



Speaking at the University of Glamorgan, Fraser Sampson discussed the future of police authorities.

Leadership beyond authority

— who should govern the police?

This talk begins and ends with a question – the first I'll try to answer, the second I'll leave with you.

The first question is: "Why not get rid of police authorities?"

This is not a rhetorical question – it is being asked at the highest levels of policing and government (in the Green Paper, the Flanagan Review and in the proposals of the Home Secretary) as well as by former Home Secretary David Blunkett MP.

The question has the same beguiling simplicity that should alert the more intelligent audience. Rather like the vox pop questions, "should we pull out of the EU?" or "why don't we just scrap the Human Rights Act?", it pre-supposes that you know enough about the status quo. In our case it assumes that you know what police authorities do to start with. But, unlike the binary reasoning of the Sky viewer voting on their remote control, it needs a bit more thought before pressing the red or green button.

Tripartite arrangement

Police authorities are part of what is generally referred to as the tripartite arrangement.

David Blunkett, when Home Secretary, was accredited with explaining the tripartite system for governance in policing – police authority, chief constable and Home Office – as "one gets all the money, one gets all the power and one gets all the blame".

What is interesting is that when you tell people this in the policing world each of them thinks they are one of the others.

Leaving aside the other two parts for now, we should ask a second question: who knows what their police authority does?

Again, this is not necessarily rhetorical – ask 100 people and see how many are able to tell you.

Police authorities have a number of statutory obligations which in sum are:

- Setting the budget – to that extent they do have all the money but they give most of it to the chief constable or commissioner at the start of the financial year.
- Holding the chief constable or commissioner to account – a clear and unambiguous obligation of which we will hear more in a moment.
- Securing the maintenance of an efficient and effective police force – in performance measurement terms the "efficient" part is the

easy bit (tracking spend and costs, etc) but how do we measure whether a police force is really "effective"?

- Consulting their communities on policing priorities and practices.
- Ensuring the force is complying with the European Convention on Human Rights.

Other areas include appointing – and dismissing – chief officers and handling complaints against the most senior ranks.

The police authority is the employer for the police and it provides audit and corporate governance functions.

That is the bald theory and the legislation – what does it look like in practice?

Examples of holding to account can be found in the police use of stop and search powers, how they are being used, whether it is proportionate and in pursuit of a legitimate aim and whether it is having an adverse impact on any particular group(s). These are legitimate areas of inquiry for their police authority.

Other examples might be around the use of Tasers: how they are perceived by communities and whether it is better to carry them overtly or covertly; how readily they are deployed and what the overall effect has been on officers, victims, suspects and the communities at large.

Police authorities also maintain an independent custody visitor scheme which means that trained members of the communities can go into cell areas unannounced to ensure the welfare of detainees being held there.

It is interesting how the context of these duties is changing. The last time I spoke here I gave a talk on the European Convention and powers of arrest. When looking at Article 3 – which provides an absolute right to freedom from torture and inhumane/degrading treatment – we struggled to think of realistic examples where this might be engaged; the best I could do was find an example of alleged swearing and heavy-handedness by officers in Austria. Now I am back and we have clear evidence of the UK being used for "rendition" flights and so-called "rule of law" states admitting torture and General the Lord Guthrie feeling moved to write an excoriating piece for a national broadsheet condemning the practice. So much has changed so quickly on an international scale; on a local scale police authorities are there partly to guard against such things ever taking hold under any administration. Alongside a professionally-led and politically

independent police service, police authorities are the community conscience, they are the answer to the *quis custodiet ipsos custodes* question; they watch the watchdogs. They are also advocates, not for the police but for the policed. They call for and scrutinise performance data and ensure that there is a convincing, evidence-based explanation behind policing practices, policies and expenditure from the top of the organisation. They set policing plans and strategies, ensuring continuity and consistency that extends beyond the relatively brief periods of office of chief officers. They conduct research about local priorities and monitor use of resources, requiring value for money. In brief, they provide the governance while the force provides the delivery.

But I would be surprised if many police officers, let alone the public, could tell you what their police authority does never mind who they were – and perhaps that is part of the bigger question and the reason for some of the others.

Which brings the next question: Who are they? Before we do away with these police authorities we should at least understand who they are.

There was an editorial in the *Yorkshire Post* last year demanding a system of governance which has a direct link between policing and the local electorate – I happily wrote to the editor saying that I had good news. We have already got one.

Leaving the specific London arrangements to one side, police authorities generally have nine members elected to their local council and eight independent members, one of whom must be a magistrate. This model ensures that the political balance is retained so that no single party can dominate. Members are all drawn from local communities and the authority retains a connection with local courts service.

