

Making Justice work in Wales

Consultation responses

June 2020



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***Ar gael yn Gymraeg a Saesneg | Available in English and Welsh**

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MJW 02	Cymdeithas y Cyfreithwyr	The Law Society
MJW 03	Swyddfa Comisynydd yr Heddlu a Throseddau Gwent	Office of the Police and Crime Commissioner for Gwent
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Senedd Cymru
Y Pwyllgor Deddfwriaeth, Cyfiawnder
a'r Cyfansoddiad
Gwneud i Gyfiawnder weithio yng
Nghymru
MJW 01
Ymateb gan: Sefydliad Cymorth
Honiadau Ffug y DU (FASO)

Welsh Parliament
Legislation, Justice and Constitution
Committee
Making Justice work in Wales
Response from: False Allegation
Support Organisation UK (FASO UK)

Although this input is on behalf of our organisation the False Allegation Support Organisation UK (FASO UK) www.false-allegations.org.uk. This also affects others who maintain innocence.

Our organisation cover both the criminal element of false sex accusations and those falsely accused of child protection issues. The latter also needs to be addressed by having both Family and Criminal court work together when cases present themselves, and as part of making justice work in Wales.

Many allegations reported are not truthful; the Criminal Injuries Compensation is one of many reasons for the influx of allegations where money is received easily. The rhetoric that too many 'accusers' are losing out in the investigations, or in court by people not prosecuted, they say there is an aberration in the numbers accused, to the numbers prosecuted.

No argument appears that; Individuals are not guilty of the crime purported, that more robust investigative procedures have been put in place since the Henrique report, and account for the drop of prosecutions. There is no solid empirical data collected to-date, to confirm or deny reasons for that drop – just rhetoric and supposition.

My comments and suggestions on how the different elements of the system on the Making Justice work in Wales follows;

1. Wales Justice Board – Within the consultation this appears to be only a talking shop combined of many elements of the criminal justice system. For a fair and equitable system to be introduced – the board need to be transparent, question inconsistencies of practice within each of the board organisations – in order to create checks and balances that scrutinise, change and keep healthy the Welsh justice system.

2. Police – Using the term victim pre supposes this person is not guilty when only the court can decide that. It brings greater stigma to the accused especially in sex cases and exacerbates the media to make up lurid suppositions.

a. Amending the pre-bail/ under investigations to a determined date for ceasing investigations. This will then create and not exacerbate mental health issues as at present.

- b. Stop advising accusers of date/time of accused's interviews – homes are ransacked and often all goods and chattels removed, sold or locks changed. Appropriate applied consequences to police personal, if this happens.
- c. Statistics are needed as to the reasons why cases have been opened, progressed and reasons for dropping the case.
- d. All arrested or asked in for voluntary interviews to have, pre interview, a mental health 'triage' by qualified practitioner – paid for by Health service.
- e. Given the prison service are using the lie detector test for those coming out of prison – this should happen at the question time for both accuser and accused. Equality of arms.

3. CPS

- a. A decision within a set time frame as to whether a charge is made or a case dropped.
- b. Consequences for not handing over material that aids the defence in a timely fashion.
- c. Sharing information with Family courts in a cost effective and timely manner to aid the family courts to have shorter trials.
- d. Prosecuting and completing cases with integrity, not as such in the Lynette white debacle.

4. Prisons

- a. Both Black/white and private prison governors to be under the same codes of practice given by the Senydd.
- b. NHS facilities to be in charge of and monitor the 24 hr health care of prisons and to administer local drugs and those prescribed from specialists at the given times.
- c. Robust access for prisoners to outside specialists for all that is required on a human body.
- d. Specialist end of life care, along with alzheimer's, dementia management, in appropriate surroundings.
- e. Prisoner records, in particular OASIS – kept up to date and being signed annually by prisoner.
- f. Discrimination of individuals to stop for all those maintaining innocence and actively inputting for or wanting appeals.

5. Rehabilitation of prisoners

- a. A fair and equitable system where all prisoners have regular access to probation both internal and external to be supported through the gates.

- b. Ensuring prisoners' rights to parole boards are easily accessed with updated personal records.
- c. All prisoners to receive rehabilitation information within their last 6 months and appraised of difficulties they may face in the community.
- d. No prisoner to be released without appraisal of lists of relevant contacts where they are being sent, especially those sent to hostels.

6. Legal Aid

- a. Legal aid needs to be made available to lawyers in order for a robust defence of individuals, along with access to specialist's reports such as mental health practitioners.

7. Victim Support – there are no victims until the court decides on guilt or not.

- a. Court findings to be the arbitrator of who is entitled to compensation. No payment until after trial.
- b. All those having their case dropped and found not guilty in court should also have a right to access this fund, as they are now victims.
- c. The police to pass on those in the above category to the CICA for compensation.

8. Public Health

- a. To be intrinsically involved with police and prisons for the welfare of all those going through the criminal proceedings.
- b. Have robust plans for each offender released from prison into the community through local authorities.

9. Voluntary Sector

- a. Take on support, with all other areas for those maintaining innocence especially the sex offenders whose problems are not being addressed.

10. The family court system

- a. Both family and criminal court are often party to the same allegations, especially when children are involved. They have to share information and each court holds the other up. To save costs they should work together on joint cases. This helps alleviate the psychological impact on all involved.

The FASO also drew the following report to the Committee's attention:

[Report on an unannounced inspection of HMP Parc](#) by HM Chief Inspector of Prisons.

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Gwneud i Gyfiawnder weithio yng
Nghymru
MJW 02
Ymateb gan: Cymdeithas y Cyfreithwyr

Welsh Parliament
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Committee
Making Justice work in Wales
Response from: The Law Society

Introduction

The Law Society of England and Wales (the Law Society) welcomes this opportunity to respond to the Legislation, Justice and Constitution Committee's inquiry into making justice work in Wales.

As the representative body for more than 200,000 solicitors in Wales and England, the Law Society negotiates on behalf of the profession and lobbies regulators, governments and others. The Society also plays an active role in law reform, the effective operation of legal institutions and access to justice.

In Wales, the Law Society monitors, influences and responds to the devolution of law-making and the developing legal community in Wales. The Law Society's Wales Committee is an advisory committee which comprises specialist lawyers (not all of whom are solicitors) drawn from across Wales who volunteer their time.

This submission will briefly reflect on the Law Society's response to the report of the Commission on Justice in Wales (the Thomas Commission), before moving on to consider six broader themes that we believe the Committee should consider as part of its inquiry.

Commission on Justice in Wales

The Law Society welcomes the Thomas Commission's long-term vision for the future of justice in Wales. As the body of Welsh law grows, it is important that due consideration is given to the distinct needs of the Welsh public and the legal profession as they seek to ensure their businesses remain vibrant and sustainable going forward.

The overarching recommendation of the Thomas Commission is that justice be fully devolved to Wales. The Law Society has no objection in principle to this proposal. However, engagement with Wales-based members has unveiled a full spectrum of views on the matters considered by the Thomas Commission and specific concerns about the financial implications of greater devolution for the future accessibility and administration of justice in Wales.

The Law Society therefore believes that any further devolution of justice functions to Wales must be accompanied by an adequate commitment to funding from UK Treasury (i.e. a full Barnett consequential of spending in England) and meaningful intergovernmental collaboration with the legal sector to ensure its success. The ability of solicitors in Wales and England to practise across the border must be

maintained without restriction, and the current single regulatory framework for solicitors across Wales and England should be preserved. The Law Society is also concerned with promoting the single jurisdiction on the world stage and the reputation of Wales and England as a global legal centre, whilst recognising the unique circumstances of Welsh law.

In that regard, the Law Society welcomes the Counsel General's recognition of the need for Welsh Government to be proactive in developing a jurisdictional solution to accommodate Welsh law and the distinct needs of Wales without creating barriers for the operation of justice or the ability of practitioners to work across Wales and England.

The Law Society therefore calls for a holistic, coordinated and non-partisan approach to system planning and delivery; one hitherto impeded by the jagged edge of Wales' devolution settlement and political impasse.

Legal Aid

Significant reductions in legal aid funding since 2012, coupled with Wales's challenging geography and patterns of communication, have precipitated a crisis in terms of advice deserts, rendering people across large parts of the country unable to access high quality legal advice and representation.

Analysis of data from the Legal Aid Agency directory of providers (September 2019) and the Office of National Statistics (2017) reveals that there are only five providers of community care legal aid covering the whole of Wales (Cardiff, Vale of Glamorgan, Rhondda Cynon Taff, Swansea and Gwynedd). In other words, 77% of Welsh local authorities do not have a single community care legal aid provider.

The provision of housing legal aid fares little better; 49% of the Welsh population live in a local authority which has just 1 such provider. This has and will continue to have a negative impact on the lives of the Welsh public during what is likely to be one of the most difficult times in their life.

Pro bono services, such as those offered by Cardiff Lawyers Care in conjunction with The Wallich, are increasingly regarded as new oases of advice, providing free legal support to those who would otherwise be unable to afford it. While *pro bono* work undoubtedly makes an important contribution to society, it should not be regarded a substitute for a properly funded legal aid system. Practitioners who volunteer their time should also not be taken for granted. This is particularly pertinent to the Covid-19 recovery, as the immediate focus of practitioners who have previously had capacity and commitment to *pro bono* work will likely be on rebuilding the financial and commercial health of their practices.

Legal aid services are often provided by smaller law firms which need to be economically viable to survive. Such firms, however, face particular challenges which inhibit their ability to undertake legal aid work, including bureaucratic hurdles, cuts in fees and loss of expertise. Wales boasts a rich network of smaller firms - as the Jomati Review identified, a total of 43% of all Welsh firms employ 10 solicitors or less, while just 18% employ 50 or more. The Review also found that the

percentage of older lawyers is noticeably higher in Wales than in England. Under the current regime, therefore, Wales is at a particular disadvantage when it comes to accessing public funds for solicitors.

The Law Society would welcome the introduction of a more robust and streamlined system for administering legal aid in Wales, as recommended by the Thomas Commission: “The funding for legal aid and for the third sector providing advice and assistance should be brought together in Wales to form a single fund under the strategic direction of an independent body.” Such a system has the potential to level up advice provision across the country and, subject to the fair allocation of funds, provide a much-needed economic stimulus to indigenous Welsh firms.

The Welsh Government’s Single Advice Fund has to date favoured large advice providers, such as Citizens Advice, who provide advice services nationally or on a regional basis. The Law Society would welcome a change in the criteria which recognises the importance of solicitors’ firms, particularly in rural localities, where there are often no other advice agencies. Enabling such firms to apply more easily to the Fund would enhance access to justice and help safeguard their economic resilience. Solicitors also often relieve pressure on individuals through helping with debt, employment and other social welfare problems, which in turn contributes to better health outcomes. In line with the preventative agenda of Future Generations legislation, the Law Society also believes that a mechanism should be established whereby solicitors working in health-justice partnerships can access funding from the health budget.

Criminal Justice System

The Law Society has previously expressed concern about the unsatisfactory current state of the criminal justice system. Following a prolonged period of underinvestment, it faces a number of challenges, including an ever-growing shortage of criminal duty solicitors, an increasing number of court closures, and inadequate prison provision.

Criminal defence solicitors have received no fee increase since 1998, leading many to eschew a career in this vital field and the sector to become an increasingly ageing one. In 2018, the percentage of criminal duty solicitors over the age of 50 stood at 48% in north Wales, 49% in south Wales, 62% in west Wales and 64% in mid-Wales. The comparable percentages for those under the age of 35 were 13%, 13%, 5% and 9% respectively. With insufficient numbers of young lawyers entering and remaining in the field, within five years’ time there could be areas in Wales where people who have been arrested will not be able to access a duty solicitor.

Court closures have taken place at an unprecedented pace and scale over the past decade, leaving defendants, witnesses and practitioners having to travel further and longer to access court services. As at March 2019, Wales was home to 27 active HM Courts and Tribunals Service sites, down from 43 in 2015, while the number of magistrates’ courts fell from 36 in 2010 to 14 in 2018.

The Covid-19 pandemic has also brought to the fore the unhygienic conditions in which practitioners work in courts to assist the smooth-running of justice, such as a lack of suitably large interview rooms in which to advise clients. While the potential opportunities that technology offer for virtual and remote hearings are great, they have yet to be fully tested and proven. Until such time as they are, there will remain the need for cases to be heard in public at convenient and safe locations. Of course, certain areas of work, such as jury trials and family law matters, will always require face to face hearings. The rollout of technology is therefore but a partial antidote to historic underinvestment in the court estate.

The inadequacy of provision for prisoners in Wales is by now well-rehearsed. The absence of facilities that can accommodate female or Category A offenders means that a significant proportion of Welsh prisoners serve their sentences in England; as many as 37% at the end of December 2018. Pre-release contact between a prisoner and their family is of critical importance for their eventual reintegration into society, but the long distances Welsh families often have to travel endangers this process and, in turn, recidivism outcomes. The Law Society welcomes the planned opening of the UK's first residential centre for women in Wales in 2021, but progress towards establishing parity of provision with male prisoners remains too slow. Meanwhile, overcrowding persists, as does the reality of offenders serving ineffectual and repeat short sentences, at great expense to the public purse. Bold steps are required to realise a whole-system approach which meets the unique socio-political circumstances of Wales. The recently published blueprints for the delivery of female offending and youth justice services make an initial move in this direction.

Whilst the Law Society agrees with the Thomas Commission's analysis of the deficiencies in the criminal justice system in Wales as it stands, devolution does not, in itself, offer a solution to these challenges. Even if the necessary enabling legislation was passed at Westminster, without full and appropriate funding for the operation of a devolved system being allocated by UK Treasury, it is unlikely that the Welsh Government would feel able to assume the new responsibilities. It is also important to consider the implications for effective scrutiny of any new justice functions by an already overstretched and under-resourced Senedd.

The Law Society anticipates that the forthcoming Royal Commission into the Criminal Justice System, announced as part of the Queen's Speech in December 2019, will offer an opportunity to further advance some of the Thomas Commission's proposals and engage in meaningful dialogue about the future direction of criminal justice policy in Wales. We would encourage the Committee to interest itself in the work and membership of the Royal Commission to ensure a strong Welsh voice.

Legal Profession

The Thomas Commission recommended that: “The present system where legal practitioners can practise in England and Wales and the legal professions are jointly regulated should be continued.” This integrated and pragmatic approach is particularly welcomed and echoes the Law Society’s call for the shared regulatory system to be maintained and developed. Removing the existing cross-border interoperability of legal professions would make little economic or business sense given that the practice of law will continue in a similar way irrespective of further devolution or, indeed, changes to the single jurisdiction.

The economic contribution of the legal services sector to the Welsh economy is well-captured in a 2019 report by the Wales Governance Centre. Their analysis identified that growth in legal activities GVA has been relatively rapid since 2013 and that estimated GVA in legal activities was £473 million in 2017, equivalent to £151 per person, up from £432 million in 2016. The Law Society is concerned with protecting and promoting this growth and the ability of solicitors in Wales to build on their current level of legal services activity.

If new bodies equivalent to the Law Society, Solicitors Regulation Authority (SRA) and the Solicitors’ Compensation Fund needed to be created for Wales, then the profession could be faced with a significant increase in the costs of representation and regulation. Moreover, it is inevitable that many practitioners would still regard being qualified in England as advantageous in terms of prestige and their career development. Any duplication in regulatory structures could have repercussions for the recruitment and retention of professionals in Wales, thereby exacerbating the “brain drain” which already affects the Welsh legal sector so keenly.

Whilst supporting a unified legal education and training approach across Wales and England, the Law Society believes there is space within the unified regulatory structure for tailored provisions to be made which take account of devolved arrangements. In that vein, the Law Society looks forward to working closely with the new Law Council of Wales which will seek to promote the interests of legal education and the awareness of Welsh law. The Law Society also welcomes the SRA’s proposed addition of a Welsh language test requirement for the Solicitor’s Qualifying Examination (SQE) so that qualified lawyers seeking admission have the option to demonstrate their language competence in either Welsh or English. This is a positive change which highlights the importance of the Welsh language within the single jurisdiction. However, it does not go far enough, and the Law Society would like to see a commitment from the SRA that this same courtesy be extended to domestic lawyers seeking qualification in the SQE from implementation date (Autumn 2021) (see *Welsh Language and the SQE* section below).

Investment in Technology

Legal practitioners, and the people they serve, need an infrastructure that can support a “digital first” approach to justice in Wales. Internet connectivity remains intermittent or non-existent in too many parts of Wales, and this is limiting the ability of practices, particularly those in rural areas, to take advantage of new technologies that could enhance their operations and services. The Law Society welcomes Superfast Cymru’s reconfigured offer to law firms in Wales and their commitment to work in partnership on running solicitor-specific seminars, but believes Wales is still losing out to other parts of the UK. Legal services are a critical service for the public good and more investment in digital infrastructure is required of Welsh Government to address gaps in provision.

The ongoing Covid-19 pandemic has brought into sharp relief the need for significant investment in the IT infrastructure of law firms. Many continue to operate using on-premises servers and are yet to transition to cloud-based solutions. This has clear implications for the ability of staff to work from home, thereby impacting on business profitability, and has the potential to give rise to data management and compliance issues. In October 2019, Swansea University and the Welsh Government announced a £5.6 million investment in the Legal Innovation Lab Wales operation which is intended to help law firms innovate at the intersection of law and technology. The Law Society believes this investment should be prioritised towards rolling out cloud-based solutions, such as Microsoft 365, across all firms in Wales so as to establish a digital baseline.

Business Support

The Law Society fully endorses the aim of transforming south Wales into a legal centre, as recommended by the Thomas Commission, and looks forward to working with partners to explore how this can be achieved. However, it is vitally important that the benefits of this venture and complementary businesses support infrastructure are felt right across the country so that firms in lesser urban parts of Wales are not left behind. Aside from being legal advisors, many solicitors also double up as business managers. It is critical, therefore, that solicitors are able to navigate the latest advice and support packages available so as to enable them to make the right choices for their firms. The ongoing Covid-19 pandemic has highlighted this need more than ever, with firms facing unprecedented cash flow pressures and reduced fee income, putting many at risk of collapse. The Law Society is currently working with Business Wales to equip firms with the skills they need to take advantage of new technologies and practices and looks forward to collaborating further to enhance the offer that is available.

The Law Society would also particularly encourage the Committee to consider the future design and accommodation requirements for civil justice in Wales. For various structural and cultural reasons, civil justice has historically served as the poor relation of its criminal and family counterparts in terms of resources, organisation and policy, the legacy of which remains clear today. The non-devolved tribunals, for example, are poorly accommodated. The location of the Cardiff Civil Justice Centre to the rear of the old General Post Office can only be

described as obscure, while the fact that Employment Tribunals in Cardiff are held in the Magistrates Court is unsatisfactory. The Welsh tribunal system similarly lacks its own infrastructure of hearing and administrative facilities yet, as the Senedd goes on making distinct provision for Wales, the scope of the Welsh Tribunals' jurisdiction can only increase.

The importance of image for promoting south Wales as a centre of excellence for legal services cannot be overstated. The development of a new, purpose-built legal hub, co-locating civil courts, tribunal hearing rooms, accommodation for practitioners and research and training facilities, has the potential to place Cardiff in the top rank for hearing and professional facilities. Whilst recognising the significant cost implications of such a proposal, failure to invest will ultimately result in Cardiff losing out to other regional centres.

Welsh Language and the SQE

The way that solicitors qualify is set to change with the introduction of the SQE in the autumn of 2021. The SRA's current position is that SQE assessments will not be offered through the medium of Welsh from implementation date. Rather, the SRA is planning for an "incremental approach" to offering the SQE in Welsh and aims to assess demand for such provision over coming years. The reasons for this are cited as being the cost implications of translating the assessment questions and difficulty in ensuring equivalence between the English and Welsh versions. The Law Society regrets this decision and maintains the steadfast view that domestic lawyers seeking qualification should be able to do so using Welsh as their first language.

It is currently unclear whether the SRA is legally obliged to provide the SQE in Welsh, and there appear to be no current plans within Welsh Government to mandate otherwise through the Welsh Language (Wales) Measure 2011. However, the strong view of Welsh Government remains that the SRA should aspire, as a minimum, to providing the ability to answer questions in Welsh when the SQE goes live. With fewer than 18 months to go until then, clarity is urgently needed from the SRA on whether the first cohort of candidates will be able to undertake any part of their assessment in Welsh. If, as looks likely, the SRA cannot commit to this, then a transparent process should be established whereby the SRA works with partners, including Welsh Government and the Law Society, to map out a pathway for achieving linguistic parity within a sensible and mutually agreed timeframe. The Legal Services Board has identified the provision of assessment in Welsh as an area against which the SRA's next application will be assessed and we remain hopeful that we will reach a mutually acceptable solution soon.

