy leads? No. Not at all.

*Policing and Community Safety*

Very much echoing existing research on 'departmentalism' and overcoming silo practices (e.g. Ling, 2002), Craig suggested that the Welsh Government should "break away" from silo working to ensure that ministerial portfolios and departmental responsibilities follow a more "strategic" approach.

**Craig:** I'd make a judgement on the way in which the Welsh government works at the moment as well. That needs to change, because they're currently working in silos. And it, we need to break away from that. So, it's quite strange, in a way, that you have the legislation and the acts and the strategic vision in relation to working across the pillars that are within the Health and Wellbeing Act. But that is not demonstrated in terms of the portfolios and the structures and the ministers and their departments...

*Policing and Community Safety*

Concerns were also raised by practitioners about the effects that repeated changes to the portfolios of Welsh Ministers responsible for policing and justice areas had in Wales. For Jayne, regular changes has heightened confusion by creating uncertainty over which minister or Cabinet Secretary is responsible for matters relating to policing and justice in Wales.

**Jayne:** Previously it [justice] was children and communities, as a portfolio area which was *so vast* and open to such interpretation that that didn't help. Then of course we're now under the portfolio area of local government and public services. That, again, is so open to interpretation it's insane...

*Community Safety and Criminal Justice*

Craig expressed his own confusion about the identity of the Minister currently responsible for policing in Wales, suggesting that this confusion is largely down to the number of changes that have been made to Welsh Government ministerial portfolios.

**Craig:** I am completely confused in terms of who police are with now—in the main, it's the Cabinet Secretary for Communities and Local Government— who took over the lion's share of what was the Cabinet Secretary of Communities and Children's portfolio. But it has also been fragmented a little bit with the Minister for Welsh Language and Lifelong Learning and the Deputy Minister for Skills and Technology, I think. So, we've immediately got three that we're dealing with, which again, doesn't help and support police in Wales.

*Policing and Community Safety*

Practitioners also highlighted the problems they have faced when working with partners that fall under the wider auspices of the Welsh Government. For George, the existence of twenty-two local authorities in Wales means that Welsh forces often spend a considerable amount of time working to develop relationships at a local as well as national level. A report by the Wales Auditor General in 2016 concluded that the "complex relationship" between different agencies responsible for community safety, including police forces and local authorities, is

one of the “biggest barriers” to improving the delivery of community safety services in Wales (Wales Auditor General, 2016: 16).

**George:** I suppose another issue, really, which was touched on, was the twenty-two local authorities. Not only are police in Wales working with UK Government, Westminster, they’re working with Welsh Government, and then there’s twenty-two local authorities. South Wales alone have got seven, which means a huge amount more of work gone into the sort of politics at that local level as well. And when you consider the likes of Birmingham, they would—if you looked at the Chief Constable of West Midlands, for instance, or if you looked at Birmingham itself, would be UK Government and one local authority. So, there’s the difference, then, and there’s a lot of effort put in by Chiefs, PCCs, with all the different bodies within Wales and Welsh policing.

*Policing and Community Safety*

For some practitioners, working alongside local health boards in Wales can also present operational challenges. For Isabelle, the “odd split” between policing and health services means that the “crossover” between health and policing is something that continually needs to be “negotiated”.

**Isabelle:** They [police] can employ doctors on a self-employed contract, or they can employ agencies, but they don’t have an agreement with the health service, with the health board, and they would need to do that for health needs. So, you have this odd split between health and criminal justice, and there is very specific legislation around health and criminal justice because one is devolved and one isn’t. So, the crossover is something that needs to be explored and negotiated.

*Health*

Steven explained that having to work across local health boards, the police and local authorities can be an “incredibly exhausting” often slows down the pace at which change can be achieved in Wales.

**Steven:** We've now got one health board trying to negotiate one simple thing with six different political groups, each with their own political agendas and each with their own leadership issues, and each with their own corporate priorities. And that's almost impossible sometimes, to address. Even now, I mean, colleagues are working on something as simple as reviewing a protocol for how we deal with Section 136's. Because it's not just a police issue, it also impacts on health, the AMPS, the third sector. So, getting the six local authorities in a room to agree, between them, the way the amps will work, then agree that that's what the police and the health board want, proves incredibly exhausting. And slows change down dramatically, because you're constantly trying to convince people to come to the table.

*Mental Health*

For those involved in the provision of prison healthcare, the health board structure across Wales can also create a number of difficulties. According to Jack, the fact that four different health boards are responsible for four public sector prisons in Wales means that approaches to prison healthcare can vary. The current structures in Wales, according to Jack, are unlike the arrangements that exist in England.

**Jack:** What is evident is that the structure in each of the health boards, and where prison health sits, is different [in Wales]. And from my experience in England, when that is the case the approach is different, and the priority is different. So, for example, if it sat within mental health in every single health board, the approach would probably be the same. If it sat within public health, then the approach would be the same. But it's very different. And so, the approach will inevitably be very different.

*Health*

Jack wanted to see the Welsh Government use its existing powers to "standardise" approaches to prison healthcare and overcome any regional inconsistencies. Such changes, according to Jack, would be both "beneficial" and "achievable" in Wales.



**Jack:** The momentum now should be to, with those prisons, is to coordinate that transformation to one way of working within Wales. Because six prisons [in Wales] isn't difficult to coordinate. I had a colleague who worked in England who used to manage six prisons. So, you know, it's not difficult to standardise approaches for operational delivery. Of those six prisons in England, there was a women's prison, there was a children's prison, and there was a Cat C prison. They're all different prisons. You can have standard ways of working for different prisons, you know, over a spread. There's no reason why it can't be done... It would be hugely beneficial to have an overarching coordination in Wales which was solely focused on it. Because it's absolutely achievable. Really achievable.

*Health*

More generally, other participants discussed ways to overcome the confusion and uncertainty within the Welsh criminal justice policy space. One suggestion was that a Welsh Government Minister for policing and criminal justice would help to improve clarity and accountability for these issues in Wales. We shall return to this in chapter seven.

### **3.4 Conclusion**

The arguments presented in this chapter show that the policing and criminal justice policy space in Wales is a complex, unclear, and confused environment for policy makers, officials and service providers. First, the research findings reveal that due to Wales' role as a "minor partner" within the single jurisdiction, the Welsh context may often be ignored and neglected by justice officials in Whitehall. This issue is compounded by the regular churn of new staff as well as decisions by UK Ministers to try and work "at pace". As outlined in the first section, the consequences of this are that policies are introduced by the UK Government that fail to reflect the different legislative and policy arrangements in Wales.

Second, the arguments presented in this chapter demonstrate that the Welsh Government has failed to engage sufficiently with policing and criminal justice issues in Wales. The accounts of practitioners explained that this has contributed to a lack of understanding which

has added to the confused and uncertain nature of the policing and criminal justice policy space in Wales. The views of participants also suggested that silo working between Welsh Government departments has added to the problems facing service providers and officials in Wales.

Finally, the research findings offer an insight into the “frustration”, “suspicion” and “cynicism” that is created within a system characterised by unclear responsibilities and confused priorities. Despite the fact that ‘partnerships’ and ‘joined-up’ approaches between the Welsh Government and UK justice directorates in Wales are heralded as a way in which to overcome the jagged edges, these findings suggest a different reality in practice.

## Chapter 4

### The limits to joined-up policy making

#### The main findings in this chapter are:

- The current constitutional arrangements prevent the Welsh Government from pursuing alternative approaches in policy areas it has responsibility for.
- The Welsh Government cannot adopt a 'whole-system' approach to tackling the root causes of offending because it does not control all of the necessary legislative and policy levers.
- As a "minor partner" in the England and Wales system, the Welsh Government has little influence over the trajectory of UK criminal justice policy.
- The challenges presented to those actively seeking to influence UK Government policy may lead to policy makers and service providers in Wales simply giving up on any campaign for change.
- A failure to influence UK Government policy means that the Welsh Government can end up implementing policies that it does not want.
- UK Government justice policy has already contributed to the demise of 'progressive' Welsh Government policy.

#### 4.1 Introduction

The research findings in this chapter provide an insight into policy development and design within the Welsh policing and criminal justice policy space. The chapter begins by reflecting upon the barriers that the Welsh Government faces in designing and introducing new and alternative policy responses within its existing areas of responsibility. In the second section, the chapter considers the limitations that policy makers and officials in Wales face when attempting to alter or influence the trajectory of UK criminal justice policy. Finally, the accounts of participants explain that the challenges associated with the jagged edge may be responsible for the demise of progressive Welsh Government policy.

## 4.2 Barriers to new and alternative approaches

The establishment of new legislatures and governments in Northern Ireland, Scotland and Wales forged open a space for devolved nations to become a “living laboratory” for policy innovation (Paun et al, 2016: 5). In the area of social policy, the governments of Scotland and Wales have been particularly active in developing policies aimed at social justice (Scott and Mooney, 2009). In Wales, the “enabling context” provided by devolution (Chaney and Drakeford, 2004: 136) led to the development of a “distinctive approach” to social policy and social justice (Drakeford, 2007: 173).

The distinct approach taken by the Welsh Government includes its role within the Welsh justice policy space. A decade ago, youth justice scholars coined the phrase ‘dragonisation’ to describe to the emergence of a “distinctively Welsh” approach to dealing with children in conflict with the law (Edwards and Hughes, 2009; Haines, 2010: 233). This approach, its proponents argued, reflected a more progressive stance centred upon human rights and a Children First, Offender Second philosophy. As well as youth justice, it has been argued that the Welsh Government has championed a more progressive approach to tackling substance misuse (Bennett and Holloway, 2011) as well as well as responding to the accommodation needs of prison leavers (HMI Prisons, 2010; 2014). The latter will be reflected upon in more detail towards the end of this chapter.

Despite the opportunities for policy innovation in the UK, policy divergence between Whitehall and the devolved governments can also be constrained (e.g. Keating, 2005; Mackinnon, 2015; Adams and Schmueker, 2005). A study by Brewster and Jones (2019) identified considerable limitations to what the Welsh Government can achieve within the Welsh justice policy space. While these barriers include the lack of capacity within the policy-making machinery and a reluctance amongst officials to push for change, the study also identified that the devolution dispensation has restricted the emergence of innovative policy (Brewster and Jones, 2019). This argument was supported by the accounts of those interviewed during this research. For William, even though the Welsh Government should be thinking about “whole-system” approaches to public policy, the current dispensation means that it is unable to influence policy areas that it has “no control” over.

**William:** If we think about the way the we should be thinking about public policy, you know, Wellbeing of Future Generations Act, that kind of thinking, what you should always be thinking is a whole-system approach, and the Welsh Government can't think of a whole-system approach in justice because they're not responsible for it and they've got no control and no levers over parts of it.

*Community Safety and Criminal Justice*

Anthony also argued that the Welsh Government's inability to "fully control" certain levers acts as a major impediment to the realisation of a different approach to policy in Wales.

**Anthony:** I think the fundamental issue about the constitution is that if you want to take a different approach to England – a less punitive, more socially responsible approach, and do things like start tackling adverse child experience and all of those issues – but you don't have the levers to be able to fully control that, then it makes it quite difficult.

*Policing and Community Safety*

A number of participants offered examples of the limitations that Welsh Government officials face. Anthony, for example, described the constraints placed upon policy makers to achieve 'whole-system' change when introducing The Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015. For Anthony, the Welsh Government's inability to "specify different sanctions" for those convicted of violent offences limited the extent to which that it could deliver a truly alternative approach in Wales.

**Anthony:** We've had a recent Act passed from a Welsh Government perspective [The Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015]. The one thing it couldn't do was specify different sanctions for offenders or different protections for victims beyond what was already in existence for England and Wales. But, obviously ... the aspiration from Welsh Government's point of view is why don't we do something different? Why don't we take more restorative approaches? Why don't we invest more in perpetrator programmes? Those sorts of things. Because, as we know, what happens with perpetrators, particularly of domestic violence, is that they just do it time and time again. They go through, they get sentenced, they serve the sentence, they come out, and lo and behold you've got another victim.

*Policing and Community Safety*

Anthony developed this argument further to explain that a failure to introduce alternative responses is likely to lead to the continuation of the "revolving door" for offenders convicted of violent offences.

**Anthony:** You know, and again, it's that revolving door, unless you start to think differently about justice and how to start solving these problems—which clearly, we're doing in Wales, but if you don't have the ability because of the Constitution to actually say, "No, Welsh offenders, there's a mandatory course that they will have to go on, or a treatment that they will have to undertake." Those sorts of things.

*Policing and Community Safety*

A further example was provided by Sarah who suggested that a limited set of powers can potentially "change the vision" that policy makers set out to achieve. Sarah explained that having shared control over a policy area can also make the vision "harder to realise" for policy makers in Wales. This argument was outlined as she discussed the regulation of sex work in Wales.

**Sarah:** If I think of some of the work with women exploited through prostitution. Say you wanted to go, 'Do you know what? We need to create a policy where those women are protected ...' Say they wanted to do a zoning of it. Because that crosses devolved and non-devolved areas, it suddenly may minimise or change the vision ... It's an example where you may have a willingness from one statutory body wanting to do something ... but then you have the police saying, 'We can't because ...' And they use the instructions and the guidance and the policies that are coming out of ACPO [now renamed the National Police Chiefs' Council], etc. So that means that Wales wouldn't be able to achieve its vision.

*Community Safety*

For practitioners working in the area of substance misuse, the most significant “challenges” facing service providers in Wales are that all of the key legislative levers for drug and alcohol services are held by the UK Government. For Jamie, this means that many of the “more generalised” problems facing offenders simply cannot be dealt with by the Welsh Government.

**Jamie:** In terms of where policies need to change, when you're looking at more generalised harm, you're looking at imprisonment in relation to drug-related crimes. You're looking at drug-related deaths. Legislation needs to change around that, and obviously that isn't devolved. That's dictated by Westminster. So, I think that's where the challenge comes.

*Substance Misuse*

According to Sarah, a clear example of this is the introduction of drug consumption rooms in Wales. Despite growing support for safe injecting sites (e.g. Kaleidoscope, 2017), Sarah explained that this could not be achieved by the Welsh Government because the all-important legislative levers are held by the UK Government.

**Sarah:** I think of safe injecting sites . . . That's a perfect example of a limitation. If Welsh Government did want to pursue that, they would probably struggle because of legislation.

*Community Safety*

This point was further outlined by Ross who described the difficulties that Welsh Government officials face when attempting to influence policing policies in Wales.

**Ross:** Injection rooms are an example of what they [Welsh Government] can't do. They can't change the system where we're putting people in prison unnecessarily because of their drug use. Yes, they can work with police and crime commissioners to look at where we caution people and where we don't caution people. But again, that would be the responsibility of the police and crime commissioner and not Welsh Government, even though the Welsh Government can influence. So, I think those bits of work are more difficult.

*Substance Misuse*

In youth justice, although most of the "core services" that form Youth Offending Teams are already devolved (Drakeford, 2010: 139), Emma explained that the current dispensation prevents the Welsh Government from controlling a number of important areas affecting children who come into contact with the youth justice system. This includes responsibility for the secure estate as well as the age of criminal responsibility in Wales.<sup>33</sup>

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<sup>33</sup> The age of criminal responsibility in England and Wales is 10 years. The Scottish Government introduced a bill to increase the age of responsibility for children in Scotland from 8 to 12 years in March 2018. Age of Criminal Responsibility (Scotland) Bill. See - [https://www.parliament.scot/S5\\_Bills/Age%20of%20Criminal%20Responsibility%20\(Scotland\)%20Bill/SPBill29S052018.pdf](https://www.parliament.scot/S5_Bills/Age%20of%20Criminal%20Responsibility%20(Scotland)%20Bill/SPBill29S052018.pdf)



**Emma:** You're probably designing something that you have no control over or have limited control over. It's the kind of statutory justice elements, if you like, within the operation of the system. What age do you [want] criminal responsibility? What type of court orders? It's the whole custodial responsibility. It's the bricks and mortar. The capital and the revenue costs.

*Youth Justice*

In the policy area of mental health, Rhys expressed his concern that Welsh legislation in this area lacked “any real teeth” when compared to the powers held by the UK Government. This argument emerged following a discussion of the independent review of the Mental Health Act 1983 that was published in 2018.

**Rhys:** But the measure isn't allowed to have any real teeth. You know, why couldn't we have a Welsh Mental Health Act? Because it has the criminal justice matters involved in it, it has the public protection matters which are Home Office, Ministry of Justice. So, they keep the juicy bits, they keep the bits that are there.

*Mental Health*

William also expressed his frustration at the restrictions faced by policy makers in Wales. Following the recent attempts made by the Ministry of Justice to provide greater autonomy and control to prison governors in England (see Ministry of Justice, 2017b), William explained that such plans could not be pursued in Wales. For William, this example outlines that Welsh Government officials are unable to take a “whole-system” view of the problems facing prisoners, even in areas that they are directly responsible for.<sup>34</sup>

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<sup>34</sup> For information on the benefits associated with ‘whole-system’ approaches see Ministry of Justice (2018d) and Institute for Public Policy Research (2016).

**William:** So, for example, [the] Ministry of Justice have devolved much more responsibility down to prison governors, particularly around things like health and education. Well, they can't do that in Wales because they're our responsibilities, but also it would take... all you would have is a voluntary agreement. There's no accountability. So MOJ have got clear accountability with governors. What they've said is, great, you want to take responsibility? Here it is. Here's the money, but we will hold you to account for that. We can't do that. So, you can never take the whole-system view of it, and that's what causes the problems, in my view.

*Community Safety and Criminal Justice*

This argument was developed further by Michael who highlighted the difficulties for Welsh Government officials while operating within a system where they are responsible for the welfare of prisoners but unable to control many of the drivers that impinge so heavily upon their experiences. This includes sentencing policy as well as the location of prisoners across the prison estate in England and Wales.<sup>35</sup>

**Michael:** I would imagine that there is an issue in that you're looking at the best ways to support and rehabilitate someone but then you've got no control over, say, sentencing guidelines, or the locations of prisoners. And you also have no control over the laws under which they're incarcerated. I suppose if you identify that a certain behaviour results from certain circumstances, you might view it differently as a criminal offence. You might recognise, 'this pattern of behaviour indicates substance misuse or it indicates mental ill health. We don't wish to treat it so harshly as a criminal offence.' But you can't change that. So, you're dealing with people who are incarcerated under laws you haven't made, according to sentences and sentencing guidelines you haven't written, and then you've got to help them out.

*Substance Misuse*

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<sup>35</sup> Research has shown that distances from home can have a considerable effect on post-release resettlement outcomes (e.g. Cochran et al, 2015; Fox et al, 2005; Lindsey, et al, 2015).

Another example of the barriers to achieving a 'whole-system' approach is that healthcare arrangements in Wales vary between different settings. In police custody, for example, physical health services are the responsibility of the police while mental health services are provided by the local health board.<sup>36</sup> At all court custody suites in Wales, physical health care services are contracted out to Taylormade Medical Service and local health boards are responsible for mental health care (HMI Prisons, 2016a). The responsibility for healthcare in public sector prisons in Wales falls to the local health boards. At HMP Parc in Bridgend, which is run by G4S, all primary physical and mental health services are provided by G4S Medical Service (HMI Prisons, 2016b).<sup>37</sup>

According to Jack, "without one body overseeing" healthcare arrangements in Wales there are likely to be a number of challenges to delivering a co-ordinated approach.

**Jack:** When you look at the challenges around delivering healthcare it's around the movement of patients between those settings, and if you have that oversight and coordination of those, then it makes the systems better... A man goes to court. Who provides the health? A man goes to prison. Who provides the health? And if it's a different process, which it is in Wales, without one body overseeing, then there's going to be some challenges and some opportunities to make improvements, whether that's cost improvements or quality improvements.

*Health*

The problems presented to prisoners by inconsistent support services were recently outlined by the National Audit Office following a review into mental healthcare in English prisons. The report found that distances from home, poor information sharing and lack of notice were all responsible for prisoners "routinely" failing to receive "continuity of care" when released

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<sup>36</sup> The arrangements for physical healthcare services vary between force area. In Dyfed-Powys, Castle Rock Group are contracted to provide primary healthcare services (HMICFS, 2018). Gwent Police directly employ nurses to provide health services to those held in police custody (HMICFRS, 2017). North Wales Police also use an "in-house medical service" to provide health services (HMIC, 2015: 29). South Wales Police commission the Mitie Group to provide physical health services for those detained in police custody (HMIC, 2016). All information is accurate and correct up to the date of the last police custody inspection carried out by HMIC/ HMICFRS.

<sup>37</sup> Secondary mental healthcare services are provided by Abertawe Bro Morgannwg University Health Board.

from prison into the community (National Audit Office, 2017: 9). The difficulties that prisoners in Wales can face upon release were explored by Jack when considering the experiences that individuals suffering from complex mental health problems are likely to encounter as they pass through the fragmented system in Wales. This was outlined by Jack when reflecting upon the benefits associated with a seamless system.

**Jack:** If I had complex mental health problems, living in north Wales, and I was arrested into police custody, then if there's a devolved responsibility for health then the health board also have responsibility for health for me in police custody, then I would maintain my care with the health board whilst being in police custody. In terms of continuity of the care, in terms of not having to repeat assessments, in terms of ensuring medication continues, ensuring that there's no barriers for communication or transfer of information—because at the moment, that doesn't exist. If I was then sent to prison—and because of devolved responsibility for health, then the health board is also providing health for the prisons—then that would just follow. So literally my care package would follow me, whether I was in the community, whether I was in police custody, whether I went to court, whether I was in prison. And then, when I was released, it would go back to [the] community again, and so it would be completely seamless.

*Health*

Jack also outlined the benefits associated with a more seamless approach for service users once they are released into the community. These arguments are similar to those that eventually led to the decision to transfer responsibility for prison health from the Prison Service to the National Health Service (see HMI Prisons, 1996).

**Jack:** And it's also post-custody, to be able to transfer back seamlessly, you know, within the same organisation, within the same system. And it's a system which the patients know, as well? You know, if they're being cared for using the same assessment documents, the same care packages, it's better. It's going to be better for them. The outcomes are going to be better.

*Health*

Jack also suggested that these benefits would extend to health service providers working in the community. This includes removing the need to carry out repeated assessments as individuals pass from one policy space to another.

**Jack:** And there's going to be opportunities for the providers as well, because you're not going to have that continual need for assessment. You know, if a man transfers from a prison in Wales to a prison in England they'll do a completely new assessment again, and whenever a prison in Wales receives a man from England we'll do a complete assessment again. And there's some opportunities to have some efficiencies there in terms of clinical timing, you know? Because if their assessment has been done in the police custody, well why does it need to be repeated? At the moment we have to repeat it because we use slightly different assessment documents.

*Health*

On top of the challenges facing practitioners seeking to deliver seamless or whole-system approaches to health or substance misuse in Wales, service providers also highlighted concerns about the effects of UK criminal justice policies on devolved areas of responsibility.

#### **4.3 Wales as a “minor partner”: problems influencing UK criminal justice policy**

As well as the limitations to its own policy making powers, the accounts of participants explained that the Welsh Government is restricted further by the problems politicians and officials face when trying to influence UK policies or laws. As argued by Cairney (2006: 432), the relatively small size of devolved nations means that the “balance of power” is often tilted

towards Whitehall and UK policy departments. According to Emma, despite the fact that many youth services are already devolved, Welsh Government officials often struggle to inform the Ministry of Justice's youth justice policy. As argued in the previous chapter, Emma felt that this failure could be explained by Wales' role as a "minor partner" within the England and Wales jurisdiction.

**Emma:** They [Welsh Government] will always want to express a view, and be taken seriously when they express that view. But then their ability to influence perhaps is a bit more questionable, because inevitably the policy is for England and Wales, and Wales is the smaller – you know – the minor partner.

*Youth Justice*

Wyn also discussed the limitations that Welsh Government officials are likely to face when engaging with the police on matters relating to mental health. Offering a hypothetical example, Wyn stated that the current system is one that prevents the Welsh Government from being "directive" even when relationships between agencies and partners are strong. As a result, the Welsh Government are unable to "determine shared priorities" within the Welsh policing and justice policy space.

**Wyn:** There is no ability for the Welsh Government to determine shared priorities. And this is purely hypothetical, as has previously been argued, the police and health services and Welsh Government are all very much on the same page on this, in terms of the need to work collaboratively and to get these things done. But in a hypothetical situation where that perhaps wasn't the case, or where Welsh Government was like, "No actually, this mental health is a real, real priority and we need to be quite directive," that wouldn't be possible.

*Mental Health*

Wyn further explained that this lack of ownership may prevent the Welsh Government from dealing with any potential funding issues that arise within this policy space.<sup>38</sup>

**Wyn:** Or another example might be, you know, there is a debate, perhaps more so from policing, saying, “Well, you know mental health is a health issue, so why are so much of our policing resources being spent on this.” Welsh Government would be able to be quite directive and say, “Right, well we shall have joint health and police budget resource put into, you know, a crisis centre where people could be taken by, you know, by health professionals,” for example, but it would be a joint, and they could be directive around that.

*Mental Health*

The failure to influence Westminster policy was also discussed by Michael in the context of the Welsh Government’s Substance Misuse Strategy.<sup>39</sup> For Michael, the Welsh Government’s failure to influence or control areas such as alcohol licensing, pricing or advertising meant that its strategy became slightly more “hopeful” than it was “determined”.

**Michael:** Certainly, it came up in the original substance misuse strategy, in that there was a lot of talk about – well, there was a whole section on alcohol in the community, availability of alcohol in the community. And there’s a certain amount you could do simply by working with people. But pretty much all of the legislative levers were not devolved. So, you couldn’t reform the Licensing Act in any kind of creative fashion. You couldn’t manage the price of alcohol. You couldn’t manage opening hours. You couldn’t manage advertising practice. So that whole section of the substance misuse strategy was a bit more hopeful than it was determined.

*Substance Misuse*

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<sup>38</sup> These issues are discussed further in chapter five.

<sup>39</sup> The Welsh Government’s *Working Together to Reduce Harm* strategy was introduced in 2008.

Returning to the issue of drug consumption rooms, Jamie expressed his frustration at the Welsh Government's inability to change Westminster legislation despite a strong evidence base to support this policy (e.g. Marshall et al, 2011; Milloy and Wood, 2009; Otter, 2017). This frustration was once again put down to the lack of "control" that Welsh Government officials have over drug policy and legislation.<sup>40</sup>

**Jamie:** When talking about [the] development of services, bringing it back to the likes of drug consumption rooms, that isn't something that the Welsh Government, from a legal perspective, can give that go-ahead for. They can't change the law around that, which makes it incredibly frustrating, because you've got evidence-based interventions ... They have got a huge amount of evidence behind them to suggest that they do work, in relation to their aim and objectives.

*Substance Misuse*

A major source of concern for Jamie is that a failure to change approach will lead to a continuation in the harms facing substance misusers in Wales. Jamie made this point when referring to the prospect of drug decriminalisation and the controls that are held over the Misuse of Drugs Act 1971 by the UK Government.