But this is plainly not enough – or it is just not plain enough as the clamour for direct elections onto police authorities shows. Our parliamentary politicians want more. You will have probably heard the fuss about direct elections – it was in the Green Paper but was subsequently dropped from the Policing and Crime Bill. For now. It seems clear this it is more a matter of chronology than ideology and it has not gone away.

This level of persistence and insistence is interesting in itself. The Home Affairs Select Committee recently heard evidence from the Association of Police Authorities (APA) that neither it nor the Local Government Association had ever encountered an issue which has failed to attract a single whisper of support from any quarter. To that extent at least the proposals for direct elections have managed to unite everyone across the policing spectrum – but there is still cross-party support for the concept of direct elections. Why? Because there remains a perception that something is missing.

Accepting Churchill's observation that democracy is the worst form of government except all the others, can we assume that democratic accountability is the same thing as real accountability or would direct elections to policing governance bodies simply replace the so-called "democratic deficit" with the illusion of democracy? Before dismissing the notion of perception as mere academic froth, it is worth stopping at this point and reflecting. Does perception matter in police governance? Yes. Why? In a word – confidence.

Confidence

I would propose that the overarching concern of public services should be public confidence – we did not need a Green Paper to make its importance plain: it is axiomatic. Arguably confidence in our

public services is as much a part of our critical national infrastructure as our buildings, businesses and other bulwarks of a safe and secure society. So the supra-ordinate goal must, I believe, be for our communities to have confidence in those carrying out complex and critical activities in their name: if we can not achieve this then the chances of our succeeding in our individual business plans are fundamentally undermined from the outset.

But it is a slippery concept this confidence business. Look at another industry sector: the airlines. How often are people when they fly anywhere asked by their loved ones to call or text and say that they have arrived safely? Irrespective of the frequency, time of day or whether their children are with them or not? When the same people drive along our country back roads from one place to another, it would seem crazy to ring up every time they arrived at their destination. The statistics, however – reliable and unadulterated statistics – show that air travel is irrefutably safer than travelling on roads in general and 'B' roads in particular, by a factor of many. But they do not matter. People's perception of air travel means they have lower confidence in flying than driving. That is the reality. It is probably the same with policing. I am not a criminologist but I know that the perception of crime and criminality is heavily influenced by the media, and while the extent of that influence is not certain, it is certainly not helpful.

There is a well-known quote from the Kevin Costner film – *Field of Dreams* – that goes "build it and they will come". In policing that is simply not true. You can build what you want but no one from the press will come.

Burgle it and they will be there in droves; burn it down and there will be no holding them back, but building it will not be enough. As the Policing Minister Vernon Coaker MP discovered when he was newly appointed to the post and went to open a youth club, in policing good news is no news.

And so back to perception. Forget the police for a moment and look at fire engines. The biggest single cause of fire in the UK is arson. Does the sight of fire engines racing up and down roads increase our fear of crime? Probably not: it is seen as somehow reassuring, but it should not be as on the statistics they are probably going to the scene of a crime. In fact, fire engines might be a better indicator of some criminal activity than police cars. Public perception and confidence is, therefore, tricky. But do not just take my word for it – look at the other evidence. The most reliable figures available prove unequivocally that overall crime has been dropping consistently for many years, especially really worrying crimes such as burglary. And the public does not believe it. And this was before any economic recession during times we will come to speak of as "the good old days".

Let us turn to an extract from an independent report published by an independent think tank last year: "Britain in the 21st century is a society where people feel increasingly incapable and not confident to maintain the rule of law abdicating responsibility to a remote and technocratic criminal justice system. In a heavily regulated and protected society, information about the true nature of crime and the criminal justice process is limited by authorities which seek to increase the feeling of protection and reduce fear either for electoral advantage or to avoid scrutiny. The result is a public whose knowledge does not reflect the reality of crime or the criminal justice system." (from *The Lawful Society – Reform 2008*)

If this is the baseline for public confidence there are challenging times ahead. The Home Office agrees that the police have too many

performance targets and statistics and will replace all policing targets with just one: public confidence. This is going to be tougher than it sounds. Why? Because it is one target with two immediate problems. The first problem is what will be used as the measure? The British Crime Survey (BCS) – the same reliable source that the public does not believe on crime trends. The second problem is that the single confidence question in the BCS will ask the extent to which people agree that their local police and local authority are tackling crime and anti-social behaviour.