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Nghymru
MJW 03

Ymateb gan: Swyddfa Comisynydd yr
Heddlu a Throseddu Gwent

Welsh Parliament
Legislation, Justice and Constitution
Committee
Making Justice work in Wales

Response from: Office of the Police and
Crime Commissioner for Gwent

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1. As Police and Crime Commissioner, I welcome this opportunity to provide my views to the Legislation, Justice and Constitution Committee for the inquiry on Making Justice Work in Wales.
 2. I believe that the terms of reference for parts 1 and 2 of the inquiry are wholly appropriate and the most relevant first steps following the Commission on Justice in Wales. The Commission's finding "that the people of Wales are being let down by the system in its current state" was worrying but not unexpected. It is important that changes are made and that the people of Wales are well-served by the justice system and relevant policy and practice.
 3. This inquiry will enable the Senedd to form an understanding in order to fulfil the recommendation regarding the scrutiny of the operations of the justice system in Wales. Step 1 of the inquiry is logically followed by the analysis phase.
 4. It is important that in undertaking step 2 of the inquiry the Committee develop tangible and clear actions that enable the 'integrated approach' that the Commission so pointedly described as being absent in Wales. As Police and Crime Commissioner for Gwent and a leader of a significant area of non-devolved justice, I am committed to an integrated approach to our work. My Office and Gwent Police employ a full partnership approach and work closely with our colleagues in devolved services in a collective delivery of public services. As recognised by the Commission, Welsh Government can be seen to fund matters specifically relating to justice services including the Whole System Approach for Women and the funding of Police Community Support Officers as well as wider services such as housing and healthcare for the whole population of Wales including offenders. I am hugely grateful for this. I believe that in my approach as Police and Crime Commissioner I promote an integrated approach to policy and delivery. I have also funded services that provide opportunities for early intervention and prevention that would not seem, on the face of it, to be justice related issues. However, they most certainly can be seen to address underlying issues relevant to criminal justice. This work is best delivered through a collaborative one service approach across devolved and non-devolved areas of government. However, while I am proud of this work, I take seriously the recommendations of the Commission and recognise that there is some substantial work yet to be done.

5. Finally, I would urge the Committee to consider the current situation of COVID-19 which has created significant issues and challenges for the criminal justice system. I expect that this will demonstrate opportunities for development, and it may also further demonstrate the differences in the delivery of justice in Wales.

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a'r Cyfansoddiad
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Ymateb gan: Y Bwrdd Parôl

Welsh Parliament
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Response from: The Parole Board

Drwy ddarparu'r cyflwyniad hwn, dymuna'r Bwrdd dynnu sylw at yr adroddiad "Cyfiawnder yng Nghymru i Bobl Cymru" a gyhoeddwyd gan y Comisiwn ar Gyfiawnder yng Nghymru fis Hydref y llynedd. Amlygwyd nifer o feysydd o bryder yn yr adroddiad hwnnw, sy'n adlewyrchu'r rhai a nodwyd hefyd gan y Bwrdd Parôl, ac yn fwyaf arwyddocaol:

- Darpariaeth tai (trefniadau tymor hwy)
- Mynediad at ofal iechyd a gofal cymdeithasol
- Gwasanaethau iechyd meddwl
- Menywod (a'r goblygiadau i fywyd teuluol)
- Cymorth i droseddwy'r ifanc
- Yr Iaith Gymraeg
- Materion daearyddol (yn arbennig mewn ardaloedd gwledig ac ôl-ddiwydiannol)

Yn ogystal, nododd y Bwrdd y canlynol fel pryderon:

- Mynediad at Leoliadau Cymeradwy a llety camu ymlaen
- Mynediad at gyngor cyfreithiol a chynrychiolaeth yn y Gymraeg
- Troseddwy'r o Gymru wedi'u carcharu yn Lloegr

Darperir y sylwadau canlynol, y mae'r Bwrdd Parôl yn gobeithio fydd yn cefnogi cam canfod ffeithiau'r ymgynghoriad ac, yn benodol, gweithrediad presennol swyddogaethau cyfiawnder yng Nghymru, gan gynnwys polisïau Llywodraeth Cymru mewn meysydd datganoledig a'u rhyngweithiad gyda gweinyddu cyfiawnder; ac effaith perthnasoedd rhwng cymhwysedd y DU a Chymru ar faterion cyfiawnder penodol a nodi meysydd o bryder.

Bwrdd Parôl Cymru a Lloegr

Mae'r Bwrdd Parôl yn gorff annibynnol sy'n cynnal asesiadau risg ar garcharorion er mwyn penderfynu a yw'n bosibl eu rhyddhau'n ddiogel i'r gymuned. Cafodd ei sefydlu ym 1968 o dan Ddeddf Cyfiawnder Troseddol 1967 a daeth yn gorff cyhoeddus anadrannol gweithredol annibynnol ar 1 Gorffennaf 1996 o dan Ddeddf Cyfiawnder Troseddol a Threfn Gyhoeddus 1994.

Mae'r achosion y mae'r Bwrdd yn ymdrin â hwy yn cynnwys pob dedfryd oes, dedfrydau o garchar penagored er mwyn diogelu'r cyhoedd (IPP), dedfrydau pendant sy'n gymwys am parôl a nifer o achosion adalw. Yn ogystal, gall y Bwrdd ddarparu cyngor ar symud rhai carcharorion o garchar caeëdig i garchar agored.

Mae'r Bwrdd yn ymdrin â thua 25,000 o achosion y flwyddyn, sy'n cael eu cyfeirio atynt gan yr Ysgrifennydd Gwladol dros Gyfiawnder. Mae penderfyniadau'r Bwrdd Parôl yn canolbwyntio'n unig ar a ellir rhyddhau carcharor yn ddiogel yn ôl i'r gymuned. Y brif flaenoriaeth wrth wneud penderfyniadau o'r fath yw diogelu'r cyhoedd.

Mae gweithgarwch y Bwrdd yn cwmpasu parôl ar draws Cymru a Lloegr. Mae deddfwriaeth, gan gynnwys Rheolau'r Bwrdd Parôl 2019, polisi ac arfer, yn ogystal â chanllawiau ar gyfer aelodau'r Bwrdd Parôl, yn cwmpasu'r ddwy wlad. Mae gan y Bwrdd aelodau wedi'u lleoli yn y ddwy wlad ac mae'n ofynnol iddynt eistedd ar fyrddau parôl yn y naill wlad neu'r llall (o fewn pellter teithio rhesymol).

Wrth gynnal busnes cyhoeddus a gweinyddu cyfiawnder yng Nghymru mae'r Bwrdd wedi mabwysiadu'r egwyddor y bydd yn trin yr iaith Gymraeg a'r iaith Saesneg yn gyfartal, i'r graddau y mae hynny'n briodol yn yr amgylchiadau ac y mae'n rhesymol ymarferol. Mae'r Bwrdd wedi cyhoeddi Cynllun Iaith Gymraeg sy'n nodi sut y bydd yn gweithredu'r egwyddor honno yn y gwasanaethau i'r cyhoedd yng Nghymru y mae'n gyfrifol amdanynt.

Un o'r prif amcanion yn y Cynllun yw i'r Bwrdd ddenu ac annog siaradwyr Cymraeg i wneud cais a dod yn aelodau o'r Bwrdd Parôl ac mae gwaith wedi'i wneud i edrych ar waith maes yng Nghymru ar gyfer ymgyrchoedd recriwtio yn y dyfodol.

Mae'r Cynllun ar gael i'w ddarllen yma:

<https://www.gov.uk/government/publications/parole-board-launches-its-welsh-language-scheme-2018-2020-bwrdd-parol-yn-lansio-ei-gynllun-iaith-gymraeg-2018-2020.cy>

Mae gwybodaeth fanwl am y Bwrdd Parôl ar gael ar eu tudalennau gwe:

<https://www.gov.uk/government/organisations/parole-board/about.cy>

Sefydliadau Carchar

Mae'r Bwrdd yn bryderus bod diffyg categorïau o garchardai yng Nghymru, gan gynnwys y rhai ar gyfer troseddwy'r ifanc, a all effeithio'n arwyddocaol ar adsefydlu tra byddant yn y carchar, ac mae hyn yn aml yn creu anawsterau i droseddwy'r gynnal cyswllt gyda'u teulu a chefnogaeth arall. Mae menywod a throseddwy'r ifanc yn derbyn gwasanaeth gwael iawn.

Gall datblygu cynlluniau rhyddhau ac ailsefydlu ar gyfer unrhyw droseddwr sy'n dychwelyd i Gymru o garchar yn Lloegr gyflwyno nifer o heriau.

Deallir bod 37%¹ o garcharorion o Gymru yn cael eu cadw mewn carchardai yn Lloegr. Wrth ddatblygu gwasanaethau sydd wedi'u hanelu at garcharorion o Gymru bydd angen ystyried yr ystâd gyfan ar draws Cymru a Lloegr ac nid dim ond y sefydliadau hynny sydd wedi'u lleoli'n ddaearyddol yng Nghymru.

Carcharorion Benywaidd

Ar hyn o bryd nid oes unrhyw garchardai i fenywod neu Leoliadau Cymeradwy ar gyfer menywod yng Nghymru. Mae hyn yn creu problemau arwyddocaol i droseddwr benywaidd gynnal cyswllt gyda'u teulu, tra byddant yn y carchar, ac ar gyfer ailsefydlu ar ôl cael eu rhyddhau, sy'n cael ei arwain gan y Bwrdd. Mae tystiolaeth gan droseddwr benywaidd o Gymru sydd wedi'u carcharu yn CEM Styal a CEM Eastwood Park wedi dangos bod cael eu gwahanu oddi wrth eu teuluoedd yn fater arwyddocaol, a bod y pellter hir rhwng lleoliad y teulu yn creu rhwystr at gynnal cyswllt ac ymweliadau cefnogi.

Croesawodd y Bwrdd y cyhoeddiad diweddar ar gyfer y Canolfan Breswyl gyntaf i Fenywod yng Nghymru, a fydd yn darparu llety i fenywod agored i niwed sydd ag anghenion cymhleth a fyddai'n cael eu dedfrydu i garchar fel arall.

Gwasanaethau Datganoledig

Wrth gynnal adolygiadau parôl er mwyn asesu'r risg y mae troseddwr yn ei chyflwyno i'r cyhoedd, bydd y Bwrdd yn edrych ar ystod o fesurau a chefnogaeth a roddir ar waith i reoli'r risg, yn ogystal â chyfrannu at adsefydliad troseddwr a'u dychweliad i'r gymuned.

Mae elfen ychwanegol gymhleth yn aml wrth weithio o fewn System Cyfiawnder Troseddol ganolog ac ymgysylltu â gwasanaethau datganoledig, gan gynnwys gofal iechyd, gofal cymdeithasol a thai, yn arbennig wrth adolygu achosion lle bydd y troseddwr mewn carchar yn Lloegr ond a fydd yn dychwelyd i gymuned yng Nghymru. Gall y gwaith traws-ffiniol hwn gyflwyno nifer o heriau wrth sicrhau gwasanaethau perthnasol.

Llety Rhyddhau Addas

Er mwyn rhyddhau, mae'n rhaid i'r Bwrdd fod yn fodlon bod mesurau priodol ar waith i reoli a monitro ymddygiad a risg ac i gynorthwyo'r troseddwr i drosglwyddo'n ddiogel i'r gymuned. I lawer bydd yn hollbwysig eu bod yn cael eu rhyddhau i Leoliad Cymeradwy. Mae'r rhai sydd ar gael yn cynnig gwasanaeth o

¹ *Sentencing and Imprisonment in Wales: a fact file – Canolfan Llywodraethiant Cymru Awst 2019*

safon uchel gyda mesurau rheoli cadarn, gweithgareddau priodol ac amgylchedd galluogi. Fodd bynnag, nid oes digon o Leoliadau Cymeradwy yng Nghymru, maent yn aml yn bell yn ddaearyddol o ardal ailsefydlu'r troseddwr ac mae'r pwysau ar leoliadau yn golygu bod rhestr aros hir yn aml. Mae hyn yn cael effaith uniongyrchol ar yr asesiad o risg a gall hyn arwain at oedi neu ganlyniad negyddol ac mae'n creu rhwystredigaeth i'r troseddwr, y staff prawf ac aelodau'r Bwrdd Parôl fel ei gilydd. Felly, nid yw er budd diogelu'r cyhoedd na budd tegwch i'r carcharor pan na ellir awdurdodi rhyddhau am nad oes Lleoliadau Cymeradwy ar gael iddynt.

Mae'r sefyllfa hon yn waeth i fenywod oherwydd nid oes unrhyw Leoliadau Cymeradwy i fenywod yng Nghymru. Os byddant yn cael eu rhyddhau i Leoliadau Cymeradwy yn Lloegr, ni all y menywod ddatblygu eu cynlluniau ailsefydlu'n rhwydd ac ail-adeiladu perthnasoedd gyda'u teuluoedd.

Mae'r sefyllfa uchod yn cael ei hailadrodd yn aml pan na fydd angen Lleoliadau Cymeradwy, cyhyd ag y gellir rhoi mesurau monitro a chefnogi priodol ar waith. Fodd bynnag, mae diffyg llety rhyddhau a chamu ymlaen yng Nghymru. Gall paneli'r Bwrdd Parôl a'r gwasanaeth prawf wynebu sefyllfaoedd lle byddai troseddwr yn cael ei ryddhau lle nad oes cartref sefydlog neu i gyfeiriad cwbl anfoddhaol (er enghraifft gyda defnyddwyr cyffuriau eraill neu gydag aelodau o'r teulu sy'n agored i niwed).

Mae'r ffaith bod llai o gyfleoedd i gael mynediad at lety, cyflogaeth a gweithgareddau strwythuredig addas yn cael effaith andwyol pellach ar gynlluniau ailsefydlu mewn ardaloedd gwledig, ôl-ddiwydiannol a difreintiedig. Mae'r agweddau hyn o'r cynlluniau rhyddhau yn hollbwysig er mwyn rheoli risg. Hebddynt, mae perygl o ddychwelyd i ddefnyddio sylweddau a throseddau gyda ffordd o fyw a chymdeithion cysylltiedig, sy'n golygu bod unigolion yn agored i iechyd meddwl yn dirywio a chael eu hadalw i'r ddalfa. Mae hyn yn cael effaith andwyol ar gymunedau ac yn creu mwy o ddiodefwrwr neu'n ail-greu diodefwrwr yn achos cam-drin rhywiol a domestig.

Troseddwr gyda Materion Iechyd Meddwl neu faterion iechyd eraill

Gall fod yn anodd iawn cael mynediad at ôl-ofal iechyd meddwl, ac mae hyn yn achosi oedi sylweddol cyn rhyddhau troseddwr. Mae teithio yn broblem fawr i droseddwr, y gallai fod angen iddynt deithio am oriau yn ôl ac ymlaen o apwyntiadau gyda gwasanaethau, h.y. mae'r gwasanaethau Iechyd Meddwl Fforensig wedi'u lleoli ar hyd arfordir y Gogledd a'r De. Nid yw'r Bwrdd yn credu bod mynediad digonol yn awr at yr adnoddau i gyflawni'r galw am wasanaethau iechyd meddwl i droseddwr. Oherwydd bod GIG Cymru yn cwmpasu'r wlad gyfan, mae posibilrwydd o fabwysiadu dull mwy cydgysylltiedig ar gyfer Cyfiawnder Troseddol ac Iechyd Meddwl.

Mae'r Bwrdd yn bryderus ynghylch cysondeb triniaethau pan fydd troseddwr yn cael eu trosglwyddo o garchardai yn Lloegr i garchardai yng Nghymru, gan gynnwys triniaethau cyffuriau, a pharhad yn y gymuned.

Darpariaeth Iaith Gymraeg

Mae'n rhaid i droseddwyr dderbyn gwasanaethau ac adnoddau yn y Gymraeg, os dyma yw eu hiaith gyntaf/dewis iaith. Fel y soniwyd eisoes, mae gan y Bwrdd Gynllun Iaith Gymraeg. Fodd bynnag, mae'n amlwg y bydd hyn ond yn llwyddo drwy fabwysiadu dull system gyfan ac mae'r Bwrdd yn awyddus i weld adnoddau priodol er mwyn galluogi staff carchardai a staff prawf i gyflawni'r anghenion hynny. Hefyd, byddai mwy o ddata sy'n nodi'r galw am y gwasanaethau hyn yn ddefnyddiol er mwyn gallu comisiynu gwasanaethau priodol. Er enghraifft, yn ystod y digwyddiadau allgymorth a gynhaliwyd gan y Bwrdd Parôl a'r Unedau Cyflenwi Lleol yn 2018, nodwyd bod tua 400 o gleientiaid prawf yng Ngwynedd yr oedd yn well gan tua 375 ohonynt siarad Cymraeg, yr oedd tua hanner ohonynt yn y ddalfa, sy'n cyferbynnu'n fawr â'r rhanbarthau eraill yr ymwelwyd â hwy.

Mynediad at Gyngor a Chynrychiolaeth

Fe sefydlodd y Bwrdd dasglu rhanbarthol mewnol yng Nghymru i edrych ar wella gwasanaethau i droseddwyr Cymraeg eu hiaith ac, yn benodol, cefnogi'r hawl i ddefnyddio'r Gymraeg mewn achosion parôl ffurfiol. Mae canllawiau wedi'u datblygu i gefnogi troseddwyr y mae'r Gymraeg yn iaith gyntaf neu'n ddewis iaith iddynt.

Un o'r materion a amlygwyd oedd mynediad at gyfreithwyr sy'n siarad Cymraeg, oherwydd mae llawer o gwmnïau cyfreithiol carchardai wedi'u lleoli yn Lloegr a dim ond ychydig iawn ohonynt sydd â chynrychiolwyr cyfreithiol sy'n siarad Cymraeg, ac nid ydynt bob amser yn gwerthfawrogi anghenion penodol siaradwyr Cymraeg eu hiaith.

Gwasanaethau Prawf

Mae'r Bwrdd yn cyfranogi mewn fforwm parôl rhanbarthol yng Nghymru sy'n dod â'r Bwrdd Parôl a chydweithwyr o Wasanaeth Carchardai a Phrawf Ei Mawrhydi (HMPPS) at ei gilydd i edrych ar arferion a strategaethau effeithiol lleol, a datblygu ymatebion i'r heriau sy'n codi sy'n benodol i Gymru. Mae'r Gwasanaeth Prawf yn ailintegreiddio'r Gwasanaeth Prawf Cenedlaethol a'r Canolfannau Adsefydlu Cymunedol yn un gwasanaeth yn awr a gallai hyn ddarparu cyfleoedd i atgyfnerthu'r gwasanaethau ac anghenion penodol troseddwyr o Gymru, p'un a ydynt wedi'u lleoli yng Nghymru neu Loegr.

Dioddefwyr

Mae anghenion dioddefwyr yn elfen hollbwysig o ystyriaethau'r Bwrdd o'r amodau ar gyfer rhyddhau troseddwyr yn ôl i gymunedau ac mae heriau yn aml wrth edrych ar ardaloedd dan waharddiad a'r gallu i'w rheoli ar draws ardaloedd mawr. Bydd darparu gwybodaeth a gwasanaethau yn y Gymraeg i ddioddefwyr yn cynorthwyo eu dealltwriaeth o'r System Cyfiawnder Troseddol yng Nghymru.

Mae'r Llywodraeth wedi ymgynghori'n ddiwedd ar wella'r Cod Ymarfer i Ddioddefwyr Troseddau ac mae angen ymgorffori anghenion dioddefwyr yng Nghymru yn y Cod diwygiedig.