**Jamie:** If we're looking, for example, to try and introduce the decriminalisation of drugs, that's something that would have to be obviously agreed by Westminster. It would have to be part of whatever party's in power at the time, part of their kind of agenda, really. And I think until we have to have reform around the Misuse of Drugs Act, then it's all well and good what we're doing in Wales, but the more significant harm is just going to continue, really.

*Substance Misuse*

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<sup>40</sup> It should be noted that the Scottish Government has experienced a similar set of difficulties. In April 2018, Members of the Scottish Parliament voted 79-27 in support of the Scottish Government's motion to call for the UK Government to allow for a safe drug injecting facility to be established in Glasgow.



As a consequence of the difficulties facing service providers in Wales, practitioners revealed that they are often likely to give up campaigning for a change in UK Government policy. Brewster and Jones (2019:374) found that Welsh policy makers are often unlikely to “advance more liberal or progressive” approaches to drug policy because of the barriers presented to officials by the devolution dispensation. This argument was developed further by Michael who suggested that such ideas are often dropped because of a perception that there is little prospect for a change in UK policy.

**Michael:** I guess we just drop certain topics. We don’t expect to see movement from the UK Government, so we work on the topics which are obviously devolved, because there’s a chance for movement there.

*Substance Misuse*

Michael explained that practitioners will simply work to try and make the best of the current situation when Whitehall officials cannot be persuaded to alter policy or legislation.

**Michael:** I suppose there are probably certain aspects of policy in Wales that we would just think, ‘Oh well that’s Department for Culture, Media and Sport, or that’s Home Office. We’re not shifting them.’ My colleagues in London have tried to go and see them. They can’t shift them. So, we just let it go. We work with what we’ve got.

*Substance Misuse*

According to Emma, a failure to influence UK Government policy or legislation means that the Welsh Government will often end up with policies that it does not want. The introduction of Police and Crime Commissioners in Wales, which were opposed by the National Assembly for Wales<sup>41</sup>, was highlighted as an example.

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<sup>41</sup> Assembly Members voted down part of the Police Reform and Social Responsibility Bill on 8<sup>th</sup> February 2011.

**Emma:** But as we know, Wales can end up having to do the same things as England even if it disagrees with them. PCCs, there was an initial opposition, I think, wasn't there, and then there was a later statement, "Well we're having them so now we're going to try and work with them".

*Youth Justice*

Even in circumstances where the responsibility for legislation and policy falls under the auspices of the Welsh Government, practitioners in Wales still face challenges in trying to enforce policies that straddle non-devolved areas. In 2011, the National Assembly for Wales passed the Welsh Language (Wales) Measure 2011 to help fulfil the Welsh Government's commitment to promote the use of Welsh across Wales. The passing of the Measure led to the establishment of the Office of the Welsh Language Commissioner and the creation of new powers to investigate any failures to implement language schemes or any interference with the freedom to use Welsh across Wales. These powers were extended in 2015 after the Welsh Language Commissioner was given additional scope to impose duties upon organisations in Wales to ensure compliance with standards of conduct on the Welsh language. Alongside its pre-existing powers, The Welsh Language Standards Regulations form part of a new set of powers to help enforce and improve standards across Wales. This includes the power to administer civil penalties to organisations that fail to comply with Welsh language standards.

Despite being viewed as a major step change in improving standards across Wales, the powers given to the Welsh Language Commissioner are limited when it comes to those affected by the criminal justice system in Wales. For example, despite the devolved government's clear responsibilities for the Welsh language in Wales, the decision on whether or not the new measures can be imposed upon criminal justice agencies can only be made by a UK Minister of the Crown. Under Section 43 of the measure, the Commissioner is only able to impose the duties on Crown bodies, or ministers of the crown, with the consent of the Secretary of State. As of January 2018, the consent needed to apply The Welsh Language

Standards Regulations to HMPPS in Wales has not yet been granted.<sup>42</sup> In written evidence to the House of Commons Welsh Affairs Committee's inquiry into prison provision in Wales in February 2018, the Welsh Language Commissioner (2018: 3) revealed that "most UK Government institutions" will continue to operate schemes set up outside of the Welsh Language Measure "for some time to come".<sup>43</sup>

As well as Welsh language standards in Wales, the responsibility for tackling inequality and discrimination offers a further insight into the difficulties that practitioners in Wales face when enforcing Welsh Government policy. Through the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011, the Welsh Government is able to impose a series of 'Welsh specific duties' upon devolved public authorities. Since taking effect in April 2011, the 'Welsh specific duties' require public bodies in Wales to develop strategic equality plans, publish their equality objectives and assess the impact of future policies upon the 'general' equality duty set out in the Equality Act 2010. In 2014, a report commissioned by the Equality and Human Rights Commission found that 'Welsh specific duties' offered "greater clarity" to public bodies than the duties placed upon public authorities in England (Mitchell et al, 2014: 19). This argument was supported by Helen who described the greater clarity that exists in Wales compared with England.

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<sup>42</sup> All Welsh police forces and the British Transport Police are subject to the standards under regulation number 5. Some of the tribunals are subject to the standards under regulation number 4. These include Valuation Tribunal Wales; Mental Health Review Tribunal for Wales; Special Educational Needs Tribunal for Wales; Residential Property Tribunal Wales; Agricultural Land Tribunal for Wales.

<sup>43</sup> See Hughes and Madoc-Jones (2005); Madoc-Jones (2007); Madoc-Jones and Buchanan (2004); and Welsh Language Commissioner (2018) for information on the difficulties facing Welsh-speakers in contact with the criminal justice system.

**Helen:** Because the specific duties in Wales are quite clearly articulated, you either have a strategic equality plan or you don't have a strategic equality plan. So, you can't say, "Oh, I didn't know I had to have one," because it's clear in the duties that you do. The duties in England were not as cleanly articulated, so there was a lot more of what I would call wriggle room in England, and we know that across GB [Great Britain] officials are concerned about the way that the duties are articulated, particularly the specific duties, and what can be done to strengthen them.

*Equalities*

When it comes to the criminal justice system in Wales, however, non-devolved agencies including HMPPS and the four Welsh police forces are guided by the 'specific' duties set out by the Equality Act 2010 (Specific Duties) Regulations 2011. According to Helen, the split can create difficulties as non-devolved organisations operate in Wales (e.g. HMPPS) but remain outside of the duties set by the Welsh Government.

**Helen:** Well for those that are not listed... you can talk to them about equality, but they don't really have to take your conversations as seriously as those who are listed because they're not subject to that legislation.

*Equalities*

On a more practical level, Helen explained that the split may lead to a very different set of protections for people in Wales once they come into contact with the criminal justice system.

**Helen:** I suppose practically, it could mean that those bodies could operate in a way that was contrary to the Equality Act, but there's no remedy, no enforcement then possible. And I was going to say, for people that have enjoyed those protections, that have enjoyed those protections in their working life. They've, you know, they've done something, they've been convicted, they're now in a completely different sector. They could experience something that's completely different, that's not, not just, not solely based on the fact that they are in a custodial context, but because they don't enjoy those equality protections in the same way.

*Equalities*

The arguments presented in this section show that Wales' role as a "minor partner" in the England and Wales system means that Welsh Government officials are often unable to influence the direction of UK justice policies, regardless of the effects that they are having on devolved areas of responsibility. These issues exacerbate the challenges faced by officials seeking to use the Welsh Government's existing powers to develop alternative policy responses in Wales. In the next section the accounts of participants explain that these problems may be contributing to the demise of progressive policy in Wales. The Welsh Government's attempts to tackle the housing needs of former prisoners was identified by participants as a prime example of this.

#### **4.4 Progressive policy in retreat? The demise of priority need**

The introduction of the Homeless Persons (Priority Need) (Wales) Order 2001 was the Welsh Government's first major commitment to providing housing support to prison leavers from Wales. Developed alongside a body research that highlighted the problems often faced by homeless offenders upon their release from custody (e.g. Social Exclusion Unit, 2002), the policy ensured that 'unintentionally homeless' prison leavers were included within the categories of people for whom local authorities "must" provide housing support to (NOMS, 2006a: 12). This included offering support to prisoners with a 'local connection' to Wales without the "additional burden" of having to prove their 'vulnerability' (Shelter Cymru, 2004: 3).

The provisions introduced by the Welsh Government were markedly different to those made available to prisoners from England. The Welsh Government's policy drew praise from HM Inspectorate of Prisons (HMI Prisons) who called upon English authorities to adopt a similar approach. In 2010, following an inspection of HMP Altcourse in Liverpool,<sup>44</sup> HMI Prisons (2010: 5) described the services provided by the Welsh Government as "an example to the English authorities" of the kinds of support structures that should be in place to help try and resettle English prisoners upon release. After returning to HMP Altcourse in 2014, HMI Prisons (2014: 6) referred to the policy as something that "sets Wales apart from England" when it comes to the provision of post-release support.

The progressive nature of the Welsh Government's 'priority need' policy was discussed by service providers interviewed during this research. For Holly, the policy was a clear and effective way to break the cycle of imprisonment and street homelessness.

**Holly:** We felt that it was progressive because we knew there were a lot of people coming out of prison into homelessness, and into street homelessness. And as we saw it the first twenty-four to forty-eight hours post-release are so important for getting someone established. And if you don't get that right, if people don't have a roof over their head in that critical time, then it can be a trigger that ends up with people going straight back in. Because they end up falling off the wagon. It's a really critical time to get right.

*Housing*

Holly also suggested that the policy was responsive to the growing body of international research evidence which had identified the importance of securing accommodation for prisoners upon release.

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<sup>44</sup> Prior to the opening of HMP Berwyn in Wrexham, HMP Altcourse operated as north Wales' 'local prison'.

**Holly:** The Welsh Government were very aware of the international evidence around reoffending and the importance of a home . . . If you haven't got a home, your chances of getting back on your feet are so incredibly slim that we felt, in Wales, that we could do something positive by creating an automatic priority need for people coming out of prison.

*Housing*

The Welsh Government's policy was also supported by the findings produced in subsequent studies (e.g. Maguire and Nolan, 2007; O'Leary, 2013). This includes research which shows that having secure housing upon release is often the biggest concern facing prisoners throughout the course of their sentence (e.g. Roman and Travis, 2010; Prison Reform Trust & Women in Prison 2018). This point was outlined by Joshua when reflecting upon a recent evaluation conducted by academics at Glyndwr University and the University of Salford.

**Joshua:** I think the Glyndwr Report suggests that fears or worries about accommodation is maybe the biggest concern for many people who expect, you know, obviously, if they're in custody and they're homeless. That's one of their biggest concerns. So, I can only imagine that when priority need was in place it was one of the biggest concerns in terms of, where am I going to go when I am released, was removed.

*Housing*

Despite being heralded as a flagship policy, research published by the Welsh Local Government Association in 2008 warned about the future sustainability of automatic 'priority need' for Welsh prison leavers (Humphreys and Stirling, 2008). According to Joshua, although the policy was regarded as enlightened by those in the criminal justice sector, 'priority need' was viewed rather differently by those in local government. Joshua argued that the introduction of automatic 'priority need' for prison leavers had a negative effect on relationships between service providers operating in different sectors.

**Joshua:** It was probably celebrated within the criminal justice sector, because obviously it guaranteed accommodation for people leaving custody. It wasn't celebrated within the local authority sector on the basis that [prior to its introduction] I'm told that there was a healthy relationship between probation, prison service and local authorities in order to try to make sure there was some cooperation or some prior notice before people were leaving custody. From what I gather, anecdotally, that ended when priority need was established in the criminal justice system, the probation and prison service, knew that there was this definitive statutory duty on local authorities which meant that local authorities, like the switch of a tap...

*Housing*

Joshua explained that the breakdown in communication ultimately led to a number of problems for local authorities and housing services in Wales.

**Joshua:** Prisoners started arriving generally on a Friday, sometimes late in the afternoon and sometimes after they've had a visit to the pub as well. So, local authorities were unable to plan in terms of what support they could provide. And with them being priority need it meant there was a definitive duty to provide something. Which often meant, at that late notice, probably unsuitable bed and breakfast accommodation, probably with other prison leavers who presented at roughly the same time. On a Friday afternoon, again.

*Housing*

As well as having a negative effect on the relationships between criminal justice agencies and housing services, concerns were also raised about the impact that UK criminal justice policy would eventually have on the Welsh Government's commitment to 'priority need'. Humphreys and Stirling (2008: 46) argued that the "complex" intersection between UK criminal justice policy and the Welsh Government's responsibility for housing could affect the ability of housing services in Wales to provide suitable accommodation for offenders in future. The research warned that a continuing rise in prisoner numbers in Wales would lead



to a situation where the demand for social housing would begin to exceed the supply (Humphreys and Stirling, 2008).

Between 2001 and 2012, the number of households across Wales where a member was vulnerable due to being released from custody without accommodation to return to rose by 142 per cent (Stats Wales, 2015). The number of Welsh households where a member was vulnerable due to being released from custody increased from 640 in 2008 to a peak of 955 households in 2012. This increased demand fed into growing concerns amongst Welsh local authorities about the financial costs associated with 'priority need'. The Welsh Local Government Association estimated that during 2012/13 the average cost of accommodating a former prisoner was over £2,100 with just under £2 million spent to accommodate former prisoners in Wales in 2012/13 (Welsh Government, 2013b: 5). For Joshua, the financial pressures placed on local authorities contributed to the growing concerns over the future sustainability of automatic 'priority need' for Welsh prison leavers.

**Joshua:** I think criminal justice will say, 'Yes this has been brilliant, brilliant for us, we can focus on other things.' The local authorities would say, 'We've been spending maybe a quarter of our budget in terms of actual cash and in terms of staff time trying to resolve this fairly small cohort of people. This is actually undermining our intention to try to prevent homelessness across this much wider spectrum.'

*Housing*

In response to these concerns, the Welsh Government launched a public consultation on its plans to abandon 'priority need' for prison leavers in 2013. Despite being widely viewed as a model of best practice, the Welsh Government's Minister for Housing announced later that year that the automatic 'priority need' status given to prisoners was to be removed in the Housing (Wales) Act 2014. The decision to strip away automatic 'priority need' status for prison leavers was a major change in policy. In its place, the Housing (Wales) Act 2014 oversaw the introduction of an alternative approach geared towards the prevention of homelessness across Wales. This included placing duties on local authorities to 'help to prevent' homelessness as well as helping to secure accommodation for those at risk of homelessness in Wales.

The Welsh Government's decision to change housing entitlements for prison leavers coincided with the introduction of "radical" changes to the supervision of offenders in England and Wales through the Offender Rehabilitation Act 2014 (Anniston et al, 2014: 6). In anticipation of the likely effects that new supervision arrangements would have upon the delivery of housing support services to prisoners from Wales, the Welsh Government developed a National Pathway for Homelessness Services to Children, Young People and Adults in the Secure Estate to clarify shared responsibilities between local authorities, the National Probation Service and the Wales Community Rehabilitation Company (CRC). This included establishing processes to ensure "clear communication" between the Wales CRC, the National Probation Service and Welsh local authorities as well procedures to avoid any possible "duplication of services" (Welsh Government, 2015b: 22).

Despite the introduction of a National Pathway, a recent evaluation of the Welsh Government's new homelessness service identified a number of concerns with its approach to adults in the secure estate. This included problems at prison reception as well as "poor" services at the pre-release stage with local authorities often given very little time to address the accommodation needs of prison leavers (Madoc-Jones et al, 2018: 2). Central to the shortcomings identified by Madoc-Jones et al (2018), were the effects made by Transforming Rehabilitation. According to Joshua, these problems include the Wales CRC's failure to properly complete applications and assessments.

**Joshua:** But Glyndwr flags up that the biggest issue was within CRCs, and particularly the resourcing. Not enough people are being—are having their applications completed, the risk assessments undertaken. So local authorities are still seeing people turn up on the day completely unannounced.

*Housing*

While Joshua initially viewed the introduction of Transforming Rehabilitation as a positive change, he explained that a lack of funding for the CRC has resulted in many of the homelessness provisions put in place by the Welsh Government being "undermined".

**Joshua:** But it's that difference between, you know, the policy concept of Transforming Rehabilitation and then not funding it appropriately enough, which meant all those things the Welsh Government put into place were undermined.

*Housing*

Service providers in Wales also reflected critically upon the effects that other UK justice policies have on housing services in Wales. For Holly, the use of custodial sentences for 'low-level' offences is a major part of the problem for those charged with providing housing services.

**Holly:** It's mainly through the numbers of people who are being sentenced to custodial sentences for really low-level crime, or crime which is related to, you know, untreated health issue or an unmet support need... But one of them should be, surely, not to send people down for pointless stuff, but rather to engage them with services and to have more of a restorative or rehabilitative approach, rather than just putting people into prison. Especially some of these big prisons where people seem to get quite lost.

*Housing*

Concerns were also raised about the use of short-term sentences and the possible effects this has for prisoners who may end up losing their tenancy. Offenders who serve more than thirteen weeks will automatically lose their housing benefit and, in almost all circumstances, their tenancy.<sup>45</sup> A report by the Howard League for Penal Reform in 2011 found that prisoners were often frustrated at losing their tenancies when handed short-term custodial sentences. The research found that one of the reasons prisoners reflected more positively on community sentences was because it meant they could retain their housing or tenancy (Howard League for Penal Reform, 2011). Joshua explained that the use of short-term sentences can often have a considerable impact on housing services in Wales.<sup>46</sup>

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<sup>45</sup> Or anyone sentenced to more than twenty-six weeks in custody. See – <http://hub.unlock.org.uk/knowledgebase/housing-going-prison-preparing-release/>

<sup>46</sup> Between 2010 and 2017, an average of 349 people were sentenced to over 6 months up to and including 9 months in custody each year.

**Joshua:** The Ministry of Justice consultation [on changes to probation services] suggests there's going to be much more dialogue between the CRCs, or the probation service, and the judiciary, around sentencing... I think part of the intention is to divert people from custody. But I think the Welsh Government would hope, that they can flag up maybe they shouldn't be giving them twenty-six [weeks], you know? There are guidelines in place, I know, but please don't give them twenty-six weeks and a couple of days, because do you realise the impact this is going to have? And do you realise the cost impact this is going to have on these different services? And the chances are you are going to see this individual again in thirty weeks' time because of the decision you are going to make today.

*Housing*

In addition to sentencing, concerns were also raised about the effects that prisoner dispersal has on the delivery of through-the-gate resettlement services. Despite the UK Government's introduction of designated resettlement prisons to try and overcome the distances facing prisoners prior to their release (Ministry of Justice, 2013a), Joshua highlighted concerns that Welsh prisoners are still "dotted around" the prison estate in England.<sup>47</sup>

**Joshua:** What we understand is there's still men dotted around in other prisons. What we did do when we changed the legislation, and when we changed the legislation, a missive, a communication, went out to all governors of every prison in the UK to say there's this change in legislation in Wales, this is what you should do and we gave a list of key contact points for each of the twenty-two local authorities.

*Housing*

Significantly, some participants felt that the problems associated with UK criminal justice policy can help to explain the demise of 'priority need'. Unable to alter or change the course of the UK Government's criminal justice policy, the stripping away of 'priority need' is an

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<sup>47</sup> Data from the Ministry of Justice show that Welsh prisoners could be found within 108 different prisons in England in 2017.

example where the Welsh Government have been forced to pull back on its own more enlightened policy agenda in the face of increased demand and rising costs. This argument was outlined by Holly who suggested that the failings of the prison and probation services were central to the Welsh Government's decision to remove 'priority need' and oversee the introduction of a new approach in Wales.

**Holly:** I would say a very large part of it should be with criminal justice [responsibility for the removal of 'priority need']. And that was always part of the problem that local authorities had was that they felt that they were picking up a load of stuff which probation and the prisons ought by rights to be doing. The Welsh Government kind of pushed ahead with this [new policy] on the understanding that the Prisoner Pathway would be a better way of dealing with it all.

*Housing*

For Holly, the stripping away of automatic 'priority need' for prison leavers was a "step backwards" from what was once an acclaimed policy. Holly explained that she and her colleagues predicted that the policy's removal would likely lead to "an increase" in the level of rough sleeping. According to official figures, the number of rough sleepers in Wales has increased by 10.9% from 313 in 2016 to 347 in 2018 (Welsh Government, 2019c).

**Holly:** We took what we thought was a real step backwards by removing that [2001 duty] and creating this new tiny little category [of priority need] that hardly anyone is fitting into. And we did predict that it would lead to an increase in rough sleeping. And funnily enough, we've had a great increase in rough sleeping. Not just because of that – there's been a lot of factors in that – but we've just been doing this study where we've gone out round Wales, we've spoken to a hundred currently street homeless people, and a lot of them are prison leavers.

*Housing*

As well as the removal of 'priority need', the problems identified with the Welsh Government's new approach have also been put down to failings that are associated with the UK Government's criminal justice policy. In a letter sent to the National Assembly's Cross Party Group on Faith in February 2019, the Welsh Government's Minister for Housing and Local Government underlined this argument claiming that "the levers for effective implementation" of its housing policy "primarily rest with the UK Government" and the CRCs.<sup>48</sup> According to Marc, the intersection between the Welsh Government's housing policy and the UK Government's Transforming Rehabilitation agenda is an example of the "lack of coordination" between approaches in Wales and those taken by the UK Government in Westminster.<sup>49</sup>

**Marc:** So, what you have is a lack of coordination, at times, in terms of a systems approach to thinking, "Right, how do we deal with homelessness?" So, I'm sure the Welsh Government thought, "Right, prevention agenda. That works great. Peter Mackie thinks it's wonderful."<sup>50</sup> What we've got isn't working. Let's do this." But there was one system they had no control over, which was the criminal justice system, which arbitrarily, to a certain extent, decided to go private. And I very much doubt Chris Grayling thought about the implications of that for, you know, addressing homelessness in Wales. So that's the complexities, I think, that you end up with.

*Community Safety and Criminal Justice*

As well as the negative outcomes for service users, Holly explained that the changes meant that service providers in Wales have faced considerable challenges to try and make the system work.

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<sup>48</sup> Full quote: "The levers for effective implementation primarily rest with the UK Government, with responsibility for commissioning and resourcing of the [Community] Rehabilitation Companies resting with the Ministry of Justice. Since roll out of *Transforming Rehabilitation* it has been clear that resources have not met the increased demand...".

<sup>49</sup> This subject is explored further in chapter seven.

<sup>50</sup> See Mackie (2012).

**Holly:** But I mean I definitely get the impression that they're incredibly busy, and that they are spending a lot of time trying to make connections happen, you know, and that more resource would be desirable to make that happen more effectively.

*Housing*

In a written response to the National Assembly's Cross-Party Group on Faith, the Welsh Government's Minister for Housing and Local Government reiterated in February 2018 the findings of the evaluation into homelessness services for prisoners in Wales. The Minister said, [Community] Rehabilitation Companies resting with the Ministry of Justice. Since roll out of Transforming Rehabilitation it has been clear that resources have not met the increased demand..."

For Marc, the additional workload that Welsh service providers have had to shoulder is largely due to the fact that the CRC failed to fully understand and appreciate the Welsh policy context. As a result, Marc explained the initial contract at HMP Altcourse did not cover the "additional work" necessary to take account of Welsh Government's commitment to the prevention agenda.<sup>51</sup>

**Marc:** Now, my understanding of what happened is that when the CRCs won the contracts to deliver resettlement work, and they subcontracted it to their through-the-gate partners, the through-the-gate partners didn't appreciate when they came to the costing part of it that there might be more involved, in terms of dealing with prisoners in Wales, so that their contract didn't include the additional work that it was considered to be necessary to meet the prevention agenda. And that kind of stuff would have involved filling forms in, assessing, with a prisoner, what their needs are, what their support needs were, as well—which didn't happen in England—and then helping the prisoner engage with local authority to have their housing needs met.

*Community Safety and Criminal Justice*

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<sup>51</sup> The failings associated with the UK Government's *Transforming Rehabilitation* agenda are laid bare in a recent report by the National Audit Office (2019).

This oversight, according to Marc, meant that further steps had to be taken by Welsh Government to ensure that through-the-gate services could begin to take account of the Welsh Government's own housing policy. This included making additional funds available to Prison Link Cymru to ensure that resettlement services were carried out properly at HMP Altcourse.

**Marc:** By this point, of course, it wasn't prevention because they were all homeless. It's helping them secure accommodation. So, because there was more work involved in that than the CRCs had anticipated, the through-the-gate people had anticipated, and they had been in effect paid to do, the Welsh Government stepped in, at least for a period of time and renegotiated the Prison Link Cymru contracts so they did the resettlement work.

*Community Safety and Criminal Justice*

Interestingly, according to Marc, the additional steps taken by Welsh Government (e.g. Prison Link Cymru) to overcome these challenges may have helped the CRC to meet its own performance targets.

**Marc:** So potentially the CRCs would benefit from this. Let's say the, you know, Prison Link Cymru staff in Altcourse did a fantastic job and housed everybody. That would have a positive effect on reoffending rates, which would result in performance related pay to the CRC.

*Community Safety and Criminal Justice*

Mark also suggested that the terms of its payment by results contract means that Welsh Government may have been used to help the CRC maximise its performance related pay.



**Marc:** There were questions about, well, Welsh Government are paying people to help the CRCs meet their contractual obligations, so the Welsh taxpayers' money is being used to help CRCs in England meet their contractual obligations.

*Community Safety and Criminal Justice*

The decision to remove 'priority need' for prison leavers in Wales has been subject to widespread criticism since the changes took effect in April 2015. In response to a recent inquiry into rough sleeping in Wales, written evidence argued that the removal of priority need may have contributed to the recent rise in street homelessness (Mackie, 2017; Shelter Cymru, 2017) and that the Welsh Government should consider changing the legislation if the removal of priority need has had a detrimental effect on prison leavers (Cymorth, 2017). In its final report, the National Assembly for Wales' Equality, Local Government and Communities Committee (2018), recommended that the Welsh Government reinstate automatic 'priority need' for prison leavers from Wales. According to Holly, this approach is probably the most likely route out of the current situation given the difficulties that policy makers in Wales face when trying to lobby the UK Government for a change in its approach to criminal justice.

**Holly:** So, it would be either a case of stepping up themselves to fill that gap, and to try to outreach to services, you know, or to fund another service from within Wales to actually go out more effectively and engage with prisoners prior to release. That, I guess, would feel like a capitulation for them, wouldn't it, after having kind of taken this stance, and taken a step back. They can try and lobby UK Government, but that's a complete waste of time, isn't it?

*Housing*

However, while some may feel that the reinstallation of 'priority need' is required in order to address the housing problems facing prisoners upon release (e.g. Cymorth, 2017), the arguments set out in this chapter suggest that as long as the Welsh Government's housing policy continues to rub up against UK criminal justice policy then change is likely to be limited. This point was made by Holly who explained that any future Welsh Government

housing policy is likely to remain “limited” so long as responsibility for prison and probation services remain outside of their control.

**Holly:** I mean it’s hugely complex for them, isn’t it? You know? And they do have a really tough job on their hands because you’re very limited, aren’t you, ultimately. You know, you can’t control where Welsh prisoners are, which prison they go to. You can try and ensure that they all get a decent prevention service, but realistically, knowing the failing nature of probation, realistically you can do it until you’re blue in the face but there’s only so many staff hours...