Clearly the police cannot control the activities and resources of local authorities. Further, some local authorities do not measure their own impact on crime and anti-social behaviour – therefore policing performance will be judged against a subjective perception of the activities of organisations whose performance is not only beyond the control of the police but is not even measured by those organisations themselves. Of course, some of the rationale here must be to encourage close partnership working, but the results will require a degree of sophistication on the part of our judgemental audience that may not necessarily be present.

On the point of sophistry, some philosophers tell us that perception is reality. Well this particular perception – public confidence in the police and local council – will be the reality for us, and it will be a stark one.

If we do away with police authorities, whoever or whatever replaces them will still have to deal with this; they will also have to deal with some other things and we should look at those next.

In practical terms they will have to deal with some of the more real realities in policing. Here are a few.

The UK, according to the *Reform* report, spends the largest amount on law and order as a proportion of total government spending than any other country in the Organisation for Economic Cooperation and Development (OECD); it also spends the largest amount on law and order as a percentage of gross domestic product (GDP) than any other country in the OECD.

The UK's public order and safety share of public spending is, we are told, more than double that of Sweden, France and Denmark and around 50 per cent greater than that of Canada, Germany and Japan.

In real terms, spending on criminal justice per capita in the UK has increased by almost 50 per cent in the last decade, a far greater increase than most other countries, most notably Canada, Germany and Japan which have managed to control spending increases to less than eight per cent.

So what? I am a lawyer not an economist but to me this means two things:

1. We are part of the most expensive criminal justice system in the world.
2. We are not going to get more money for policing.

The *Reform* authors show how, overall, the police workforce in the UK has increased by about 23 per cent in the last decade.

Central police funding has risen by over £4.5 billion in real terms in the last ten years – a 43 per cent real increase. In light of this, the outgoing HM Chief Inspector of Constabulary Sir Ronnie Flanagan warned that "maintaining police numbers at their current level is not sustainable".

Again, I am not a sociologist but to me this means we are unlikely to get more officers or even keep the ones we have.

And so, using the old strategic management metaphor of a journey – that is, the "where we're going" bit and some of the road conditions ahead. What else is on the sat-nav?

A key theme running throughout public services generally is accountability and a significant strand in the Green Paper is the accountability of police authorities – or rather the lack of it. There is also the 12th Inquiry of the Committee on Standards in Public Life which is receiving evidence on accountability and leadership in local government, including police authorities.

Finally, there is the long-awaited programme of inspection of police authorities, the absence of which has been difficult to explain let alone defend. After three pilot inspections (in Derbyshire, Kent and West Yorkshire) all police authorities will be inspected by joint teams from Her Majesty's Inspectorate of Constabulary (HMIC) and the Audit Commission over the coming 18 months.

There is, therefore, consensus at strategic level on the need for greater accountability in police authorities – and accountability surely means a degree visibility and understanding.

I am not a theologian but it is surely expecting too much for people to place their trust in something they can neither see nor understand – even our religious institutions struggle with that.

But does all this drive us to the conclusion that we must get rid of police authorities, with their locally-elected councillors and community representatives?

I know intimately the arguments in favour of this proposition; I also know that there must be a lot of babies shivering in their bathwater at the prospect of being thrown out with it.

If we were to throw them out, what would we replace police

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authorities with? The oft-repeated adage that we must keep politics out of policing is as true now as it ever was but what about its corollary? Can we keep policing out of politics? I fear not.

The Conservative Party's solution to the so-called democratic deficit in policing governance also takes the form of direct election, not of police authority members but of police commissioners. There are many precedents for this beyond the UK and the US provide some salutary examples. It might be worth taking a brief look across the water for a moment.

There is an email doing the rounds of a sheriff in a hot and dusty township. He has been elected for some record term in succession and this is heralded as a policing triumph. The email is accompanied by statistics showing the sheriff's achievements in office, in particular how little he spends on prisoners' meals which he has whittled down to a handful of cents per day. What it does not show is how the sheriff's budget attracts an allowance for prisoners' subsistence and often allows the sheriff to keep the change. In some cases the change has been reported as amounting to \$100,000. The electoral email also shows pictures of chaingangs doing hard labour in orange jumpsuits. Of course, the limits of his jurisdiction means that many of our sheriff's posse will have found themselves in his care for fine defaulting,

minor acts of drunkenness and summary jobbery – a rather pathetic group to have breaking rocks in the midday sun but it is a vote winner; along, no doubt, with taking down speed cameras and turning a Nelsonian eye to other white collar irregularities. There does not seem to be much room in our sheriff's calendar for independent custody visitors, or proportionality or impartiality or objectivity.