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a'r Cyfansoddiad
Gwneud i Gyfiawnder weithio yng
Nghymru
MJW 04
Ymateb gan: Y Bwrdd Parôl

Welsh Parliament
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Response from: The Parole Board

In providing this submission, the Board would draw attention to the “*Justice in Wales for People of Wales*” report published by the Commission on Justice in Wales last October. In that report, a number of areas of concern were highlighted, which reflect those also identified by the Parole Board, most significantly:

- Housing provision (longer term arrangements)
- Access to health and social care
- Mental health services
- Women (and implications for family life)
- Support for young offenders
- The Welsh language
- Geographical issues (in particular rural and post-industrial areas)

In addition, the Board identified the following as concerns:

- Access to Approved Premises and move-on accommodation
- Access to Welsh speaking legal advice and representation
- Welsh offenders held in English prisons

The following comments are provided, which the Parole Board hopes will support the fact-finding stage of the consultation and, in particular, the existing operation of justice functions in Wales, including Welsh Government policies in devolved areas and their interaction with the administration of justice; and the impact of relationships between UK and Welsh competence on specific justice matters and to identify areas of concern.

The Parole Board for England and Wales

The Parole Board is an independent body that carries out risk assessments on prisoners to determine whether they can be safely released into the community. It was established in 1968 under the Criminal Justice Act 1967 and became an independent executive non-departmental public body on 1 July 1996 under the Criminal Justice and Public Order Act 1994.

The cases dealt with by the Board include all life sentences, indeterminate sentences of imprisonment for public protection (IPP), parole eligible determinate sentences and many recall cases. In addition, the Board can advise on moves of some prisoners from a closed to an open prison.

The Board deals with approximately 25,000 cases a year, which are referred to it by the Secretary of State for Justice. Parole Board decisions are solely focused on whether a prisoner can safely be released back into the community. The overriding priority when making such decisions is the protection of the public.

The Board's activity covers parole across England and Wales. Legislation, including the Parole Board Rules 2019, policy and practice, as well as guidance for Parole Board members, covers both countries. The Board has members located in both countries and they are required to sit on parole boards in either country (within a reasonable travelling distance).

The Board has adopted the principle that in the conduct of public business and the administration of justice in Wales, it will treat the English and Welsh languages on a basis of equality, so far as is both appropriate in the circumstances and reasonably practicable. The Board has a published Welsh Language Scheme that sets out how it will give effect to that principle in the services to the public in Wales for which it is responsible.

One of the key objectives within the Scheme is for the Board to attract and encourage Welsh speakers to apply to become members of the Parole Board and work has been underway to look at outreach in Wales for future recruitment campaigns.

The Scheme can be read here:

<https://www.gov.uk/government/publications/parole-board-launches-its-welsh-language-scheme-2018-2020-bwrdd-parol-yn-lansio-ei-gynllun-iaith-gymraeg-2018-2020>

Detailed information about the Parole Board can be found on its web pages:

<https://www.gov.uk/government/organisations/parole-board>

Prison Establishments

The Board is concerned that there is a lack of categories of prisons based in Wales, including those for young offenders, which can have a significant impact on rehabilitation whilst in custody, and often involve difficulties for offenders maintaining contact with family and other support. Women and young offenders are very poorly served.

Developing release and resettlement plans for any offender returning to Wales from an English prison can present many challenges.

It is understood that 37%¹ of Welsh prisoners are held in custody in prisons in England. Developing services geared for Welsh prisoners will need to consider the whole estate across England and Wales and not just those establishments located geographically in Wales.

Women Prisoners

There are currently no female prisons or Approved Premises for women in Wales. This creates significant issues for female offenders maintaining contact with family, whilst in custody, and for resettlement, once release is directed by the Board. Evidence from Welsh female offenders held in both HMP Styal and HMP Eastwood park identified that separation from family is a significant issue, and the long distance from the family location creates a barrier in maintaining contact and supporting visits.

The Board welcomed the recent announcement for the first Residential Women's Centre in Wales which will provide accommodation for vulnerable women with complex needs who would otherwise be sentenced to custody.

Devolved Services

When carrying out parole reviews to assess the risk an offender presents to the public, the Board will look at a range of measures and support that will be put in place to manage the risk, as well as contribute to the offender's rehabilitation and return to the community.

There is quite often an added complexity in working within a centralised Criminal Justice System whilst engaging devolved services, such as healthcare, social care and housing, particularly when reviewing cases where the offender is held within an English prison but will be returning to a Welsh community. This cross-border working can present a number of challenges to secure relevant services.

Suitable Release Accommodation

In order to direct release, the Board must be satisfied that there will be appropriate measures in place to manage and monitor behaviour and risk and to support the offender in making a safe transition into the community. For many it is essential that they are released to Approved Premises. Those which are available offer a high standard of service with robust management measures, appropriate activities and an enabling environment. However, there are not enough Approved Premises in Wales, they are often geographically distant from the offender's resettlement area and the pressure on placements is such that there can often be a considerable waiting list. This has a direct impact on the assessment of risk and can result in a delayed or negative outcome and creates frustration for the offenders, probation staff and Parole Board members alike. It is not in the interests

¹ *Sentencing and Imprisonment in Wales: a fact file – Wales Governance Centre August 2019*

of public protection or the interests of fairness to the offender when release cannot be sanctioned for want of Approved Premises.

The situation is exacerbated for women as there are no Approved Premises for women in Wales. If released to Approved Premises in England, the women cannot develop easily their resettlement plans and rebuild relationships with their families.

The above dynamic is often replicated in cases where Approved Premises are not necessary, as long as appropriate monitoring and support measures can be put in place. However, throughout Wales there is a lack of suitable release, and move-on accommodation. Parole Board panels and the probation service can be faced with situations whereby an offender would be released to no fixed abode or to an entirely unsatisfactory address (for instance with other drug users or with vulnerable family members).

Resettlement plans are further adversely affected in rural, post-industrial and deprived areas as there are fewer opportunities to access suitable accommodation, employment and structured activities. These aspects of the release plans are essential to the management of risk. Without them, there can be a drift back to substance use and crime with an attendant lifestyle and associates, leaving individuals vulnerable to deteriorating mental health and to being recalled to custody. This has a detrimental effect on communities and creation of more victims or revictimisation in the case of sexual and domestic abuse.

Offenders with Mental Health Issues or other health issues

It can be very difficult to access mental health aftercare, which can significantly delay the release of an offender. Travelling is a major issue for offenders who may have to travel for hours to and from appointments with services, i.e. Forensic Mental Health is located in the North and South coastal strip. As it currently stands, the Board does not believe that there is sufficient access to resources to meet the demand for mental health services for offenders. As NHS Wales covers the whole country there is potential for a much more joined up approach to Criminal Justice and Mental Health.

The Board is concerned about the consistency of provision of treatments where offenders are transferred from English prisons to Welsh prisons, including for drug treatments, and continuity into the community.

Welsh Language Provision

Offenders must be provided with services and resources in Welsh, if this is their first/preferred language. As already mentioned, the Board has a Welsh Language Scheme. It is clear, however, that this will only succeed by a whole system approach and the Board would like to see appropriate resources to enable prisons and probation staff to meet these needs. In addition, more data that sets out the demand for these services would be helpful so that appropriate services can be commissioned. For example, during outreach events run by the Parole Board with Local Delivery Units in Wales in 2018, it was noted that in Gwynedd there were

some 400 probation clients of whom around 375 preferred to speak in Welsh, around half of whom were in custody, which contrasts sharply with other regions visited.

Access to Advice and Representation

The Board established an internal Welsh regional taskforce to look at improving the services for Welsh speaking offenders and, in particular, to support the right to use Welsh in formal parole proceedings. Guidance on supporting offenders whose first or preferred language is Welsh has been developed.

One of the issues highlighted was access to Welsh speaking lawyers, as many prison law firms are based in England and very few have Welsh speaking legal representatives, and do not always appreciate the specific needs of Welsh offenders.

Probation Services

The Board participates in a Welsh regional parole forum which brings together the Parole Board and colleagues from Her Majesty's Prison and Probation Service (HMPPS) to look at local effective practice and strategies, and to develop responses to challenges that arise that are specific to Wales. The Probation Service is currently reintegrating the National Probation Service and the Community Rehabilitation Centres into one service and this may provide opportunities to look at strengthening the services and the specific needs of Welsh offenders, whether they are located in England or Wales.

Victims

The needs of victims are integral to the Board's consideration of the conditions for release of offenders back into communities and there are often challenges when looking at exclusion zones and their manageability across large areas. Providing victims with information and services in Welsh will support their understanding of the Criminal Justice System in Wales.

The Government has recently consulted on improving the Code of Practice for Victims of Crime and the needs of victims in Wales should be incorporated into the revised Code.

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Response from: Prison Reform Trust

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The Prison Reform Trust's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families
- promote equality and human rights in the criminal justice system.

In addition, the Prison Reform Trust has had a long-term focus on reducing women's imprisonment, supported first by the Pilgrim Trust in 2012 and subsequently by a major grant from the National Lottery Community Fund in 2015. This has supported our UK-wide programme, 'Transforming Lives: reducing women's imprisonment', since then. The programme has a strong emphasis on local practice and on engaging with women with personal experience of imprisonment. We have worked with Welsh voluntary sector agencies including the North Wales Women Centre, Llamau, Safer Wales and others to inform our understanding of Welsh women's experience of criminal justice and have engaged with the All Wales Women in Justice Board since its inception.

An important strategic element of our Transforming Lives programme is its focus on interjurisdictional learning, because the statutory and policy frameworks as well as the political approach differ between England, Wales, Scotland, and Northern Ireland in a number of key areas.

www.prisonreformtrust.org.uk

Introduction

1. The Prison Reform Trust welcomes the opportunity to respond to the Committee's inquiry on Making Justice work in Wales. As a small charity, we regret that we do not have the capacity to provide a version of this submission in the Welsh language.

2. As a whole, Great Britain continues to have the unenviable record for the highest rate of imprisonment in western Europe.¹ However, new analysis by Cardiff University's Wales Governance Centre recently revealed that the number people held in Welsh prisons climbed to its highest ever level in March this year, and that the imprisonment rate in Wales stood at 163 per 100,000 of the population—significantly higher than the comparable rate of 139 per 100,000 in England, and 131 per 100,000 in Scotland.²
3. Furthermore, many Welsh prisoners serve their sentences in English establishments and vice versa—with a third (34%) of Welsh prisoners being held in prisons in England as of December 2019; and more than 1,700 English prisoners being held in prisons in Wales. All Welsh women prisoners serve their sentence in England.
4. As the Commission on Justice in Wales report acknowledged, the current limited role for the Welsh Government and the Senedd in determining the strategic priorities and approach to criminal justice has created a jagged edge of competing and potentially conflicting interests and accountabilities between the UK and Welsh governments.³
5. We support the commission's assessment that the experience of other nations points very strongly to the need to provide greater autonomy to Wales in shaping its justice system. Enabling it to radically reset sentencing policy—which has been become increasingly punitive over the last three decades as a result of legislation passed in Westminster—in line with its wider strategic direction for other relevant health, education and social policy, which are already determined in Wales. In particular, we support a greater use of effective community sentences and supportive interventions to help people away from crime.

Part 1 – Fact finding and looking forward

Scrutiny of justice matters

6. Despite the extent of reserved matters in criminal justice, the Senedd's role in providing effective scrutiny and challenge of the policies and laws which govern the people of Wales cannot be understated. We support the recommendation of the Commission on Justice that the Senedd should

¹ Institute for Crime and Justice Policy Research, World Prison Brief, available at <https://www.prisonstudies.org/>, accessed on 2 June 2020

² Jones, R. (2020) Covid-19 and imprisonment in Wales, Cardiff: Wales Governance Centre

³ The Commission on Justice in Wales (2019) Justice in Wales for the people of Wales, Cardiff: The Commission on Justice in Wales

take a more proactive role in appropriate scrutiny of the operation of the justice system, and that clear lines of accountability within the Welsh Government need to be in place to facilitate that.⁴

7. One recent example of the effective scrutiny—and divergence from UK legislation—that a more active approach can deliver, is the role that the Equality, Local Government and Communities Committee played in securing the enfranchisement of some people in prison for council and Senedd elections, following its inquiry into voting rights for prisoners.⁵
8. The current Senedd inquiry into health and social care provision in Welsh prisons; and the recent mental health in policing and police custody inquiry are further welcome examples. Despite both prisons and responsibility for policing being non-devolved the Senedd is acknowledging the overlap of health and justice/devolved and non-devolved matters, and the tensions that a partial devolution model creates. This added scrutiny is welcome and we would urge Senedd committees to build on this. Furthermore, we support the recommendation from the Commission on Justice that “The All Wales Criminal Justice Board does not report publicly on progress and does not provide any account of performance to an elected body. The new Board, the Wales Criminal Justice Board, should report publicly on an annual basis, with relevant data, and its members be prepared to appear before an Assembly committee to explain progress.”⁶

Funding

9. The Commission on Justice has already forensically examined both the multiple funding arrangements which limit the Welsh Government’s scope to make comprehensive plans for public spending that integrate justice with other devolved policy areas; and the impact of the substantial cuts to the departmental budget for the Ministry of Justice during the last decade.⁷
10. Mayors in large English cities, such as London and Manchester are, with support from the UK government, taking forward “whole system” approaches which—through greater devolution of powers—enable them to provide more integrated services which better meet the specific needs of their cities. But between the UK and Welsh governments there remains a

⁴ Ibid.

⁵ Equality, Local Government and Communities Committee (2019) Voting rights for prisoners, Cardiff: National Assembly for Wales

⁶ The Commission on Justice in Wales (2019) Justice in Wales for the people of Wales, Cardiff: The Commission on Justice in Wales

⁷ Ibid.

tension over the coordination of funding and the ability to set specific policies to meet the particular needs of the people of Wales.

11. One of the curious features of imprisonment is that its cost is neither known nor considered by the communities which create the demand for it. It is a “free good” in the criminal justice system, with no local accountability or incentives for controlling demand or expenditure. The public is informed only in the broadest terms of the cost of imprisonment and there is no local benefit to reducing it. Yet the intergenerational costs of imprisonment are considerable.⁸ A study of “justice reinvestment” pilots shows that local authorities are able to influence demand, and we urge that further work be undertaken to make the local costs and drivers of imprisonment transparent, and to allow for the reinvestment of at least a portion of savings from its reduction to be invested locally rather than absorbed centrally.
12. Wales represents a promising area to consider absorbing the responsibility and funding for imprisonment as part of the devolution deal in its next iteration. We believe this would promote far greater transparency about the costs and consequences of imprisonment and inspire consideration of how to provide a service to the public and local courts which both commands their confidence and achieves best value for money. It would help focus minds on the reality that people from Wales who have been convicted of crimes, including those in custody, remain the responsibility of local services and are most likely to desist from crime if those services and agencies collaborate effectively both during and after their sentence.
13. This is particularly pressing when short prison sentences have the worst reconviction outcomes, failing victims, our communities and those who have offended. Nearly half of all people (48%) are reconvicted with a year of release from prison; for those serving a sentence of less than 12 months this increases to nearly two-thirds (65%).⁹
14. Our factsheet on women’s imprisonment in Wales reveals that in 2018 69% of custodial sentences for women were for less than 6 months compared to 54% of those for men.¹⁰

⁸ For examples of costings see Prison Reform Trust (2016) *Leading Change: the role of local authorities in supporting women with multiple needs*, London: Prison Reform Trust

⁹ Ministry of Justice (2019) *Proven reoffending statistics: July to September 2017*, London: Ministry of Justice

¹⁰ Prison Reform Trust (2019) *Why focus on reducing women’s imprisonment: Wales fact sheet*, London: PRT, available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women/Why%20Women%20Wales%202018%20data%20.pdf>

The existing operation of justice functions in Wales and the impact of relationships between UK and Welsh competence

15. We do not wish to repeat the detailed findings from the Commission on Justice; however, we briefly outline below some of the key points that the committee might wish to consider.
16. The growth in the use of prison for both men and women across England and Wales for most of the last three decades has created a situation in which the resources to provide a safe, decent, fair and constructive prison system have consistently lagged behind the demand for imprisonment.
17. That demand has been driven in part by the imprisonment of people who would be better dealt with in the community, and sometimes outside of the criminal justice system altogether. But it has also in the last decade or so been driven predominantly by a politically inspired growth in the severity of punishment, with higher maximum penalties for serious crime dragging up sentence length more generally, and the imposition of indeterminate sentences reaching epidemic proportion, with much longer periods of those sentences being served in custody.
18. Westminster governments have stoked demand for imprisonment, and then in response to the financial crisis dramatically cut the resources available, resulting in the collapse of safety and order which has been thoroughly documented both in the government's own statistics and in successive reports by HM Chief Inspector of Prisons. Not all prisons have been affected equally, and in Wales it is the older prisons in the public sector which have suffered most.
19. A fundamental re-think of who goes to prison and for how long is overdue, and represents the essential foundation for a permanent solution to the crisis the prison service as a whole is facing.
20. Although many areas of criminal justice, including policing, probation, prisons, the courts and most areas of substantive law are not currently devolved, many of the solutions to crime, and the basis for effective preventive strategies, lie outside the justice system.
21. The provision of effective diversionary services with help to prevent people from coming into contact with the criminal justice system in the first place is vital. The existing responsibilities of the Welsh Government for health include mental health and substance misuse services, both in the community and in prisons. The policies and services in these areas are of crucial importance to enhancing community safety, reducing crime and promoting rehabilitation.
22. In prisons, there are a range of prison-related services such as healthcare and housing which are already devolved to the Welsh Government.

Responsibilities for education extend to education for prisoners in Wales. Skills training is also a devolved function. All are essential for effective rehabilitation.

23. We support the commission's recommendation that policing and crime reduction policy, including drug abuse and mental health related issues, should be determined in Wales so that it is aligned and integrated with Welsh health, education and social policy.

24. As HM Inspectorate of Prisons and the commission highlighted, problems arise at the intersection of devolved and non-devolved policy areas, the so-called "jagged edge". For example, whilst health services are devolved, prison services remain a competence for the UK Government. As the commission highlighted following its own experience, this can have a demonstrable effect on peoples' lives:

"On our visit to HMP Cardiff, we heard from prisoners about lengthy delays in receiving medication and, in the case of anti-psychotic drugs, the danger this can cause to the individual and other prisoners."¹¹

25. As the commission acknowledged, despite attempts between both governments "to mitigate the effects of the complexity by agreeing in March 2018 a concordat on arrangements for consultation and cooperation...[it] does not really address the problems or provide a sustainable or long-term solution to the effect of separating justice from other devolved fields."¹²

26. A similar Mental Health Concordat between the Welsh Government and partners including the police and other justice bodies to work together to ensure that front-line services most likely to come in to contact with people in mental health crisis are supported is welcome. However, as the Minister for Health and Social Services acknowledged in supplementary evidence to the commission "[e]nsuring that public authorities collaborate so as to provide a seamless experience for those in need of support is difficult".

Part 2 – Analysis of how the justice system could operate more effectively in Wales

Implications, consequences and practicalities of any potential justice devolution

27. We welcome the continued emphasis on cooperation between the Welsh and UK governments, most recently through the development of blueprints

¹¹ The Commission on Justice in Wales (2019) Justice in Wales for the people of Wales, Cardiff: The Commission on Justice in Wales

¹² The Commission on Justice in Wales (2019) Justice in Wales for the people of Wales, Cardiff: The Commission on Justice in Wales

for the delivery of both Female Offending and Youth Justice services. The Female Offending Blueprint for Wales promises a whole system approach (as mentioned earlier) which prioritises early intervention and prevention.

28. Existing services, such as the North Wales Women's Centre, provide an insight into what is possible when services are designed with the needs of their communities in mind. Providing effective support in a safe, non-stigmatising settings for women to address drivers to their offending such as problematic substance use and abusive relationships is key.¹³ Women who attend and receive support from women's centres are less likely to reoffend than those who do not. A report by the Justice Data Lab found that the one year proven reoffending rate for women who had received support was 30%, compared to 35% for those who did not.¹⁴ There is also extensive qualitative evidence of the effectiveness of women-specific support services. Increased funding would enable women's centres in Wales to support the unmet needs of women who may otherwise face short custodial sentences.
29. The Women's Pathfinder, supported by the South Wales Police and Crime Commissioner, the Gwent Police and Crime Commissioner, HM Prison and Probation Service and the Welsh Government, is diverting women across South Wales and Gwent. In North Wales and Dyfed-Powys the police are adopting the 'Checkpoint' model.
30. The Women's Pathfinder commenced in 2014, aiming to 'design and deliver a women specific, whole system, integrated, multi-agency approach to women in contact with the Criminal Justice System'. It includes case conference meetings and co-location of statutory probation services with voluntary sector, women-centred partners. The focus has been on diverting low risk women away from the criminal justice system into community support at the earliest opportunity. To date over 1,500 women have accessed early intervention/support from voluntary sector partners based within the local custody suites across the four police forces. An evaluation by the University of South Wales evidenced a 26% reduction in women's reoffending and found that the re-arrest rate in the pilot sites was around half that in the comparison sites (17.8% compared with 35%).
31. However, funding remains short-term and piecemeal. The recent UK government announcement of £2.5m to services in England and Wales

¹³ Radcliffe, P. and Hunter, G. (2013) The Development and Impact of Community Services for Women Offenders: An Evaluation, London: ICPR. Available at www.icpr.org.uk/media/34025/ReportNuffieldfinal.pdf

¹⁴ Justice Data Lab (2015) Justice Data Lab Reoffending Analysis Women's Centres throughout England. London: MoJ

working to divert women away from crime, will be spread very thinly.¹⁵ Furthermore, there is very little detail on the first Residential Women's Centre, to be established in Wales, including what it might be like and who it might be for. Looking forward, it is important that a more sustainable and co-ordinated funding solution is found to support all women's support services.