*Housing*

This discussion of housing policy helps to reveal some of the limitations faced when trying to maintain a more enlightened policy approach whilst operating at the interface of the jagged edge. Although it important to recognise that other factors will have undoubtedly contributed to the problems faced by prison leavers and housing services in Wales including austerity (Ifan and Sion, 2019)<sup>52</sup>, the welfare benefit system, and how well the policy has been implemented by housing services (Mackie, 2015), the accounts of service providers indicate that Welsh Government policies may well be forced into retreat due to the effects of UK criminal justice policies that it is unable to influence or change.

## 4.5 Conclusion

The arguments presented in this chapter build upon the limited research that has already been done in this area (e.g. Brewster and Jones, 2019) to show that the current dispensation prevents the Welsh Government from pursuing alternative approaches in policy areas it is responsible for. The research findings reveal that the Welsh Government’s standing as a “minor partner” in the England and Wales system means that it has little influence over the direction of UK policing and criminal justice policy in Wales. The accounts of practitioners

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<sup>52</sup> Wider research has been done around the “significant implications” that austerity has had on devolved governments and their capacity to introduce progressive and divergent policies (e.g. Evans, 2017; Mackinnon, 2015: 48; Adams and Schmucker, 2005).

explained that the Welsh Government can end up having to implement policies that it does not want in Wales.

The arguments outlined in this chapter also demonstrate that the current system is working to undermine Welsh Government policy initiatives that straddle policing and criminal justice. The Welsh Government's decision to remove prisoners from the automatic 'priority need' category for housing was identified by service providers as an example. Further concerns were raised over the effects that the UK Government's Transforming Rehabilitation agenda are having on the Welsh Government's new approach to tackling homelessness amongst prison leavers.

## Chapter 5

### The funding labyrinth

#### The main findings in this chapter are:

- The funding arrangements for policing and criminal justice in Wales are a source of complexity for practitioners.
- UK Government funding for English-only services creates a sense of confusion amongst service providers in Wales. The police apprenticeship levy provides a clear example.
- The availability of different funding streams means there is a lack of consistency and co-ordination between services operating in the same policy space.
- Welsh Government funding is being used to support the UK Government in delivering policing and criminal justice services in Wales.
- Funding from policing and criminal justice agencies is also being used to “subsidise” devolved public services in Wales.
- The current devolution dispensation means that the savings generated from the Welsh Government’s ‘spend to save’ policy are largely being captured by the UK Treasury.

#### 5.1 Introduction

This chapter examines the perception of funding arrangements for policing and justice services in Wales. It begins by exploring the perceived complexity of the funding arrangements within the Welsh criminal justice policy space. Concerns are raised by service providers around poor funding coordination and the suggestion is made that agencies in Wales may be losing out when compared to those in England. The second section of the chapter explores the split between devolved and non-devolved funding streams. Drawing

upon the accounts and perspectives of participants, the chapter considers whether policing and criminal justice money is being used to subsidise devolved public services or vice versa.

## 5.2 Who funds policing and justice in Wales?

A clear theme to emerge from the research is that the funding arrangements for policing and justice in Wales are complicated. This echoes wider research which has identified that funding “above all other issues” is the most significant challenge facing those involved in multi-agency approaches (Atkinson et al, 2005: 12; Sloper, 2004). For William, policing and justice funding represents one of *the* biggest source of “complexity” for policy makers and practitioners operating in Wales.

**William:** The funding is something which causes some of the most complexity.

*Community Safety and Criminal Justice*

The accounts of service providers helped to explain that having two governments operating and funding services within the same policy space is a source of major confusion. For William, the “myriad” of different funding streams lie at the heart of the problems facing service providers in Wales.

**William:** I think the issue with funding is the myriad of different funding streams that operate in this area, coming from Welsh Government, coming from Ministry of Justice, coming from Home Office, sometimes even [UK Department of] Housing, Communities and Local Government.

*Community Safety and Criminal Justice*

One concern shared by participants is a sense of uncertainty over whether or not funding will be provided by central government for services in Wales. According to Rhys, these concerns often arise when the UK Government agrees to provide money to UK departments that have

responsibility for England-only services.<sup>53</sup> Rhys explained that this can lead to uncertainty amongst service providers over what funding, if any, will be allocated to Wales.

**Rhys:** In England you have Department of Health and Ministry of Justice [who] work very closely together. Ministry of Justice decides that there's a health need; Department of Health agrees; Department of Health funds Ministry of Justice to do a health programme . . . That gets announced. Welsh Government ask the question, 'So when is that happening in Wales?' The message tends to be, 'Health is a devolved matter. It's for the Welsh Government to find the money if they wish to carry out those measures.'

*Mental Health*

According to Rhys, this uncertainty is compounded by the Welsh Government's failure to be transparent over what it chooses to do with funding that is transferred to Wales. Rhys argued that this lack of openness is due to "game-playing" by the Welsh Government.

**Rhys:** And yes, the formula will be based on, if that amount of money has gone into health to be redistributed, it comes to Wales. There's game-playing, because if the Welsh Government wanted to be transparent with this, they would say, "Yes, the additional four hundred million that's been put into Department of Health and Ministry of Justice projects, we had eight million pounds as our equivalent, but we chose not to put that into that. We put it somewhere else."

*Mental Health*

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<sup>53</sup> A similar set of concerns over 'England-only' policies were raised in Chapter Three.

**Rhys:** They are the government; that's their right to do it. But I think sometimes, the argument that, "Oh we don't get the same resources," and I think there needs to be some more transparency on, well, if you didn't get the resources should we be speaking to our MP, should we be challenging? Or, did you get the resources you've just chosen to spend them on free swimming for over sixty-fives?

*Mental Health*

For John, although "pockets of money" are often made available to police forces by the Welsh Government, police in Wales are "on balance" losing out when compared to forces in England.

**John:** Because of our devolved nature, there are inevitably pots of money that are made available to English forces, via the Department of Health, Department of Education, Department of Communities and Local Government in Westminster, that are closed to Welsh forces. Now, you could say, 'but there's pockets of money available through Welsh Government that's not available to English forces'. That would be a correct statement. But the scale of that means that police forces in Wales probably, on balance, lose out compared to English forces.

*Policing and Community Safety*

The suggestion that police forces in Wales lose out on funding given to forces in England emerged particularly strongly when participants discussed the police apprenticeship levy. Since the UK Government introduced changes to the apprenticeship funding system in 2017, concerns have been raised about a shortfall in the funding available to Welsh police forces to train new officers. This is in spite of the fact that Welsh police forces contribute £2 million per annum to the UK Government's apprenticeship levy (National Assembly for Wales Economy, Infrastructure and Skills Committee, 2018). Although efforts have been made to try and resolve the problem, the stand-off between the UK and Welsh Government continues. This point was outlined by George who described the situation as a "major issue" for police forces in Wales.

**George:** The Welsh Government is saying, "We're not giving it to policing because it's not in our policies to give to blue light services". So therefore, that's exactly the money, then, that police can't access. They can't possibly access. But the Home Office is saying, "Oh well we've given it to Welsh Government." The Welsh Government is saying, "Well we're not spending it on that. That's non-devolved. Why are we going to spend it on non-devolved services?" And that was all. So, we were really left there, and that was a major, major issue. Took up a huge amount of time.

*Policing and Community Safety*

For Craig, the problems associated with the apprenticeship levy provides further evidence that different funding structures apply to police forces in Wales. Craig pointed to these differences when explaining that Welsh forces were currently being funded using a "special grants arrangement" while a resolution to the levy problem is being found.

**Craig:** And the latest that police in Wales have heard is that the apprenticeship levy in Wales will have to be something that we specifically put in as part of our evidence towards the comprehensive spending review, which is something that they are doing. The police are putting some work together on the comprehensive spending review for the next round... At the moment it's a special grants arrangement, whereas if we were an English force it wouldn't be a special grants arrangement, it would be, you know, monies available through normal channels, because it's obviously the Department of Education in England, whereas it's in Wales it's the Welsh Government and they're saying that they haven't had any money for it.

*Policing and Community Safety*

Although the money received from the Home Office has helped to ensure that "progress" can be made, Sion explained that the process to find a solution has been "torturous" for policing officials in Wales.



**Sion:** There have been difficulties at both ends to get the two respective governments to agree where the money is and how it's to be resolved. I think we are now making progress. We've had some money given from the Home Office that enables us to make progress. But it's been a tortuous process.

*Policing and Community Safety*

John described how Welsh police forces have been "stranded" without funding since the apprenticeship levy was introduced in April 2017. Although a temporary agreement has been reached, John indicated that the issue was still "outstanding".

**John:** The four Welsh police forces, until very recently, have been stranded without the funding that's given to the remaining thirty-nine forces in England to fund police training. That money wasn't available to the four Welsh forces because education is devolved in Wales, and the routing of the apprenticeship levies [is different]. Welsh forces pay into the levy, but they weren't able to access it because of this anomaly. Nobody thought about it when the legislation was passed. So, they were stuck, 'til the absolute eleventh hour, not being able to access funding to train and recruit officers. They've just got an interim fix, but it's still one that's outstanding.

*Policing and Community Safety*

Sion raised additional concerns about the uncertain future for policing in Wales if the problem cannot be resolved. This included the suggestion that "different professional standards" between forces in Wales and England may become a reality if a solution to police officer training is not found. In 2016, a report by the House of Commons Home Affairs Committee raised concern about the levels of police training and the "alarming lack of consistency" between police forces in England and Wales (House of Commons Home Affairs Committee, 2016: 8). The Committee's concerns included fears that a lack of consistency could lead to differing standards between the 43 forces in England and Wales. For Sion, the problems surrounding the police apprenticeship levy could lead to an inconsistency between forces in Wales and England.

**Sion:** Clearly this is a very important matter for policing in Wales because if it isn't finally resolved – and it's only partially resolved at this point – then you could end up with different professional standards this side of the border compared with the other side, which would be no use whatsoever . . . Until that matter is finally put to rest – and we don't know exactly how much money Welsh forces are going to have and how we can draw it down, regardless of where it comes from – only then will we be able to relax properly and to get on with the professional training of future police officers.

*Policing and Community Safety*

Beyond the apprenticeship levy and the allocation of monies from central government, the complexities associated with having two different governments funding services within the same policy space were reflected upon in relation to service delivery. Luke, for example, confessed to his own confusion at the current funding arrangements for policing and mental health services in Wales. This viewpoint emerged when discussing the introduction of triage schemes across Wales which sees psychiatric nurses placed in police control rooms to help improve responses for people in mental health crisis.<sup>54</sup>

**Luke:** The establishment of those budgets comes from two different governments. You know, and I think that's a really important point. Because you look at some really good work that has been done about putting mental health nurses within control rooms, so when somebody rings 999 the call handler can speak to a mental health professional who can get the records up on screen to go, "Ah, this person should be directed there," or talk to them. In Gwent it has been really successful, that kind of triage that has prevented people kind of being picked up or coming into the system. You know, who pays for that? It's kind of based within a police function, or an emergency services function... but it's a health intervention because it's preventing people coming into the criminal justice system at the lower end.

*Mental Health*

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<sup>54</sup> For further information on the role and effectiveness of policing and mental health triage (in England) see Callender and Cole (2016).

The complexity of the funding arrangements in Wales were also outlined by Richard when discussing youth justice services in Wales. Richard explained how the funding of youth services has become “inconsistent” across Wales due to the existence of so many different funding streams.

**Richard:** You’ve got the Youth Justice Service. It’s the only children and young people’s service that’s not devolved to Wales. I don’t know how many youth justice partnerships you’ve got [in Wales]. You’ve got four in north Wales and they’re all funded differently. So, you get a pot of money from the Ministry of Justice, you get one from the Welsh Government, your local authorities will do something, North Wales police and the police and crime commissioner will do something . . . But it’s inconsistent. You look at Gwynedd and Ynys Môn Youth Justice [services], and you look at Flintshire Youth Services . . . They’ll have different pots of money from different organisations.

*Policing and Community Safety*

William also described the complex funding arrangements for youth justice services in Wales. With money for youth services coming from Welsh Government, the Home Office and the Ministry of Justice, William explained that the creation of many new programmes and initiatives “creates yet more complexity” for service providers and users in Wales.

**William:** The Welsh Government create new programmes. They create additional initiatives, because politicians like those things, but that creates yet more complexity. For example, they have a Positive Engagement for Young People Fund which funds all of the preventative activity. You’ve got youth service funding going in. You’ve then got the Home Office saying to police and crime commissioners, ‘Do you want to bid for money on a Youth Intervention Fund on serious violence?’ And then you’ve got [the] Ministry of Justice coming in with different funding around young people.

*Community Safety and Criminal Justice*

According to William, the existence of so many different funding streams means that youth justice services lack co-ordination in Wales. William explained that this has resulted in situation where “different people” are attempting to accomplish “different things” for young people.

**William:** And actually, we’re talking about the same cohort of young people, but you’ve got different people trying to do different things, and actually what you need is basically saying, let’s just put all the money into one bit. You know, consolidate it all, and put it through one single route.

*Community Safety and Criminal Justice*

William’s views are also supported by the findings of wider research into multi-agency working. A study by Robinson et al (2008: 420) into responses to sexual violence identified that the existence of “competing agendas and priorities” can lead to a conflict between different agencies. Williams arguments were echoed by Kate who argued that the criminal justice system in Wales is being “hampered” by the many different sources of funding for services. Kate explained that the current arrangements are responsible for a “constant” conflict over who is “setting priorities” for criminal justice in Wales.<sup>55</sup>

**Kate:** I think criminal justice in Wales is really hampered by the different sources of money and this constant fight about who is in control, who is setting priorities for the criminal justice system.

*Community Safety and Criminal Justice*

Kate developed this argument further to suggest that the many sources of funding can result in a number of different organisations tendering for contracts within the same policy space. According to Kate, a lack of “co-ordination” between funders means that there can often be

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<sup>55</sup> For further information on the relationship between funding, multi-agency approaches and agenda setting see Chambers (2017).

overlaps as well as gaps in services which create a “lot of difficulty” for those in need of support.

**Kate:** And again, this is partly driven by different resources coming from different masters. So, you will have charities and NGOs bidding, tendering for money from Westminster, from the Ministry of Justice, from the Welsh Government and spring up everywhere. There’s no coordination, so there’s lots of overlap and sometimes you’ve got the same service provider but three different organisations in one area, and nothing for the rest of north Wales. It makes no sense. And creates a lot of difficulty, also, for those who are using the services.

*Community Safety and Criminal Justice*

Due to a lack of co-ordination between funders, Kate explained that it can often be “incredibly difficult” for service providers *and* users to understand what services are available. This point was underlined as she reflected upon the “astonishing” findings of a study into homelessness services in north Wales.

**Kate:** I think one of the difficulties, and that’s been from before Transforming Rehabilitation, is that you’ve got a lot voluntary service provision, a lot of very small voluntary service provision. It’s incredibly difficult to map what services are available locally. So, some work was done quite a long time ago on services for homeless people in the north Wales region, and the number of organisations that were providing something, but that nobody knew about, was astonishing, absolutely astonishing.

*Community Safety and Criminal Justice*

As well as the adding to complexity of the service provider landscape, Kate argued that the presence of so many organisations competing for the same funding can create problems for joined-up working. In particular, Kate explained that the introduction of the UK Government’s *Transforming Rehabilitation* agenda has led to a greater emphasis on

“competition” rather than a desire for service providers to “work together” between service providers.

**Kate:** So, you’ve created these strange spaces where there is competition—and that’s quite an important factor—but there is competition rather than the desire to work together to address particular social issues, and that creates some problems as well.

*Community Safety and Criminal Justice*

By making different “pots of money” available in Wales, Kate explained that the current approach is one that acts as an impediment to “multi-agency” approaches. This includes the fact that agencies or services are reluctant to “share data” or any evidence of “best practice” with potential competitors.

**Kate:** You’ve got all this kind of commercial sensitivity stuff going around now, which is incredible. So, people won’t talk to each other, they won’t share data, they won’t share best practice... They’ve been set up to become competitors for pots of money that are very time specific, very outcome focused and really don’t encourage that kind of multi-agency working.

*Community Safety and Criminal Justice*

The arguments outlined by Kate buttress those already presented in chapter on the frustrations and complexities faced by practitioners seeking to develop joined-up approaches.

### 5.3 A drain on whose budget?

Despite having no formal control over policing and criminal justice, Welsh Government funding is directed toward a number of different justice areas in Wales. One of the devolved government’s major commitments is to fund 500 additional Police Community Support Offices (PCSOs). This policy was introduced in 2012 in response to the UK Government’s

“disinvestment” in policing and resulting decline in police officer numbers in England and Wales (Lowe et al, 2015: 71). According to Sion, the funding for PCSOs is “generously” provided by the Welsh Government despite the fact that policing is an area reserved to the UK Government.

**Sion:** The Welsh Government very generously, voluntarily, provides support for policing and community support officers: five hundred across Wales. So, they are prepared to put their hands in their pockets even though they don’t have to.

*Policing and Community Safety*

This point was echoed by Jayne who described the additional funding provided by the Welsh Government as a “bonus” for police forces in Wales.

**Jayne:** Welsh Government provide significant funding for things that fall under the heading of justice that I don’t think is to be sniffed at. They provide the funding for the additional five hundred PCSOs. Welsh Government don’t in theory have to do it.

*Community Safety and Criminal Justice*

Another recipient of Welsh Government funding are youth offending services in Wales. The Welsh Government’s major commitment within this area is through the Youth Crime Prevention Fund which provides £5 million to spend on projects relating to education, training, substance misuse and restorative justice. The Welsh Government and Youth Justice Board’s (2014) joint strategy states that the money should be used to prevent youth crime and offending in Wales. Emma listed the many areas that Welsh Government money is helping to support, including services where funding was withdrawn in England by the UK Government in 2010.

**Emma:** They [Welsh Government] fund Youth Offending Teams to undertake preventative activity for children at risk of entering the system, and that's all but one Youth Offending Team which has a different model. That funding disappeared in England in 2010, so they've continued to feel that's important. They fund some pre-court diversion activity. They fund activity that Youth Offending Teams undertake in terms of addressing substance misuse, some health issues, restorative justice, accommodation, Careers Wales, so some activities, if you like, that are delivered by devolved services to children in the youth justice system on top of maybe what you would expect a statutory Youth Offending Team partnership to be doing.

*Youth Justice*

Welsh Government funding is also used to support the delivery of adult offender services in Wales. Jonathan explained that money from the devolved budget is being put into housing services<sup>56</sup> and domestic abuse schemes in Wales.<sup>57</sup> The Welsh Government's Minister for Housing and Local Government announced in February 2019 that it will provide funding to base housing officers in local probation services across Wales (NAW Debate, 13 February 2019).

**Jonathan:** They [Welsh Government] are putting money into things like the women's Pathfinder project. They're jointly funding some housing for HMPPS in terms of establishing and working better towards the housing pathway that was agreed a few years ago. They're putting money into lots of domestic abuse schemes that HMPPS are closely linked with. So, there's a variety of things that they're funding to add to HMPPS delivery, I guess, and to sort of the wider picture.

*Community Safety and Criminal Justice*

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<sup>56</sup> In a debate on 14 February 2019, the Welsh Government's Minister for Housing and Local Government noted that the Welsh Government was funding housing officers in the probation service.

<sup>57</sup> The Welsh Government announced in November 2018 that it was investing £300,000 into the Limitless programme which aims to support women who have been affected by domestic violence and sexual abuse. The programme will also receive £1.2 million of European Union funding.



This money, according to Jonathan, helps to supplement the “core” services that are provided by HMPPS.<sup>58</sup>

**Jonathan:** It’s stuff that, you know, massively supplements what HMPPS are doing in terms of their delivery, but it doesn’t stray into that core delivery in terms of what they would need to do.

*Community Safety and Criminal Justice*

A clear theme to emerge from the accounts of service providers is the view that Welsh Government funding has helped to reduce the number of people ending up in the criminal justice system in Wales. In a statement on delivering community safety services in 2015, the Welsh Government’s Minister for Public Services claimed that the devolved government should be credited with “significant achievements” in diverting children and young people away from crime (Welsh Government, 2015d). This argument was developed further by Emma who told us that the money spent by the Welsh Government on prevention and pre-court diversion has contributed to the reduction in the number of Welsh children in custody.<sup>59</sup>

**Emma:** I think if you go back along the line, if you look at prevention and pre-court diversion, it has certainly contributed to the number of children coming through courts, and by virtue of that it will impact on custody, because you’re lengthening people’s journeys, in effect.

*Youth Justice*

Emma expanded upon this by claiming that the removal of Welsh Government money would likely lead to a reversal of this trend and a possible “rise” in the number of children entering custody in Wales.

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<sup>58</sup> HMPPS state that its core services are protecting the public, punishing and rehabilitating offenders and reducing reoffending.

<sup>59</sup> The number of immediate custodial sentences handed to children in Wales fell by 70.5% between 2010 and 2017 (Jones, 2019).

**Emma:** I think particularly in terms of pre-court diversion, because we're not sucking people into the system now, we're looking at every opportunity not to do that. If some of that was removed, then the concern is that actually your numbers start to rise again.

*Youth Justice*

William also suggested that a withdrawal of the "significant" investment being made by the Welsh Government would result in a rise in the number of first-time entrants into the criminal justice system in Wales.<sup>60</sup>

**William:** There is a significant amount of money that goes in from Welsh Government. I mean, take youth justice as an example. If you take the prevention money they put in away, they probably would be looking at a big spike in first-time entrants again. The numbers in the secure [estate] would go up because the UK Government don't put that money into it.

*Community Safety and Criminal Justice*

The financial benefits associated with investment in 'front-end' prevention and diversion services have been reflected in changes to penal policy across international jurisdictions. A study by Clear and Schrantz (2011) found that more than half the states in the United States have created fiscal incentives for community-based alternatives to imprisonment. This includes states like Texas which has seen a 6.1% decrease in the number of people held in Texas Department of Criminal Justice facilities between 2010 and 2017 (Texas Department of Criminal Justice, 2017).<sup>61</sup> In England and Wales, a report by House of Commons Justice Committee (2010) in 2010 concluded that there is an "inescapable need" for a longer-term

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<sup>60</sup> The number of first entrants to the criminal justice system in Wales decreased by 30.7% between 2013 and 2017. From 9,379 in 2013 to 6,734 in 2017. Data were obtained from the Ministry of Justice via the Freedom of Information Act 2000.

<sup>61</sup> Policy changes that have connected to the decrease in the population include reforms to expand drug courts and increased parole release rates. It was announced in 2017 that four prisons would close in Texas due to the fall in the prison population. For further information see Levin (2011) and BBC News (2014).

strategy to divert resources to crime prevention initiatives that will reduce the size of the prison population and probation caseload.

However, despite some of the clear benefits associated with diversion and prevention, some participants expressed concern over the effectiveness of the Welsh Government's own 'spend to save' policy. For William, while investment to reduce demand on the criminal justice system can help to produce savings, under the current settlement much of this saving is being captured by the UK Treasury.

**William:** So, if you take youth justice, for example, you know, Wales has dramatically reduced the numbers of Welsh young people going into custody. So there have been cashable return on that. It has not come to the Welsh Government. What has happened is it has gone to UK Government and into Treasury because the budgets necessary for youth justice have gone down.

*Community Safety and Criminal Justice*

Joshua explained that the Welsh Government's investment in services to prevent homelessness amongst prison leavers is also likely to generate considerable savings, particularly for UK criminal justice agencies.

**Joshua:** But obviously, the biggest saving is in the criminal justice system because the cost to accommodate someone in custody would far outweigh the cost of them repeatedly presenting to the local authority... There are financial benefits across the board, but, yeah, there is sizeable benefit to the criminal justice system.

*Housing*

Similarly, when reflecting upon the subject of women's imprisonment in Wales, William explained that the "immediate" or "short-term" savings of any future policy to reduce prisoner numbers in Wales are likely to be captured by the UK Government.<sup>62</sup>

**William:** From a socially, moral, perspective, if the Welsh Government decides it wants to dramatically reduce the numbers of women going to prison and they're going to take action to do it. The economic benefit of it, you would argue, the long-term economic benefit will be coming to Welsh Government because they'll reduce the longer-term demand for public services, but the immediate cashable saving in the first five years, of reducing the custody budget, just goes back to the Ministry of Justice.

*Community Safety and Criminal Justice*

The consequences of the fact that the Welsh Government does not benefit directly from its own 'spend to save' efforts were reflected upon by other participants. This included Anthony who raised concerns over the future sustainability of the Welsh Government's policy alongside its commitment to the Well-being of Future Generations (Wales) Act 2015.

**Anthony:** The problem is that the savings that you generate through a Welsh approach, are actually savings to agencies that aren't Welsh. So, you're talking about criminal justice savings, so that goes directly back to UK Government, and the logic of a sustainable approach, when you look at, say, the Future Generations Act, that sort of thing, is that actually if you're investing to save, you save, and then you invest that saving back into saving more. Well, we can't do that, so you haven't got that virtuous circle, because you don't hold the levers that say, you know, "if it's ours to manage".

*Policing and Community Safety*

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<sup>62</sup> For further information on justice reinvestment for women see Stubbs (2016).

As a way to address this problem, William suggested that the agreement between the Ministry of Justice and the Mayor of London as a potential model for Wales to follow.<sup>63</sup>

**William:** If you look at the memorandum of understanding between MOJ and the Mayor of London, they even talk about the transfer of custody budgets. So, the deal is, "if you [Mayor of London] invest in more preventative work, we may transfer some of our custody budget to you if you can demonstrate you're keeping people out of prison". Now, the Welsh Government are not in that position with the UK Government.

*Community Safety and Criminal Justice*

The subject of women's imprisonment was again used by William to illustrate how savings might one day be captured by the Welsh Government.

**William:** So, the female offending work, the Welsh Government are taking it to that point where they're saying, "If we invest in all this greater preventative work, and triage and diversion, we will probably stop a hundred women a year going into Eastwood Park, fifty going into Styal. That's not costing you a hundred times x custody budget. What about transferring that to us so we can invest, and invest even more?" So, you'd bring the numbers down even more. But they are not there yet.

*Community Safety and Criminal Justice*

Sarah also emphasised the importance of changing the current arrangement in Wales. She explained that a failure to capture savings may prove be a real "limiter" for those seeking to design innovative policy approaches in future.<sup>64</sup>

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<sup>63</sup> For further information on the devolution agreement see Mayor of London and Ministry of Justice (2018).

<sup>64</sup> See Chapter Four for a discussion on the removal of automatic 'priority need' status for prison leavers from Wales.

**Sarah:** And one of the other barriers, then, is about how central government interact with Welsh Government in terms of impact and benefit. So, recently I was talking about the blueprint [on women], and one of the things which we mentioned was, is there any way that we can make sure that we capture the savings that are happening, and maybe even try and build in a mechanism of return? Because that's a real risk... A women's service in Wales reduced a court by one just by their diversion work. And yet, that saving has gone to the Treasury and not to Wales, and we're not seeing that come back. And I think that's a real limiter for people. Because if we can't... it's like, we want to continue doing what we're doing but we can't keep getting the pot going dry.