Down in the cities below it is worth noting how his more metropolitan colleagues might be faring. As one eminent commentator on policing pointed out to the BBC during the direct election debate, the average tenure of city police chiefs in the US is around two years.

Back home, our other political parties have their own versions and views on how to address the democratic deficit, some of it involving proportional representation with all its attendant challenges.

Although their proposed solutions may differ, all parties see the same need for reform. Can they all be wrong? It is true that the "Boris experience" in London last year has scared some of the horses but remember two things:

1. The departure of Sir Ian Blair took place under the present legislative regime.
2. The ability to remove a chief officer in this way is not universally seen as a bad thing.

And so we come to another key question: what is wrong with direct elections in policing? Apart from those illustrated above, there are many other risks in the proposals being debated, with the following being worthy of further deliberation:

■ The biggest single issue affecting public confidence in criminal justice system (according to Louise Casey) is sentencing and case disposal. It would therefore be very easy to get elected on a "tough on prisoners" ticket, be appointed to a police authority or commissioner's post and find at your very first meeting that you are in the wrong room: as a police authority member or police commissioner you could not influence sentencing or case disposal at all. How will that play out on public confidence and re-election?

■ Then there is the "single issue" route to election generally. Your campaign to get elected could be based on one local concern/perception only to find yourself on a board which takes decisions on behalf several million people.

■ There's the diversity impact – research shows that minority groups are more likely to be under-represented in direct elections such as those proposed (particularly under proportional representation) and, of course, diversity concerns might be one of the single issues that got you there in the first place, especially if your party's policies are predicated on promoting the interests of a specific national, ethnic or racial group.

■ There's the politicisation of policing. On the same day as the Home Affairs Select Committee met to consider the matter of direct elections to police authorities *The Times* ran a story on the investigation at the Haute la Garenne care home in Jersey. According to *The Times*, what had been reported by the police as "manacles" for shackling children were now confirmed as being pieces of guttering and the "bone fragment from a child's skull" is a piece of stone. The new investigating officer in the case was quoted as saying that intense political pressure had caused the early stages of the investigation to be portrayed in the dramatic way it was – and the relevant policing authority there is an elected body.

■ And finally we come to the biggest democratic enemy of all and the biggest enemy of all democracy: voter apathy. In sum, low turnouts

favour the colourfully motivated and their members may win the day on the most flimsy of electoral support.

On the point of elections, the UK is coming up to a General Election and there is little doubt that police governance is likely to be a manifesto issue. For students of constitutional law this brings a further legal nicety. While the House of Lords has the power to upset government legislation on its passage through the Houses, if that legislation is a manifesto issue, under the Salisbury-Addison convention, their Lordships cannot really help and once the legislative programme is underway there are fewer chances of intervention by the politically neutral.

In the meantime, the Policing and Crime Bill contains other governance and accountability provisions: one is collaborative arrangements. As currently drafted, the Bill will give the Home Secretary power to order collaborative arrangements to be made, modified or dismantled by police authorities and chief officers.

Which resurrects the "M" word. Across England and Wales the experience of police force mergers was one of mixed emotions but, like the villain in the Harry Potter books whose name must not be mentioned, most suspected mergers would be back in another guise.

Sir Ronnie suggested that, instead of a continued centralised approach focusing on more resources and staff, policing should be opened up to create the space for "entrepreneurial and innovative solutions from the leaders of the police service at all levels".

And, in my view, that must include police authorities; constitutionally they are leaders of the police service and should provide that leadership, conspicuously and consistently.

There are already signs of this leadership and innovation such as the collaboration activity in Wales, the East Midlands and Yorkshire and the Humber. But there is room for far more. We can move away from centralisation towards local governance and accountability; inculcate greater and meaningful citizen involvement, through the Policing Pledge, partnership and participatory budgeting.

But we have to increase leadership beyond authority, increase the profile of police authorities – you cannot be accountable if you cannot be seen – and increase our capability and capacity: professionalising the police does not just mean at the delivery levels. In terms of the Policing Pledge police authorities have a key role: listening to what people say, ensuring that is incorporated into the local pledges and then holding the police forces to account for delivering against the promises they have made.

Does that require direct election of police authority members, police chiefs or anyone else? I do not know and in a politically restricted position it is not for me to say.

My personal worry is that the direct election debate becomes the conjuror's left hand, which everyone watches in awe while the real devilry takes place below the curtain.

And so to the final question, the exam question: "Against this background, how are we going to set the strategic direction for policing in the next ten years, in a way that ensures public confidence, political impartiality and personal accountability?"

Having had more than my fair share of exam questions I will leave that one with you.

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