¹⁵ Ministry of Justice website, 'Funding boost to steer more women away from crime', available at <https://www.gov.uk/government/news/funding-boost-to-steer-more-women-away-from-crime>

Senedd Cymru
Y Pwyllgor Deddfwriaeth, Cyfiawnder
a'r Cyfansoddiad
Gwneud i Gyfiawnder weithio yng
Nghymru
MJW 06
Ymateb gan: Comisiynydd Plant Cymru

Welsh Parliament
Legislation, Justice and Constitution
Committee
Making Justice work in Wales
Response from: Children's
Commissioner for Wales

Background information about the Children's Commissioner for Wales

The Children's Commissioner for Wales' principal aim is to safeguard and promote the rights and welfare of children. In exercising their functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner's remit covers all areas of the devolved powers of the National Assembly for Wales that affect children's rights and welfare.

The UNCRC is an international human rights treaty that applies to all children and young people up to the age of 18. The Welsh Government has adopted the UNCRC as the basis of all policy making for children and young people and the Rights of Children and Young Persons (Wales) Measure 2011 places a duty on Welsh Ministers, in exercising their functions, to have 'due regard' to the UNCRC.

This response is not confidential.

The role and remit of the Children's Commissioner for Wales and justice

The Children's Commissioner for Wales was established under the Care Standards Act 2000, as amended by the Children's Commissioner for Wales Act and Regulations 2001. The remit of the office is therefore governed by this statutory underpinning.

The principal aim of the Children's Commissioner's office is to safeguard and promote the rights and welfare of children. In carrying out duties and functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner's remit covers all areas of the devolved powers of the Senedd insofar as they affect children's rights and welfare. In summary, the powers of the Commissioner extend to:

1. The power to review the effect on children of the exercise of functions or proposed exercise of functions of defined public bodies in Wales including Welsh Government;
2. The power to review and monitor how effective are the arrangements for complaints, whistleblowing and advocacy of defined public bodies in safeguarding and promoting the rights and welfare of children;
3. The power to examine cases in respect of individual children in certain circumstances;
4. The power to provide assistance to a child in certain circumstances;
5. The power to make representations to the Welsh Government about any matters affecting the rights and welfare of children which concern her and for which she does not have the power to act.

The Children's Commissioner for Wales does not have power to act in a number of defined circumstances. These include areas that have not been devolved to the Senedd, which include immigration and asylum, welfare benefits, children in the military, justice and policing, where CAF/CASS (the Children and Family Court Advisory Service) is able to act and where Welsh Ministers have functions in respect of family proceedings. The Commissioner is neither able to enquire about or report on any matter that is or has been the subject of legal proceedings.

Family law proceedings cross the divide of devolved and non-devolved responsibilities, as public law falls under the remit of local authorities in Wales but private law does not. This can create confusion for families when seeking advice or assistance; my office is able to support in some areas of a child's life where that child is in local authority care for example, but I cannot intervene in the court proceedings themselves or prevent a court from making an Order for example.

My Investigation and Advice team is regularly contacted by parents seeking advice on how to overturn or amend court orders, from Grandparents seeking greater involvement with court proceedings, or concerns about family circumstances being misrepresented within proceedings. Aside from advising on/supporting

with complaints to the relevant local authority where warranted, my office is unable to directly advise or assist in relation to those court proceedings.

These sorts of cases demonstrate the challenges that can exist not just in terms of the Commissioner's role in providing advice and guidance to families and children, but also the complexities that arise in separating children's lives into the categories of devolved and non-devolved competencies.

Divergence in family law and the impact on children and families in Wales

There are a number of challenges that arise for Welsh domestic law and policy making for children and young people, particularly where England and Wales court proceedings and statutory intervention in family life are required. The Commission on Justice recommends that "the law relating to children and family justice in Wales should be brought together in one coherent legal system, aligned with functions in relation to health, education and welfare".

Public Law:

Children's social care functions carried out by Welsh local authorities fall between two pieces of legislation; the Social Services and Wellbeing (Wales) Act 2014 ("SSWB Act") and the Children Act 1989 (for England and Wales). Work to support children in need of care and support falls under the Welsh legislation, including a child coming into the care of a local authority on a voluntary basis, whereas child protection and care proceedings remain under the England and Wales legislation. There is Wales specific guidance for some areas of child protection but largely it is the Children Act that governs these functions. However, despite the common jurisdiction for England and Wales, the SSWB Act has signified a divergence in approach with England in regards to the care, planning and duties towards children who become looked after and when they are placed in care.

There has been significant concern in Wales about the rising rates of children coming into care, per 10,000 of the population. Rates are rising in England also but overall the rate for Wales is significantly higher. As at 31st March 2019, there were 6,845 Welsh children in care, a rate of 109 per 10,000. This has been rising

year on year but there is also significant variance between the lowest rate of 49 per 10,000 in Carmarthenshire and the highest at 216 per 10,000 in Torfaen¹. The overall rate for England for the same period is 65 per 10,000². This is despite the fact that the legal threshold for the care orders comes under the same legislation for England and Wales. However, there are a significant number of areas of preventative family support that the Welsh Government and Local Authorities can further develop to reduce the likelihood of children entering the care system.

Whilst the Welsh Government are seeking a more preventative approach to family support to limit the number of children entering the care system and have worked with Local Authorities Social Services departments to set reduction targets on the number of children coming into care, there has been concern from some Local Authorities that elements of this are beyond their control, for example, socio-economic factors and the decisions of the family courts. I discussed this area of policy whilst giving evidence to the Children, Young People and Education Committee in November 2019.³

The Family Justice Review 2011, an extensive review of the Family Justice Review, set out a vision for a more child centred family court system and led to the establishment of the Family Justice Network for Wales.⁴ The need for further strengthened working has been recognised by the Commission of Justice, which has identified reform in the short and longer term, recommending an “all-Wales approach to family justice, developed and led by the Family Justice Network for Wales” to be followed by local authorities in regards to child protection referrals with an agreed objective of avoiding care proceedings if strengthened family support would be more appropriate. The Commission has also recommended there be “vigorous support for a programme of research to underpin reform of

¹ <https://statswales.gov.wales/Catalogue/Health-and-Social-Care/Social-Services/Childrens-Services/Children-Looked-After/childrenlookedafterat31marchper10000population-localauthority-year>

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/850306/Children_looked_after_in_England_2019_Text.pdf

³ <https://record.assembly.wales/Committee/5694#C240110>

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217344/fjr-execsummary.pdf

Welsh family justice and associated preventative services. The overarching aim should be the reduction in the numbers of children taken into care and the provision of far better evidence of the impacts of intervention on family life". My office is represented at the Family Justice Network and I support the work that is being explored following the Commission's report.

A shift to a greater emphasis on preventing statutory intervention in family life will require a shift in the focus and funding decisions of Local Authorities. It is my understanding that Welsh Government undertook some initial scoping work on "rebalancing the sector" for children's services as part of the reduction of children entering the care system work. However, due to the unprecedented demands placed on Welsh civil service as a result of the COVID-19 crisis, it is my understanding that this work has paused.

Private law:

As noted above, private family law cases fall outside the remit of both Welsh Government and of my office.

Many separating families will be able to resolve their arrangements without resorting to court applications, but this is not always possible. At present mediation is only available to families seeking to make a court application by which point their circumstances may have already become protracted. In addition, there is often a cost to access mediation which can be prohibitively expensive for some parents even if it is just what they need to be able to reach a suitable and workable agreement that would benefit them and their children.

The Commission on Justice highlights the impact of the decline in expenditure on legal aid and the consequences this has had for families. Provision of legal aid has been removed for most private family law issues, but has remained for some cases where there has been evidence of domestic violence or child abuse. The Commission reports how this had led to a significant lack of legal advice for families and resulted in a number of individuals representing themselves in court.

In this regard, the Commission recommends that “legal advice should be available to each private family law dispute prior to the commencement of proceedings”. This would contribute significantly to the de-escalation of disputes reaching court. There are likely to be significant financial implications for this shift in family law practice, and again, would require further scrutiny and consideration by the committee.

I am aware that some initial scoping work on developing a Supporting Separating Families Alliance (SSFA) for Wales is being undertaken by CASCADE (Children’s Social Care Research and Development Centre). The SSFA’s purpose will be to help separating families resolve issues outside of the family court system and support families to resolve conflict in a more children-focused way.

Devolution of Youth Justice, the Age of Criminal Responsibility and the UNCRC:

My Office and I provided evidence to the Commission on Justice to set out my concerns in regards to Wales’ inability to fully implement its commitment to children’s rights insofar as elements of youth justice and criminal responsibility remained non-devolved. I would advocate for the Committee to explore the further devolution of youth justice and criminal responsibility to Wales on the grounds this is linked intrinsically to Wales’ commitment to social equality and human rights, including those set out in the UNCRC.

The Minimum Age of Criminal Responsibility and the UNCRC

In England, Wales and Northern Ireland the age of criminal responsibility is currently 10 years of age, subjecting children to the lowest age of criminal responsibility in Europe. This is the lowest of all European Union Member States, since the minimum age of criminal responsibility in Scotland recently increased to 12 years of age, from the previous 8 years of age.⁵

The current age of criminal responsibility for England and Wales is considerably lower than the age recommended by the UN Committee on the Rights of the

⁵ <https://beta.parliament.scot/bills/age-of-criminal-responsibility-scotland-bill>

Child, and has been for some time. This is despite the fact the UNCRC is incorporated into Welsh Law via the Rights of Children and Young Persons (Wales) Measure 2011, unlike England. The UN Committee has recently published its General Comment on children's rights in the child justice system. In 2019, the Committee concluded that in regards to adolescent's rapid brain development which "affects risk-taking, certain kinds of decision making and the ability to control impulses... state parties are encouraged to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age". The Comment further notes that adolescents continue to develop and mature cognitively beyond the teenage years and "commends state parties that have a higher minimum age, for instance 15 or 16 years of age" ⁶.

It is worth noting, that whilst the Commission on Justice recommended that the minimum age for criminal responsibility is increased to at least 12 years of age, this falls below the recommended age by the UN Committee on the Rights of the Child. For Wales to truly pay full regard to its commitment to children's rights, the minimum age of criminal responsibility should be raised to 16, or at the very least, the recommended age of 14.

Youth Justice

The Commission on Justice highlighted the close partnership working that exists in Wales in regards to youth justice, with well-established interconnections between devolved youth services, youth justice and other relevant devolved services, of which the Youth Justice Board for Wales facilitates co-operation.

In Wales we have seen a significant focus on a preventative approach to youth justice. This has been facilitated by greater emphasis on the need to reduce the number of children and young people entering the justice system across many elements of the youth justice system. As highlighted in the Commission's report, approximately 50% of the work undertaken by youth offending teams in Wales is

⁶https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en

preventing and diverting children away from entering the youth justice system. As a result, Wales has seen a significant reduction in the number of children entering the youth justice system. In 2009, there were 5,228 first time entrants to the youth justice system. In 2019, this has fallen to 553.⁷ We have also seen a significant reduction in the number of children in Wales being placed in custody, with (as of 12 May 2020) 24 young Welsh placed in custody, compared to 42 in May 2015.⁸

However, my office continues to hear of cases where young people do not have the support in place for their release from custody, particularly in regards to community support, such as access to mental health services and identifying appropriate placements or housing arrangements. This seems to be affected by the fact that young people are the responsibility of non-devolved custody and/or probation services, but many of the support services come from devolved provision including health, social care and education.

Police forces in Wales have shown progressive leadership in their approaches to crime prevention, particularly in regards to young people, with a growing commitment and understanding of employing a trauma based approach, greater recognition of adverse childhood experiences and a commitment to adopting a children's rights approach in policing. South Wales Police in particular have enshrined their commitments to children's rights with the publication of a Children's Rights Charter⁹, which my team were able to support and advise on during its development. I am hoping to facilitate further discussions with both the youth justice and policing sectors in Wales and am planning to host a Children's Rights Seminar for the sector, to explore innovative practice by the forces and agencies to recognise the impact of trauma on children and how children's rights can be further embedded in policing and youth justice.

Despite the aforementioned positive aspects of youth justice I have been particularly concerned that levels of criminalisation remain considerably higher

⁷ <https://www.gov.uk/government/statistics/youth-justice-statistics-2018-to-2019>

⁸ <https://www.gov.uk/government/statistics/youth-custody-data>

⁹ <https://www.childcomwales.org.uk/wp-content/uploads/2020/05/SWP-Charter.jpg>

for care experienced young people, and my office is represented on a working group being led by NYAS Cymru to explore the potential development of an all-Wales protocol to reduce the unnecessary criminalisation of care experienced young people, as is currently in place in England.¹⁰

The Youth Justice Blueprint for Wales has been an important recognition of, and plan forward to, facilitate Wales' unique approach to youth justice¹¹. The Blueprint is bold in its commitment to improve the “criminal and social outcomes for children who come into contact with the youth justice system” and sets out short, medium and long term objectives to deliver a whole-system approach to reform. The Blueprint is clear in its commitment to children's rights and sets out its ambition to ensuring children are active participants in the system ensuring devolved and non-devolved services work together to realise children's rights. It also recognises the complex mix of needs children experience who find themselves within the youth justice system, such as mental health, communication and development needs and childhood trauma. However, I am aware that due to the current demands on the civil service in Wales as a result of the Coronavirus pandemic, this work has been paused.

My team and I have also been working to raise awareness of the distinct lack of secure and semi-secure accommodation for children and young people in Wales who have complex needs. Children with complex emotional and behavioural needs can often become caught between health and social care, to find the most suitable placement for them. Children are being escalated up the system towards secure accommodation due to a lack of suitable and safe accommodation that would meet their needs. Development of this vital provision, jointly commissioned by health and social services, would enable children and young people with complex emotional and behavioural needs to be placed appropriately and receive therapeutic care and support across their health and social care needs without

¹⁰https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765082/The_national_protocol_on_reducing_unnecessary_criminalisation_of_looked-after_children_and_care.pdf

¹¹ https://gov.wales/sites/default/files/publications/2019-05/youth-justice-blueprint_0.pdf

being held in secure accommodation or inpatient mental health units. I have been reassured that work to develop this provision is progressing with Welsh Government, but there is scope to explore how children and young people, potentially for those at risk of criminalisation, could benefit from such provision. Discussions about this have taken place in the context of the Youth Justice Blueprint since 2018 but as yet no tangible progress has been made.

Welsh public services are responsible for health, social care, housing and education; all key elements of support for young people involved in the justice system. The artificial separation of youth justice however can create confusion between services as to their responsibilities and it is young people that are negatively impacted by this. Devolution of youth justice would enable Wales to fully realise its commitment to the UNCRC and legal duty to promote and protect the rights of its children and young people. This aligns with the recommendation made by the Commission on Justice, that “Building on the reducing numbers of children and young people in custody and those entering the criminal justice system, youth justice policy should be determined and delivered in Wales”.

In light of this, I believe that further exploration of the devolution of youth justice is required, which in turn could support a movement towards increasing the age of criminal responsibility to 16 years of age, or at the very least the recommended age of 14.

Senedd Cymru
Y Pwyllgor Deddfwriaeth, Cyfiawnder
a'r Cyfansoddiad
Gwneud i Gyfiawnder weithio yng
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Ymateb gan: Comisiwn Cydraddoldeb
a Hawliau Dynol

Welsh Parliament
Legislation, Justice and Constitution
Committee
Making Justice work in Wales
Response from: Equality and Human
Rights Commission

-
1. We have consistently recommended that both the UK Government and Welsh Government ensure that the UK and Welsh equality and human rights legal framework is strengthened by improved access to justice because legal rights are of little value unless we are able to seek justice when they are breached.
 2. One of our Priority Aims in our strategic plan for 2019 – 2022 is that people can access redress when they are wronged and have a fair trial in the criminal justice system. Our 'Is Britain Fairer?' 2018 report concludes that it has been increasingly difficult to access representation and redress in British courts. The opening statement from the Commission on Justice in Wales accords with our own inquiries and research in relation to access to justice:

"We have unanimously concluded that the people of Wales are being let down by the system in its current state."
 3. When transforming the justice system in Wales, we recommend that the Welsh Government ensures that:
 - Mechanisms for seeking redress for breaches of the Equality Act 2010 and Human Rights Act 1998 are made more accessible and effective
 - More people in Wales are able to access high quality advice in relation to discrimination and human rights.
 - Barriers to justice for women and girls who have survived violence are exposed and reduced,
 - The needs of the people of Wales are considered by the UK Government when changes are made to the legal aid system, and rules governing access to legal aid for discrimination cases are amended in line with our recommendations.
 - Practice and procedures in the criminal justice system are improved by the UK Government to ensure a fair trial for disabled people.
 4. We acknowledge Welsh Government's commitment to funding the provision of discrimination advice in Wales via the Single Advice Fund.

Public Sector Equality Duty

5. Public authorities and those carrying out public functions are subject to the Public Sector Equality Duty under the Equality Act 2010. Organisations subject to the public sector equality duty must have due regard to the need to eliminate

unlawful discrimination, harassment and victimisation, advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not. We have produced [guidance](#) to support organisations to comply with the Public Sector Equality Duty,

6. Welsh Government must consider how the Public Sector Equality Duty can be better complied with and used as a lever for improvement within the Justice system in Wales. Welsh Government must also assess the likely impact of proposals and recognise and respond to disproportionate impact on particular groups; and ensure that the system itself reflects the community it serves at all levels.
7. Chapter 12 of the Commission on Justice's report which relates to governance, the law of Wales and the judiciary highlights the need for alignment and a whole system approach. We recommend that all public authorities involved in the Justice system in Wales and associated services consider how the Public Sector Equality Duty can be better complied with and used to guide this alignment.

Data Gaps

8. The Commission on Justice identify a number of data gaps within their report. This aligns with our Strategic Plan, where we have identified that to improve equality and human rights outcomes, we must have access to relevant data that enables us, Government, regulators and inspectorates, service providers and civil society organisations to understand the different experiences and outcomes for certain groups, and the underlying reasons behind them.
9. Our [measurement framework](#) is the tool we use to monitor progress on equality and human rights across a range of areas of life in Great Britain. There are six areas in the framework; education, work, living standards, health, justice and personal security and participation. We emphasise the importance of Wales specific data and that there are gaps in Wales specific data in a number of areas.
10. We have identified limited data on certain protected characteristics in the makeup of court and tribunal users. We are taking action to engage with the Ministry of Justice and Her Majesty's Courts and Tribunals Service to make sure that information on protected characteristics is effectively included in data on the makeup of court users.