*Community Safety*

An interesting argument to emerge out of the accounts of participants was the sense that money from one government was being used to subsidise the other. For William, against the backdrop of the problems associated with the Welsh Government's current 'spend to save' policy, the criminal justice system represents a "significant drain" on devolved public services in Wales. William explained that the Well-being of Future Generations (Wales) Act 2015 can help public services in to overcome these challenges "going forward".

**William:** I think that the criminal justice system is a significant drain on Welsh devolved public services, when you look at all the ACEs [adverse childhood experiences] agenda, and the preventative agenda.

*Community Safety and Criminal Justice*

While the arguments presented by William, Emma, Anthony and Joshua suggest that the criminal justice system is a drain on devolved public services, others service providers were keen to point out that funding from the police and criminal justice budget is often used to subsidise devolved services in Wales. This argument was made by John who explained that policing money is used to support school and education services.

**John:** I guess another one is schools. You know, police match fund—and people often forget this—they match fund police officers in schools. So, police pay for half the bill of putting police officers in schools. The Welsh Government pay the other half. So, we only focus on the bit the Welsh Government give us, but actually we forget the fact that it's non-devolved money that's actually funding the other half. There's lots of areas.

*Policing and Community Safety*

Ross also outlined how criminal justice money is used to help fund services tackling substance misuse in Wales. This money is provided by South Wales Police and HMPPS in Wales and given to G4S who run the DYFODOL service.

**Ross:** The G4S element of the contract is about one million, of which treatment would probably be half of that, so maybe up to four, five hundred thousand pounds. South Wales? I don't know the size of the DYFODOL contract, it's quite a significant contract, and a lot of that would be within treatment, so you're probably talking similar amounts.

*Substance Misuse*

Service providers also explained that police money is being used to support the NHS in delivering mental health services in Wales. The argument was made by John when discussing the policy to introduce psychiatric nurses into police control rooms across Wales.<sup>65</sup> John explained that the money for this initiative was currently coming out of the police budget.

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<sup>65</sup> Dyfed-Powys Police introduced a mental health triage service in January 2015. The scheme is jointly funded by Dyfed-Powys Police and the Hywel Dda University Health Board (Dyfed-Powys Police, 2018). A three person Mental Health Triage team was introduced by Gwent Police in September 2018 (Gwent, 2018). The Police and Crime Commissioner's Police and Crime Plan for 2017-2021 revealed that the scheme in Gwent is being jointly funded by the health service (Office of the Police and Crime Commissioner for Gwent, 2017). North Wales Police will introduce its own triage system in 2019 having received funding from the Welsh Government. This was announced in response to a report by HMICFRS into mental health and policing in November 2018 (Daily Post, 2018) South Wales Police fund six mental health triage practitioners to work in police control rooms across the force area. The project began in December 2018 and was expected to 'go live' in January 2019 (South Wales Police, 2018).

**John:** Currently all four forces are using their own budget – police money – to fund community psychiatric nurses to sit in police control rooms to help us better manage the demand of mental health.

*Policing and Community Safety*

Sion added that the scheme is a “concrete example” of the way that money from the policing budget is being used to pay for a devolved service in Wales.

**Sion:** So, there’s an example, a very concrete example, of how we’re actually paying for a service which one could argue is really a responsibility of the NHS. I think that would be easier to resolve if the Welsh Government was responsible for both services in terms of allocating budgets. That’s not the case at the moment, but we are motivated more by what is good public service as opposed to whose budget is it coming out of.

*Policing and Community Safety*

However, Sion downplayed the suggestion that police see themselves as “subsidising” devolved services.

**Sion:** So, police can make their plans accordingly. You could say they’re subsidising devolved public service. Yes, you could do. That’s not really the way they are looking at it.

*Policing and Community Safety*

Unlike Sion, Ross did feel that policing money was being used to subsidise devolved public services. Ross described the “slight resentment” felt by police in Wales who believe they are providing funding for something that is “essentially a health issue”. This argument was outlined by Ross when discussing the police funding provided for substance misuse wrap around services (e.g. Hopkins, 2016).



**Ross:** So, the PCCs don't fund treatment. What I think is a slight resentment in Wales, is that the police and crime commissioners are having to fund not just programmes to support people, but they're having to provide money for rapid prescribing. And their point is, well why are paying what is essentially a health issue? And I have sympathy for that. They probably shouldn't be.

*Substance Misuse*

George also explained how police money was being spent in schools to “assist” the Welsh Government in its efforts to improve community safety as part of the All Wales Schools Liaison Core Programme (e.g. Stead et al, 2011).

**George:** Which is helping the whole community safety agenda, because the curriculum of police officers in schools is around community safety, knife crime, drugs, etc, etc. Sexting and all that. All things which you're trying to keep kids out of the criminal justice system which will assist Welsh Government.

*Policing and Community Safety*

As a sign of apparently growing tensions over such cross-subsidisation, participants explained that decisions had been taken to try and remove funding from different services in Wales. Harry, for example, cited the Welsh Government's decision to withdraw money from Operation Tarian.<sup>66</sup> This decision was taken, according to Harry, despite the fact that policing services were helping to tackle a problem that was “a drain” on the devolved health budget.

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<sup>66</sup> The Welsh Government announced further cuts to Operation Tarian in its Draft Budget proposals for 2018-19 in October 2017 (Welsh Government, 2017e).

**Harry:** The [Welsh] Health Minister took a decision to take half a million pounds out of [Operation] TARIAN. That money was going from the health budget because of TARIAN's part in tackling drugs, which of course is a problem that's a drain on the health service. But it's 'No, that's policing, so I'm taking the money out.' We've got the threat that next April they'll take out the money for police officers in schools [now renamed the Wales Police Schools Programme].

*Policing and Community Safety*

In response to the Welsh Government's decision, Craig explained that police services in Wales are now "pushing" and "pulling" funding away from devolved services.

**Craig:** And the police have actually got to a position where there's even been a little bit of pushing and pulling of funding purely because Welsh Government have pulled funding from certain activities and, as a result of that, police have made a decision to pull funding from other aspects. So that relationship is a difficult one purely from a funding point of view.

*Policing and Community Safety*

## 5.4 Conclusion

The research findings presented in this chapter demonstrate that the funding arrangements for policing and justice services in Wales are one of *the* greatest sources of complexity for service providers and practitioners. The accounts of research participants suggest that the availability of different funding streams means there is a lack of consistency and co-ordination between services operating in the Welsh criminal justice policy space. The arguments surrounding the police apprenticeship levy in Wales provide this chapter, and perhaps this report as whole, with one of the clearest examples of the problems associated with the jagged edge of policing and criminal justice in Wales.

The arguments outlined in this chapter also reveal that the funding arrangements for services can create tensions between devolved and non-devolved partners in Wales. The accounts of service providers suggest that funding from UK policing and criminal justice agencies is used to “subsidise” devolved public services in Wales. It was also argued that Welsh Government funding is being used to support the UK Government in delivering policing and criminal justice services in Wales. The research findings also offer an insight into the concerns held by some practitioners that the current devolution dispensation means that the Welsh Government’s ‘spend to save’ policy is generating savings that are not being captured by the Welsh Treasury.

## Chapter 6

### Scrutiny and accountability across the Jagged Edge

#### The main findings in this chapter are:

- The House of Commons fail to take account of the distinct Welsh context to policing (Home Affairs Committee) and criminal justice (Justice Committee) in Wales.
- HM Inspectorate may often struggle to fully understand the distinct legislative and policy context in Wales.
- The National Assembly for Wales plays a significant role in scrutinising policing and criminal justice issues in Wales.
- The National Assembly is limited in its ability to scrutinise these areas.
- A lack of publicly available Welsh-only data often adds to the problems facing National Assembly officials.
- The complex nature of the devolution dispensation means that issues relating to policing and criminal justice are being missed by committees in Cardiff and Westminster.
- The Welsh Government's Ministerial and departmental portfolios are unclear. This presents further challenges to Assembly Members and committee officials seeking to scrutinise the government's role in the policing and criminal justice policy space.

#### 6.1 Introduction

In each of the preceding chapters concerns have been raised about the complexity of the policing and criminal justice system in post-devolution Wales. Having already drawn attention to the consequences that this has for policy development and the funding for policing and justice services, in this chapter the accounts of participants are used to consider the effects that the devolved and non-devolved split has upon accountability and scrutiny.

The chapter begins by exploring the level of oversight that policing and justice in Wales receives from structures that are accountable to the UK Parliament and UK Government.

This includes a discussion about the role being played by the departmental committees established by the House of Commons and HM Inspectorate. In the second section, we explore some of the practical challenges faced by officials working at the National Assembly for Wales in trying to scrutinise policing and criminal justice in Wales. This is followed by a discussion that draws upon the accounts of participants to explore the consequences of the current constitutional dispensation for the scrutiny of and accountability for policing and justice in Wales.

## **6.2 The House of Commons and HM Inspectorate**

There are two House of Commons committee's responsible for scrutinising policing and criminal justice in England and Wales. The Home Affairs Committee is one of nineteen departmental committees set up under House of Commons Standing Order 152 and is responsible for examining the expenditure, administration and policy of the Home Office. This includes areas such as policing, national security, public order, emergency powers and the misuse of drugs. The Justice Committee is another departmental committee appointed by the House of Commons to scrutinise the expenditure, administration and policy of the Ministry of Justice. Its remit includes examining prisons, probation, youth justice, the courts and legal services.

Research into parliamentary scrutiny has highlighted the crucial role of House of Commons select committees in shaping government policy. A study by Benton and Russell (2013) found that 40% of committee recommendations were accepted by the UK Government between 1997 and 2010. It is arguable that the influence of select committees has only grown with the introduction of the Wright Committee's reforms in 2010. According to Bates et al (2017), these reforms have led to select committees becoming the "principal vehicle" through which the UK Parliament now scrutinises government policy. While not only helping the select committees to become a "more assertive and effective" system of oversight, the profile now afforded to select committees has increased their status and potential to influence government policy (Dunleavy and Muir, 2013; Geddes, 2018; May, 2015).

Given the authority and policy power that select committees have in Westminster (e.g. Bates et al, 2017; Benton and Russell, 2013), it is concerning that doubts were raised during the research about the extent to which that Westminster committees manage to engage with Wales and take account of the Welsh context. This included Sian who failed to recall a single time that the House of Commons Home Affairs Committee has undertaken an inquiry that has managed to examine the distinct nature of policing in Wales. Sian's argument offers support to the view that concern with the Welsh context appears "less pervasive" for House of Commons committee's other than the Welsh Affairs Committee (Bratberg, 2011: 469).

**Sian:** I can't remember a time when the Home Affairs Select Committee have done it. Not to that extent. There was [an example] when the Police and Crime Commissioner in Gwent sacked the Chief Constable.<sup>9</sup> That's probably the only time that Wales has made it into the headlines. But that was not about Wales, it was about how that interaction happened and the actions that he [the PCC] took. I think somebody said in the proceedings, 'What does the Welsh Government think about this?' but that's probably as far as it has gone.

*Policing and Community Safety*

For Sam, the committees in Westminster focus upon "system-wide" issues with minimal attention to the Welsh context. As a result, Sam explained that justice officials from Wales appearing before a Westminster committee will often face few specific questions about the Welsh context, with the exception of those relating to the Welsh language.

**Sam:** Officials go and get scrutinised by the committees in Whitehall, and that is very system-wide. Apart from maybe some questions about Welsh language ... the questions could be asked of justice officials in any other part of the jurisdiction.

*Community Safety and Criminal Justice*

According to Sian, the failure to direct attention towards the Welsh context reflects the fact that Wales is not seen as "important" in Westminster. This argument is one that offers

support to the accounts of participants presented in Chapter Three as well as to Cairney's (2006) assertion that the relatively small size of devolved nations means that the focus tends to be directed elsewhere. Because of this, Sian believed that "nobody" is able to properly understand what is happening within policing in Wales.

**Sian:** Wales isn't that important. You know, you're not looking at it through that lens in any particular way. And I'm guessing the argument would be, well you'd do that if it was devolved, wouldn't you? And because it's not, they have to keep that separation. But what that means is that nobody really gets under the skin of what's happening in Wales.

*Policing and Community Safety*

Although it is the responsibility of the Home Affairs Committee and Justice Committee to scrutinise policing and justice, it is important to recognise that the House of Commons Welsh Affairs Committee plays an active role in providing oversight of the criminal justice system in Wales.<sup>67</sup> Since 2005, for example, the Welsh Affairs Committee has carried out three separate inquiries into the subject of imprisonment in Wales as well as two inquiries into policing.

Interestingly, however, Sian raised concerns about the appropriateness of the Welsh Affairs Committee's involvement and, crucially, the decision to hold the Welsh Secretary to account for an area that falls outside of his or her responsibilities. Sian explained that when the Welsh Secretary is asked to appear before the Welsh Affairs Committee, Home Office officials will simply provide the Wales Office with "lines" to use in response to particular questions on policing issues. For Sian, this practice raises concerns over the "level of detail" that the Welsh Affairs Committee are able to go into when questioning a minister who is not responsible for policing and justice in Wales.

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<sup>67</sup> Although the Welsh Affairs Committee's role is to examine areas that fall under the responsibilities of the Secretary of State for Wales, the Committee also considers policy areas that are likely to have an impact in Wales. In recent years, the Committee has carried out inquiries into agriculture, broadcasting, transport nuclear power and Brexit.

**Sian:** But there is a genuine question, for me, around if you've got the Welsh Affairs Committee, which the Minister goes in front of, or they answer the questions, they are answering questions on another department, and the Home Office just bung lines off to the Wales Office, which says to me that they don't scrutinise very hard because if they can get away with what they send them, then, you know, it can't be that level of detail.

*Policing and Community Safety*

Sian developed this argument further claiming that the Welsh Secretary does not have the necessary "reach" to discuss issues outside of their own department including policing and criminal justice.

**Sian:** And without being rude about ministers, if it was that level of detail then officials would know about [it] because they [Welsh Secretary] wouldn't be able to do it... They haven't got that sort of reach. You know, they would have to be in the department.

*Policing and Community Safety*

As a result, Sian explained that a failure to get into the detail means that the Welsh Affairs Committee often does not get beneath the surface to any of the "real stuff" surrounding the problem being subjected to scrutiny.

**Sian:** So, yeah. It's kind of surface level. It doesn't get into any of the real stuff.

*Policing and Community Safety*

To try and overcome the issues raised by Sian, the Welsh Affairs Committee has heard from ministers and officials from other departments as part of its inquiries into policing and imprisonment. During its most recent inquiry into prison provision in Wales, the committee has received oral evidence from ministers from the Ministry of Justice as well as Executive Director of HMPPS in Wales. In June 2018, the Welsh Government's Cabinet Secretary for



Communities and Local Government and Deputy Director for Community Safety also gave evidence at a session held at the National Assembly for Wales in Cardiff.

As well as House of Commons committees in Westminster, policing and criminal justice agencies operating in Wales are subject to scrutiny from HM Inspectorate. HM Chief Inspector of Prisons is responsible for inspecting the conditions in prisons and young offender institutions in Wales and to report on the treatment of prisoners held in Welsh prisons. The probation and youth offender service in Wales are scrutinised by HM Chief Inspector of Probation. The Chief Inspector's responsibilities include testing the effectiveness of existing provisions and to make recommendations for improvements to UK Ministers. All four police forces in Wales are subject to regular inspections by HM Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS). Established in 2017 to replace HM Inspectorate of Constabulary (HMIC), HMICFRS monitor and inspect the effectiveness, performance and efficiency of Welsh forces and report to the Home Secretary.

The inspectorate bodies that report to UK Government Ministers operate at an England and Wales level. For a number of participants, this can often mean that inspectors overlook the distinct legislative and policy context in Wales. This point was made by John who explained that inspectors working for HMICFRS often fail to appreciate that forces in Wales operate in a "different space" to those in England. According to John, the "naivete" that is often shown by inspectors means that forces in Wales need to work with the inspectorate to ensure that they better understand the impact that devolution has on policing in Wales.

**John:** It's often said that police act locally, i.e. within the devolved space from Welsh Government, but they're measured nationally, vis-a-vis Home Office and HMICFRS. And that's a challenge, particularly around inspection. Again, it's incumbent on the four forces in Wales to engage HMI regularly so that they understand the context in which Welsh forces are operating. In the past they haven't always done that, and Welsh forces [have] been viewed exactly the same as an English force, and there's been a naiveté. They haven't recognised that police in Wales operate in that different space.

*Policing and Community Safety*

This argument was developed further by George who argued that HMICFRS inspectors from outside of Wales do not have a “full understanding” of the Welsh dimension.

**George:** There’s a lot of scrutiny around policing. More so probably than any other organisation in the country. We’ve mentioned that sometimes it’s not a like-for-like, because police in Wales have the devolved nature of their work. And with HMIC[FRS] the inspectors are not from your own force, and generally won’t be from Wales. So therefore you’ve got English inspectors coming across to Wales who don’t have a full understanding.

*Policing and Community Safety*

The suggestion that HMICFRS fail to take account of the distinct context in Wales would be supported by an examination of the contents of some of its publications. In November 2018, for example, a report by HMICFRS into policing and mental health failed to acknowledge the different legislative and policy context in Wales. HMICFRS (2018a: 25) recommended that the Department of Health and Social Care in England work alongside the Home Office to “review the overall state response” to people suffering from mental ill-health. No reference to the Welsh Government was made in its report. In a further example, a report by HMICFRS (2018b) into police responses to hate crime failed to consider and assess the Welsh Government’s (2014b) own framework for dealing with hate crime in Wales. This omission was in spite of HMICFRS’ efforts to point out that the national hate crime criminal justice board is co-chaired by a police official and a member of the Welsh Government in Wales.

According to George, one consequence of the problems raised by participants is that police forces in Wales can be marked down by inspectors who do not fully understand why Welsh forces are not replicating some of the work being done by forces in England.

**George:** We could be marked down because we are not doing things similar to what the English forces are doing.

*Policing and Community Safety*

The challenges that inspectors face operating in an unfamiliar context were also outlined by participants when discussing prisons in Wales. While questioning the level of understanding that inspectors have of the Welsh context, Marc highlighted the difficulties facing HMI Prisons staff who are required to have an understanding of “two systems” when carrying out inspections at establishments in Wales and in England. The example of housing policy was used by Marc to illustrate the differences that inspectors need to be aware of.

**Marc:** But I think on a practical level for staff, up to a certain point, it's very difficult for them to keep two systems in their heads. A classic example of that would be, if you come and do an inspection, one week you've been doing prison inspection in Birmingham and speaking to the Transforming Rehabilitation staff there about housing, and the next week you could be at Parc. Individual staff would have to be very, very studious to keep up to date with all the policy changes in Wales that differ from England. I wouldn't expect to find any of the inspectorate staff know, for instance, that there's a prevention agenda regarding housing in Wales, as opposed to England.

*Community Safety and Criminal Justice*

Although individuals carrying out inspections for HMI Prisons may struggle to get to grips with two systems, reports published by HMI Prisons have managed to reflect some of the policy differences between Wales and England. Significantly, this includes efforts to critically evaluate the Welsh Government's role in this policy space. In 2015, a thematic review into patterns of substance misuse in prisons concluded that the Welsh Government's decision not to introduce an Integrated Drug Treatment System had led to “poorer outcomes” for prisoners held in Wales (HMI Prisons, 2015: 14). The different housing entitlements once afforded to prisoners from Wales has also been acknowledged by HMI Prisons. After two inspection reports had praised the Welsh Government's housing policy at HMP Altcourse (2010; 2014) a recent inspection of HMP Swansea led HMI Prisons (2018) to suggest that there may be a correlation between a rise in prisoner homelessness and the Welsh

Government's decision to strip away automatic priority need for prisoners in the Housing (Wales) Act 2014.<sup>68</sup>

The suggestion that inspectors fail to fully take account of the Welsh context was also made in relation to probation services in Wales. While pointing out that inspectors may well understand that there are "certain complications" because of devolution in Wales, Kate expressed her view that inspectors do not "pay much heed" to the Welsh context.

**Kate:** I don't think they [HMI Probation] pay much heed to devolved contexts. They will see there are certain complications, possibly, in what probation can deliver. That point about local connection, local services, what's available, you know, how much communication is there between housing policy and criminal justice policy?

*Community Safety and Criminal Justice*

Kate also highlighted the fact that inspectors are often more likely to identify practical issues rather than make any kind of judgement on the structure of probation services in Wales. This was evidenced, according to Kate, by the fact that she could not recall reading any reports by the inspectorate that have dealt with the "Welsh Government context" in Wales.

**Kate:** They will probably look at that and go, 'There's a problem here. Whether that's due to devolution or not, we don't really care, it's just something that we notice.' In that sense they are probably not set up to take account of that, and point to where the problems lie. The structural problems. They just see the practical problems on the ground and might make reference to some of the structural [problems]. But to be honest, I'm not sure I've ever read anything that referred to the Welsh Government context in particular, unless it was a reference saying that that policy undermines something else.

*Community Safety and Criminal Justice*

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<sup>68</sup> This was discussed further in Chapter Four.

The issues raised by Kate are visible in HMI Probation reports. In 2016, for example, a thematic review into services for female offenders failed to consider whether responses between Wales and England were different. This was despite the inclusion of case studies from Rhyl and Wrexham and a clear recognition from HMI Probation (2016) that mental health, substance misuse and accommodation are important services for female offenders in the community. More recently, a report by HMI Probation (2018) into domestic abuse and the work being carried out by CRCs in England and Wales acknowledged the existence of distinct legislation in Wales but failed to assess how this has impacted on the delivery of CRC services.<sup>69</sup>

Although HM Inspectorate may recognise that some practical differences exist between Wales and England, Marc explained that these differences are “primarily” understood by inspectors as concerning the Welsh language. Marc’s viewpoint offers support to Sam’s claim that justice officials based in Wales scrutinised at Westminster are unlikely to face questions that probe the specifics of the Welsh context with the exception of those concerning the Welsh language.

**Marc:** On a practical level, there’s an awareness that Wales is different, and that there’s a gap in knowledge about that, and an attempt to do something about it. Funnily enough, in the Ministry of Justice and in England, when they think Wales, they think north Wales . . . They think of difference primarily in terms of language, and occasionally policy.

*Community Safety and Criminal Justice*

As well as expressing concerns that HM inspectorate fail to appreciate the Welsh context, William expressed uncertainty about the relationship between HMI Prisons and the Welsh Government. While acknowledging that HMI Prisons are able to place recommendations on the Welsh Government, William suggested that there was a lack of reciprocity.

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<sup>69</sup> HMI Probation’s annual report for 2017 referred to the Welsh Government on just one occasion where it incorrectly stated that “the Welsh government has devolved responsibility for youth justice” (HMI Probation, 2017: 93).

**William:** The people who run prisons are accountable to HMPPS, who are accountable to the Justice Secretary. Yet you can have a HMI Prisons report that's hugely critical of Welsh Government, and puts recommendations on Welsh Government. But they [the Welsh Government] have no ability to say to the Executive Director of HMPPS, or Governor of Swansea, for example: 'As a government, we are expecting improvements, and we will scrutinise you on it.' Because the Welsh Government have got no ability to do it.

*Community Safety and Criminal Justice*

For William, this places the Welsh Government in a very different position to UK Ministers and officials in terms of holding people "accountable" for any failings in the prison system in Wales.

**William:** Whereas David Gauke [then Secretary of State for Justice] can sit in Whitehall and say, to the Executive Director of HMPPS in Wales, 'I want to see improvements in Swansea prison by next year or you will be sat here in front of me explaining and you may potentially lose your job as a result of it.' Or he/she could say to the governor, 'I want an improvement plan from you and I'm holding you accountable for it.'

*Community Safety and Criminal Justice*

Concerns raised by participants about the level of scrutiny of the Welsh context by committees in Westminster and HM inspectorate were accompanied by worries over the extent to which that policing and criminal justice issues are being picked up and scrutinised by the National Assembly for Wales.

### **6.3 Policing and justice scrutiny at the National Assembly for Wales**

In contrast to the select committees in the House of Commons, there has been little "formal research" into the effectiveness of committee scrutiny at the National Assembly (Expert

Panel on Electoral Reform, 2017: 62). The fifth term of the National Assembly has 14 permanent committees with most of Welsh Government's responsibilities subject to scrutiny from seven principal policy and legislation committees as well as the Constitutional and Legislative Affairs Committee.<sup>70</sup>

Since the National Assembly was formally empowered in 1999, formal powers over policing and criminal justice in Wales have been held in London. Wales' most recent devolution dispensation, the 2017 Wales Act, reserved responsibility for 'Home Affairs' and 'Justice' to the UK Government (see Chapter Two). According to William, the fact that policing and justice are formally reserved to the UK Government suggests that the responsibility for scrutinising these areas in Wales should lie entirely with the UK Parliament.

**William:** If justice isn't devolved, there's an argument in my head that says, everything in the justice system is ultimately the responsibility of the Justice Secretary, and he or she is accountable to Parliament, or the Justice Committee in Whitehall.

*Community Safety and Criminal Justice*

Notwithstanding those comments, the accounts of participants explained how policing and criminal justice in Wales are regularly subject to oversight by the National Assembly. Those interviewed during the research gave examples where Assembly committees have explored issues that overlap with the UK Government's formal responsibilities for policing and criminal justice. These include inquiries into rough sleeping in Wales, new psychoactive substances, the emotional and mental health of children and young people, suicide prevention, and legal jurisdiction. Inquiries into prisoner voting and prisoner healthcare have recently been announced by the Equality, Local Government and Communities Committee and the Health, Social Care and Sport Committee respectively.<sup>71</sup>

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<sup>70</sup> Each of these committees has a dual responsibility for policy and legislation. For more information see Expert Panel on Electoral Reform (2017).

<sup>71</sup> The Equality, Local Government and Communities Committee also undertook post-legislative scrutiny in 2016 of the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act.

According to Ffion, National Assembly committees tend to respond to new or emerging problems. Ffion explained that issues are often scrutinised when Assembly Members feel as though they can no longer be ignored.

**Ffion:** The times that non-devolved issues have ended up on the committee radar have been reactive rather than proactive. So the NPS (New Psychoactive Substances) stuff came up not to try and stop something developing, but because Members were seeing people on the streets in their areas and said, "We can't ignore this anymore."

*Scrutiny*

As well as the sense that Members can no longer ignore a particular issue, Ffion explained that certain areas will be examined by committees when it is perceived that the problem is unlikely to be "picked up" and scrutinised "anywhere else". This argument follows on from the concerns raised by other participants (Sian and Sam) about the level of scrutiny directed towards the Welsh context in the House of Commons.

**Ffion:** So some committee inquiries are very much trying to shape debate, and shape things in future... The stuff that I've seen come up has all been, "We cannot avoid this anymore. We can't rely on, Westminster aren't picking it up." And I'm not sure if that's a conscious thing for committees. I don't recall a Member ever saying, "Well, you know, we've just got to do this now." But that's kind of where committees have ended up, is that it's unavoidable because it's not being picked up anywhere else and you've got these situations.