Key findings in Wales for Justice and Personal Security

11. We have conducted research and gathered evidence in a number of areas to inform our priorities. This evidence may be helpful in informing Welsh Government's proposals for transform justice in Wales. Evidence within our [Is Wales Fairer? 2018 report](#) sets out the key equality and human rights challenges

currently facing Wales. The key findings in Wales in relation to Justice and Personal security are:

- a. There have been a number of court and tribunal closures in Wales in recent years. There are concerns that these closures have created geographical barriers to people's access to justice, especially among people living in rural areas and those with mobility-related conditions.
 - b. Reduced financial support through legal aid and the use of tribunal fees have created a negative effect on people's access to civil and criminal justice.
 - c. The number of recorded hate crimes has increased across all recorded protected characteristics in Wales, particularly for disability hate crimes.
 - d. There has been a sharp increase in the number of sexual and domestic violence offences reported to, and recorded by, the police since 2015. This include sexual abuse offences against children. This could be due to improved reporting or recording, or due to an increase in incidents.
 - e. Three of the five prisons in Wales are overcrowded, posing potential risks for prisoner safety. There has been a considerable increase in self-harm and assault incidents in prisons in Wales.
 - f. The inappropriate use of police stations as a 'place of safety' for people with mental health conditions has decreased considerably, but there has been a slight increase in detentions.
12. All of these issues have been exacerbated by the recent Coronavirus crisis, for example Dr Robert Jones of the Wales Governance Centre recently [reported](#) that the number people held in Welsh prisons climbed to its highest ever level by 27th March 2020, 17 days after the World Health Organisation declared the outbreak of Covid-19 a global pandemic, and HMP Swansea was the most overcrowded prison in England and Wales at the end of March 2020.
13. In a [letter](#) to the Prime Minister on 19th March 2020, David Isaac, Chair of the Equality and Human Rights Commission, highlighted the following:

"We know that during periods of confinement domestic abuse (a crime mostly impacting women and girls) tends to increase, and that the healthcare and educational settings that offer a way of identifying this issue will be under unprecedented pressure."

Court Closures, Video Hearings and digital technology

14. Chapter 8 of the Commission on Justice's report is about delivering justice locality and structure and gives a lot of detail about the numbers of courts, their locations and court closures. The chapter gives time, distances, and geographical locations of courts, explaining that some places are two hours by public transport from a Magistrates' Court. The report concludes with this:

“Given the geography and demography of Wales, the dearth of public transport and the state of the digital network, there is after the extensive court closures little alignment between the justice system and communities and people in Wales.”(Page 361)

15. In March 2018, we submitted [evidence](#) to the consultation on the strategy for the courts and tribunals estate, including the approach to court closures, improvements to court buildings, and the modernisation of some court administration. We acknowledged that modernising the courts may provide a number of opportunities to improve access to justice, for example by improving accessibility for disabled court users. However, our key concerns about the proposals, in relation to both the closure of existing courts and the introduction of digital justice alternatives, are:

- the lack of comprehensive evidence and impact assessment to underpin decision-making and ensure the courts modernisation programme does not disproportionately disadvantage people with certain protected characteristics, in particular disability, age, pregnancy and maternity, and sex;
- the closure of courts on the basis of increased use in the future of digital processes, which will necessarily exclude people with certain protected characteristics who have lower levels of digital literacy, before the impact of digital processes has been thoroughly assessed; and
- the potentially detrimental implications of virtual processes (including virtual hearings and online court processes) on access to justice and fair trial rights.

16. In light of our concerns, and the requirement for HM Courts & Tribunals Service (HMCTS) to comply with the public sector equality duty, we recommend that HMCTS:

- does not proceed with any court closures until it has collected the evidence about court users necessary to conduct a meaningful equality impact assessment, and has conducted that assessment;
- conducts a thorough assessment of the digital literacy of court users in order to determine the nature and content of the support required to ensure access to justice in the context of increased digitalisation; and
- establishes a clear evidence base setting out the impacts of virtual processes (including virtual hearings and online court processes) and the equality and human rights issues that need to be addressed before any new measures are introduced or existing pilots are extended.

17. The Commission on Justice also comments on the use of video hearings and digital technology. On 27th April 2020, we published an [interim report](#) for our inquiry: Does the criminal justice system treat disabled people fairly? This

inquiry looked at whether the needs of disabled defendants are properly identified and whether adjustments are put in place to meet their needs, so they are able to take part fully in court processes. Existing evidence tells us that people with cognitive impairments, mental health conditions and neuro-diverse conditions are significantly overrepresented in the criminal justice system.

18. The interim report highlights the use of video hearings in England and Wales which can significantly hinder communication and understanding for people with learning disabilities, autism spectrum disorders and mental health conditions. Defendants' needs must be identified from the outset so that adjustments can be put in place. We warn that if this does not happen, then disabled people are at risk of not understanding the charges they face, the advice they receive or the legal process, so cannot participate effectively in legal proceedings against them. Adjustments can include the use of intermediaries, allowing extra time for breaks, or providing information using visual aids.
19. While we have not called for video and audio hearings to be halted, we expressed concerns about the lack of data currently available on the use of remote hearings, and encouraged Governments to begin collecting this data now to inform its use in the future.
20. We agree with the Commission on Justice's 39th recommendation that a strategy for Wales for provision of proper physical and digital access to justice before the courts, tribunals and other forms of dispute resolution should be drawn up and determined in Wales based on the needs of the people of Wales. This reflects our own recommendations, but we would add that this strategy should also reflect the

Public Sector Equality Duty. We also agree with the Commission on Justice's 20th recommendation that digital court services and other dispute resolution services that are being developed and introduced must be fully accessible to people throughout Wales and free assistance must be available to help individuals use them. This reflects the recommendations in our own interim report. Our final report will be published later this year.

Access to Justice - Information, Advice and Assistance

21. In Chapter 2 of the Commission on Justice Report, resources for the justice system in Wales are considered. Page 78 of the report details the legal aid spend differences between England and Wales.

"The criminal legal aid expenditure of £36 million in Wales in 2018-19 equates to £11.50 per head of population; the equivalent figure in England was £15 per head."

22. In paragraph 3.50, it is highlighted that 93% of Welsh households have access to the internet but Wales has around 10% lower network capability than England. The report goes on to give details about lack of awareness about rights and that those who need advice are least likely to be able to access it, including disabled people, people with mental health issues, people with learning difficulties, people in crisis and people whose first language is not English or Welsh. Within the conclusions at paragraph 3.53, it states that of additional concern is disabled people's access to legal advice and assistance with benefits cases has been diminished – this is based on evidence from Disability Wales.
23. Chapter 9 of the Commission on Justice's report on the legal sector refers to and is complemented by the Welsh Government review of the legal sector in Wales, which was undertaken by Jomati Consultants LLP. Both highlight the difficulties for firms and solicitors in Wales and lack of legal aid practitioners in Wales.
24. We highlighted in our [briefing](#) in 2017 that changes to civil law justice are adversely impacting children, disabled people, ethnic minorities and women. These changes included: substantial reductions to the scope of civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO); proposals for further reforms to legal aid (including a residence test); reforms to judicial review; and the introduction of fees in employment tribunals. Cuts to legal aid, as well as the imposition of Employment Tribunal fees until the Supreme Court's judgment in July 2017, damaged access to justice for ordinary people, with disproportionate impacts on some groups. Reduced access to justice risks allowing employers, service providers and public authorities to breach people's rights with impunity, bringing down standards in the workplace and impeding fair access to goods, facilities and services for everyone.
25. Our own research [report](#) looked at the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) since it came into force in 2013.

LASPO introduced funding cuts to legal aid and resulted in fewer people being able to access legal advice and representation. Using case studies, this report looks at how LASPO has negatively affected people's lives and access to justice in three areas of law: family law, employment law, welfare benefits law. When the UK Government carried out a review of LASPO, we made a submission to the review setting out recommendations to address the issues that we identified. We are pleased that some of these have been adopted as part of the UK Government's action plan following the review. For example, the UK Government agreed to remove the mandatory telephone gateway for debt, discrimination and special educational needs and it was removed on 15th May 2020. The UK Government also agreed to seek to improve the available data so that they can consider the equality implications and put in place better systems and a communication campaign. We are monitoring their progress.

26. In June 2019, we published the final [report](#) for our inquiry which looked at whether legal aid enables people who raise a discrimination complaint in Wales and England to get justice. We found that very few people are getting the representation they need in courts or tribunals. Between 2013/14 and 2017/18 no workplace discrimination cases received legal aid funding for representation in the employment tribunal, and only 1 in 200 cases taken on by discrimination specialists received funding for representation in court. We identified a number of barriers to representation, including rules which effectively limit funding to cases with high compensation awards. This requirement misses the point when it comes to discrimination cases, which are often more about challenging unacceptable behaviour and upholding rights than obtaining financial awards.
27. Recent [research](#) in April 2020 has identified barristers who may be at greater financial risk due to Covid-19 interrupting their fee incomes. In broad terms, these barristers supply up to 50% of legal aid defence work and, hence, their loss would constitute a severe obstacle to restarting criminal trials. In all cases, the practitioners in the most vulnerable situations are more likely to be predominantly female, BAME, young or with newer practices. Their loss from the profession would impact substantially on the diversity of those supplying legal services.

Criminal Justice

Black, Asian and Minority Ethnic people

28. Part 3 of Chapter 4 of the Commission on Justice's report focuses on the evidence that those who are charged, tried and punished are disproportionately likely to come from Black, Asian and Minority Ethnic (BAME) communities. [Evidence](#) published very recently on 15th May 2020 by the National Police Chief's Council shows that even during the current Coronavirus crisis, BAME people are more likely to receive fines under the emergency legislation.
29. In December 2018, we held a roundtable discussion in Cardiff about [The Lammy Review](#), an independent review of the treatment of, and outcomes for, BAME individualsⁱ in the Criminal Justice System in England and Wales. The Review published its final report, which included a range of recommendations, in September 2017. Stakeholders reflected that there has been a lack of engagement and discussion on the Lammy Review in Wales since its publication. It was acknowledged that, arguably, some of the problems the Review responds to are less acute in Wales than in England's big urban areas. However, all participants agreed that significant problems exist and improvements are needed.
30. It is clear that the Criminal Justice System cannot be seen in isolation. Efforts to improve the treatment of, and outcomes for, BAME individuals in the Criminal Justice System in Wales touch on all areas of life. For example, improved

education services and access to health and social services is vital if we are to reduce re-offending, especially among BAME individuals, who often face significant obstacles into accessing high quality public services. Many of the relevant levers for this are devolved to the Welsh Government.

31. The Lammy Review identified three central principles for the taking forward of its recommendations. These principles were fully supported by individuals we spoke to. In summary, these are:

- There must be robust systems in place to ensure fair treatment in every part of the criminal justice system. The key lesson is that bringing decision-making out into the open and exposing it to scrutiny is the best way of delivering fair treatment.
- Trust is low not just among defendants and offenders, but among the BAME population as a whole. The answer to this is to remove one of the biggest symbols of an 'us and them' culture – the lack of diversity among those making important decisions in the criminal justice system.
- The criminal justice system must have a stronger analysis about where responsibility lies beyond its own boundaries. Statutory services are essential and irreplaceable, but they cannot do everything on their own. The system must do more to work with local communities to hold offenders to account and demand that they take responsibility for their own lives.

32. During our project, five practical steps emerged to take forward the Lammy Review's principles and recommendations in Wales. The five steps are:

- To build further on multi-agency working, utilising the close relationships that can be built in Wales.
- To improve scrutiny and accountability mechanisms at all levels in order to improve service delivery and ensure transparency.
- To invest in better mentoring, support, and training.
- To actively engage with local communities through a range of projects and approaches.
- To collect and share data on ethnicity throughout services and procedures.

33. Finally, participants echoed the Lammy Review's statement that criminal justice agencies should adopt a principle of 'explain or reform': if they cannot provide an evidence based explanation for disparities between ethnic groups then reforms should be introduced.

34. We recommend that Welsh Government consider these points when considering the Commission on Justice's 6th recommendation that each of the police, Crown Prosecution Service, the judiciary and HM Prison and Probation

Service should publish a strategy in respect of BAME people in Wales and report annually on the strategy to the Senedd.

Children and Young people

35. In Wales and England, the age of criminal responsibility is 10 years old. Any child below the age of 10 is not considered to have the capacity to infringe the criminal law. Scottish Government is giving consideration to raising the age. We recommends the age raised in line with Committee on the Rights of the Child (CRC) Article 40 recommendations. More details can be found in our [response](#) to the Justice Committee inquiry on children and young people in custody in October 2019. We therefore agree with the Commission on Justice's 11th recommendation that the age of criminal responsibility should be raised to at least 12 years old.
36. In February 2019, we published our [report](#) on Women's rights and Gender Equality which was our formal submission to the UN Committee on the Elimination of All Forms of Discrimination Against Women. In June 2018, the UK Government published its female offender strategy. The strategy sets out the measures it will take to enhance mental health services for women in prisons, promote alternative sentencing and ensure that treatment of women in the criminal justice system takes account of gender and gender-based violence. It also includes a shift away from building new community prisons for women to encouraging the greater use of non-custodial sentences by increasing community-based support. While the general direction of the policy has been praised, several organisations, including the Association of Police and Crime Commissioners and members of the female offender strategy advisory board, have expressed concerns about how effective the strategy is likely to be in practice.
37. We recommend that the UK and Welsh governments, where relevant, should:
- provide an increased and longer-term funding commitment for a network of women's centres to support liaison and diversion from the criminal justice system and enable rehabilitation, particularly for ethnic minority women;
 - implement the [Corston Report](#) recommendation relating to interdepartmental coordination and transfer of responsibility;
 - improve the provision and availability of mental health services for women in prison, recognising the different issues women, including trans women, experience in prison, to prevent suicide and self-harm, and facilitate resettlement;
 - monitor and collect data on the use of community sentences for women, and;

- evaluate the community treatment sentence requirements to ensure that women are not unduly pressured to receive mental health treatment in order to avoid detention, and provide valid consent to treatment.

38. We agree with the Commission on Justice's 13th recommendation that the comprehensive network of services and centres as alternatives to custody for women in Wales must be established rapidly and sustained over time.

Hate Crime

39. In 2016 we [responded](#) to the Home Affairs Select Committee inquiry into hate crime and its violent consequences. In summary we said: There is extensive knowledge, expertise and experience in tackling hate crime across Britain. However, pockets of knowledge and good practice often exist in silos, with organisations across Britain developing their own practices in isolation from one another. We recommend a review of the most effective strategies in tackling hate crime and leadership at government level to share leading work in this area. Public authorities and those carrying out public functions are subject to the Public Sector Equality Duty under the Equality Act 2010, which requires them to have due regard to the need to tackle prejudice and promote understanding. In this context, we would like to see greater efforts from public authorities to proactively tackle hate crime.

40. Although criminal justice is not devolved, Welsh Government has taken - and could take further - legislative and policy opportunities with the aim of reducing hate crime and to help heal divisions in society. The Welsh Government's Hate Crime Delivery Plan and the Public Sector Equality Duty offer mechanisms for doing this. Our monitoring of the PSED showed that many public authorities have set equality objectives that relate to tackling hate crime.

41. In 2016, we undertook research into [LGBT hate crime reporting](#) and [disability related harassment](#), and [causes and motivations of hate crime](#). Welsh Government should consider the evidence and recommendations in these reports to support further improvements to reduce hate crime.

42. The UN made recommendations to the UK Government on what it should do to tackle hate crime. As the body tasked by statute with promoting compliance by the UK with its obligations under international human rights law, we recommended:

- a full-scale review of aggravated offences and sentencing provision in Wales and England without further delay, as recommended by the Law Commission;
- monitoring use of the sentencing guideline for hate crime in Wales and England to assess consistency of sentencing;

- consistent data collection methods across countries, the criminal justice system and within individual agencies to allow comparative and chronological analysis;
- evaluation by the police and other statutory agencies of their reporting and recording processes, in consultation with people from local communities, and steps taken to simplify them;
- a review of the provision of third-party reporting, to evaluate their impact and sustainability, highlight geographical and thematic gaps and ensure they are consistent with police recording systems;
- police should refer all victims of hate crimes and incidents to relevant support services. Such services should be adequately funded. All victims should be told whether their case will be investigated and/or prosecuted, including regular updates on the progress of any investigation or prosecution.

43. Welsh Government should consider these recommendations when considering the Commission on Justice's report and their statement (Page 151):

“Although much has been done, the evidence leads us to conclude that much more needs to be done in ensuring that support is provided immediately to all victims of crime.”

Domestic Abuse

44. In Part 2 of Chapter 4 the Commission on Justice considers victims of crime and refers to the Welsh Government's work in domestic violence, including reference to the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015.
45. Domestic abuse is an abuse of human rights. Both domestic and international equality and human rights law impose positive obligations on the UK and Welsh Government to prevent and protect women from domestic abuse. These obligations are heightened where there is a predictable increased risk. Under the UN Convention on the Elimination of Discrimination against Women (CEDAW), which is binding in international law, the UK and Welsh Governments have committed to take all appropriate measures to eliminate all forms of discrimination against women, including gender-based violence. The CEDAW Committee's general recommendation 35 emphasises that genderbased violence in the form of domestic violence constitutes discrimination against women, and may amount to torture or cruel, inhuman or degrading treatment. There is a due diligence obligation to prevent, investigate, prosecute and punish such acts.
46. The key rights engaged by domestic abuse under the European Convention on Human Rights (ECHR), given domestic effect by the Human Rights Act 1998, are: the right to life (article 2), the prohibition on torture (article 3), the

right to respect for private and family life (article 8) and the right to non-discrimination (article 14). The ECHR imposes positive obligations on the Government to protect individuals against abuse or harm caused by other individuals, including a duty to put in place necessary law enforcement. Specifically with respect to domestic abuse, the European Court of Human Rights has made clear that a state's "failure to protect women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional."

47. There is clear evidence that sexual violence and domestic abuse increase during epidemics and other times of crisis. UK helplines are reporting a sharp rise in calls, and reports that domestic homicides have more than doubled since social distancing restrictions were implemented. The increased risk to women at this time is therefore a predictable major 'secondary' impact of the Covid-19 pandemic. Calls for services are likely to increase as the lockdown is lifted in Wales and women are able to flee their abusers.
48. Our 'Is Britain Fairer?' 2018 report highlighted that domestic abuse and sexual violence are gender based crimes that disproportionately affect women, and we know that disabled, LGBT and some ethnic minority women are at particular risk. Further, it is clear that ethnic minority, migrant, disabled, LGBT and older women face particular barriers to accessing non-specialist support, and that specialist organisations supporting these groups already faced funding difficulties even prior to the pandemic. We know that specialist provision in Wales has reduced due to changes in procurement processes by Local Authorities.
49. Welsh Government has a duty to provide appropriate protective and support services to all women who are victims of or at risk of violence - including provision of refuges, specially trained health workers, rehabilitation and counselling. In its policies on gender-based violence Welsh Government is expected to place "particular emphasis on the groups of women who are most marginalized and who may suffer from various forms of intersectional discrimination."
50. We have expressed concerns about a serious lack of funding and shortage of services for domestic abuse survivors, prior to the pandemic and in the context of the UK Domestic Abuse Bill. Sufficient crisis funding must be urgently provided to charities and organisations providing refuge and/or support services for survivors, including advice and advocacy. We welcome the Welsh Government's commitment to provide £24 million for charities overall, as well as £200,000 specifically for refuges and support services. However, it is not yet clear what proportion of the £24 million will be allocated to domestic abuse and sexual violence charities, or how funds will be distributed. Whilst it's noted that UK Government has announced £25million

towards helping victims of domestic abuse and sexual violence to be distributed via Police and Crime Commissioners, it is unclear what proportion of this fund will reach Wales.

51. We consider that a proportion of the £24 million funding for charities in Wales should be ring fenced for domestic abuse and sexual violence charities. Funding should be unrestricted crisis funding to cover the additional costs to domestic abuse and sexual violence charities resulting from Covid-19, including staff shortages and moving to remote service provision. In particular, it must include clear ring-fenced funding for smaller organisations led by and for groups sharing protected characteristics, including ethnic minority, disabled and LGBT women, to ensure continued provision of vital support to these groups. Consideration should be given to ensuring sufficient accessible safe accommodation and support for disabled and deaf survivors. In addition to immediate crisis funding, further funding will be required to respond to increased demand, including the likely spike in the numbers of survivors seeking help (and consequent pressure on services) in the coming months when social distancing restrictions are eased.
52. The UK and Welsh Governments must ensure that police retain capacity to respond to all forms of violence against women and girls during the pandemic, and that local police leaders communicate clearly to the public that responding to these crimes remains a priority. Prior to the pandemic, there were already significant concerns about the low rates of prosecution of rape and sexual offences, and this issue is currently the subject of a Home Office review. The significant delays to the progress of these offences through the criminal justice system, often taking years to be charged, is one reason for the high levels of victim withdrawal. With all new jury trials suspended from the end of March until last week, these delays look set to increase and long-term attention should be given to how to reduce delays once normal service resumes.
53. Crimes of violence against women and girls, including domestic abuse, must continue to be addressed by police as a high priority. Community Cohesion Coordinators have a key role in working with devolved and non-devolved organisations to help tackle hate crime and heal divisions in society. Police and Crime Commissioners and Chief Constables should give public assurances of this at a local level. If and when remote jury trials take place, careful consideration should be given as to how to ensure fair proceedings, in consultation with survivor groups and experts on the effects of trauma on survivors, including migrant and child survivors.