*Scrutiny*

Despite evidence that the National Assembly is providing oversight, participants revealed that scrutinising areas that straddle the UK Government's responsibilities for policing and justice can present officials with a number of problems. A major problem, according to Anna, is that it can be difficult to get UK ministers or officials to engage with the Assembly's work.



This includes “basic” things like trying to get in touch with UK officials about an ongoing inquiry or upcoming evidence session.

**Anna:** And it’s sometimes basic stuff; they [UK officials] won’t even respond to phone calls or e-mails or even letters from chairs.

*Scrutiny*

Ffion also explained that it can take a “long time” as well as a lot of work to ensure that UK Ministers and officials engage with the Assembly’s work around policing and justice.

**Ffion:** Once they [UK officials] twigged what the Assembly committee were looking at and why and how, and we had long conversations about it, they [UK officials] were more amenable. But it took a long time, and it took a few suggestions that the committee could push more publicly for some of this stuff if the more informal approaches were not working.

*Scrutiny*

This was echoed by Claire when discussing the attempts made by one committee to call a UK Minister to provide oral evidence. Claire revealed that the invitation was initially “refused” before the Minister finally agreed to appear after “quite a lot of negotiating”.

**Claire:** It was one of those areas where the policy position of Wales and their approach to children was very different from England. They called in the UK Government minister on the basis of the fact that, at that time, they were looking at devolving youth justice budgets to local authorities. But obviously they [the committee] wanted the UK Government to come in and talk about the fact that there was a very different policy approach and what that meant for young people who were ending up having to be placed in custody. In the first instance they refused to come and give evidence, and then after quite a lot of negotiating, at the last minute they turned around and said, 'Yes we will come.'

*Scrutiny*

For Anna, the problems that Assembly staff face reflects the way in which UK Ministers and officials feel that they can be “dismissive” of the Assembly scrutiny process. This is partly explained by the fact that there is no “pushback” on UK officials if they decide to turn down the Assembly’s request to appear and provide oral evidence.<sup>72</sup>

**Anna:** There is a confidence that they [UK officials] can be that dismissive with Assembly committees; that there’ll be no pushback ... It’s not just data. It’s actually getting UK Government representation in [that] can be difficult.

*Scrutiny*

Ffion explained that Home Office officials will often feel reluctant because they view themselves as answerable to the House of Commons Home Affairs Committee and not the National Assembly for Wales. For Ffion, this helped to explain why things “didn’t come easily” for committee staff when trying to get official representation from the Home Office.<sup>73</sup>

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<sup>72</sup> Section 37(3) of the Government of Wales Act 2006 states that the Assembly cannot “impose” a call to give evidence on a Minister of the Crown or an official working for a UK Government department.

<sup>73</sup> Geography and distance may also be a factor in whether or not individuals decide to provide oral evidence. A study by Geddes (2018) found that witnesses in London are the most likely to appear before a House of Commons committee. Geddes (2018) suggests that this may be due to the fact they have the shortest distance to travel and can appear before committees at relatively short notice.

**Ffion:** On the inquiries – the NPS in particular – it took them quite a long time to get Home Office engagement. In the end they did come to give evidence, and actually submitted a very useful paper. But it didn't come easily because the Assembly were the devolved institution, and I think Whitehall – I mean we can't speak for all Whitehall departments – but there was an impression that Whitehall departments answer to [Westminster] select committees.

*Scrutiny*

This point was developed further by Sian who explained that UK Government departments are able to “get out” of appearing before National Assembly committees. While they “absolutely” cannot avoid scrutiny from a House of Commons committee, Sian explained that neither the Welsh Government nor the National Assembly are able to “force” UK Ministers to appear before an Assembly committee. Although written answers to questions may be provided as an alternative, a refusal to appear in person will prevent committees from reaping the benefits associated with oral evidence sessions. These may include a “more informed” approach to scrutiny (Thompson, 2014: 397).

**Sian:** UK bodies can get out of them [i.e. Assembly committee inquiries]. They can't get out of UK ones where the UK parliament scrutinise their own departments. So, Home Affairs Select Committee and the Welsh Affairs Committee and all of that. It is procedural and [they] absolutely couldn't get out of that. But when the Welsh Government or National Assembly ask, it's [an] invitation. They can't force them to come.

*Policing and Community Safety*

While explaining that “informal routes” may be used to try and overcome the issues faced by Assembly committees, Anna revealed that the process can be an “incredibly frustrating experience” for committee Members and officials.

**Anna:** It's about using those informal routes as well as the official to official routes. But it becomes an incredibly frustrating experience from the Senedd's perspective – as officials but you also see that Members get frustrated as well.

*Scrutiny*

Further to the difficulties that officials face to try and secure UK Government representation, research participants explained that a lack of publicly available Welsh-only data often adds to the problems facing National Assembly officials. Although the Freedom of Information Act 2000 can "greatly enhance" the amount of information made available to committees (McAllister and Stirbu, 2007: 305), Claire described the task of trying to obtain data from the Ministry of Justice as "one of the main challenges" facing committee officials who are often forced to use the Act to access information. This is largely due to the fact that very little Welsh-only justice data is made publicly available (e.g. Ministry of Justice, 2017a).<sup>74</sup>

**Claire:** I'd say one of the main challenges, particularly on an Assembly Member inquiry – so the proactive stuff – is getting any data out of the Ministry of Justice. Assembly staff quite often get asked for information, and they will only be able to access that information – because there's obviously hardly anything publicly available for Wales – by putting in a Freedom of Information request to the Ministry of Justice.

*Scrutiny*

Claire explained that the process can often become "quite complicated" when statistical data is sought from UK justice agencies. This is particularly the case, she explained, when the responsible authority believe that the data requested is information that "somebody is going to use".

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<sup>74</sup> The development of the Ministry of Justice's 'Court Outcomes by Police Force Area data tool' means that Welsh-only sentencing data is now publicly available.

**Claire:** I think within committee inquiries it's slightly different. But with Assembly Members' constituency-type enquiries, the police will make Assembly officials go through FOI as well, just because they like to have that audit trail. It can be quite complicated to get hold of any kind of data, particularly statistical data that they think somebody is going to use. If you're looking for more policy-type data it's a bit easier. But if you're looking for statistics it's very difficult.

*Scrutiny*

Attempts to gather data from the UK Government can be time consuming as well as complex. Claire recalled the recent experience of a colleague who was forced to wait nine months before receiving information from a UK justice agency.

**Claire:** They won't accept [Senedd] officials approaching them in any other way, and usually it can take about six months [to access]. It's constant chasing. A colleague did an inquiry for an Assembly Member last year, and I think it took them nine months to get the data, and that data now is two years' old. People constantly get, 'Oh we don't collect that data in that way.' It's quite hard work.

*Scrutiny*

In response to this problem, Anna echoed the Ministry of Justice's (2017) call for an improvement to the availability of Welsh-only information as well as a more open debate around policing and criminal justice in Wales (e.g. Jones, 2013).

**Anna:** I think the point of data and the fact that people have to undertake Freedom of Information requests to get basic data from the Ministry of Justice is very disappointing, isn't it? So I think it's about information and more readily available data, but also about just a lot more open information and debate around these issues.

*Scrutiny*

Ffion also called for a wider debate around policing and justice in Wales when discussing the recent emergence of a discussion around imprisonment in Wales (e.g. NAW Debate, 9 October 2018). The recent debate, according to Ffion, has helped to highlight that there has previously been little interest or engagement in policing and justice issues within a “Welsh-specific context”.

**Ffion:** Until that report came out, because of the issues with accessing data, I mean people who know about the sector probably knew there were some pretty grim numbers to be uncovered, but you know, by definition really, people don't see much of prisons, you know? You don't go in, you don't visit, when you try and visit it's quite a process to get in and you have to know the right people to get in. You know, so it's not a particularly exposed demographic. I mean, maybe that's just prison and we're talking about wider than that. You know, to have the interest, you kind of have to know sometimes what the landscape is, and I don't think we've ever really had that in a Welsh-specific context.

*Scrutiny*

Concerns about a lack of engagement with the Welsh context include the lack of interest shown by civil society organisations in Wales. According to Anna, this is largely due to the fact that groups interested in policing and criminal justice choose to direct their attention towards UK Ministers and Members of Parliament, despite the overlap between criminal justice policy and devolved services in Wales.<sup>75</sup>

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<sup>75</sup> Although the Howard League for Penal Reform and the Prison Reform Trust are based in London, both organisations have been actively involved in campaigning on issues in Wales. This includes providing written and oral evidence submissions to the House of Commons Welsh Affairs Committee inquiries and public opposition to the Ministry of Justice's plans to build 'super' prisons in Wales. See BBC News (2017) and Prison Reform Trust (2014).

**Anna:** The other element is that you don't have the same sort of interest groups talking about these issues because it's not seen as devolved. If I was working for the Prison Reform Trust, would I be speaking to Assembly Members about it? I don't know. No, I'd most probably be focusing my attention at a Westminster level, even though it obviously has all these impacts on devolved services. I think that has an impact as well in terms of how prominent it is.

*Scrutiny*

For Huw, the fact that "not that many" third sector criminal justice groups operate in Wales reflects the "jagged edges" of responsibility in this area. Huw claimed that the unclear settlement may be responsible for organisations "not wanting" to take on justice issues in Wales.

**Huw:** It might be the case that there's not that many third-sector organisations taking on those issues. Again, and that might be reflective of the grey areas, jagged edges, of the devolution settlement ... We're talking about Members not wanting to take it on because of the lack of impact. It might be that the same is true of third-sector organisations as well.

*Scrutiny*

According to Claire, the absence of criminal justice interest groups in Wales means that the subject is unlikely to get on to the agenda of Assembly committees.<sup>76</sup> Claire explained that without such groups committee chairs and Members are unlikely to be handed "briefings" about particular issues or problems emerging in Wales.

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<sup>76</sup> One exception that was not reflected in the accounts of participants is the role played by justice unions in Wales. During the Fourth Assembly (2011-2016) a cross-party group on Justice Unions was chaired by Julie Morgan AM and contributed to debates on prison reform and changes to probation services in Wales. The National Probation Officers Union (NPO) has also played an active role in producing briefings for Assembly Members and officials (see NPO, 2018).

**Claire:** Lobbying Assembly Members, sending briefings out to Assembly Members like we see lots of the other [organisations do]. In health there are lots of charities who are all meeting with the chair of the committee constantly to get their subject on the agenda. I just don't think with the Prison Reform Trust and the Howard League of Penal Reform, they don't have a Wales office, so they are not going to be doing that.

*Scrutiny*

For Huw, the under-developed nature of criminal justice interest groups in Wales can also help to explain why the Welsh Government has not taken “a lead” on policing and criminal justice, despite demonstrating a recent “appetite” to get more involved in the issue. Huw’s arguments are supported by research which shows that voluntary groups and organisations are “an essential pillar” in ensuring greater government transparency, scrutiny and accountability (Edwards, 2004: 15).<sup>77</sup>

**Huw:** So there’s clearly an appetite from the government to take on those issues, and you know, if the government take a lead on it, I think Members will tend to follow. So it might be kind of reflective of a wider civic society gap in knowledge... I mean correct me if I’m wrong, but there’s not that many other people looking at those kind of issues?

*Scrutiny*

In the absence of a strong and engaged civil society in Wales, participants called upon the Welsh Government to be much clearer about its role in the policing and criminal justice policy space. This point was made by Claire who suggested a correlation between the Welsh Government’s failure to be transparent and a lack of scrutiny over policing and criminal justice in Wales. According to White (2015: 8), government openness is one of the “key factors” in determining the effectiveness of parliamentary scrutiny.

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<sup>77</sup> This includes organisations interested in policing and criminal justice. Since being founded in 1981, the charity INQUEST has provided advice and expertise on state related deaths and has campaigned for changes to government policy. See – <https://www.inquest.org.uk/>



**Claire:** There's responsibility on the Welsh Government to better promote what they do, though, because actually do they do a lot in this area. And you know, the fact they fund community support officers. You know, they spend an awful lot of money on criminal justice things and they're just not very good at communicating that.

*Scrutiny*

This argument was developed further by Anna who suggested that the Welsh Government's failure to clearly communicate what it is doing within the policing and criminal justice policy space acts as an impediment to effective scrutiny.

**Anna:** And I think that's part of the problem is that there's actually quite a lot of stuff going on in the Welsh Government, but Assembly officials just don't know about it. So you can't scrutinise what you don't know is happening, and actually, the Welsh Government shouldn't be afraid of that scrutiny because it would most probably help them in lots of ways.

*Scrutiny*

It is not just the National Assembly that was seen as undertaking less scrutiny that it might. George also expressed his frustration at the Welsh Government's perceived lack of interest in scrutinising policing in Wales. Specifically, it was claimed that the Welsh Government fail to scrutinise policing officials on the effects that particular issues and approaches may have on Welsh communities as well as devolved public services.

**George:** I would have thought that people at Deputy Director, Director-level, would be wanting to see policing officials and ask, “what’s happening? What’s going on? Who’s doing what? Where’s what, what’s the position with this? What’s the latest crime figures on that? What’s happening in our area? What impact is it having on health? What impact is it having on social services? What are you seeing around A&E admissions? What’s the issues with knife crime at the moment that we need to be thinking about within Welsh Government within the devolved partners here? Are we getting an increase? Are we getting people who are being arrested who are youths? Where are they being arrested? Do we need to do more with schools and local communities around that?” None of those questions are being asked of policing officials in Wales.

*Policing and Community Safety*

This argument was developed further by Steven who suggested that Welsh Government ministers are unlikely to create any “noise” about policing because it does not currently fall within their “brief”.<sup>78</sup>

**Steven:** The problem you’ve got at the moment is Welsh Government have no responsibility for policing, therefore the impact on policing is not a Welsh Government concern. So, all the noise about policing in Wales comes from Westminster and the Home Office. The police are this, the police are overwhelmed at this, and the police are overwhelmed at that. And yet, because Welsh Government don’t have any accountability for policing, you don’t hear anything from the Health Minister, you don’t hear anything from the Social Care Minister, you don’t hear anything from Education Minister, because it’s not their brief.

*Mental Health*

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<sup>78</sup> The suggestion that Welsh Government ministers do not take ownership over policing and criminal justice in Wales was discussed in Chapter Three.

As well as a lack of engagement, Ross explained that the Welsh Government's decision to regularly alter ministerial and departmental portfolios can exacerbate the problems facing officials. For Ross, repeated changes have been responsible for a sense of uncertainty amongst practitioners "because there's no clarity" over which department or Minister is responsible for a particular policy area. This can often mean that the National Assembly "loses out" because it is unaware of what is happening within policy areas that intersect with policing and justice in Wales.

**Ross:** The problem is if you don't have anyone who has a direct responsibility, or the system doesn't know where the person is, it means you don't really feel you're able to explain what is going on, and therefore the Assembly loses out because the Assembly doesn't then know what's going on. So, I do think it needs to be properly bottomed out and agreed and then it stays... Because as I say, that has been really unhelpful, I think. And it almost feels like we've been relegated, as a sector.

*Substance Misuse*

Ross explained that it is important for service providers to be certain who the responsible minister is so that relationships between practitioners and government officials are clear. This point was made as Ross revealed his own confusion over the identity of the current minister responsible for substance misuse in Wales.

**Ross:** I don't even know who the flipping minister is now. It keeps changing, but then our department keeps changing from health to justice all the time, so we never know which the minister is... Now I don't know who the minister is. Genuinely, I have no idea... You know, I think it's a mess. I think from a provider's point of view, it is really good, even though I might not always like the minister, to have that relationship clear and the agenda is clear.

*Substance Misuse*

The uncertainty over Ministerial responsibilities can also cause confusion when questions are raised by Assembly Members in the Siambr. According to Huw, the result of this is that justice

questions can be put to any one of a number of government representatives including the First Minister, the Cabinet Secretary for Local Government<sup>79</sup> as well as the Counsel General.

**Huw:** And there's also just stuff around the kind of plenary which reflects the nature of the devolution settlement. So, the fact that justice is kind of generally spread across all cabinet responsibilities, so, you know, with partners in local government, counsel generals taking some kind of responsibility, or letting FMs taking responsibility over it as well, and then plenary debate as well.

*Scrutiny*

Huw explained that the number of ministers' potentially responsible for policing and justice further increases when the Welsh Government's responsibilities for offender healthcare and learning are taken into consideration.

**Huw:** It's [justice] got spread so thinly across the Welsh Government... So it's a very ambiguous bit of the settlement anyway. That's then spread quite thinly, so prisoner learning is under education, prisoner health is under health, and then the Cabinet Secretary for Communities and Local Government and the Counsel General kind of pick up what they want from that.

*Scrutiny*

This argument was developed further by Huw when recalling the uncertainty that Assembly officials faced when a question concerning a violent incident in the community was tabled by an Assembly Member. Huw explained that the spread of justice responsibilities across so many portfolios resulted in a great deal of confusion amongst ministers and Assembly officials alike over which minister should respond to the question.

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<sup>79</sup> Justice now falls under the responsibilities of the First Minister and Deputy Minister.

**Huw:** I think there was an urgent question at the time, about it, and there was confusion in the government as to who would answer it, because obviously it depended where the Member was going with the supplementary question. So it's like, are you going to go after the health angle or—and obviously you can't... get that information from the Member. It's their prerogative to decide. But I mean, that's one of the rare instances of an issue coming through the kind of tabled questions avenue relating directly to the justice system.

*Scrutiny*

In addition to the spread across government departments, Ffion explained that the nature of Assembly committee portfolios means that policing and justice issues straddle the responsibilities of a number of different committees. Because of their broad remit, Assembly committees are often responsible for scrutinising the portfolios of more than one minister (Expert Panel on Electoral Reform, 2017).<sup>80</sup> For Ffion, this often means that the “focus” on justice issues becomes “diluted” as there is no single committee in the Assembly to take ownership over the scrutiny process.

**Ffion:** And linked to that, obviously, is the fact that the committees don't have a committee that's responsible for those matters. It's spread across. I mean Assembly portfolios don't mirror government portfolios in the way that Westminster Select Committees do, but you know, this issue does not sit with one committee alone. Which, again, means the focus is spread and is diluted by everything else that all those committees have. So Westminster has the justice committee. It looks at it. It's its bread and butter. Your Home Office, you know, your Home Affairs Committee. Whereas the Assembly does not have an equivalent, you know, 'Justice Issues as they relate to Wales Committee' to drive it.

*Scrutiny*

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<sup>80</sup> The addition of two extra permanent committees during the Fifth Assembly has added to the capacity issues facing Members and officials.

The consequences of these various issues for the scrutiny of policing and justice in Wales were also explored by participants.

#### 6.4 Falling between the gaps? The consequences of complexity

It has been well established that clear lines of accountability are key to the process of parliamentary and public scrutiny of government (e.g. Berry et al, 2011; White, 2015). The accounts of our research participants similarly suggest that a lack of transparency can act as a major impediment to effective scrutiny. This argument was made by Ross when reflecting upon the uncertainty surrounding the Welsh Government's role in the policing and justice policy space.

**Ross:** Without clarity, you don't get accountability, and I feel there is no clarity and therefore Welsh Government are not being held to account for what they're doing in this field.

*Substance Misuse*

Central to the view that the system is unclear in Wales is the complex nature of the devolution dispensation. This argument was developed by Ffion who suggested that a lack of clarity around policing and justice responsibilities, as well as regular changes to the devolution settlement, can make scrutiny difficult. Ffion explained that Assembly committee officials often have to "double-check" whether or not particular policy areas or responsibilities are devolved.

**Ffion:** But there is so much complexity around the settlement, officials can find themselves having to check, “Oh is that actually [devolved]...” ... I mean staff in the research service are dealing with this stuff. And Clerks deal with the subject detail when it comes ‘round because they’re dealing with the whole portfolio. So they kind of keep abreast in the general sense. But when it comes down to the detail staff look, and think, “I need to double-check” ... Once they get to grips with one settlement, you can guarantee there’s another settlement landing on their desk.

*Scrutiny*

The complexity surrounding the devolution settlement can also present challenges for Assembly Members. For Anna, the “opaque” nature of the devolution dispensation means that Members can often be uncertain about particular issues or subjects. Although the introduction of a reserved powers model was seen as a way to bring clarity to the devolution settlement in Wales (e.g. UK Government, 2015), Anna suggested that officials remain unclear on “certain issues” since the introduction of the Wales Act 2017.<sup>81</sup>

**Anna:** And this settlement is so opaque. The whole move to the new model that was meant to provide clarity, stability. You know, ‘a settlement for a generation,’ which I think we all know is not the case... I’m still unclear on certain issues, and I think... is it fair then to expect Members [to be clear] who are pulled in so many different directions?

*Scrutiny*

Anna explained that the problem is compounded by the fact that Assembly Members are often stretched across a number of different committees. The Expert Panel on Electoral Reform (2017) found that during the Fifth Assembly more than half of all Members were sitting on either two or three committees. These capacity problems mean that Members will

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<sup>81</sup> Rawlings (2018: 18) has described the Wales Act 2017 as a “lost opportunity” in the search for a robust and “intelligible” devolution settlement.

The Legislation (Wales) Bill was introduced by the Welsh Government in December 2018 to help make Welsh law more accessible and clearer. See – <http://www.assembly.wales/laid%20documents/pri-ld11927/pri-ld11927-e.pdf>

be forced to spread themselves thinly across different committee responsibilities and can often be “hard pressed” to provide in-depth scrutiny (Expert Panel on Electoral Reform, 2017: 71). Anna explained that a “very heavy workload” can prevent Members from developing an “in-depth” understanding of the issues that are being subjected to scrutiny.<sup>82</sup>

**Anna:** The committee work, is one element of a very heavy workload. Can you expect them to have that in-depth knowledge? Most probably not, unless it’s something that is a particular interest area for them. And therefore, that follows through in terms of what committees in particular end up scrutinising.

*Scrutiny*

The capacity issues described by Anna mean that Members may be unable to adequately prepare for a committee or have sufficient time to engage with the evidence submitted as part of an ongoing inquiry. This situation is likely to mean that Members will rely upon the “suggested questions” that have been set by committee officials in preparation for oral evidence sessions (Expert Panel on Electoral Reform, 2017: 80). The Expert Panel on Electoral Reform (2017: 80) concluded that this “adequate” but “unsatisfactory” circumstance can prevent Members from posing their own penetrating questions as well as drawing upon the available evidence to offer in-depth scrutiny.

The apparent lack of understanding amongst Assembly Members might also be explained by the fact that Members and officials fail to receive regular briefings on policing and criminal justice issues in Wales.<sup>83</sup> This point was made by George who explained that without regular briefings Assembly Members are unlikely to “ask questions” about what policing in Wales “is about”.

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<sup>82</sup> See Expert Panel on Assembly Electoral Reform (2017)

<sup>83</sup> This argument was outlined by Claire when discussing the absence of civil society organisations in Wales in the previous section.



**George:** I think that, again, it shows a real lack of understanding from everybody in Wales outside of policing, of what policing is about. And as a result, you're afraid to ask questions, and you're afraid to show that, actually, I haven't got a clue what policing does, but I would like to know. So therefore, they [Assembly Members] won't ask the questions because they're not briefed enough, because what you learn very quickly where I am is that they're briefed and briefed and briefed, and I'm led to believe more so than colleagues in Westminster. So therefore, there's nobody to brief them around this area of work. So I wonder if that's the reason why they don't do it.

*Policing and Community Safety*

The sense that Assembly Members do not have a sufficient understanding of policing and justice was also shared by Jonathan when recalling a recent plenary debate on probation service reform. While questioning the Welsh Government's knowledge of probation practice, Jonathan suggested that the Senedd debate revealed that some Assembly Members have only a "surface level understanding" of the issues in Wales.

**Jonathan:** I'm not sure Welsh Government have got real depth of understanding about probation practice, in terms of the, you know, having scrutinised what they're doing on a day-to-day basis. I mean there was, I don't know if you saw the debate a couple of weeks back about future probation services in Senedd, and there were some really good points made there. But there was also, I think, a number of points where there was perhaps a surface level understanding of the relationship with prison, probation, the way that all fits together.

*Community Safety and Justice*

Huw also felt that a lack of Welsh Government "expertise" may deter Assembly Members from enquiring about policing and justice issues. Huw explained that Members may feel "better off" trying to obtain information on policing and justice in Wales from alternative sources.

**Huw:** There's no Member who is forensically looking at what the government is doing by means of Assembly questions. You know, that just doesn't happen. And I don't know why that is. It might be because the Members aren't interested, or aware of the impact. But also, they might be aware that the government doesn't have that level of expertise and they're better off finding that information somewhere else.

*Scrutiny*

Due to the uncertainty that arises when Assembly Members and officials attempt to scrutinise subjects that intersect with non-devolved responsibilities, participants explained that committees are often unsure about how their work can contribute to future policy. Ffion explained how "difficulties" emerge when committees scrutinise devolved subjects that overlap with the UK Government's responsibilities for policing and criminal justice.

**Ffion:** I think that's where a lot, this 'jagged edge' comes into play is where the main, inverted commas, policy sits at the Westminster level. But it's where our education, local authority, health, social services, sort of weave around the support, isn't it? And I think sometimes because of the difficulties about how the services interact with one another, committees are not always clear how they can make a contribution, I suppose, around those.

*Scrutiny*

According to Laura, Assembly committees can be unsure about the scope of their recommendations when providing oversight on policing and justice. When reflecting upon a recent committee inquiry that had addressed policing in Wales, Laura explained that the committee were "limited" in what they could recommend due to the fact that policing is "not devolved".

**Laura:** But in terms of making any recommendations to the Welsh Government, that was obviously limited because they couldn't tell them, "Well, make the police do this, that or the other," because it's not devolved. So I think the committee ended up with a recommendation about having discussions with the police and crime commissioners. So I think that's the way they sort of skirted around the issue, as it were.

*Scrutiny*

Ffion also revealed that committees can be uncertain about who they can "recommend to" when scrutinising policing and criminal justice. To overcome this dilemma, Ffion explained that recommendations will be written in a particular way so as to encourage the Welsh Government to work alongside the UK Government in areas where their responsibilities overlap. This point was made by Ffion when reflecting upon a recent Assembly committee inquiry.

**Ffion:** So in all honesty, that inquiry really rubbed up against a whole host of non-devolved issues. And there were some Members who felt, I think, that that posed problems, because who could they recommend to? And other Members just said, "Well, nobody else is doing this so we're going to do it, and what we will do is phrase the recommendations in such a way that you ask the Welsh Government to liaise with UK counterparts, or to deal with the bits that are within Welsh control."

*Scrutiny*

A significant finding to emerge from the research was the suggestion that the challenges presented to committees scrutinising non-devolved areas can lead to some subject areas being deliberately avoided. Instead of exploring these areas, Ffion explained that committees may decide to take on subjects where they are "more likely to get traction and impact" and avoid the practical problems that Members and officials face when examining areas that extend beyond the National Assembly's competencies.