Prisons

54. The Commission on Justice consider prisons in detail in Part 4 of Chapter 4 in their report and highlight that Wales has one of the highest imprisonment

rates in Western Europe. Prisoners are particularly vulnerable to human rights breaches as all aspects of their lives are controlled by the state.

55. Families can provide valuable support for prisoners, who are all in a vulnerable situation, but particularly for those with mental health conditions. Our [inquiry](#) in 2015 into non-natural deaths of adults with mental health conditions reported that families can also play an important role in helping to develop a treatment plan for prisoners with such conditions. In order to comply with their obligations under the right to life, institutions should provide appropriate social support which will include the opportunity for regular family contact.

56. Our [Is Wales Fairer? Report 2018](#) gives details about prisons and overcrowding. Welsh Government has reiterated the problems caused by the lack of prisons for either women offenders or high-risk offenders, who currently have to be housed in jails in England, especially the impact it has on maintaining family connections (Welsh Affairs Committee, 2015). There are also limited facilities for young offenders in Wales. As stated above, Dr Robert Jones of the Wales Governance Centre recently [reported](#) that the number people held in Welsh prisons climbed to its highest ever level by 27th March 2020. We highlight the difficulties that this is causing in our [submission](#) to the UK Parliament Women and Equalities Committee inquiry into the impact of COVID19.

57. We are concerned about unlawful use of restraint against children and young people in custody, as well as the disproportionate use of restraint on certain groups sharing protected characteristics. Our [human rights framework](#) for restraint is a tool for policy makers and has already been used to inform policy and legal developments in Wales and England. We use the framework to inform our own work on restraint. It provides useful examples explaining the key principles of the following articles of the European Convention on Human Rights:

- Article 3 (prohibition on torture, inhuman and degrading treatment)
- Article 8 (respect for autonomy, physical and psychological integrity)
- Article 14 (non-discrimination)

58. The development of the framework was informed by discussion with government departments; regulators; inspectorates and ombudspersons; and the third sector. In 2016 a [follow-up report](#) examined the steps taken to act on our recommendations. We identified that changes are being made in some areas where we had concerns, but some key areas still need to be addressed.

59. We recommend that when implementing the Commission on Justice's recommendations, Welsh Government considers how our recommendations on preventing non-natural deaths of adults with mental health conditions in prisons, police custody and psychiatric hospitals can be adopted in the Welsh context and in particular our Human Rights Framework can be embedded in institutions in Wales.

People with Mental Health Conditions

60. The Commission on Justice highlight in their executive summary on page 11 of the report that the evidence that they received showed that the approach to those with mental health issues is not properly addressed within the criminal justice system. At page 178 of the report, they detail that police forces are also seeing a high level of demand from those experiencing mental health issues and that the four Welsh forces are working in partnership with their local health boards to provide support to those who are experiencing mental health issues, whether that is through a triage process in the control room or through mental health staff working alongside response officers.

61. This accords with the evidence in our *Is Wales Fairer? 2018* report. We will be publishing the results of our criminal justice inquiry, which looks at this issue in more detail with associated recommendations, shortly.

Conclusion

62. In conclusion, we would ask that the Legislation, Justice and Constitution Committee consider the following relevant recommendations from our *Is Wales Fairer? 2018* report, as follows:

- a. To ensure access to justice in Wales, Welsh Government should:
 - i. implement any recommendations of the Commission on Justice in Wales that address the key findings and recommendations in '*Is Wales Fairer? 2018*', including on the mitigation of UK legislation and policy on access to justice and legal aid, and conditions of detention;
 - ii. improve the availability of transport for accessing courts, particularly for rural households;
 - iii. continue to review the provision of both general advice services and specialist discrimination advice in Wales, to ensure adequate access to good quality services across Wales.
- b. To increase confidence in the criminal justice system and improve the response to hate crime, the Welsh Government, police forces and other relevant bodies in Wales should improve support for victims and witnesses to report online and offline hostility and intimidation, and develop effective mechanisms for tackling it.
- c. To address violence against women, domestic abuse and sexual violence, Welsh Government should:

- i. ensure the full implementation of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 and deliver the national violence against women, domestic abuse and sexual violence strategy by November 2021, ensuring that appropriate prevention programmes are developed and implemented, and survivors of violence against women, sexual or domestic abuse, receive appropriate and timely support, including specialist support for women from ethnic minorities, disabled women, women with complex needs, and children and young people;
 - ii. raise awareness of the issue, including by implementing all outstanding actions from the National Assembly for Wales Equality, Local Government and Communities Committee post-legislative scrutiny of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015;
 - iii. collect and monitor data about the number of spaces needed in refuges, and develop a sustainable funding model for refuges and domestic abuse services, including those that provide specialist services.
- d. To improve conditions in detention settings and reduce overcrowding across Wales:
- i. Welsh Government should work with the UK Government to invest in appropriate alternatives to prisons, including community sentencing, rehabilitation centres and diversion.
 - ii. Police forces in Wales should keep accurate and detailed reports on the use of police cells as a 'place of safety' under the Mental Health Act.

<https://www.equalityhumanrights.com/sites/default/files/is-britain-fairer-2018-is-wales-fairer.pdf>

SICRHAU BOD CYFIAWNDER YN GWEITHIO I BOBL CYMRU: YMATEB ODDI WRTH MY DEATH, MY DECISION.

Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad /
Legislation, Justice and Constitution Committee

Gwneud i Gyfiawnder weithio yng Nghymru /
Making Justice work in Wales

MJW 08

Ymateb gan: My Death, My Decision
Response from: My Death, My Decision

Mehefin 2020

Am fwy o fanylion, gwybodaeth a thystiolaeth, cysylltwch gyda:

Carrie Hynds

Associate Director

www.mydeath-mydecision.org.uk

Am My Death, My Decision

Corff ar-lawr-gwlad dibroffid yw My Death, My Decision sydd yn ymgyrchu dros gyfreithloni cymorth i farw yn Lloegr a Chymru. Fel mudiad cynyddol, rydym ar flaen y gad o ran newid cymdeithasol: mae bron 90% o'r cyhoedd nawr yn cefnogi newid yn y gyfraith i ganiatáu oedolion iach o ran meddwl, sydd naill ai yn gleifion terfynol wael neu yn wynebu dioddefaint anwelladwy, y dewis o farwolaeth dawel, ddi-boen ac urddasol.¹

Mae My Death, My Decision yn credu na ddylid cyfyngu cymorth i farw cyfreithlon i'r rheiny sydd ond â chwe mis neu lai i fyw. Rydym yn credu fel y mae tosturio wrth eraill wedi ysgogi pobl i gefnogi cymorth i farw ar gyfer cleifion terfynol wael, y dylid rhoi cefnogaeth i'r rheiny sy'n wynebu dioddefaint annioddefol ac anwelladwy. Trwy waith ein haelodau, cefnogwyr, noddwyr a gweithredwyr, rydym yn helpu i ledaenu'r trafod cyhoeddus ar gymorth i farw a cheisio sicrhau newidiadau yn y gyfraith.

Ein Methodoleg

O fewn yr ymateb hwn i'r ymchwiliad, mae My Death, My Decision yn gwneud sylwadau ar yr effaith anghymesur ymddangosiadol y gallai'r gyfraith gyfoes sy'n gwrthwynebu cymorth i farw gael ar Gymru. Mae dau bwynt rhagarweiniol dylid eu gwneud am y sylwadau hyn. Yn gyntaf, mae'n bwysig nodi bod ein rhifau yn debygol o fod yn geidwadol gan eu bod yn seiliedig ar ystadegau a rhyddhawyd i ni ar y nifer o bobl deithiodd o'r DU i'r corff Dignitas yn y Swistir. Felly, o ganlyniad dydy'n rhifau ddim yn cynnwys y rheiny sy'n teithio i gyrff gwahanol fel Lifcircle, EX International, neu Pegasos. Yn sgil hyn, mae hefyd felly yn bwysig cydnabod bod ein sylwadau yn rhai dros dro, gan ein bod yn cydnabod y bydd angen archwiliad pellach.

Ein Hargymhelliad

Rydym yn hapus i ymateb i ymchwiliad pwysig y Senedd ac i rannu ein hargymhelliad i gefnogi caniatáu Cymru i drefnu ei chyfraith ei hunan ar gymorth i farw cyfreithiol, diogel a thosturiol.

Rydym yn cefnogi safbwynt yr Arglwydd Thomas o Gwmgiedd a'r Comisiwn ar Gyfiawnder yng Nghymru ac yn credu y dylid trosglwyddo'r pwerau i reoli cyfiawnder a phlismaona i'r Senedd. Rheswm anorfod arbennig i wneud hynny byddai i alluogi'r Senedd i ddelio gydag un o'r anghyfiawnderau mwyaf dybryd sy'n effeithio Cymru ar hyn o bryd: y gwaharddiad ar gymorth i farw.

Mae bellach dystiolaeth anorfod i gefnogi newid yn y gyfraith fyddai'n caniatáu oedolion yn iach eu meddwl, sydd naill ai yn anwelladwy neu yn wynebu dioddefaint annioddefol, y dewis o gymorth i farw; yn amodol ar amddiffyniadau grymus. Eto, hyd yn oed petai Cymru'n dewis peidio diwygio'r gyfraith, ein barn ninnau yw y dylai'r hawl i wneud y fath ddewis fod yn nwylo'r Senedd. Felly, o ran achos pryder, rydym yn argymhell y Senedd i geisio hawlio trosglwyddo'r cwestiwn penodol hwn i'w swyddogaeth deddfwriaethol ddatganoledig.

1 Mae ymchwil newydd yn dangos bod hyd at 93% o bobl yn gweld cymorth i farw yn dderbyniol mewn o leiaf rhai sefyllfaoedd hyd yn oed os yn anaml: National Centre for Social Research (2019) i'w weld ar: <https://www.mydeath-mydecision.org.uk/wp-content/uploads/2019/03/Briefing-on-NatCen-assisted-dying-poll.pdf>

Mae ein hargymhelliad yn seiliedig ar dri ffactor.

1) Bod anallu'r Senedd i benderfynu ar gyfreithlondeb cymorth i farw yn ei osod yn groes i lywodraethau datganoledig eraill y Deyrnas Unedig.

Fel mater o egwyddor gyffredinol, barn My Death, My Decision yw y dylai cyfreithlondeb y Senedd fod, neu o leiaf yn cael ei weld yn bod, yn gyfartal â chyfreithlondeb llywodraethau datganoledig eraill ar draws y Deyrnas Unedig a thriogaethau dibynnol y Goron. Mae hyn oherwydd dau reswm. Yn gyntaf, yn dilyn datganoli pwerau deddfu ychwanegol, yn bennaf ym maes lechyd a Gofal Cymdeithasol, mae rôl y Senedd bellach yn ddadleuadwy gyfartal i hwnnw sydd gan Seneddau eraill ar draws y Deyrnas Unedig; pwynt a nodwyd yn symbolaidd ym mis Mai 2020 pan newidiodd y Cynulliad i fod yn Senedd. Yn ail, rydym yn cydnabod bod cefnogaeth y cyhoedd yng Nghymru i awdurdodaeth ddeddfwriaethol neilltuol, fel y dangoswyd gan 63.49% o etholwyr yn pleidleisio "ie" yn Refferendwm Datganoli Cymru 2011; ac rydym yn credu felly mae'n anorfod gywir, fel mater o egwyddor, y dylai'r Senedd feddu ar gymwysterau cyfatebol i Seneddau eraill ar draws y Deyrnas Unedig, fel ym meysydd cyfraith a chyfiawnder.

Tu hwnt i'r sylw cyffredinol hwn, rydym yn credu bod yna achos datganoledig penodol i gefnogi cymorth i farw. Erbyn hyn mae yn hir-sefydlog bod rhai cwestiynau moesol goddrychol yn syrthio tu mewn i ffiniau deddfwriaethol y llywodraethau datganoledig. Er enghraifft, mae'r categori hwn o gwestiynau yn cynnwys rheoleiddio erthyly a rhoi organau.. Cwestiwn arall sy'n ffitio i mewn i'r categori hwn yw cyfreithloni cymorth i farw. Felly, yn hanesyddol bu gwahanol ddeddfwriaethau yn meddu ar yr hawl i bennu eu cyfraith eu hunain ar y mater hwn, heblaw yn achos Cymru.² O edrych ar statws cymharol y Senedd fel corff deddfwriaethol, rydym yn credu y byddai gosod cysondeb o'r egwyddor hon hefyd yn caniatáu'r Senedd ei hunan i ddeddfu ar gymorth i farw.

Tra'n rhoi annhegwch sylfaenol y trefniant presennol i'r naill ochr, rydym yn credu bod dau reswm egwyddorol arall pam fod y sefyllfa bresennol yn annerbyniol.

Yn gyntaf, mae'n wahaniaeth sylweddol rhwng safbwyntiau'r cyhoedd yng Nghymru a gweddill y DU ar gymorth i farw. Er bod diwygio cymorth i farw, ar gyfer y rheiny sy'n anwelladwy neu'n wynebu dioddefaint annioddefol, yn derbyn cefnogaeth ysgubol yn Lloegr a Chymru, mae'n berthnasol nodi i arolwg gan NatCen yn 2019 ganfod tra bod 88% o'r Deyrnas Unedig yn ei chyfarwydd yn cefnogi cymorth i farw, o leiaf dan rai amgylchiadau, cynyddodd hyn i 93% ar gyfer ymatebwyr o Gymru.³ O dderbyn mai nod cyffredinol datganoli yw cydnabod falle bod gan etholwyr Cymreig safbwynt gwahanol i weddill y DU, ac felly yn meddu ar yr hawl i ddeddfu'n wahanol ar y mater yna, onid yw'n anochel os oes gan yr etholwyr Cymreig agwedd wahanol ar gwestiwn moesol goddefol, mae pwysigrwydd gallu'r Senedd i ddeddfu ar y cwestiwn hwnnw yn tyfu'n fwy arwyddocaol fyth?

Felly mae anallu Cymru i ddeddfu yn unol â dymuniadau ei hetholwyr yn annheg, ac mae'r annhegwch hwn yn cynyddu oherwydd y ffaith mai hwn yw'r unig lywodraeth lle mae'r sefyllfa yn bodoli.

Ond hyd yn oed ymhellach na hyn, hyd yn oed petai'r etholwyr Cymreig ddim am newid y ddeddfwriaeth ar gymorth i farw, mae anghyfiawnder gwrthgyferbyniol anallu'r Senedd i wneud y dewis hwnnw yn dwysáu gan fod gan San Steffan fetto effeithiol. Er enghraifft, dan y trefniannau cyfansoddiadol presennol, ni ellir newid Deddf Hunanladdiad 1961 (sy'n gwahardd cymorth i farw yn Lloegr a Chymru) ond gyda chefnogaeth 326 AS (neu fwyafrif syml) yn San Steffan. Felly mae'n amhosib i'r etholwyr yng Nghymru, sy'n meddu ar bersbectif gwahanol i'r etholwyr yn Lloegr, byth i ddeddfu i newid y gyfraith, neu i'r gwrthwyneb i atal newid y gyfraith, oherwydd dim ond 40 AS sy'n cynrychioli etholaethau Cymreig. Mewn gair, golyga hyn bydd unrhyw newid yn y gyfraith dros Gymru bob amser yn ddibynnol ar safbwyntiau etholwyr Seisnig neu eu cynrychiolwyr etholedig.

Golyga hyn, tra bod'n ddealltwriaeth eang y gall gwahanol bobl anghytuno'n rhesymol ynglŷn â chyfreithloni cymorth i farw (ac mewn cydnabyddiaeth o hyn, gall bron pob gweinyddiaeth ddatganoledig bennu ei chyfraith ei hunan), dydy'r Senedd ddim yn meddu ar yr awdurdod hwn er bod y mwyafrif llethol o'r cyhoedd yn ffafrio cymorth i farw; gydag etholwyr Seisnig yn meddu ar fetto effeithiol dros y gyfraith yng Nghymru. O ganlyniad i'r ffactorau hyn, rydym yn credu ei bod yn anghywir o ran egwyddor na all Cymru bennu ei chyfraith ei hunan ar gymorth i farw.

2 Yng Ngogledd Iwerddon mae'r gyfraith ar gymorth i farw yn cael ei reoli gan Adran 5,12,13,13A, a 13B o'r Criminal Justice (Northern Ireland) Act 1966. Does'n ddim trosedd statudol yn yr Alban o roi cymorth i rywun arall farw ac yn lle hynny rheolir y weithred gan gyfraith wladol yr Alban ar ddynladdiad. Ar Ynys Manaw gwaharddir cymorth i farw dan Adran 2(1) o'r Criminal Law Act 1981; yn achos Jersey a Guernsey, mae'r ddwy ddibynwlad yn meddu ar yr hawl i basio deddfwriaeth sylfaenol i newid y gyfraith ar gymorth i farw, ond byddai angen sêl bendith Pwyllgor y Cyfrin Gyngor ar Faterion Jersey a Guernsey. Yn gyferbyniol, mae Adran 2(1) a 2(2) Deddf Hunanladdiad 1961 yn gwahardd cymorth i farw yn Lloegr a Chymru.

3 *Ibid no.1*. Fodd bynnag, rhaid cyfaddef bod maint y sampl yng Nghymru yn llai na Lloegr.

2) Anallu'r Senedd i bennu cyfreithlondeb risgiau cymorth i farw yn tansilio effeithiolrwydd gofal diwedd bywyd.

Fel y crybwyllwyd uchod, safbwynt My Death, My Decision yw bod anallu'r Senedd i bennu cyfraith Cymru ar gymorth i farw yn annheg o ran egwyddor. Rydym yn credu, fodd bynnag, bod datganoli tameidiog dewisiadau diwedd bywyd yng Nghymru hefyd yn esgor ar oblygiadau ymarferol difrifol.

Safbwynt My Death, My Decision yw, fel gofal lliniarol, dylid gweld y dewis o gymorth i farw cyfreithiol a diogel fel hawl gofal iechyd sylfaenol. O ganlyniad, nid ydym yn gweld gofal lliniarol o safon uchel a chymorth i farw fel dewisiadau nad ydynt yn cydfynd, ond fel ffurfiau cyflenwol o gymorth sy'n bodoli ar sbectwm o ddewisiadau diwedd bywyd. O dderbyn hyn, rydym yn credu, gan fod gan Gymru yr awdurdod i bennu ei chyfraith a pholisi ar rai cwestiynau diwedd bywyd, sef gofal lliniarol,⁴ mae'n hollol afresymegol nad yw'r Senedd yn meddu ar yr un awdurdod dros gwestiynau diwedd bywyd eraill, fel y ddeddfwriaeth ar gymorth i farw.

Mae hyn yn bodoli oherwydd, er gwaetha ymdrechion gorau gofalwyr lliniarol proffesiynol Cymru a lefelau mwyaf erioed o fuddsoddi mewn gofal hosbis, rydym yn cydnabod ei fod yn anochel bod gan feddygaeth liniarol ei chyfyngiadau. Er mwyn osgoi unrhyw amheuaeth, dydy hyn ddim yn gwadu nad oes angen ymestyn gofal lliniarol ymhellach, na bod mwy i'w wneud o ran ei gyllido,⁵ mae ond yn gydnabyddiaeth na ellir lleddfu rhai ffurfiau o ddiodeffaint a rhai cyflyrau meddygol gan ofal lliniarol yn unig. Er enghraifft, gwelodd astudiaeth ddiweddar gan yr Office of Health Economics tra falle mai dim ond 1,048 o bobl sy'n marw yng Nghymru yn dioddef o boen diymgeledd llwyr, mae bron saith gwaith mwy o bobl (7,137) yn marw gyda'u poen wedi ei lleddfu'n rhannol, hyd yn oed os ydynt yn derbyn cymorth lliniarol.⁶ Yn wir, mae'r broblem hon ond yn debygol o waethygu wrth i boblogaeth Cymru heneiddio a thyfu'n fwy tueddol o afiachusrwydd torfol, fel mae Adroddiad Tueddiadau'r Dyfodol Llywodraeth Cymru yn dangos sy'n debygol, o herwydd amcangyfrifir erbyn 2039 bydd y nifer o bobl dros 65 mlwydd oed 40% yn uwch nag oedd yn 2014.