**Ffion:** Which I think leads back sometimes to why Assembly Committees may choose subjects where they know they're more likely to get traction and impact. Ultimately they are limited in their time – in terms of committee time but also in terms of their tenure. They have five years and they want to make an impact, and if there is a subject where they know they'll be able to get Welsh Government ministers in, there's an evidence base, there is a stakeholder network of people who can come and help shape that, who are lobbying them, [then] that's the subject that will take priority.

*Scrutiny*

An example of this was provided by Ffion when discussing a proposal for a committee inquiry into the construction of HMP Berwyn in north Wales. Because of concerns over what level of “impact” Members could have within a non-devolved policy area, Ffion revealed that the subject was eventually dropped and replaced with an inquiry into a devolved area of policy.

**Ffion:** Somebody scoped a paper for the committee in the last Assembly. It all got a bit complicated because the north Wales prison was being built, and the north Walians [members from north Wales] wanted to have a look at that. But then there was a feeling of, ‘Oh, but, you know, what impact can we actually have?’ And then something more direct, more . . . devolved, frankly, came up, and it took the attention.

*Scrutiny*

The workload issues faced by Assembly Members and committee staff can also mean that non-devolved areas are deliberately avoided. This point was made by Claire when discussing plans for a committee inquiry into the use of ‘Spice’ in prisons and the decision eventually taken by Members to prioritise another subject area.

**Claire:** People were asked as part of their forward work planning whether they thought that they should be looking at that. And obviously they went back to them and said, well actually, where Spice [a psychoactive drug] is probably the biggest problem is in prisons. Obviously, you've got quite a lot of prison data showing the use of Spice and how it's getting in, and then the implications of that for rehabilitation. But it was just one of those things where . . . even though they [Assembly Members] thought it was an important issue, the committee also had another twelve subjects. And for them, they didn't want to prioritise a subject that they felt was non-devolved. So they thought it was important, but as more prominent issues came to the table, it slid down and then it came off. I think that tends to be the pattern.

*Scrutiny*

As well as being purposively overlooked, participants suggested that policing and justice can inadvertently fall between the gaps of the UK Parliament and National Assembly for Wales. This point was made by Ffion who explained that the uncertainty over who is responsible can lead to certain issues being missed by committees in Cardiff and Westminster.

**Ffion:** I think what tends to happen is Westminster will think, "Well, most of those things are devolved," and Cardiff will think, "Well that's not devolved," and these things just fall in the gaps.

*Scrutiny*

Sian also explained that issues may go without scrutiny when committees in the House of Commons believe that the subject will be picked up elsewhere.<sup>84</sup>

**Sian:** What level of scrutiny is there? And they don't get into that. They leave that to someone else who then doesn't do it, basically.

*Policing and Community Safety*

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<sup>84</sup> Presumably by committees at the National Assembly

A number of ways of improving scrutiny of policing and justice in Wales were made by participants. These included suggestions that chime with the findings of existing research which has identified the importance of clear lines of accountability as well as the role played by evidence and expertise (e.g. Berry et al, 2011; Geddes, 2018; White, 2015). For John, attempts to improve scrutiny in Wales should be led by the National Assembly who could be doing more to try and hear the “voice” of police forces in Wales.

**John:** I’m not sure that the Welsh Assembly has flexed its muscle that it has got over policing. I think it’s generally left police forces well alone, because they’re not devolved. And yet, as an accountable body across Wales, it should probably do more to hear their voice.

*Policing and Community Safety*

This argument emerged while John expressed his concern that the National Assembly is not currently doing enough to scrutinise police forces in Wales.

**John:** [It] sounds crazy that police should be demanding more accountability, and they’re not. But I just think they’re [the Assembly] not excited, they’re not demonstrating that vigour “we want to know more about what you do because you affect our communities so much!”

*Policing and Community Safety*

As well as the National Assembly doing more, Jonathan suggested that the “evolving relationship” between the UK and Welsh Government is something that should eventually be scrutinised by the House of Commons Justice Committee. Jonathan’s view offers support to growing calls to acknowledge the Welsh context, including the Welsh Secretary’s admission that the system needs to recognise that “very different” support mechanisms for offenders that exist in Wales and England (Cairns, 2018, Q.168).

**Jonathan:** I guess part of it is about catch-up as well, though, isn't it, in terms of, what we've been talking about today is a sort of evolving position in terms of HMPPS, Ministry of Justice, and the understanding of the Welsh Government and vice versa. And I guess part of that will flow, in terms of things like the Justice Select Committee and some of the Welsh Assembly committees going for it. So I guess partly it is about the evolving relationship and how that, you know, the relationship then, you do need to have things like that scrutinised because it's sort of all with it.

*Community Safety and Criminal Justice*

Other interviewees suggested that improvements in scrutiny need to be driven by the Welsh Government. When it comes to recognising the distinct legislative and policy space in Wales, Jayne argued that it is up to the Welsh Government to try and get this message across more clearly.

**Jayne:** There needs to be an acceptance of that [Wales is different]. And maybe that's for Welsh Government to offer that education... maybe it's for them to take the lead on that instead of just complaining about it when it doesn't happen... Unless something changes with Whitehall departments, to get that proper acceptance that they are the government in Wales. They're not another government department. They're not the local authority. They are *the* government of Wales, with those four fundamental policy areas that are totally within their management.<sup>85</sup> Unless that acceptance is given, this problem is going to carry on and on and on.

*Community Safety and Criminal Justice*

Jayne argued that the creation of a "specific" role for policing and justice at a ministerial level would provide a clearer focus for the Welsh Government's activities in this space.

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<sup>85</sup> These four areas are Office of the First Minister and Cabinet Office; the Health and Social Services Group; the Economy, Skills and Natural Resources Group; and the Education and Public Services Group.

**Jayne:** I think that [justice] should be reflected in having a specific person at Cabinet-level appointed with justice in their role. Not least because Welsh Government provide significant funding for things that fall under the heading of justice.

*Community Safety and Criminal Justice*

Ross also argued that the appointment of a Welsh Government policing and justice minister would enhance structures of accountability and help to “bridge the gap” between non-devolved and devolved areas of policy. He made this point when discussing the shortcomings of the existing arrangements in Wales.

**Ross:** But I do think they need more accountability, having a clear line of minister, and then they can bridge the gap between criminal justice and the health. We need someone who can champion us, who basically is going, “Yes, we need health to up its game,” like in the prisons, “We need that to be happening.” I don’t think anyone is taking anyone to task on this issue. I think it’s being raised by the criminal justice system, ironically, mainly in the UK Government, but Wales actually hasn’t properly responded to that. Because I think they sort of pass it on to Welsh Minister, Welsh Minister goes, “Well, it’s really a substance misuse issue, it’s not really my issue, it’s...,” you know, and then, “It’s criminal justice and I don’t really know why I’ve been brought in.”

*Substance Misuse*

Huw also recommended the appointment of a Welsh Government minister for policing and justice. Creating a “figurehead” for these policy areas in Wales would help to facilitate better scrutiny and raise more awareness to what the Welsh Government are doing within the policing and justice policy space.



**Huw:** I think it comes from the government to a large extent. So I think if you did have—I mean, you know, hypothetically speaking—if you had a member of the cabinet who was responsible for all things relating to justice and criminal justice in Wales, that would raise its profile to such an extent that, you know, that you’d have a figurehead for it for a start. You’d have questions being asked every month. You’d have committees scrutinising the minister, and you know, that would lead to... awareness being raised of these issues. And there would be a focal point for all of the work that the Welsh Government does.

*Scrutiny*

Huw developed this argument further by suggesting that a designated minister for policing and criminal justice would help to give the subject “more profile”. He bolstered his point by pointing to the impact of changes to the economy and infrastructure portfolio.

**Huw:** If you had like a minister for criminal justice that would immediately raise its profile. It’s amazing to me that, you know, the economy and infrastructure portfolio, cabinet secretary changes then from economy and infrastructure to economy and transport. The number of transport questions went right up because of the word ‘Transport’ in his portfolio because Members look at the question and think, “Oh, ‘Economy and Transport?’ Oh, I can ask about transport questions,” and economy and infrastructure doesn’t lend itself to that. I know it sounds simplistic but that’s what happens. So the Welsh Government could do more to raise it by kind of giving it more profile, but they choose not to, and you know, the settlement might be the reason why.

*Scrutiny*

For Craig, such a development would also represent an important step in overcoming some of the barriers that policing and community safety practitioners face when engaging with Welsh Government ministers.

**Craig:** I think if you had a Police Minister for Wales then you might find that that becomes more of a meaningful dialogue.

*Policing and Community Safety*

While space prevents wider discussion in this report, it should be noted that the arguments about scrutiny and accountability presented in this chapter feed into a much wider set of debates about the capacity of the National Assembly and its ability to effectively scrutinise policy and legislation in Wales (Expert Panel on Electoral Reform, 2017; UK's Changing Union Project & Electoral Reform Society Cymru, 2013).

## 6.5 Conclusion

The research findings discussed in this chapter reveal that there are some significant challenges for those seeking to scrutinise policing and criminal justice in Wales. Firstly, the accounts of participants demonstrate that the structures in place at the House of Commons have largely failed to take account of the distinct Welsh context to policing (Home Affairs Committee) and criminal justice (Justice Committee). The research findings also reveal that HM Inspectorate can often struggle to take onboard the distinct legislative and policy context to policing, probation and prison services in Wales.

Secondly, the arguments presented in this chapter show that the National Assembly for Wales is playing a significant role in the scrutiny process. The accounts of participants, however, also reveal that there are limits to the ability of Assembly Members and officials to fully scrutinise policy areas that extend beyond National Assembly competence. These issues are being compounded by a lack of publicly available data on policing and justice in Wales as well as the absence of civil society groups or organisations focused on justice in Wales.

Finally, the research findings demonstrate that the jagged edges between devolved and non-devolved responsibilities mean that scrutiny can fall between the gaps that separate the House of Commons and the National Assembly for Wales. These findings add further weight

to the suggestion that the jagged edge is responsible for a uniquely complex and convoluted set of arrangements for justice policy in Wales. This will be explored further in the next chapter.

## Chapter 7

### Managing complexity: successes and limitations

#### The main findings in this chapter are:

- The arrangements for policing and criminal justice are complex in all settings and jurisdictions. This includes areas of England that have recently benefited from city-region devolution.
- The complexity that exists in Wales can be “helpful” for UK justice agencies who wish to develop enhanced partnership approaches with devolved partners and public services.
- The establishment of a set of de facto Welsh criminal justice institutions is helping to overcome the complex policing and criminal justice arrangements in Wales.
- All-Wales strategies and forums are being developed by the UK and Welsh Government to take account of the distinct legislative and policy arrangements in Wales.
- Even though Welsh criminal justice directorates have been introduced to reflect the Welsh context, the current arrangements are precarious and only “temporary”.
- Some practitioners feel that the policing and criminal justice arrangements in Wales are substantially more complex than those existing in other jurisdictions.
- The complex nature of the devolved and non-devolved split in Wales is likely to become more complicated in future as UK and Welsh Government policies begin to diverge more widely.

#### 7.1 Introduction

In this chapter the accounts of participants are used to assess the complexity of the Welsh policing and criminal justice policy space and its political implications. The chapter begins by considering the claim that the arrangements in Wales are no more complex than they are

elsewhere before drawing upon the accounts of practitioners and service providers who suggest that the UK Government has found a way of managing this complexity through a de facto set of Welsh criminal justice institutions. This will include the view that the devolved and non-devolved split can help UK justice agencies operating in Wales.

In the second section, the chapter explores the suggestion that the current devolution dispensation is responsible for a *more complex* set of arrangements than those found in other jurisdictions in the United Kingdom. Using the accounts provided by participants, the chapter considers the complications of having two government's operating within the same policy space and explores some of the limitations to the UK Government's attempts to improve joined-up working on the ground in Wales by establishing de facto Welsh criminal justice institutions.

## **7.2 Overcoming complexity? A de facto Welsh criminal justice system**

The evidence set out in the preceding chapters show that the split between devolved and non-devolved responsibilities gives rise to a complex set of arrangements in Wales. The accounts of participants reveal that a number of problems exist in relation to intergovernmental relations (Chapter Three), policy development (Chapter Four,) funding (Chapter Five), and scrutiny (Chapter Six). However, despite the many problems highlighted by participants, some service providers nevertheless downplayed suggestions that the policing and criminal justice arrangements for Wales are particularly or especially complex. While acknowledging that the system in Wales is complicated, participants highlighted the complexity of policing and criminal justice in other settings. This argument was made by Anthony who explained that policing and justice is complex even within jurisdictions where the "schism" that exists in Wales is not present.<sup>86</sup>

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<sup>86</sup> A Criminal Justice Joint Inspection in 2015 concluded that the England and Wales criminal justice system is "complex" because of the many different layers of local, regional and national structures, policies and procedures (Criminal Justice Joint Inspection, 2015: 7).

**Anthony:** Something that I have said time and again is that it always was complex. And even in England, where you don't have that schism... I actually got to see how it worked in England and how it worked in Northern Ireland. Less so in Scotland until fairly recently. And even though they had all of those levers in England, if you just take the English situation, it was still entirely complex.

*Policing and Community Safety*

Anthony maintained that even without the devolved and non-devolved split things would still be complex in Wales.

**Anthony:** So even without the constitutional complexity, it would be complex anyway.

*Policing and Community Safety*

The suggestion that the policing and justice arrangements in Wales are inordinately complex was also downplayed by Sian when comparing the arrangements in Wales to those in England. Sian explained that regional and city devolution in England has led to the development of its own complex set of arrangements. This argument is supported by the findings from a recent study which found that a "complex machinery of government" is developing in city-regions in England (Lupton et al, 2018: 43). The concerns raised by Lupton et al (2018) include tensions between the aims of local and national policy makers.<sup>87</sup>

**Sian:** From my position and looking at what happens in England, I don't know if it's more complex [in Wales], because you have a level of devolution in England, particularly with the introduction of the Mayors, and you have the same problems with local authorities and their perceived or not perceived levels of influence, and you have the same problem of communicating from the centre out to the regions.

*Policing and Community Safety*

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<sup>87</sup> Lupton et al (2018: 43) found that "patchy" devolution of powers means that city-regions have not been able to achieve the "policy integration" that was originally intended.

This argument was echoed by Jonathan who rejected the notion that practitioners in Wales are likely to face any “added complexity” because of the role being played by the Welsh Government. The complicated arrangements that exist in England were once again used to support this argument.

**Jonathan:** It is complex, but I think... most of what we do is complex, isn't it? You know, delivering services in London is complex, delivering services in Greater Manchester is complex. I think it is complex... If you're a frontline practitioner, I don't think there's necessarily an added complexity in terms of Welsh Government.

*Community Safety and Criminal Justice*

According to Sam, the suggestion that the devolved/non-devolved context is problematic in Wales is something of a “red herring”. Sam explained that these issues simply reflect the complexity of government in any normal setting.

**Sam:** I think the devolved/non-devolved is more of a red herring in that than people think. I think that is the complexity of government full stop.

*Community Safety and Criminal Justice*

Sam reiterated this point by playing down the suggestion that having just “one government” responsible for policing and criminal justice will mean that all issues are “covered” in Wales. This argument was developed further by Sam who suggested that the complex nature of the system in Wales might actually be “helpful” for UK justice agencies in Wales.

**Sam:** So, I just don't think that because you're all one government all of these things naturally just cover themselves and they all get covered. You have to work hard in the same way. And in some senses being non-devolved is helpful because you can create channels and opportunities to speak to people about a whole range of policies by design.

*Community Safety and Criminal Justice*

Sam revealed that the unclear nature of the system has helped UK justice agencies to "create channels and opportunities" through which to engage with devolved services. Central to Sam's argument is that the complicated set of arrangements that exist in Wales have helped to ensure that "proper systems" are in place "to deal" with the problem. Sam explained that these systems have been developed because UK justice officials are "alive to the risk" that things are potentially more complex in Wales.<sup>88</sup>

**Sam:** I think what I'm saying is, if it is more complex, what that means is people are alive to the risk and they wake up to it. So, I don't think—the outcome, I would argue, is better, because arguably it might be more complex, and that's probably true, but then people realise there's a complexity and they set up proper systems to deal with it. HMPPS in Wales have proper systems here to interface with those things that you're talking about [devolved responsibilities]. I'm not sure that really exists in England, because you're all meant to be one, you know, part of one system.

*Community Safety and Criminal Justice*

Sam explained that in response to complexity, arrangements have been put in place that can help to reduce the likelihood that offenders are "randomly missed" within Welsh Government policy. Sam suggested that the complex system in Wales has helped lead to the creation of forums that ensure that offenders are "remembered" at the policy design stage.

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<sup>88</sup> Sam's views are supported by systems theory which argued that complex systems can often lead to the design of enhanced governance concerns which are able to take account of the intricacies of complex problems.



**Sam:** It increases the chances that Wales doesn't get randomly missed. HMPPS in Wales have now created forums with Welsh Government, forums with ministers, where they say, 'You know this policy? You know that policy? It's really important that we try and remember offenders in it.'

*Community Safety and Criminal Justice*

Sam's argument was developed further by Jonathan who also felt that the devolved and non-devolved context could be viewed as a "positive" for service providers. Jonathan explained that the current arrangements provide UK justice agencies with a unique opportunity to become "more embedded" in strategic discussions about services provided by the Welsh Government. According to Jonathan, these opportunities are not available in the same way to officials working for UK justice agencies in England.

**Jonathan:** So, I think that that has actually led to a positive position for UK justice agencies operating in Wales compared to colleagues in England because I think that the very basis of the sort of devolved, non-devolved administration has forced them to have conversations that I don't think always take place in England. So, I think that officials in Wales are more embedded in the sort of the strategic level conversations about those services with Welsh government than any of my colleagues are in England.

*Community Safety and Criminal Justice*

The "nature" of the devolved and non-devolved system in Wales, according to Jonathan, also "forces" officials from the UK and Welsh Government to be in regular contact with one another. For Jonathan, this means that the delivery mechanisms in Wales are often "better integrated" than those in England.

**Jonathan:** I think that, as you move into the sort of strategy realm, and the business planning realm and all that sort of stuff, I think it is a complex world, but I think it's complex everywhere... I think that the nature of the devolved administration forces those conversations more. So, I think that, and what we are able to describe in terms of our delivery mechanisms and our link into it, I think are better integrated in Wales than I see in a lot of places in England.

*Community Safety and Criminal Justice*

The development of a de facto set of Welsh criminal justice institutions are central to Sam and Jonathan's claim that a better set of arrangements exist in Wales. As outlined in Chapter Two, Welsh directorates were introduced to help reflect the "different Welsh perspective" and to allow UK justice agencies to take full account of the distinct legislative and policy context in Wales (NOMS Cymru et al, 2006: iii). For some practitioners, these institutions are a way to manage and overcome the complexities associated with the jagged edge. According to Jonathan, the creation of HMPPS in Wales in 2014 marked the beginning of "sea-change" to way the way in which Wales was to be viewed and treated by the UK Government.

**Jonathan:** I think in 2014, with the establishment of HMPPS in Wales, I think that started a sort of a sea-change in people realising that things were going to be different.

*Community Safety and Criminal Justice*

Jonathan explained that the birth of HMPPS in Wales was markedly different to its predecessor, NOMS Cymru, which was set up as one of ten 'regional' areas in England and Wales. For Jonathan, HMPPS in Wales was established to help "recognise the reality" of the distinctive legislative and policy context in Wales.

**Jonathan:** But I think that the sort of, the recognition that Wales is different, is really what led to sort of HMPPS in Wales being established. I think NOMS Cymru was slightly different, I think that NOMS Cymru was one of a sort of a number of regional NOMS arrangements... I don't think it was particularly set up to recognise that Wales was different. I think it was one of a number of setups. I think HMPPS in Wales was explicitly set up to recognise the reality of the devolved administrations.

*Community Safety and Criminal Justice*

This includes understanding the “practicalities” involved in managing prison and probation services in Wales.

**Jonathan:** I mean I do think that, sort of the way that they've engaged over the last couple of years is definitely leading to a much better understanding of the practicalities of managing these sorts of systems and what issues come up.

*Community Safety and Criminal Justice*

As an example of the efforts being made to try and take account of the Welsh context, Jonathan explained that the template for HMPPS senior meetings now includes an agenda item on Wales. This, according to Jonathan, is evidence that Wales is being considered as part of discussions on UK justice policy.

**Jonathan** What's happening now is I think there's a much greater understanding of things that are likely to be different in Wales . . . HMPPS senior meetings have got a set template, agenda, purpose . . . There is a consideration of 'is there something different we need to do in terms of Wales?'

*Community Safety and Criminal Justice*

These kinds of changes, according to Jonathan, have ensured that the need to recognise Wales has become “embedded in the system” because of the efforts being made by senior officials working for a de facto Welsh justice agency.

**Jonathan:** It's a work in progress, I think, people recognising that difference, but I do think it's there. And I think [it's] partly because staff are always giving it, "Don't forget, don't forget, don't forget," I think it is embedded in the system.

*Community Safety and Criminal Justice*

The arguments outlined by Jonathan also extend to youth justice services and the role that is played by Youth Justice Board Cymru (YJB Cymru). According to Kate, YJB Cymru has helped to put a "different slant" on youth justice services in Wales. In 2012, when the Youth Justice Board for England and Wales was abolishing its regional office structure, the decision was taken to retain YJB Cymru on account of the "particular policy complexities" that underpin youth justice services in Wales (Case, 2014: 110). Kate argued that the presence of YJB Cymru has helped service providers to overcome some of the "tension" within this space and has led to the development of joint policies in Wales.

**Kate:** Youth justice is a really good example of where that tension is really clear, but it has been mediated by having YJB Cymru which has been able to put a different slant on youth justice in Wales. [It is] looking to work with the Welsh Government to put something together that supports children in the youth justice system. So, having a joint youth justice strategy is actually an example of where that complexity has been dealt with quite well.

*Community Safety and Criminal Justice*

For Sian, the establishment of a Home Office in Wales Team has also helped to improve joint-working and collaboration between the UK and Welsh Government. Central to this, according to Sian, is that UK justice officials are able to work "on the ground" in Wales and respond to any problems that may arise when new policies are announced or unveiled by the UK Government. The proximity between the Welsh Government and UK justice officials based in Wales was seen as particularly important in establishing relationships which, as shown elsewhere (e.g. Darlington et al, 2004; Lessard et al, 2006; Percy-Smith, 2006), are pivotal to successful partnership working.

**Sian:** Staff can walk into that building [Welsh Government]. They have got a pass. They literally can walk in and go and find who they want to speak to; sit down and explain, 'This isn't about politics. This is the problem. We're going to be accused of this. Can you get four hundred grand out of your minister?' 'Oh, I'll go away and find out' . . . So that sort of thing is where there is real added value of somebody who is on the ground with a very small team . . . who is able to make those relationships and get things done when the politics . . . the devolution stuff, and everything else gets in the way.

*Policing and Community Safety*

Sian developed this argument further by outlining a number of examples where UK justice officials in Wales have helped to smooth over some of the jagged edges between devolved and non-devolved responsibilities. In one example, Sian recalled the Welsh Government's refusal to provide additional money to support plans to introduce Police and Crime Commissioners in Wales. When faced with the prospect that its plans would not receive consent from the National Assembly, Sian explained that UK officials in Wales were able to come up with "an alternative" plan to help get the legislation through.

**Sian:** Where I talk about the PCCs thing, and the Welsh Minister's absolute—*absolute*—thing was that, "Not giving any money, any money at all, from my local authorities to support the police and crime panels that need to scrutinise the PCCS. No. Not doing it. No consent." You know, like, right. Okay then. So, what does that mean? Well, UK officials didn't think that meant anything. What it meant was that legislation was not going through. They had to come up with an alternative... We did, we created an alternative, but nobody had thought of that.

*Policing and Community Safety*

Sian also recalled how UK officials working in Wales helped to avert a potential "disaster" from unfolding when the ballot papers for the Police and Crime Commissioner elections were produced without Welsh translation. This problem was avoided because UK justice staff

based in Wales were able to remind officials in Whitehall of the distinct Welsh legislative and policy context.

**Sian:** There's another example around those elections where the Home Office hadn't done the Welsh language bit properly, and again, if they hadn't corrected that, that would have been a complete disaster. A lawyer somewhere got confused about, you know, whether it was affirmative or whatever the opposite is and then, ah, I don't know. So, nobody did it. So, you didn't have ballot papers in Wales. Disaster. [They] Sorted it out, officials working in Wales were shouting from the rooftops, screaming and yelling, "No you can't just give them an English one and tell them to write in Welsh. That's not how it works!"

*Policing and Community Safety*

Another example of the benefits associated with the Home Office Team in Wales was in relation to the introduction of the UK Apprenticeship Levy. Sian explained that officials in Wales managed to play an important role in negotiating a way for the issue to be "resolved". This includes helping to "cut through" the "rigidness" of the UK Treasury and Cabinet Office when coming up with a solution to problem.

**Sian:** Then more recently you've had the apprenticeship levy thing... for two years they've been ping-ponging backwards and forwards. Complete lack of any understanding when this thing was first introduced. UK justice officials in Wales brokered a way for that to be resolved so that they didn't get to the point which they were nearly at, where the police were saying, "it's going to be on your heads, ministers from both sides, because we're not going to be able to recruit. The public are going to be at risk in Wales". Nobody wants that. So, you need to have somebody that cuts through that policy, kind of rigidness, of Treasury, Cabinet Office, all the rest of it, and say, "Right okay, let's just down tools a second. Practically, how do we get this done? What do we do? We'll find some money. Welsh Government will find some money."

*Policing and Community Safety*

Alongside the development of de facto Welsh criminal justice institutions, UK justice agencies in Wales have contributed to the development of 'All-Wales' criminal justice strategies. While these frameworks have been introduced to help reflect the changes made by devolution, a shift in language towards a 'Wales', 'Cymru' and 'All-Wales' approach reflects the continuing emergence of a distinct Welsh system.<sup>89</sup> According to Jonathan, the establishment of Integrated Offender Management Cymru and the All Wales Criminal Justice Board as both adding "more clarity" to the "wider landscape" in Wales.

**Jonathan:** In terms of the wider landscape of strategy development, I think there's much more clarity now than there has been. I think that we've got things like the Wales Criminal Justice Board (now Criminal Justice Board for Wales) and IOM [Integrated Offender Management] Cymru in terms of [a] reference point. I think people understand what those boards are doing and what the contribution is.

*Community Safety and Criminal Justice*

This includes the development of the *Wales Reducing Reoffending Strategy* that was published by Integrated Offender Management Cymru in 2014. The strategy's aim was to help align the de facto Welsh criminal justice agencies in Wales and the Welsh Government on matters relating to crime reduction and prevention.<sup>90</sup>

**Jonathan:** That led to the first reducing reoffending strategy that was pulled together with Welsh Government, and that has now evolved into sort of the framework for supporting those at risk of reoffending.