O ganlyniad i hyn, rydym yn credu gallai effeithiolrwydd cyflawn gofal diwedd bywyd yng Nghymru gael ei danseilio gan anallu'r Senedd i ddeddfu a rheoleiddio cymorth i farw. Mae hyn oherwydd mewn awdurdodaethau lle mae cymorth i farw yn gyfreithlon, mae tystiolaeth bod y dewis o gymorth i farw yn gallu torri rhai o'r cyfyngiadau mewn meddygaeth liniarol. Er enghraifft, gan fod meddygaeth liniarol yn driniaeth poen-ogwyddol, mae'n aml yn anffafriol i ddelio gyda ffurfiau eraill o ddiodeffaint sy'n meddu ar gymeriad dirfodol, e.e. colli annibyniaeth. Ond mae data o Oregon, sy'n dangos bod traean o'r holl ymgeiswyr sy'n gwneud cais am gymorth i farw ddim wedyn yn mynd yn eu blaen ar ôl cael eu derbyn,⁷ yn awgrymu y gallai cymorth cyfreithlon i farw fod yn fodd i ryddhau'r tensiynau hyn a hyd yn oed ysgogi pobl i barhau i dderbyn gofal lliniarol.

Ym mhrofiad My Death, My Decision, mae llawer o bobl sydd wedi derbyn caniatâd i gael cymorth i farw yn y Swistir yn adrodd fod y wybodaeth y gallent ddiweddu eu bywyd petai eu diodeffaint yn datblygu'n annioddefol yn ddigon iddynt barhau i fyw. Felly, fel mae Gogledd Gwlad Belg wedi arddangos ers dros ddegawd, rydym yn credu bod gofal diwedd bywyd yn gweithio orau pan fod gofal lliniarol a chymorth cyfreithlon i farw yn bodoli gyda'i gilydd. Er enghraifft, bydd dros 70% o'r bobl sy'n gofyn am gymorth i farw yn Rhanbarth Fflandrys yng Ngwlad Belg wedi defnyddio'r opsiynau gofal lliniarol ymlaen llaw,⁸ ac yn Oregon, mae bron 90% o gleifion yn derbyn gofal lliniarol cyn gofyn am gymorth i farw.¹¹

4 Marie Curie, 'Gofal Lliniarol a Chenhedloedd y DU: anghenion asesu, polisi a strategaeth wedi'u diweddarau: goblygiadau i Gymru'. Yn hygyrch yn: <https://www.mariecurie.org.uk/globalassets/media/documents/policy/marie-curie-reports/state-of-the-nation-report-wales-english.pdf>

5 Yn wir, mewn awdurdodaethau sydd wedi cyfreithloni cymorth i farw, yn nodedig Canada, mae'n achos yn aml bod mynediad i a nawdd ar gyfer gofal lliniarol yn gwella ochr-yn-ochr gydag unrhyw newid yn y gyfraith. O dderbyn bod cymorth i farw cyfreithlon yn arwain yn aml at sgysiaid diwedd-bywyd yn datblygu'n dderbyniol, mae'n bwysig bod gofal lliniarol yn gwella ochr-yn-ochr â chymorth i farw cyfreithlon er mwyn sicrhau y gall pobl wneud penderfyniadau deallus seiliedig ar bob opsiwn sydd ar gael.

6 B. Zamora et al, 'Poen Anniogel mewn Gofal Lliniarol yn Lloegr', Y Swyddfa Economeg Iechyd (2019). Yn hygyrch yn: <https://www.ohe.org/publications/unrelieved-pain-palliative-care-england>

7 Hospice UK, 'Hospice Care in Wales 2018' (2018). Yn hygyrch yn: [https://www.hospiceuk.org/docs/default-source/Policy-and-Campaigns/briefings-and-consultations-documents-and-files/hospice-care-in-wales-report-2018-\(english\)_web.pdf?sfvrsn=2](https://www.hospiceuk.org/docs/default-source/Policy-and-Campaigns/briefings-and-consultations-documents-and-files/hospice-care-in-wales-report-2018-(english)_web.pdf?sfvrsn=2)

8 Mae'n werth nodi mai yn awdurdodaethau sydd wedi cyfreithloni cymorth i farw, y rheswm unigol mwyaf cyffredin dros ofyn am gymorth i farw yw 'colli annibyniaeth' (90.6% ar gyfartaledd o ymgeiswyr yn Oregon), yn cael ei ddilyn yn agos gan 'gollu urddas' (74.4% ar gyfartaledd) a'r 'anallu i gymryd rhan mewn gweithgareddau yn gwneud bywyd yn bleserus' (89.1% ar gyfartaledd). Yn gyferbyniol, noda meddygon yn Oregon mai dim ond 25.7% o ymgeiswyr ar gyfartaledd sy'n cael eu hysgogi gan ryddhad annigonol o boen, sy'n awgrymu nad yw gofyn am gymorth i farw yn deillio o ryddhad annigonol o boen ond yn hytrach oherwydd ffurfiau eraill o ddiodeffaint di-boen. Yn wir, mae hyn wedi ei gadarnhau mewn archwiliad diweddar yng Nghanada, ddaeth i'r casgliad ei bod yn annhebyg bod ymgeiswyr yn ceisio cymorth i farw oherwydd mynediad annigonol i ofal lliniarol. Gweler n8 a J Downer et al, 'Early experience with medical assistance in dying in Ontario, Canada: a cohort study' CMAJ February 24, 2020 192 (8) E173-E181 Ar gael ar: <https://www.cmaj.ca/content/192/8/E173>

9 Oregon Health Authority, 'Oregon Death with Dignity Act: Data Summary 2018', Public Health Division, Centre for Health Statistics (2019). Accessible at: <https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Documents/year21.pdf>

10 S Dierickx et al, 'Involvement of palliative care in euthanasia practice in a context of legalized euthanasia: A population-based mortality follow-back study', Palliat Med. 2018 Jan; 32(1):114-122, accessible at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5758933/>

11 *Ibid* no.9

Oherwydd hyn, rydym yn credu nad yw hi yn gwneud synnwyr i Gymru gael ei hatal rhag penderfynu ar ei chyfraith ei hunan ar gymorth i farw, oherwydd gellid dadlau fod yr anallu i ddarparu un ffurf o gymorth diwedd bywyd yn tanseilio effeithiolrwydd cyflawn ei strategaeth gofal.

3) Mae'n ymddangos bod y gwaharddiad ar gymorth i farw yn Lloegr a Chymru yn cael effaith anghyfartal ar Gymru.

Yn wahanol i 10 awdurdodaeth yn Unol Daleithiau America, taleithiau Victoria a Gorllewin Awstralia, Colombia, Y Swistir, Yr Iseldiroedd, Gwlad Belg, Lwcsembwrg, Yr Almaen, Yr Eidal a Canada, lle caniateir cymorth i farw mewn rhyw ffurf neu'i gilydd, erys cymorth i farw yn anghyfreithlon yng Nghymru a gweddiill y DU. Yn wir, o dan Adran 2(1) a 2(2) o'r Ddeddf Hunanladdiad 1961 gall unrhyw un sy'n ei gael yn euog o roi cymorth i rywun arall i farw wynebu hyd at 14 blynedd o garchar.

Eto, er gwaethaf y gwaharddiad cyflawn ar gymorth i farw, mae ymchwil oddi wrth yr UK Assisted Dying Coalition (y mae My Death, My Decision yn aelod sefydlol ohono) wedi darganfod bod mwy nag un person yr wythnos yn teithio o'r DU i'r Swistir i dderbyn cymorth i farw.¹²

Yn ein tyb ni, mae'r casgliadau hyn yn dangos nad yw'r gyfraith bresennol yn Lloegr a Chymru yn gweithio – yn hytrach mae'n gyrru y rheiny sydd naill ai yn eu gwaeledd olaf neu yn wynebu dioddefaint anwelladwy dramor neu yn ddirgel. Mae ystadegau pellach a ryddhawyd i ni yn arddangos bod y gwaharddiad presennol yn cael effaith anghyfartal ar Gymru:

- Mae'r gyfran o bobl sy'n teithio o Gymru i'r Swistir i dderbyn cymorth i farw yn ddemograffeg sy'n cynyddu ymhlith y cyflymaf; ac ers 2014 mae'r nifer o bobl sy'n teithio o Gymru wedi mwy na dyblu.¹³
- Yn berthnasol i boblogaeth Cymru fel canran o'r Deyrnas Unedig, bu nifer o flynyddoedd pan oedd y rheiny deithiodd o'r DU am gymorth i farw yn drigolion anghymesur yn byw yng Nghymru.¹⁴

Tra ei bod falle yn rhy gynnar i wneud sylwadau pendant, rydym yn credu gallai'r risg y byddai Deddf Hunanladdiad 1961 yn ymarferol gael canlyniadau anghyfartal yng Nghymru warantu'r Senedd gael yr hawl i archwilio a rheoleiddio ei chyfraith ei hunan.

Felly, fel rhywbeth sydd o bwys, rydym yn argymhell y Senedd i ofyn am i'r cwestiwn penodol o gymorth i farw i gael ei drosglwyddo i mewn i'w grymoedd datganoledig.

I grynhoi, rydym yn credu ei bod hi yn amser i Gymru gymryd safiad arweiniol ar gymorth i farw cyfreithlon, diogel a thosturiol ar gyfer y rheiny sy'n dioddef yn anwelladwy neu yn eu gwaeledd olaf, fel y mae Cymru wedi gwneud ar gwestiynau tebyg o'r blaen. Rydym, wrth gwrs, yn cydnabod falle bydd eraill yn anghytuno. Eto, o dderbyn bod y gyfraith bresennol:

- (i) yn gwrthod i Gymru yn anghyfiawn yr un grymoedd ag awdurdodaethau datganoledig eraill; ac
- (ii) (o ystyried materion eraill sydd wedi'u datganoli'n barod) yn gwahanu yng Nghymru elfen allweddol o'r sbectrwm hollgynhwysfawr o ofal diwedd bywyd, y dylai fod yn rhan cyflawn ohono; ac
- (iii) yn gallu effeithio'n anghyfartal ar bobl yn byw yng Nghymru,

rydym yn credu bod rheswm cryf dros Gymru o leiaf gael yr awdurdod i bennu ei chyfraith ei hunan.

O'r herwydd, rydym yn argymhell yn gryf bod y Senedd yn galw ar San Steffan i ddatganoli'r mater cyfiawnder penodedig o gymorth i farw i'r Senedd.

12 Assisted Dying Coalition, 'Briefing: Number of UK citizens going to Switzerland to seek an assisted death' (2018). Accessible at: https://humanism.org.uk/wp-content/uploads/2019-2-1-KM-Assisted-Dying-Briefing_-_Number-of-UK-citizens-going-to-Switzerland-to-see-an-assisted-death-1.pdf

13 Yn ôl ystadegau a ryddhawyd i My Death, My Decision, teithiodd naw person o Gymru i Dignitas rhwng 2002 a 2013. Mae hyn yn golygu cyfartaledd o 0.6 ymwelydd y flwyddyn. Mewn cymhariaeth, rhwng 2014 a 2020 rydym yn deall bod wyth person wedi teithio i Dignitas, sy'n golygu cyfartaledd o 1.3 ymwelydd bob blwyddyn.

14 Yn ôl EuroStat a ffigyrau o'r Swyddfa Ystadegau Genedlaethol, cyfrifai poblogaeth Cymru 5.9% o'r DU yn 2014, ond 6.8% o'r rheiny deithiodd o'r DU i Dignitas yn yr un flwyddyn. Yn ôl EuroStat a ffigurau gan y Swyddfa Ystadegau Gwladol, roedd poblogaeth Cymru yn cyfrif am 5.9% o'r DU yn 2014, ond 6.8% o'r rhai a deithiodd o'r DU i Dignitas yn yr un flwyddyn.

MAKING JUSTICE WORK IN WALES: A RESPONSE FROM MY DEATH, MY DECISION.

May 2020

Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad / Legislation, Justice and Constitution Committee

Gwneud i Gyfiawnder weithio yng Nghymru / Making Justice work in Wales

MJW 08

Ymateb gan: My Death, My Decision
Response from: My Death, My Decision

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About us

My Death, My Decision is a grassroots non-profit organisation that campaigns for the legalisation of assisted dying in England and Wales. As a growing movement we are at the forefront of social change: nearly 90% of the public now favours a change in the law to allow adults of sound mind, who are either terminally ill or facing incurable suffering, the option of a peaceful, painless, and dignified death.

My Death, My Decision believes that legalised assisted dying should not be restricted to only those with six or fewer months left to live. We believe that just as compassion for others has motivated people to support assisted dying for those who are terminally ill, it should also underscore support for those facing intolerable and incurable suffering, as faced by our patron Paul Lamb. Through the work of our members, supporters, patrons, and activists we help to broaden the public debate on assisted dying and seek to secure changes in the law.

Our Methodology

Within this consultation response My Death, My Decision comments on the seemingly disproportionate impact the current law prohibiting assisted dying may have upon Wales. There are two preliminary points which should be made about these comments. Firstly, it is important to note that our figures are likely to be conservative as they are based on statistics released to us on the number of people who travelled from the UK to the Swiss organisation Dignitas. Accordingly, our figures do not include the number of citizens who travel to alternative organisations such as Lifecircle, EX International, or Pegasos. In view of this, it is also therefore important to recognise that our comments are provisional, as we recognise further investigation may be necessary.

Our Recommendation

We are pleased to respond to the Senedd's important consultation and share our recommendation in support of allowing Wales to determine its own law on legal, safe, and compassionate assisted dying.

We support the view of Lord Thomas of Cwmgiedd and the Commission on Justice in Wales and believe that powers to control justice and policing should be devolved to the Senedd. A particularly compelling reason to do so would be to enable the Senedd to address one of the most pressing injustices currently affecting Wales: the prohibition of assisted dying.

There is now compelling evidence to support a change in the law which would allow adults of sound mind, who are either terminally ill or facing incurable suffering, the option of an assisted death; subject to robust safeguards. Yet, even if Wales decided not to reform the law, it is our view that the authority to make such a choice should be vested within the Senedd. Therefore, as an area of concern, we recommend that the Senedd should request for this specific issue to fall within its devolved competencies.

Our recommendation is based on three factors.

1) The Senedd's inability to determine the legality of assisted dying puts it at odds with other devolved administrations across the United Kingdom.

1 'New research finds up to 93% of people consider assisted dying acceptable in at least some situations, even if rarely.', National Centre for Social Research (2019). Accessible at: <https://www.mydeath-mydecision.org.uk/wp-content/uploads/2019/03/Briefing-on-NatCen-assisted-dying-poll.pdf>

As a matter of general principle, it is the view of My Death, My Decision that the legitimacy of the Senedd is, or at the very least should be seen to be, equal to that of other devolved administrations across the United Kingdom and Crown dependencies. This is the case for two reasons. Firstly, following the devolution of additional law making competencies, most notably in Health and Social Care, the Senedd's role is now arguably equivalent to that of other Parliaments across the United Kingdom; a point symbolically recognised in May 2020 when the Senedd transitioned from an Assembly into a Parliament. Secondly, we recognise that popular support has now grown in Wales for a separate legislative jurisdiction, as demonstrated by 63.49% of the electorate voting 'yes' in Wales' 2011 Devolution Referendum; and accordingly we believe it must therefore be correct, as a matter of principle, that the Senedd should have comparable competencies to other Parliaments across the United Kingdom, such as in the fields of law and justice.

Beyond this general observation, we believe that there is also a specific devolutionary case in support of assisted dying. It is now well established that certain morally subjective issues fall within the margin of appreciation for devolved administrations. For example, this category of issues include the regulation of abortion and organ donation. Another issue which fits squarely within this category is the legalisation of assisted dying. Hence, different administrations have historically always had the power to determine their own law on this matter; except in the case of Wales.² Given the Senedd's comparable status as a legislative Parliament, we believe that a consistent application of this principle would also entitle the Senedd to also determine its law on assisted dying.

Setting aside the fundamental inequity of this arrangement, we believe there are two further principled reasons why the present situation is unacceptable.

Firstly, there is a notable difference between the views of the public in Wales and the rest of the UK on assisted dying. Although assisted dying reform, for both those who are terminally ill or facing incurable suffering, is overwhelmingly favoured in both England and Wales, it is relevant to note that a 2019 poll from NatCen found that whilst 88% of people in England favoured assisted dying for the incurably suffering, in at least some circumstances; this increased to 93% when respondents were asked from Wales. Given that the general purpose of devolution is to recognise that the Welsh electorate may have a different view to the rest of the UK, and thus should also be entitled to legislate on that matter differently; it surely follows that if the Welsh electorate has a different view on a morally subjective question, the importance of the Senedd's ability to legislate on that issue becomes all the more significant. Wales' inability to legislate in accordance with the wishes of its electorate is therefore unjust, and this is compounded by the fact that it is the sole administration where this is the case.

But more than this, even if the Welsh electorate did not want to change the law on assisted dying, the stark injustice of the Senedd's inability to make that choice must be exacerbated by the fact that Westminster has an effective veto. For example, under the current constitutional arrangements the Suicide Act 1961 (which prohibits assisted dying in England and Wales) can only be changed with the support of 326 MPs (or a simple majority) in Westminster. It is therefore impossible for the electorate in Wales, which has a different perspective to the electorate in England, to ever enact a change in the law, or conversely prevent a change in the law, since only 40 MPs represent Welsh constituencies. In short, this means any change in the law for Wales will always be reliant upon the views of English voters or their elected representatives.

This means that whilst it is widely understood that different people may reasonably disagree about the legalisation of assisted; and in recognition of this, almost every devolved administration can determine its own law; the Senedd does not have this authority; despite an overwhelming majority of the public favouring assisted dying; and English voters having an effective veto over the law in Wales. In view of these factors, we believe it is wrong as a matter of principle that Wales cannot decide its own law on assisted dying.

2) The Senedd's inability to determine the legality of assisted dying risks undermining the overall effectiveness of end-of-life care.

As established above, it is the view of My Death, My Decision that the Senedd's inability to determine Wales' law on assisted dying is unjust in principle. However, we also believe that the piecemeal devolution of end-of-life choices in Wales also has serious practical implications.

2 In Northern Ireland the law on assisted dying is governed by Section 5, 12, 13, 13A, and 13B of the Criminal Justice (Northern Ireland) Act 1966. In Scotland there is no statutory offence to assist in the death of another and instead the practice is governed by Scotland's common law crime of homicide. In the Isle of Man assisted dying is prohibited under Section 2(1) of the Criminal Law Act 1981; in the case of the Jersey and Guernsey, both dependencies are entitled to pass primary legislation to change the law on assisted dying but would require royal sanction from the Privy Council Committee for the Affairs of Jersey and Guernsey. In contrast, Section 2(1) and 2(2A) of the Suicide Act 1961 prohibit assisted dying in both England and Wales.

3 *Ibid no.1*. However, the sample size for Wales was admittedly smaller than England.

It is the view of My Death, My Decision that, like palliative care, the option of a legal and safeguarded assisted death should be seen as a fundamental healthcare right. Consequently, we view both high-quality palliative care and legalised assisted dying as not mutually exclusive end-of-life choices, but as complementary forms of assistance which exist on a spectrum of end-of-life options. Given this, we believe that since Wales already has the authority to decide its own law and policy on some end-of-life issues, namely palliative care,⁴ it is plainly illogical that the Senedd does not have the same authority over other end-of-life issues, such as the legislation of assisted dying.

This is because, despite the best efforts of palliative professionals in Wales and record levels of investment in hospice care, we recognise that palliative medicine inevitably has limits. For the avoidance of any doubt, this is not to say that access to palliative care does not need further expansion, nor that there isn't still more to be done in regard to its funding; it is merely a recognition that some forms of suffering and some medical conditions cannot be adequately alleviated by palliative care alone. For example, a recent study by the Office of Health Economics found that whilst only 1,048 people may die in Wales with completely unrelieved pain, nearly seven times more people (7,137) die with their pain only partially relieved, even if they might be receiving palliative assistance.⁶ Indeed, this problem is only likely to worsen as Wales' population grows older and more prone to comorbidity; as the Welsh Government's 'Future Trends Report',⁷ indicates is likely, since by 2039 the number of people aged over 65 in Wales is estimated to be 40% higher than it was in 2014.