*Community Safety and Criminal Justice*

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<sup>89</sup> A study by Mooney and Scott (2011: 3) explored the relationship between the language used within Scottish social policy and the Scottish Government's attempts to emphasise the importance of policy for 'the nation', the 'national project' or for 'Scotland'.

<sup>90</sup> The All-Wales Criminal Justice Board is the body that has responsibility for the delivery of Integrated Offender Management Cymru.

For Sarah, the All-Wales Criminal Justice Board has strengthened the Welsh Government's role within the criminal justice policy space. Its representation on the board has ensured that service providers are able to "communicate" with Welsh Government officials in a way that they have not been able to do so before. One of the All-Wales Criminal Justice Board's aims is to improve joint-working between devolved and non-devolved agencies.

**Sarah:** I think at the moment the connection between the All-Wales Criminal Justice Board and Welsh Government is strengthening. So, we're seeing more Welsh Government representation. It helps that Public Health Wales is involved because I think it's shifting the narrative to, you know, it's, in reality, we're all... it's giving us a language that allows us to communicate with it, with Welsh Government, in a way that maybe we wouldn't have done before.

*Community Safety*

According to Jonathan, the All-Wales Criminal Justice Board enables UK justice agencies to communicate and share information more freely. This point was outlined by Jonathan when reflecting upon a recent meeting of the Board.

**Jonathan:** So, I mean yesterday we had the All Wales Criminal Justice Board. You know, I had conversations with police and crime commissioners about things that weren't Criminal Justice Board business but they were about other bits and pieces that we're touching on, and there's lots of examples of that all over the place.

*Community Safety and Criminal Justice*

Other examples of collaboration between the UK and Welsh Government include the development of the Justice in Wales Strategy Group. According to Jayne, the group has



already proven to be a “good way” to share information between Welsh Government and UK justice agencies.<sup>91</sup>

**Jayne:** My understanding is that in addition to the role as Director of HMPPS Wales, an element of the job is to be the conduit between Ministry of Justice and Welsh Government, so that they’re a trifecta, it would appear. And that is, it’s definitely improving. To that end, we have the Justice in Wales Strategy Group meetings, which are co-chaired by a Welsh Government official, and the Executive Director of HMPPS in Wales, and that is proving to be a good way to at least share information.

*Community Safety and Criminal Justice*

This argument was also outlined by Jonathan who indicated that the group means that collaboration is now being steered by officials at a senior level.

**Jonathan:** I also think that the recent-ish, last couple of years, introduction of the Justice in Wales Strategy Group has changed that again, and I think it has done it at a different level, so we’re doing that now at Director-level in terms of that sort of engagement.

*Community Safety and Criminal Justice*

Jayne suggested that the Justice in Wales Strategy Group appears to be “working well” and has led to a clear “improvement” in the relationship between Welsh Government officials and HMPPS in Wales.<sup>92</sup>

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<sup>91</sup> A concordat between Ministry of Justice and Welsh Government was published in June 2018. The concordat establishes a plan for future arrangements including “consultation and co-operation” between the Ministry of Justice and the Welsh Government (2018: 1). The agreement suggests that forums like the Justice in Wales Strategy Group can be used to host future discussions between the two governments.

<sup>92</sup> According to Jayne, the Justice in Wales Strategy Group was established in response to the Ministry of Justice’s Prison Safety and Reform White paper and its failure to include the Welsh Government as part of the policy design process.

**Jayne:** And together, Welsh Government and HMPPS pulled together a narrative to set out what the different considerations were in Wales, and we consulted with each of the devolved policy areas to make sure that there was a full narrative for Wales that was included in there. Great. So as long as there's a heads up, it seems to be working well in that way. It's definitely an improvement than it was.

*Community Safety and Criminal Justice*

For Jonathan, the group has “helped massively” in providing a link between the Ministry of Justice and the Welsh Government. As well as ensuring that UK justice agencies fully appreciate the devolved context, Jonathan argued that it has also helped the Welsh Government to take account of Ministry of Justice policy.

**Jonathan:** And I think that has helped massively in acting as a bridge between HMPPS in Wales, Welsh Government and the Ministry of Justice . . . The Ministry of Justice sometimes forgets about devolved administration; [but] it happens the other way as well, I think.

*Community Safety and Criminal Justice*

Against the backdrop of the establishment of de facto Welsh institutions and the development of ‘All-Wales’ approaches, participants explained that UK Government policies are now beginning to reflect its growing recognition of Wales and the Welsh context. This argument was outlined by William who suggested that the Ministry of Justice’s decision to recently introduce alternative proposals for probation service reform in Wales reflects the “progress” that is being made in Wales.

**William:** If you go forward a bit, we seem to be making some progress in some respects, because if you look at the recent proposals around probation, because of our work with HMPPS, at least there they've convinced Ministry of Justice to say, do you know what, yeah, you could go in a different direction altogether. So, in Wales, what you'll see is a totally public sector probation service managing everything, allowing us to work much more closely then with HMPPS in terms of, right, now what services do you need to wrap into that, and how do we resource them? Because before you had a system where most offenders in the community were managed by a company who had no contractual relationship, or any relationship, with us as a government.

*Community Safety and Criminal Justice*

Jonathan acknowledged that the proposals for probation service reform in Wales will be a "big step" in ensuring that the "Welsh landscape" is reflected more clearly in UK justice policy. Jonathan also felt that service providers operating in England are likely to want to see similar changes introduced there.

**Jonathan:** There was some recognition that Wales was different there in terms of how some of the funding for Transforming Rehabilitation came through, in terms of the substitution and all that sort of stuff. But I think this is an evolution. I think the conversation now about we need to do something different in Wales to reflect the landscape better, I think maybe the proof is in the pudding that they've got that agreed... because I mean that is causing, within the National Probation Service world, I mean everybody in England wants to do exactly the same thing, for different reasons, I think. So, I think yes, I mean certainly, that has been quite a big step that that has taken place.

*Community Safety and Criminal Justice*

In October 2018, it was announced by the Cabinet Secretary for Communities and Local Government that the Welsh Government was working alongside HMPPS in Wales to prepare two 'blueprint' strategies to improve responses to women and young people in the criminal

justice system. For William, the blueprints provide yet another example of the improvements being made to recognise the distinct Welsh context. For William, the strategies also reflect the Welsh Government's determination to take more ownership over the Welsh criminal justice policy space.

**William:** Hence the blueprint work where Welsh Government have said, "Well let's take it to a different place and say, do you know what, we will design our blueprint for youth justice because we understand how our system works and then we will come to you and say, how do we now fund this or put the resources into it to support a system that relates to Wales?"

*Community Safety and Criminal Justice*

Even if the blueprints reflect the Welsh Government's desire to take a more prominent role in criminal justice, Sam argued that the blueprints are in fact joint strategies between the UK and Welsh Government on how best to improve services as a "combined government".

**Sam:** The blueprint on women and young offenders came from HMPPS. It's not a devolution piece of work. In fact, I would argue it's the complete opposite it. It's within the current settlement, what is it that we can do better for these groups of people and to use the blueprint to prove that within the current settlement we can do a lot better as a combined government—you know, devolved and non-devolved—about how you deal with these people.

*Community Safety and Criminal Justice*

The importance of collaboration was also outlined by William who explained that the blueprints provide a clear illustration that the UK and Welsh Government are now willing to work alongside one another in a bid to help "co-design" a better system in Wales.

**William:** And I think the difference now is that we have got to a point where at least the UK Government will openly admit that, and the Welsh Government will openly say, "We want to work with you now, not against you or, you know, forget the political differences, governmental differences, we've got to work together." So, I think that's where we're getting to, in the absence of devolution because my view is, even if the devolution argument goes on and on, we still have to design, co-design a system which is better.

*Community Safety and Criminal Justice*

The more active role being played by the Welsh Government was acknowledged by a number of participants. For Ross, this activity reflects the fact that the Welsh Government is becoming more aware of its powers and responsibilities within the policing and justice policy space. This is particularly evident, according to Ross, when looking at the Welsh Government's commitment to improving services for female offenders in Wales.<sup>93</sup>

**Ross:** Again, looking at the issue of women's prisons. It's an interesting one, I think Welsh Government are wanting more of a say in how women are treated. And certainly, the noise from certain ministers is, "We don't necessarily need a prison, but we need better provision." And I think the government's, the UK Government's recent announcement is to move us into that potential direction.

*Substance Misuse*

For Ross, the Welsh Government decision to engage with the Ministry of Justice's plans to reform probation services in Wales is yet another example of its growing interest in the area.

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<sup>93</sup> This is against the backdrop of a unique set of problems for Welsh women sentenced to immediate custody (e.g. Rees et al, 2017; House of Commons Welsh Affairs Committee, 2007).

**Ross:** I think Transforming Rehabilitation was a bit of a disaster everywhere, and I think even though in Wales it probably worked better than anywhere else in the UK, it still didn't really integrate properly. But I think Welsh Government, again, are having to engage and go, "Well what sort of probation system do we want?" I mean they probably will go for a more state-run system, which would be fine. But you know, I think that's another thing where Welsh Government are realising, actually, they have more power than they maybe thought they did have. And certainly, more responsibility.

*Substance Misuse*

The suggestion that the Welsh Government's role has increased in recent years was developed further by Sion when discussing the Welsh Government's decision to establish a Policing Board for Wales. In a written statement in November 2018, the Welsh Government's Cabinet Secretary for Communities and Local Government revealed that the Board would provide a useful forum for policing issues to be discussed in Wales. Sion explained that the formation of the Policing Board further reflects the Welsh Government's growing interest in policing issues and is likely to improve "collaboration" between Welsh police forces and the Welsh Government.

**Sion:** The relationship with the Welsh Government is definitely ratcheting up because they've now established a formal policing board for Wales, chaired by the First Minister or his nominee, which will be one of the cabinet secretaries— Communities, Local Government and Public Services—which would mean that there will now be a formal relationship between policing in Wales and the Welsh Government, so that the understanding and coordination can be better. So, there is a recognition by the Welsh Government that they need to understand more about policing as part of the justice system than they currently do.

*Policing and Community Safety*

Significantly, the evidence of improved collaboration between the UK and Welsh Government was seen as a way to route through the complex nature of the system in Wales.

For Joshua, the Welsh Government's growing activity in this space has shown that the complexity surrounding the devolved and non-devolved context in Wales can be overcome. This view was outlined by Joshua when discussing the introduction of the *National Pathway for Homelessness Services* by the Welsh Government in 2015 to clarify shared responsibilities and help organisations work together "more effectively" (Welsh Government, 2015b: 5).<sup>94</sup>

**Joshua:** I think the development of the pathway showed that those devolved and non-devolved issues can be overcome.

*Housing*

Sarah also suggested that the "ownership" shown by the Welsh Government within the National Housing Pathway has helped to make the delivery of housing services "smoother" and a lot "easier" for service providers to "navigate".

**Sarah:** So, housing is devolved and as a result there's a bit more, maybe a bit more ownership? Maybe that's the wrong word. But a Welsh ownership around, 'we need to get this right.' So, straightaway you've got a kind of standardised way for Wales... There's lots more to be done, because we need to do that with the supported housing thing which is all disparate, but at least for Welsh women, for example, there's a route in and a housing pathway that's standard. It's certainly not the panacea for everything, but it certainly makes things a lot smoother and a lot easier to navigate. So, if something's not working, it's easier to identify. You're not having to deal with every local authority which, for the England pathways, they're different in every local authority area. They have a slightly different process. Just, there's some things which the devolved context makes it easier in terms of delivery, I think. And I think that's because there's a political driver with that.

*Community Safety*

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<sup>94</sup> These organisations include local authorities, the National Probation Service and the Wales Community Rehabilitation Company.

According to Harry, collaborative working and co-operation are key to working through the complexity in Wales.

**Harry:** It isn't necessarily problematic as long as the message that comes down is the need to collaborate and cooperate, and that there's the methodology there.

*Policing and Community Safety*

Sian also played down the view that the "different landscape" in Wales "overcomplicates" things for police in Wales.

**Sian:** And that's how the police operate, I think, at the moment. They have to, to manage the kind of slightly different landscape, but I don't think it overcomplicates. They still do what they do and in the same way.

*Policing and Community Safety*

This point was also outlined by Craig who suggested that police in Wales will simply work their way through any added complexity.

**Craig:** It can be difficult, but we work through it, I guess.

*Policing and Community Safety*

The accounts of participants in this report identify a number of problems associated with the devolved and non-devolved system in Wales. In this section, however, the views of service providers suggest that the establishment of Welsh based justice institutions and the development of 'All-Wales' strategies are helping to overcome some of these challenges. However, the accounts of participants also explained that the barriers created by current constitutional arrangements cannot be overcome so easily.



### 7.3 The jagged edge: an unprecedented source of complexity

The research findings have already shown that the justice system in Wales is complex. Significantly, however, for others they are substantially *more complex* than those existing in other jurisdictions. According to Anthony, although the arrangements in England are far from simple, the dual set of responsibilities in Wales means the system “becomes more complex” when trying to design alternative approaches to crime and disorder.

**Anthony:** In the sense that if you were taking a different approach to crime and disorder, which we are in Wales, and you don’t control all of the levers, then it becomes more complex. But that’s not to say it’s simple in England. That’s probably the best way of putting it. It’s complex wherever you look at it, because of the nature of public service, the way we operate, the way people think. You know, just in terms of administrative boundaries.

*Policing and Community Safety*

Sian also argued that the system in Wales can be considered more complicated due to the level of difference that devolution has added to the delivery of UK justice services in Wales. Sian suggested that this is reflected in the way that UK justice agencies are forced to consider how the “complexity” will impinge upon their efforts to take certain policies “forward” in Wales. The different structures to ministerial portfolios were identified by Sian as an issue.

**Sian:** I think it has to be [more complex] yes, in the sense that you have to think differently about doing things. You know, so even ministerial portfolios don’t align. So, the way that the UK Government are set up, you know, you have a minister for this, minister for that. In the Welsh Government, there might be several that have an interest. So, there’s a complexity there. There’s complexity around trying to work through if the UK Government want to do, take something forward, what do they need to think about that’s different here?

*Policing and Community Safety*

For John, the involvement of both the UK and Welsh Government within the same policy space, each with its own legislature, funding and accountability structures, is responsible for the “confused and cloudy” system that police forces in Wales operate in.

**John:** I think when you’re looking at two jurisdictions with separate legislators, separate funding, separate accountability mechanisms, it gets confused and cloudy, and often Welsh police forces get caught in the cross-fire.

*Policing and Community Safety*

The difficulties presented to police forces were also outlined by Craig who suggested that the “blurring of the boundaries” between devolved and non-devolved responsibilities can often cause an “overlap” between UK and Welsh Government policy. Craig explained that this is the issue that police forces in Wales “struggle” with the most while operating at the jagged edge.

**Craig:** What tends to happen just by virtue of the fact that they [Welsh Government] are involved in some elements of non-devolved areas also, because there is that blurring of the boundaries and there will always be an overlap in terms of any social policy, then it’s that blurring of those boundaries, I think, that is the main issue that police struggle with.

*Policing and Community Safety*

As a consequence of this overlap, Craig explained that police forces in Wales will have to negotiate their way through different policies and pieces of legislation. Craig revealed that this may including having to confront policies that actually “drive against one another”.<sup>95</sup>

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<sup>95</sup> The problems presented to service providers by ‘duplication’ and ‘overlapping’ policies are explored further in Chapter Five.

**Craig:** It can be confusing, and I think more operationally, than from a commissioning point of view. So again, if we look at the domestic violence arena and work, and where we've got, again, a lack of acknowledgement by Westminster [and] the Home Office, on the fact that actually some of these aspects—substance misuse and others, those that sort of bleed into the sort of health aspect or education—belong to Welsh Government. But they don't acknowledge that in terms of the policies and legislation that they push forward, which as a result of means that police in Wales are in the position that they might have two pieces of legislation, or certainly two policies, that might drive against each other.

*Policing and Community Safety*

This point was developed further by Marc when discussing the UK Government's decision to overhaul probation services at a time when the Welsh Government was unveiling a new approach to preventing homelessness. For Marc, the simultaneous introduction of these policies is an example where two different approaches have failed to complement one another. These comments were made when discussing the findings from a recent report which had concluded that CRCs were not fully implementing the Welsh Government's preventative homelessness strategy (see Madoc Jones et al, 2018).<sup>96</sup>

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<sup>96</sup> In a written response to the Cross Party Group on Faith in February 2018, the Welsh Government's Minister for Housing and Local Government reiterated the findings of the evaluation into homelessness services for prisoners in Wales. The Minister said, "The levers for effective implementation primarily rest with the UK Government, with responsibility for commissioning and resourcing of the [Community] Rehabilitation Companies resting with the Ministry of Justice. Since roll out of Transforming Rehabilitation it has been clear that resources have not met the increased demand..."

**Marc:** The classic example of that is, it was difficult to imagine a scenario whereby the Welsh Government would have privatised aspects of resettlement at the same time as they brought in a prevention agenda for housing, okay? So, you know, there would have been more thinking about that issue. So, the English Government obviously privatised aspects of resettlement, and gave it to the CRCs who contracted it out to through-the-gate providers. But at the same time the Welsh Government introduced the prevention agenda, and clearly that they were both completely—you know, prevention is going to involve more work, more activity with prisoners. It was going to need advocacy.

*Community Safety and Criminal Justice*

Marc explained that the conflict between these two policies indicates that there is a “lack of coordination” within a system where two governments are responsible for two intersecting policy areas.

**Marc:** So, what you have is a lack of coordination, at times, in terms of a systems approach to thinking, “Right, how do we deal with homelessness?” So, I’m sure the Welsh Government thought, “Right, prevention agenda. That works great. Peter Mackie thinks it’s wonderful.”<sup>97</sup> What we’ve got isn’t working. Let’s do this.” But there was one system they had no control over, which was the criminal justice system, which arbitrarily, to a certain extent, decided to go private. And I very much doubt Chris Grayling thought about the implications of that for, you know, addressing homelessness in Wales. So that’s the complexities, I think, that you end up with.<sup>98</sup>

*Community Safety and Criminal Justice*

The suggestion that the arrangements in Wales are *more complex* often emerged against the backdrop of a comparison with the supposedly more straightforward arrangements in

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<sup>97</sup> See Mackie et al (2012)

<sup>98</sup> This quotation was also used in Chapter Four.

England. In contrast to the arguments outlined in the previous section, Sion suggested that the UK Government's responsibility over criminal justice *and* social policy in England makes it simpler for policing and justice problems to be addressed. This point was made by Sion who, while acknowledging that a "resolution" may not always be forthcoming, explained that things are "easier" for police forces in England because they are only responsible to "one master".

**Sion:** So, in terms of England in one sense it's easier that there's, because there's only one master so to speak... they know, if they've got a problem they've only got to go to Westminster. Now that doesn't mean the problem is going to be resolved. But they know there's only one. So, if they've got an issue with the health service, the way the health service is working in say, Warwickshire, then it's still the Department of Health that they have to go to, which is the same UK Government. Whether they get a resolution is a different matter.

*Policing and Community Safety*

This argument was developed further by Rhys who suggested that things are "easier" in England because the UK Government controls both criminal justice *and* social policy. Rhys compared this to the situation in Wales where a minister is unable to respond to an issue or problem that falls outside of the Welsh Government's powers or competencies.

**Rhys:** It would be easier on the basis of, you'd have one set of priorities: you'd have the government's. I know departments have little bits between them, but if you went to see a Minister in England, they can be making the decision and they will be having communication with the Minister or the team in that department. I can go and see Vaughan Gething who will say to me, "This is what I would like to see for mentally disordered offenders in Wales." He doesn't have the last final say on that because MOJ could just turn around and say no.

*Mental Health*

For Jayne, the fact that officials in England only have to deal with “one set of legislation” makes the English context more straightforward than it is in Wales. Jayne also suggested that officials in England do not have to consider the “different language requirements” that are dealt with by staff in Wales.

**Jayne:** But from seeing colleagues who were England-based and only had the England perspective to think of—don’t get me wrong, it’s challenging in itself, with their own version of devolution and local authority creation, how it is, nothing is easy as long as you’re dealing with people—but I think that having one set of legislation, that you only have to think about that. You don’t have to think about different language requirements or anything similar. Yes, I think that’s easier.

*Community Safety and Criminal Justice*

Jayne also suggested that the structure of UK government departments helps lead to a much clearer way of working in England. Whereas “specific departments” take responsibility for areas such as health and housing in Whitehall, these areas are spread across departmental portfolios in Wales. As a result, Jayne explained that trying to work out what impact a policing and justice policy will have in Wales requires greater effort.

**Jayne:** Because you’ve got specific departments that are one hundred percent looking after health, education, social services, housing, whichever. They’re sorted. You’ve got effectively one building that deals with each, and that’s all they deal with, which is great. Whereas Welsh Government have got to be—I don’t want to say ‘Jack of all trades’ because you know what follows with that and that would be disparaging to Welsh Government officials—but they need to have cognisance of everything, so that when they get one approach from the Ministry of Justice, they go, “right okay, that could have an impact on housing, that could have an impact on social care” and they need to at the very least sign-post, if not have the high-level answers to be able to set out the store to say, “Hang on a second, you need to give this a bit more thought because it’s different here, in that way.”

*Community Safety and Criminal Justice*

William also felt that Whitehall departments responsible for English-only services will have a better opportunity to input into Ministry of Justice policy at an earlier stage than officials in Wales.<sup>99</sup>

**William:** When the UK government are discussing criminal justice reform, the Department for Health are at the table [and Welsh Government officials are not].

*Community Safety and Criminal Justice*

The level of difference between Wales and England led some to reflect critically upon the complexity that exists within the England and Wales system as a whole. When discussing his recent involvement in a project around systems approaches, Marc expressed his view that the delivery of policing and justice services become “more difficult” when trying to accomplish things on an England and Wales level. Marc added that efforts to achieve change are made more difficult when the system is “complicated”.

**Marc:** And one of the interesting things about helping to develop that programme has been thinking about how the system is more difficult when it’s England and Wales. So, setting aside the philosophical bit about what people are thinking of and what are their concerns, it is more difficult to change things when the system is more complicated. And the system is much more complicated when it’s England and Wales.

*Community Safety and Criminal Justice*

Due to the level of difference between social policies in Wales and England, Luke also suggested that it can be “increasingly difficult” for practitioners trying to deliver services on an England and Wales basis. Luke explained that separate notes will often have to be made to reflect the different Welsh and English policy contexts.

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<sup>99</sup> In the previous section Jonathan claimed that UK justice officials in Wales are able to input into social policies being designed in Wales. William is arguing here that officials responsible for social policy in England are able to input into justice policy at an earlier stage.

**Luke:** I was just talking about it to a colleague earlier, actually, about how increasingly difficult it is to do things on an England and Wales basis. You know, because things are so different that you try to do anything, you end up with a comment that's like a page... well actually we'd have a Welsh comment and an English comment. And I think that's increasingly the case... It's the mind of statisticians to see England and Wales as that concept—but actually the reality? It is quite different.

*Mental Health*

In response to some of problems associated with an 'England and Wales' approach, the UK Government has established a set of de facto Welsh criminal justice institutions to reflect Wales' distinctness. While some participants reflected positively upon the work that has been carried out by UK justice agencies in Wales, service providers also raised concerns over the limitations of this approach. According to Sam, although HMPPS in Wales can play a key role in helping the Ministry of Justice to overcome some of the challenges of working in a devolved context, it can be difficult for staff to ensure that all Ministry of Justice policies reflect the context of devolved government in Wales. Sam explained that a failure to do so can potentially "damage relations" between partners.

**Sam:** All too often HMPPS in Wales are still acting as a filter on the Whitehall side [checking] whether Wales has been properly thought of, and staff can feel a bit like whack-a-mole in that sense. If they are not quick enough a mole is going to pop up and really HMPPS in Wales will pay the heaviest price, because they tend to damage relations.

*Community Safety and Criminal Justice*

The difficulties faced by staff in Wales were discussed further by Sam who revealed that the Ministry of Justice expect HMPPS officials working in Wales to somehow "fix" or "magically evaporate the Welsh problem". Sam explained that this process often requires a lot of work



and “due diligence” to ensure that the Welsh context is properly reflected in Ministry of Justice policy.<sup>100</sup>

**Sam:** HMPPS in Wales will get something from the MOJ that just won’t have any Welsh context in it at all, and either the Executive Director will have to pick it up or they’re coming to HMPPS in Wales as if, by showing them, you know, you magically evaporate the Welsh problem, or they can somehow fix it by reading it once and then having a conversation. And they can’t. It’s got to... proper due diligence has got to be done, you’ve got to have the right conversations, you’ve got to go through it and trawl through it with the Welsh context.

*Community Safety and Criminal Justice*

Sam argued that a major source of “complexity” for justice officials working in Wales is that operations within the devolved and non-devolved policy space are political. A study by Davies (2009: 91) found that political differences can often cause concern and “provoke anxiety” amongst those who are engaged in partnership working.

**Sam:** On the Welsh side, the difficulty that HMPPS in Wales have, the complexity from the Welsh side upwards is that everything is political, even operations.

*Community Safety and Criminal Justice*

Sam developed this point further explaining that because two different governments operate within the same policy space, any mistake or controversial incident can lead to one side making a “political argument” or “point” about the other.

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<sup>100</sup> The accounts of practitioners in Chapter Three suggest that Ministry of Justice policy does not always reflect the devolved context in Wales. Examples include the *Prison Safety and Reform White Paper*, the *Female Offender Strategy* and the decision to announce a new prison at Baglan in Port Talbot in March 2017.

**Sam:** It can be a kind of complicated and slightly dangerous arena for an operational, and very operational business where things go wrong, because that's the nature of the business. So, if you want a specific example of that, serious further offence, really horrible case, people do tend to make a political point about who was running the administration of that bit of the world at the time whether it was public or private, which may or may not be material in the end, but certainly helps people to make a political argument.

*Community Safety and Criminal Justice*

The political nature of the relationships between UK justice agencies and the Welsh Government were also acknowledged by other participants. Sian, for example, explained that the operational complexity can be removed in Wales but when looked at through a "political lens" it often becomes more difficult.

**Sian:** But practically, on the ground, the relationships are so good here that there's so much that could be done. So, it depends on which viewpoint you're looking at it. If you want to look at it through the political lens? Then yes [it's complex]. If you want to look at it through a practical, 'can we get things done that really pave the way for the UK?', you know, that complexity just kind of goes away, effectively.

*Policing and Community Safety*

While recognising that efforts are being made to improve collaboration and "alignment" in Wales, Joshua also suggested that there are likely to be continuing "frictions" between both governments due to their own "different political outlooks".

**Joshua:** The Ministry of Justice are comfortable with those in housing taking it a slightly different route because they've got this established HMPPS Wales office. They've got the All Wales strategy group as well. So, you know, it's where Welsh Government try to bring those policies together and make sure there's alignment, they complement each other, although obviously, you know, there are going to be frictions when there are governments in place with different political outlooks.

*Housing*

In addition to the barriers that political differences may present, Olivia raised further concerns about the capacity of the de facto Welsh criminal justice institutions to take account of the devolved context. While being appreciative of what the Home Office in Wales has achieved, Olivia argued that the influence of the unit is likely to be "limited" because of its relatively small capacity.

**Olivia:** At best what we're talking about with the Home Office presence in Wales is three people. And don't get me wrong, I think the three of them are very effective, and they have certainly paved the way with some of that relationship building with Welsh Government. Staff have gone from a position of not even being afforded a desk in Welsh Government and having to sit in the coffee shop across the road to actually being in meetings and being able to engage effectively. But . . . three people can only do so much. And in terms of that knowledge development with Welsh Government . . . and being able to influence? It's going to be limited.

*Policing and Community Safety*

The accounts of participants also raised concern over the fragility of the arrangements that are working to improve joint-working and to reflect the Welsh dimension. For a number of participants, including Emma, the partnerships between devolved and non-devolved agencies are reliant on "individuals and personalities" who are driving forward this work to help overcome some of the issues faced by those working at the jagged edge.

**Emma:** It becomes complex if you don't have good relations, and you don't work at your relations and keep your stakeholders on board with you and you with them. It becomes complex if you don't find some common ground between yourselves. But that can vary a lot. Unfortunately, it does come down to individuals and personality sometimes in this world. You really hope that it doesn't, but it does. So, I think in terms of developing a joint sense of direction, that's absolutely key.

*Youth Justice*

This argument was echoed by Olivia who suggested that partnership working is being driven by "personalities" as opposed to any legislation that stipulates that partners must work together. This system, according to Olivia, is one that could potentially unravel if one individual decides not to engage or participate.

**Olivia:** think a lot of it on that level comes down to personalities . . . They're sitting round the table because they want to . . . And that it's the right thing to do. But the danger with that is that if you do have an individual who doesn't want to play [along], then it all unravels.

*Policing and Community Safety*

For Craig, the spirit of "muddling through" has ensured that officials have continued to engage with the Welsh Government in the absence of any kind of directive from Home Office officials in Whitehall. Craig's argument offers support to Fyfe et al's (2009: 216) claim that the "devolution gap" between reserved and devolved matters often means that certain policies have to be worked through.

**Craig:** And I think, I think to a degree, that muddling through has worked, but it's worked on the good will of people in Wales and people like the Home Office team in Wales pushing the boundaries, putting themselves into meetings, engaging with the Welsh Government, as opposed to it being driven by the Home Office.

*Policing and Community Safety*

Sam dismissed the idea that the current system was down to individuals but acknowledged that the arrangements underpinning intergovernmental approaches were "temporary".

**Sam:** I would concede that it is temporary. I wouldn't say it's about individuals.

*Community Safety and Criminal Justice*

While acknowledging that the Ministry of Justice and the Welsh Government are currently "working well" together, William also suggested that this is only temporary and could well change if new Ministry of Justice ministers are appointed in Whitehall.<sup>101</sup>

**William:** While Welsh Government are working well with them now, and with a set of ministers in the Ministry of Justice that want that to happen, a different set of ministers in Ministry of Justice could want a different thing altogether.

*Community Safety and Criminal Justice*

The precarious nature of the system led some participants to reflect critically upon the absence of any kind of formal structures in place to compel partners to work together.<sup>102</sup> When discussing the efforts being made by police forces in Wales to employ psychiatric

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<sup>101</sup> The regular churn of ministers at the Ministry of Justice may add to the concerns raised by William. As outlined in Chapter Three, the Ministry of Justice has had six different Secretaries of State since 2010 (Freeguard et al, 2018).

<sup>102</sup> The Crime and Disorder Act 1998 required local authorities to develop partnerships alongside voluntary, statutory and community partners to reduce crime and enhance community safety.

nurses in police control rooms, Luke expressed the view that this was largely down to relationships between partners rather than any formal protocols.

**Luke:** I think that seems to be based a lot around good relationships, you know, and “let’s see what we can do”, and the four forces wanting to respond to Welsh Government.

*Mental Health*

This point was echoed by Wyn when reflecting upon the decision to employ psychiatric nurses in police control rooms.

**Wyn:** It’s ad hoc. It’s not necessarily a uniform directive.

*Mental Health*

Wyn developed this point further suggesting that a reliance on “relationships” rather than a “framework” is likely to ensure that policy initiatives remain localised and are not rolled out on an all-Wales level in future.

**Wyn:** There’s a huge drive around, you know, substance misuse rooms and so on, and that’s purely just the Police and Crime Commissioner’s own interest in that field. If that’s successful, there’s no framework for that to then be rolled out and upscaled across Wales. It relies on the relationships between, you know, various stakeholders that don’t follow a single path of accountability.

*Mental Health*

The research found that even when frameworks to facilitate collaborate working are put in place, the nature of the devolved and non-devolved split means that UK justice agencies may not be formally required to take part. One such example includes the Public Service Boards in Wales which were introduced by the Welsh Government to bring together a range of

statutory bodies, such as local authorities and local health boards, to set out clear objectives for achieving the well-being goals included within the Well-being of Future Generations (Wales) Act 2015. While police forces and probation services in Wales are officially invited to participate in the Public Service Boards, and have already agreed to do so, Sion explained that probation services and police forces in Wales are not “technically” or “legally” members of the board.

**Sion:** Police forces in Wales are regarded as full members of the public service boards in Wales even though technically and legally they’re not. They’re statutory invitees. But all four chief constables and all four police crime commissioners in Wales have agreed willingly to sign up to the principles that were in the Future Generations Act, and they take leading roles in all the public service boards that operate from within Wales.

*Policing and Community Safety*

This point was also echoed by Sarah who explained that the Public Service Boards in Wales cannot “compel” police forces to take part.

**Sarah:** Where the problem comes is, of course, the public service boards don’t—because they’re Welsh Government—they can’t compel police, for example, to come. But all of the police and crime commissioners have said that the police will sit on the public service boards, and they do, and that commitment has been there.

*Community Safety*

The arguments of Sion and Sarah suggest that the current system is one that works because of individuals and relationships and perhaps despite its structures. This point was echoed by Kate when reflecting upon the disconnect between UK justice policy and the Welsh Government’s commitment to tackling homelessness amongst prison leavers. For Kate, the current system in Wales is one that “works” because of the efforts being made by “individuals” not because of its “design” or structure.

**Kate:** How does that work? It works because individuals make it work, and organisations make it work, but it doesn't work by design.

*Community Safety and Criminal Justice*

Alongside the view that the current system is problematic for service providers in Wales, the accounts of participants suggested that these “design” flaws are likely to become more pronounced in future. Participants explained that the system in Wales is going to become even more complex as the policy differences between Wales and England widen. According to Emma, this process is now being driven forward by the Welsh Government as it becomes increasingly aware of its “own sense of direction” in a number of different policy areas. This includes policies in housing, social care and health services.<sup>103</sup>

**Emma:** But there are differences in policy—and I think as devolution has developed, it seems to me the policy divides are widening in some respects, and Wales has developed more of its own sense of direction, if you look at social care, health, housing. So, the one isn't the mirror image of the other. If I think back to my early days, you'd probably get a document produced by the UK Government, Wales would have a look at it, just stamp the logo on, and that would be it. But we've moved light years away from that.

*Youth Justice*

Luke also recognised the increasingly “different direction of travel” in Wales since he began working in policy in 2003. Luke explained that growing levels of divergence are likely to create a number of additional “challenges” for Whitehall departments in future.

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<sup>103</sup> In future, this may well include extending voting entitlements in Welsh elections to some or all prisoners from Wales. The National Assembly's Equality, Local Government and Communities committee is currently undertaking an inquiry into extending the voting franchise to prisoners. On 30 January, the Deputy Minister and Chief Whip outlined the Welsh Government's support for “the principle of the right to vote for prisoners” (NAW Debate, 30 January 2019).



**Luke:** I started in policy in 2003, and there was a lot more read-over, there was no legislative powers. You know, it was very different. I think increasingly it feels like there is difference... I mean obviously there have been political differences since then (2003) in terms of the governments, as well, which has seen a different direction of travel. I think that poses challenges for the reserved areas, of how they respond to that, and how departments within Whitehall are agile enough to be able to do it.

*Mental Health*

The difficulties likely to face officials in Whitehall were also reflected upon by Craig when discussing the Welsh Government's plans to remove the defence of reasonable chastisement. While critical of the Welsh Government's handling of the issue, Craig explained that its decision to introduce a policy that relates directly to policing means that things are likely to get "very messy" once the changes comes into effect.

**Craig:** Police forces in Wales have had this conversation with the Home Office in Wales about how will that [smacking ban] practically be played out in Wales. It hasn't been thought through. And it can't be thought through unless you think it through right from cradle to grave through from the incident taking place, to it being recorded by the police, by it being investigated, potentially, court processes and/or other sanctions, and then what the outcome of that is... From a Welsh Government point of view, they believe that they're doing it all for the right reasons, but you can't do it in isolation with the enforcement element of that ban and then the criminal justice process that follows. So, I would describe that as a classic example of where it will be very, very messy.

*Policing and Community Safety*

Sian explained that although the UK Government has largely supported the Welsh Government's previous attempts to legislate within the policing and justice policy space, the decision to introduce the 'smacking ban' is a policy that "doesn't quite fit" with the Home Office's aims. For Sian, the challenges facing the Home Office are likely to "come to the fore" over the longer term.

**Sian:** These things have been, “Oh that’s nice, they’re doing that.” We’ll, let them... we’ll let them do VAWDASV [Violence against Women, Domestic Abuse and Sexual Violence], you know, that’s quite a good thing, everyone likes it, and at the time it fitted with what the Home Office were doing. But now it doesn’t quite fit. So, I think it’s kind of a longer game, this, and it’s what will happen five or ten years down the line. That will be the other divergence where it will really kind of come to the fore.

*Policing and Community Safety*

Sian sees the ‘smacking ban’ in Wales as a development that will “really test the barriers” between the devolved and non-devolved in Wales.

**Sian:** So the removal of defence of reasonable chastisement will really test the barriers on this, I think, because that is the first time, I think, that Welsh Government is introducing a piece of legislation that actually changes the way that criminal justice operates, in the sense that the police—taking smoking in cars slightly differently—but this time, they are asking the police to do something different to what they would do in England in the criminal justice kind of space, not outside of it. I think that will be a real test of how complex this really is, and whether they can work through that and find a way forward.

*Policing and Community Safety*

## 7.4 Conclusion

The arguments presented in this final chapter separate out two alternative viewpoints on the policing and criminal justice arrangements in Wales. In the opening section, the research findings reveal that the complexities associated with the jagged edge are a “red herring” and no more significant than those facing practitioners elsewhere. Of most importance, however, is the suggestion that the emergence of a de facto set of Welsh criminal institutions are helping to manage and overcome the difficulties created by the devolved and non-devolved

split. This includes the efforts being made by the Home Office Team in Wales and HMPPS in Wales to develop shared approaches and foster joined-up working with the Welsh Government through 'All-Wales' forums and strategies.

In the second section, the accounts of service providers suggest that an inordinately complex set of arrangements exist in Wales. Despite the efforts that are being made by UK justice officials in Wales to help smooth over the jagged edges between devolved and reserved responsibilities, the research findings demonstrate that the current arrangements are not sufficient. The accounts of practitioners also suggest that the current arrangements are likely to become more complex as the policy differences between the UK and Welsh Government widen in future.

## Chapter 8

### Conclusion

As we noted at the outset of this report, the comparative lack of interest in the operation of the justice system in Wales has presented substantial challenges as we have sought to prepare this, the first systematic analysis of the operation of that system in the unique constitutional circumstances of post-devolution Wales. Absent an established research literature or mature policy debate, our exploration is necessarily just that: not the final word, but rather a foundation on which to build.

That said, we believe that we have made substantial progress. Even if every river has not yet been mapped or mountain measured, we have been able to develop a good understanding of the territory and terrain. This picture has been built up on the basis of 29 elite level interviews with key actors in the system as well as a focus group. These interviews were all conducted on the basis of anonymity reducing the likelihood that we would simply hear the 'party line', and encouraging our participants to be open and candid in their consideration of the operation of the justice system in Wales. Evidence from these interviews and the focus group discussion has been supplemented by and triangulated with evidence from other sources. As the extensive bibliography makes clear, we have mined a wide range of documentation from official reports to academic articles, and from speeches to policy documents. Whilst we make no claim to absolute comprehensiveness, the account nonetheless covers a great deal of ground and does so authoritatively.

That said, there is clearly much more work to be done. Colleagues in the Wales Governance Centre are currently in the process of producing further reports on the fiscal and economic dimensions of the operation of the justice system in Wales. We will also supplement our previously published Factfiles. In addition, we will shortly be publishing a report on how the justice system in Wales might operate differently. All of which we hope will encourage and inform a wider political and public debate about the future of the justice in Wales. As our experience in preparing this report has made clear, there can be no doubt about the dedication and professionalism of those striving to make the current system work. The

question that remains is the extent to which the constitutional underpinnings of the system they are seeking to operate helps or hinders their efforts?

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## Appendix 1: Research Methodology

### Research aims

The research objectives were to explore the policing and criminal justice system in post-devolution Wales *through* the accounts, experiences and perceptions of service providers and practitioners. The research was guided by six aims:

1. To map out the jagged edges between devolved and non-devolved responsibilities for policing and criminal justice in Wales.
2. To consider the effects that the current constitutional arrangements have on policing and criminal justice services in Wales.
3. To assess the efforts being made to smooth over some of the 'jagged edges' between the UK and Welsh Government's responsibilities.
4. To consider the impact that the devolved/ non-devolved split has on policy development and design.
5. To explore the funding arrangements for policing and criminal justice in Wales.
6. To consider the effectiveness of the existing arrangements for scrutinising policing and criminal justice in Wales.

### Research design

The research was guided by a qualitative methodological framework. Described by Denzin and Lincoln (1988: 3) as an approach that helps to make the social world "visible" to the researcher and the reader, the research strategy ensured that the accounts of service providers and practitioners are central to the development of a more in-depth understanding of the post-devolution system in Wales. This approach is especially significant given the lack of existing research, analysis or theory in this area (e.g. Jones, 2013).

An interpretivist epistemology was used in this research. Described as an approach which treats participants as “active agents” in the data collection process (Perez et al, 2015: 4), the use of an interpretivist strategy enables the research to “enlarge” and “deepen” our understanding of practitioners experiences of working at the jagged edges of justice (Angen, 2000: 380). The interpretations of participants were guided by a constructionist ontological position that sees knowledge as something situated within the accounts, experiences, and meanings that have been constructed by those who took part in this research (Becker, 1982).

### **Data collection**

A purposive approach to sampling was used during this study. This approach ensured that specific ‘elite’ individuals could be targeted based upon their relevance to the research aims and questions. The process of identifying participants was reliant upon the researcher’s “situated knowledge” of the research field (Barratt et al, 2015, p.5) as well the identities of those who had submitted written evidence to the Commission on Justice in Wales’ call for evidence in February 2018. In some cases, participants were successfully recruited because of prior relationships that the researcher had with key individuals or potential gatekeepers.

Data were gathered from participants through semi-structured interviews. This method enables participants to “speak freely” about their experiences (Bennett and Wright, 1984: 7) and helps to capture the “richness and spontaneity” of participants own feelings towards the research questions (Oppenheim, 1992: 81). Due to a lack of existing research or analysis in this area, the method ensured that new themes and issues were able to emerge out of the interview data. This included concerns around the UK Government’s failure to adequately consult with Welsh Government officials during policy development.

A focus group was also carried out with five participants recruited to discuss the scrutiny of policing and criminal justice in Wales. A semi-structured approach to interviewing was taken to ensure that issues and themes could flow out of the accounts and descriptions given by participants.

## **Data analysis**

The research data were analysed using a thematic approach which involves “identifying, analysing and reporting” emerging patterns from the research data (Braun and Clarke, 2006: 79). Within qualitative studies, a theme is something which “captures something important” from the data in relation to a specific research aim or question. This includes themes which repeatedly surface from the data as well as those which appear less often but can provide a “more detailed and nuanced account” of an issue raised during data collection (Braun and Clark, 2006: 83). An example of this was the suggestion that the current arrangements in Wales provide UK justice agencies in Wales with an opportunity to create better systems.

The process of identifying themes was aided by the verbatim transcription of interview data. Described as a “basic” yet “integral” process within qualitative data analysis (Lapadat and Lindsey, 1999, p.65), the transcription of research data was guided by the use of a Dictaphone during data collection. While the gathering of field-notes can often lead to a loss of information and valuable detail (Kieren and Munro, 1985), the use of an audio recorder allowed the researcher to replay interviews so that important themes were not missed.

## **Research ethics and the presentation of findings**

Ethical approval was sought and granted from Cardiff School of Law and Politics Research Ethics Committee before a single participant was contacted. The Committee considered a range of different issues including data protection, potential harm to participants and researcher safety.

A key ethical concern during the research was securing the informed consent of research participants. The concept of informed consent is one that “attempts to capture and convey” what is widely regarded as the “acceptable relationship” between the researcher and research participants (Miller and Boulton, 2007: 2199). Nevertheless, achieving informed consent was just one ethical hurdle that had to be overcome. The quest to produce ethical research is something which had to be negotiated and managed throughout all stages of the research.

A key component to ethical research is maintaining the anonymity and confidentiality of participants. Throughout each and every interview an attempt was made to meet participants in a non-public setting. This often included interviewing participants in small offices or private rooms so that participants' involvement in the research would remain confidential (the only exception being the focus group). Because the anonymity and confidentiality of research participants is something that can occasionally be relinquished after data has been collected (Shaw, 2003), steps were also taken to safeguard the identity of participants where data were included in the final report.

A "ubiquitous" practice in qualitative research is to replace participant names with pseudonyms (Lahman et al, 2015:445). In addition, researchers can look to "remove identifiers" within the research data to help create a "clean data set" that prevents any participants from being identified by what they have said. Throughout the process of data analysis the researcher edited transcripts to maintain participant anonymity. This included examples where participants spoke about their involvement in a high level meeting as well as references to their own employer. Because the Welsh policing and criminal justice policy space is reliant on partnerships and joint-working between only a handful of organisations and individuals, this practice was essential to ensuring that the identities of participants were protected.

Offering participants complete anonymity throughout all stages of the project helped the research to recruit participants. In addition, by reassuring participants that key aspects of their identity would be removed from any data used in the final report, participants are likely to have felt more comfortable in divulging information in a more open and honest way. A major challenge surrounding 'elite' interviewing is the tendency for participants to tailor their responses to a set of wider organisational or institutional goals. A study by Lancaster (2017) found that research data gathered from 'elite' participants was often transmitted through a "tightly controlled official line". The offer of anonymity ensured that participants could deviate from any official lines and help to provide the research with a much more honest account and reflection of the challenges facing those operating between the jagged edges. For qualitative researchers interested in exploring sensitive topics, the trust that develops

out of confidentiality can encourage participants to discuss “issues which are deep, personally threatening, and potentially painful” (Lee, 1993: 98).

### **Limitations**

The main limitations to this study are that *some* key populations are excluded from the research sampling. The research did not seek to gain access to service users including those who have experienced police custody, the court system, probation supervision or individuals who have been held in the adult prison estate or the secure estate for children. In addition, no attempt was made to speak to individuals who have come into contact with substance misuse services, mental health support or housing services in Wales. A failure to access these populations means that their own experiences of the jagged edges between the UK and Welsh Government’s responsibilities have not been included here.

Another limitation to the study is that the research is focussed upon the accounts and experiences of service providers and practitioners working in Wales. When attempting to assess whether or not the arrangements that exist in Wales can be considered *more complex* than they are in England in Chapter Seven, for example, the approach taken means that there limits to what conclusions can be drawn from the research. This question could only be robustly dealt is the exact same study were carried out with service providers and practitioners working in England.



## Appendix 2: List of research participants

Name	Sector	Name	Sector
Anna	Scrutiny	Laura	Scrutiny
Anthony	Policing and Community Safety	Luke	Mental Health
Carol	Community Safety	Marc	Community Safety and Criminal Justice
Claire	Scrutiny	Michael	Substance Misuse
Craig	Policing and Community Safety	Oliver	Substance Misuse
Emma	Youth Justice	Olivia	Policing and Community Safety
Ffion	Scrutiny	Richard	Policing and Community Safety
George	Policing and Community Safety	Rhys	Mental Health
Harry	Policing and Community Safety	Ross	Substance Misuse
Helen	Equality	Sally	Community Safety
Holly	Housing	Sam	Community Safety and Criminal Justice
Huw	Scrutiny	Sarah	Community Safety
Isabelle	Policing and Community Safety	Sian	Policing and Community Safety
Jack	Health	Sion	Policing and Community Safety
Jamie	Substance Misuse	Sophie	Equality
Jayne	Community Safety and Criminal Justice	Steven	Mental Health
John	Policing and Community Safety	Sue	Education
Jonathan	Community Safety and Criminal Justice	William	Community Safety and Criminal Justice
Joshua	Housing	Wyn	Mental Health
Kate	Community Safety and Criminal Justice		

## Appendix 3: Information Sheet

This information sheet provides details about a research study that is being carried out by researchers at the Wales Governance Centre at Cardiff University on criminal justice in Wales.

### What is the research about?

On the 18 September 2017, the First Minister of Wales, Carwyn Jones AM, announced that the recently retired Lord Chief Justice of England and Wales, Lord Thomas of Cwmgiedd, will chair a Commission (the Commission on Justice in Wales) to examine the functioning of the justice system in post-devolution Wales. In a subsequent speech to Cardiff University's Wales Governance Centre and Public Law Wales, Lord Thomas made clear that the Commission will undertake the most far-reaching examination of the justice system in Wales for at least two hundred years.

The aim of this project is to produce research findings that can be fed into the ongoing work of the Commission on Justice in Wales. Building upon previous research that was carried out at the Wales Governance Centre between 2010 and 2016, this study will seek to clarify the current operation of justice functions Wales in the context of the jagged edge between devolved and ostensibly non-devolved responsibilities.<sup>104</sup> As part of the research I will be talking to a number of different people from a range of organisations across England and Wales.

### Why and how was I chosen?

You have been given this information sheet because of your knowledge, experience and expertise in relation to the research topic.

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<sup>104</sup> Developing on the preliminary work reported in Wales Governance Centre, *Justice in Wales: Principles, Progress and Next Steps*, September 2016 (<http://sites.cardiff.ac.uk/wgc/files/2016/09/Justice-in-Wales-Sept-2016.pdf>)

**Do I have to take part?**

No, it is your choice whether you take part in the study. If you do wish to take part in the research we will meet for about 45 minutes and talk about your experiences in relation to the research questions.

**Will I be paid?**

No. Your participation and involvement in the study is voluntary.

**What will happen next if I want to take part?**

If you don't want to take part then you are free to destroy this information sheet and you will hear no more about the project. Even if you agree to take part in the research you can decide to withdraw from the study at any point before, during or after the interview.

**What will happen to the findings?**

The information given by participants will be recorded on an audio recording device and written up as part of a series of reports that will be fed into the ongoing work of the Commission on Justice in Wales. The findings will also be used as part of a number of academic publications that will be written once the Commission has completed its work. It is hoped that the research will contribute to a much more informed academic and public debate on policing and criminal justice in Wales.

**Who is funding this research?**

This project is jointly funded by the Economic and Social Research Council (ESRC) and the Welsh Government.

### **What do I do if I want to make a complaint?**

If anything about this research concerns you, either before, during or after your involvement, please contact Professor Richard Wyn Jones ([wynjonesr@cardiff.ac.uk](mailto:wynjonesr@cardiff.ac.uk)) at the Wales Governance Centre at Cardiff University.

### **What are my contact details?**

Dr Robert Jones  
21 Park Place  
Wales Governance Centre  
Cardiff University  
Cardiff  
CF10 3DQ

**Email:** [jonesrd7@cardiff.ac.uk](mailto:jonesrd7@cardiff.ac.uk)

**Telephone:** \*\*\*\*\*

## Appendix 4: Consent form

Name of Researcher: **Dr Robert Jones**

1. I have read (or have had read to me) the information sheet provided to me about this project.
2. I understand that my involvement is voluntary and that I can withdraw at any time without giving any reason.
3. I understand that the information I will give will be kept confidential between myself and the researcher Dr Robert Jones.
4. I understand that the interview will be recorded on an audio device that will (the file) be destroyed within two years of the interview. In the meantime it will be kept confidential and stored securely on a protected computer system that only Dr Robert Jones has access to.
5. I understand that I will remain anonymous throughout the research.
6. I agree to take part in the research.

Name of participant:

Date:

Signature:

## **Appendix 5: Home Office supporting agencies and public bodies**

### **Executive non-departmental public body**

Disclosure and Barring Service  
Gangmasters and Labour Abuse Authority  
Independent Office for Police Conduct  
Office of the Immigration Services Commissioner  
Security Industry Authority

### **Advisory non-departmental public body**

Advisory Council on the Misuse of Drugs  
Animals in Science Committee  
Biometrics and Forensics Ethics Group  
Migration Advisory Committee  
Police Advisory Board for England and Wales  
Police Remuneration Review Body  
Technical Advisory Board

### **Tribunal non-departmental public body**

Investigatory Powers Tribunal  
Police Discipline Appeals Tribunal

### **Independent monitoring body**

Independent Anti-slavery Commissioner

## **Other**

Biometrics Commissioner

College of Policing

Commission for Countering Extremism

Forensic Science Regulator

HM Inspectorate of Constabulary and Fire & Rescue Services

Independent Chief Inspector of Borders and Immigration

Independent Family Returns Panel

Independent Reviewer of Terrorism Legislation

Intelligence Services Commissioner

Investigatory Powers Commissioner's Office

National Counter Terrorism Security Office

National Crime Agency Remuneration Review Body

The Security Service

Surveillance Camera Commissioner

UK Council for Internet Safety

## **Appendix 6: Ministry of Justice supporting agencies and public bodies**

### **Executive agencies**

Criminal Injuries Compensation Authority  
HM Courts & Tribunals Service  
Her Majesty's Prison and Probation Service  
Legal Aid Agency  
Office of the Public Guardian

### **Executive non-departmental public bodies**

Cafcass  
Criminal Cases Review Commission  
Judicial Appointments Commission  
Legal Services Board  
Parole Board  
Youth Justice Board for England and Wales

### **Advisory non-departmental public bodies**

Advisory Committees on Justices of the Peace  
Civil Justice Council  
Civil Procedure Rule Committee  
Criminal Procedure Rule Committee  
Family Justice Council  
Family Procedure Rule Committee  
Independent Advisory Panel on Deaths in Custody  
Insolvency Rules Committee  
Law Commission  
Prison Service Pay Review Body  
Sentencing Council for England and Wales  
Tribunal Procedure Committee



## **Other**

Academy for Social Justice

Academy for Social Justice Commissioning

HM Inspectorate of Prisons

HM Inspectorate of Probation

Independent Monitoring Boards

Judicial Appointments and Conduct Ombudsman

Judicial Office

The Legal Ombudsman

Official Solicitor and Public Trustee

Prisons and Probation Ombudsman

Victims' Commissioner



Canolfan  
Llywodraethiant Cymru

Wales Governance  
Centre

**Wales Governance Centre**

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