In view of this, we believe that the overall effectiveness of Wales' end-of-life care regime may be undermined by the Senedd's inability to legislate and regulate assisted dying. This is because in jurisdictions where assisted dying is legal, there is evidence that the option of an assisted death can often help to resolve some of the limitations within palliative medicine. For example, since palliative medicine is a pain-oriented form of treatment, it is often ill-equipped to resolve other forms of suffering that are of an existential character e.g. loss of autonomy. But data from Oregon, which shows that a third of all applicants who apply for an assisted death do not then proceed after being accepted,⁸ implies that legal assisted dying may be capable of resolving these tensions and even encourage people to continue receiving palliative care.

In the experience of My Death, My Decision, many people who have been 'greenlighted' for an assisted death in Switzerland report that the mere knowledge that they could end their life if their suffering became unbearable is enough for them to continue living. Therefore, just as Northern Belgium has demonstrated for over a decade, we believe that end-of-life care works best when both palliative care and legal assisted dying exist in tandem. For example, over 70% of people who request an assisted death in the Flanders Region of Belgium will have exhausted the options of palliative care beforehand; as in Oregon, nearly 90% of patients receive palliative care before requesting assistance to die.

Because of this, we believe that it does not make sense for Wales to be prevented from deciding its own law on assisted dying, as the inability to provide one form of end-of-life assistance may arguably undermine the overall effectiveness of its care strategy.

4 Marie Curie, 'Palliative care and the UK nations: an updated assessment needs, policy, and strategy: implications for Wales'. Accessible at: <https://www.mariecurie.org.uk/globalassets/media/documents/policy/marie-curie-reports/state-of-the-nation-report-wales-english.pdf>

5 Indeed in jurisdictions which have legalised assisted dying, notably Canada, it is often the case that access and funding for palliative care is also improved alongside any change in the law. Given that legal assisted dying often results in end-of-life conversations becoming destigmatized, it is vital that palliative care is improved in conjunction with legal assisted dying to ensure that people make informed decisions based on all available options.

6 B. Zamora *et al*, 'Unrelieved Pain in Palliative Care in England', The Office of Health Economics (2019). Accessible at: <https://www.ohe.org/publications/unrelieved-pain-palliative-care-england>

7 Hospice UK, 'Hospice Care in Wales 2018' (2018). Accessible at: [https://www.hospiceuk.org/docs/default-source/Policy-and-Campaigns/briefings-and-consultations-documents-and-files/hospice-care-in-wales-report-2018-\(english\)_web.pdf?sfvrsn=2](https://www.hospiceuk.org/docs/default-source/Policy-and-Campaigns/briefings-and-consultations-documents-and-files/hospice-care-in-wales-report-2018-(english)_web.pdf?sfvrsn=2)

8 It is worth noting that in jurisdictions which have legalised assisted dying, the single most common reason for seeking an assisted death is 'losing autonomy' (on average 90.6% of applicants in Oregon), closely followed by a loss of dignity (74.4% on average) and inability to engage in activities which made life enjoyable (89.1% on average). In contrast, doctors in Oregon note only 25.7% of applicants on average are motivated by inadequate pain relief, which suggests assisted dying is not sought because of inadequate pain relief but rather due to other non-pain forms of suffering. Indeed, this has been affirmed by a recent investigation in Canada, which concluded it was unlikely applicants seek an assisted death because of inadequate access to palliative care. See n8, and J Downar *et al*, 'Early experience with medical assistance in dying in Ontario, Canada: a cohort study', *CMAJ* February 24, 2020 192 (8) E173-E181. Available at: <https://www.cmaj.ca/content/192/8/E173>

9 Oregon Health Authority, 'Oregon Death with Dignity Act: Data Summary 2018', Public Health Division, Centre for Health Statistics (2019). Accessible at: <https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Documents/year21.pdf>

10 S Dierickx *et al*, 'Involvement of palliative care in euthanasia practice in a context of legalized euthanasia: A population-based mortality follow-back study', *Palliat Med.* 2018 Jan; 32(1):114-122, accessible at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5758933/>

11 *Ibid* no.8

3) The prohibition of assisted dying in England and Wales seems to have a disproportionate impact on Wales.

In contrast to 10 jurisdictions in the United States of America, the Australian states of Victoria and Western Australia, Colombia, Switzerland, the Netherlands, Belgium, Luxembourg, Germany, Italy, and Canada, where assisted dying is permitted in some form, assisted dying remains unlawful in Wales and the rest of the UK. Indeed, under Section 2(1) and 2(2A) of the Suicide Act 1961 anyone found guilty of assisting another to die can face up to 14 years imprisonment.

Yet, despite the current blanket ban on assisted dying, research from the UK Assisted Dying Coalition, of which My Death, My Decision is a founding member,¹² has discovered that more than one person a week now travels from the UK to Switzerland for an assisted death.

In our view, these findings show that the current law in England and Wales does not work – and instead drives those who are either terminally ill or facing incurable suffering overseas or underground. Further statistics released to us indicate that the current ban may also have a disproportionate impact on Wales:

- The proportion of people who travel from Wales to Switzerland for an assisted death is one of the fastest growing demographics; and since 2014 the number of people who travel from Wales has more than doubled.
- Relative to Wales' population as a percentage of the United Kingdom, there have been multiple years where those who travel from the UK for an assisted death have disproportionately resided in Wales.¹⁴

Whilst it may be too early to make definitive observations, we believe that the mere risk that the Suicide Act 1961 may in practice have disproportionate consequences for Wales warrants the Senedd the ability to investigate and regulate its own law.

Therefore, as an area of concern, we recommend that the Senedd should request for the specific issue of assisted dying to fall within its devolved competencies.

In sum, we think that it is time for Wales to take a leading stance on legal, safe, and compassionate assisted dying for the incurably suffering and terminally ill, as Wales has done on similar issues beforehand. We of course recognise that others may disagree. Yet, given that the current law :

- (i) unjustly denies Wales the same competencies as other devolved administrations; and
- (ii) (having regard to other matters already devolved) wrongly divorces in Wales a key element from the overall spectrum of end-of-life care, of which it should properly form part; and
- (iii) may disproportionately impact upon people living in Wales,

we believe that there is a strong case for Wales have at the very least the authority to determine its own law.

Hence, we strongly recommend that the Senedd requests for Westminster to devolve the specific justice matter of assisted dying to the Senedd.

¹² Assisted Dying Coalition, 'Briefing: Number of UK citizens going to Switzerland to seek an assisted death' (2018). Accessible at: https://humanism.org.uk/wp-content/uploads/2019-2-1-KM-Assisted-Dying-Briefing_-_Number-of-UK-citizens-going-to-Switzerland-to-seek-an-assisted-death-1.pdf

¹³ According to statistics released to My Death, My Decision nine people travelled from Wales to Dignitas between 2002 and 2013. This accounts on average for 0.6 visitors per year. In comparison, between 2014 and 2020 we understand that eight people travelled to Dignitas, accounting for an average of 1.3 visitors every year.

¹⁴ According to EuroStat and figures from the Office of National Statistics, Wales' population accounted for 0.59% of the UK in 2014, but 0.68% of those travelling from the UK to Dignitas in the same year. Equally, in 2017, Wales' population accounted for 0.50% of the UK, but 0.58% of those travelling for an assisted death in 2017.

Ymgynghoriad: Gwneud i Gyfiawnder weithio yng Nghymru

Consultation: Making Justice work in Wales

Ym mis Mawrth 2019, cyhoeddodd Canolfan Llywodraethiant Cymru Prifysgol Caerdydd yr adroddiad ([wedi atodi](#)) '[Justice at the Jagged Edge in Wales](#)', gan Dr Robert Jones a'r Athro Richard Wyn Jones.

Roedd yr adroddiad yn un o gyfres o gyhoeddiadau a gynhyrchwyd gan ein prosiect Cyfiawnder ac Awdurdodaeth, prosiect ymchwil a sefydlwyd i gysgodi ac ategu gwaith y Comisiwn ar Gyfiawnder yng Nghymru.

Er iddo gael ei ddefnyddio a'i ddyfynnu gan y Comisiwn, dim ond cyhoeddiad 'meddal' cafodd yr adroddiad wrth i'r awduron ehangu ymhellach ar y canfyddiadau.

Fodd bynnag, o ystyried ei berthnasedd i'r ymchwiliad, hoffai'r Canolfan ei gyflwyno fel tystiolaeth ysgrifenedig.

Mae croeso i chi gysylltu â ni os gallwn fod o unrhyw gymorth pellach i'r ymchwiliad.

In March 2019, Cardiff University's Wales Governance Centre published the report ([attached](#)) [Justice at the Jagged Edge in Wales](#), by Dr Robert Jones and Professor Richard Wyn Jones.

The report was one of a series of publications produced by our *Justice and Jurisdiction* project, a research project established to shadow and complement the work of the Commission on Justice in Wales.

While it was utilised and cited by the Commission, the report only received a 'soft' publication as its findings are being further expanded upon by the authors.

However, given its relevance to the inquiry, the Centre would like to submit it as written evidence.

Please don't hesitate to contact us if we can be of any further assistance to the inquiry.



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Aled Roberts
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10/06/2020

Annwyl Gadeirydd

Ymgynghoriad ar wneud i gyfiawnder weithio yng Nghymru

Diolch am y cyfle i ymateb i'r ymgynghoriad hwn. Mae gan iaith rôl allweddol wrth weinyddu cyfiawnder yn deg ac effeithiol; ac mae'r dystiolaeth isod yn canolbwyntio'n benodol ar yr angen i'r system gyfiawnder a'r maes cyfreithiol allu gweithredu yn y Gymraeg yn ogystal â'r Saesneg er mwyn diogelu hawliau dinasyddion.

Gan ddilyn cylch gorchwyl yr ymgynghoriad, rwy'n nodi'r ffeithiau ynghylch y sefyllfa bresennol yn y rhan gyntaf a thynnu sylw'n benodol at rai cryfdera u neu wendidau sydd wedi dod i'r amlwg. Yn yr ail ran, rwy'n nodi pa newidiadau yr wyf o'r farn sydd angen eu cyflwyno i wella'r ffordd mae'r system gyfiawnder yn gweithio er budd y Gymraeg a'i siaradwyr.

Rhan 1: Canfod y ffeithiau ac edrych tua'r dyfodol

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Mae hawl unigolion i ddefnyddio'r Gymraeg yn y maes cyfiawnder wedi esblygu dros amser, a bellach mae'r Gymraeg wedi ei sefydlu fel un o ddwy iaith cyfraith a gweinyddu cyfiawnder yng Nghymru.

- Rhoddodd Deddf Llysoedd Cymru 1942¹ a Deddf yr Iaith Gymraeg 1967² hawl i unigolion siarad Cymraeg mewn achosion llys.
- Yn 1993, sefydlodd Deddf yr Iaith Gymraeg³ yr egwyddor 'wrth gynnal busnes cyhoeddus ac wrth weinyddu cyfiawnder yng Nghymru y dylid trin y Gymraeg a'r Saesneg ar y sail eu bod yn gyfartal.'
- Rhoddodd Erthygl 6 y Confensiwn Ewropeaidd ar Hawliau Dynol⁴ yr hawl i unrhyw berson a gyhuddwyd o drosedd i wrandawriad teg ac mae hynny'n cynnwys cael gwybod yn brydlon, mewn iaith y mae'n ei deall ac mewn manylder, am natur a sail y cyhuddiad yn ei erbyn.
- Yn unol â Deddf Llywodraeth Cymru 2006⁵ a Deddf Senedd ac Etholiadau (Cymru) 2020⁶ mae testunau Cymraeg a Saesneg pob Mesur Cynulliad a Deddf Senedd Cymru sydd yn Gymraeg ac yn Saesneg pan gânt eu deddfu, a thestunau unrhyw is-ddeddfwriaeth sydd yn Gymraeg ac yn Saesneg pan gaiff ei wneud, i'w trin at bob diben fel petai eu statws yn gydradd â'i gilydd.
- Sefydlodd Mesur y Gymraeg (Cymru) 2017 swyddogaeth Comisiynydd y Gymraeg a rhoi statws swyddogol i'r iaith Gymraeg yng Nghymru. Sefydlodd hefyd bwerau i'r Comisiynydd osod safonau ar sefydliadau a rheoleiddio'r sefydliadau hyn, gan sicrhau eu bod yn dilyn y safonau a delio â chwynion am amheuaeth o dor-safon; swyddogaeth i hybu a hwyluso defnyddio'r Gymraeg, ymchwilio os ydy rhywun yn

¹ <http://www.legislation.gov.uk/ukpga/Geo6/5-6/40/enacted>

² <http://www.legislation.gov.uk/ukpga/1967/66/enacted>

³ <http://www.legislation.gov.uk/ukpga/1993/38/contents>

⁴ https://www.echr.coe.int/Documents/Convention_ENG.pdf

⁵ <http://www.legislation.gov.uk/ukpga/2006/32/section/156>

⁶ <http://www.legislation.gov.uk/anaw/2020/1/schedule/2/paragraph/1/enacted/welsh>

⁷ <http://www.legislation.gov.uk/mw/a/2011/1/contents/enacted/welsh>



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rhwystro ar ryddid person i ddefnyddio'r Gymraeg a sefydlu Tribiwnlys y Gymraeg⁸ i wrando ar achosion ar benderfyniadau'r Comisiynydd mewn perthynas â'r safonau.

Fel rheoleiddiwr, y mae swyddogaeth Comisiynydd y Gymraeg yn rhan annatod o'r tirlun cyfiawnder gweinyddol yng Nghymru, ac mae adroddiad ymchwil⁹ a gyhoeddwyd ar y cyd gan academyddion o brifysgolion Bangor a Chaerdydd yn manylu ar rôl y sefydliad o fewn y cyd-destun cenedlaethol. Rhydd adrannau 8-10 y Mesur ganiatâd i'r Comisiynydd gychwyn neu ymyrryd mewn achos cyfreithiol yng Nghymru a Lloegr¹⁰ a gallwn hefyd ddarparu cymorth cyfreithiol i unigolyn. Fel swyddfa, rydym wedi cyhoeddi dogfen fframwaith sy'n egluro sut y byddwn yn defnyddio'r pwerau hyn.¹⁰

Fel aelodau o Bwyllgor Sefydlog yr Arglwydd Ganghellor ar yr iaith Gymraeg, sy'n canolbwyntio ar hyrwyddo defnyddio'r Gymraeg mewn llysoedd yng Nghymru, rydym yn cydweithio â'r sector i rannu gwybodaeth arbenigol yn ôl yr angen. Ym mis Mawrth 2020 gwnaed y Comisiynydd yn 'berson a ganiateir' ar gyfer bod yn rhan o achosion Llys Teulu pe byddai angen.

Gweithredu swyddogaethau cyfiawnder

Yn unol ag Adran 21 Deddf yr Iaith Gymraeg 1993 mae gan y Weinyddiaeth Gyfiawnder¹¹ a Gwasanaeth Llysoedd a Thribiwnlysoedd ei Mawrhydi (GLIThEM)¹² gynlluniau iaith, sy'n eu hymrwymo i drin y Gymraeg a'r Saesneg ar y sail eu bod yn gyfartal. Mae'r cynlluniau iaith yn egluro pa wasanaethau y byddant yn eu darparu yn Gymraeg, sut a phryd. Mae'r ddeddfwriaeth yn caniatáu ar gyfer ymchwiliadau statudol gennyf fel Comisiynydd os oes amheuaeth eu bod wedi methu â chyflawni'r cynlluniau iaith.

⁸ <https://tribiwnlysygymraeg.llyw.cymru/>

⁹ <https://mk0nuffieldfounpg9ee.kinstacdn.com/wp-content/uploads/2019/11/Public-Administration-and-a-Just-Wales-Final-Full.pdf>

¹⁰ <http://www.comisiynyddygymraeg.cymru/Cymraeg/Rhestr%20Cyhoeddiadau/Adolygiad%20barnwrol%20ac%20achosion%20cyfreithiol%20eraill.pdf>

¹¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705855/HMCTS_Welsh_Language_Scheme_2018.pdf

¹² [http://www.comisiynyddygymraeg.cymru/Cymraeg/Rhestr%20Cyhoeddiadau/MoJ%20revised%20Welsh%20Language%20Scheme%202018%20\(Cymraeg\).pdf](http://www.comisiynyddygymraeg.cymru/Cymraeg/Rhestr%20Cyhoeddiadau/MoJ%20revised%20Welsh%20Language%20Scheme%202018%20(Cymraeg).pdf)



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Cyflwynodd Mesur y Gymraeg (Cymru) 2011 fframwaith newydd o ddyletswyddau statudol ar sefydliadau ar ffurf safonau. Mae'r gyfundrefn safonau yn adeiladu ar lwyddiant cynlluniau iaith drwy godi'r disgwyliadau ar sefydliadau o ran eu defnydd o'r Gymraeg. Yn unol ag amcanion y Mesur, disgwylir y gwelir cynnydd yn y defnydd o wasanaethau Cymraeg dros y blynyddoedd nesaf wrth i sefydliadau weithredu'r safonau. Ers Mawrth 2017 mae dyletswydd ar i heddluoedd Cymru a phum tribiwnlys¹³ gydymffurfio â safonau mewn pum maes sef safonau cyflenwi gwasanaethau, llunio polisi, gweithredu a chadw cofnodion. Mae'r Mesur yn darparu ar gyfer gosod safonau ar y Weinyddiaeth Gyfiawnder a GLIThEM, gyda chydysyniad yr Ysgrifennydd Gwladol, ond hyd nes y digwydd hynny bydd y ddau sefydliad yn gweithredu cynlluniau iaith. Mae gennyf bwerau ymchwilio a gorfodi cydymffurfiaeth â safonau'r Gymraeg, ond nid oes gennyf bwerau gorfodi cydymffurfiaeth â chynlluniau iaith.

Mae heriau penodol yn ymwneud â sicrhau bod sefydliadau sy'n ymwneud â gweinyddu cyfiawnder yn cydymffurfio â'u dyletswyddau cyfreithiol o ran y Gymraeg, ac â sicrhau na chaiff y Gymraeg ei thrin yn llai ffafriol na'r Saesneg. Yr her fwyaf yn hyn o beth yw cadw golwg ar berfformiad sefydliadau sy'n gweithio'n unol â dwy gyfundrefn gyfreithiol wahanol, a'r heriau penodol sy'n codi pan fo'r sefydliadau hyn yn cydweithio â'i gilydd neu â sefydliadau eraill.

Heddluoedd

Mae adroddiadau sicrwydd blynyddol y Comisiynydd¹⁴ ar berfformiad sefydliadau wrth weithredu eu dyletswyddau iaith yn tynnu sylw at rai o'r camau sydd wedi eu cymryd i wella'r ffordd caiff y Gymraeg ei thrin. O fewn yr heddluoedd, mae'r camau hyn wedi cynnwys cynyddu sgiliau ieithyddol y gweithlu drwy ddatblygu eu prosesau recriwtio, dyrchafu a hyfforddi a chyflwyno trefniadau hunanreoleiddio i adnabod bylchau a dathlu

¹³ [Tribiwnlys Adolygiad Iechyd Meddw I Cymru](#); [Tribiwnlys Anghenion Addysgol Arbennig Cymru](#); [Tribiwnlys Eiddo Preswyl Cymru](#); [Tribiwnlys Priso Cymru](#); [Tribiwnlys Tir Amaethyddol Cymru](#)

¹⁴ <http://www.comisiynyddygydraeg.cymru/Cymraeg/Sefydliadau/Cydymffurfio/Sicrwydd/Pages/AdroddiadauSicrwydd.aspx>



Ilwyddiannau. Fel rhan o'm gwaith rheoleiddio ac er mwyn gwella a chysoni defnydd o'r Gymraeg, rwy'n rhannu'r arferion llwyddiannus rhwng sefydliadau, ac mae'r heddluoedd wedi bod yn ganolog i'r gwaith hwn.

Y gwasanaeth prawf a charchardai

Mae Gwasanaeth Prawf a Charchardai ei Mawrhydi (HMPPS) yn gweithredu yn unol â chynllun iaith Gymraeg y Weinyddiaeth Gyfiawnder.

Ym mis Rhagfyr 2018 cyhoeddodd fy rhagflaenydd adroddiad 'Cymraeg yn y carchar: arolwg o hawliau a phrofiadau carcharorion sy'n siarad Cymraeg'¹⁵. Sail yr adroddiad oedd cyfres o gyfweiliadau gyda charcharorion, arolygon o ddogfennaeth a deddfwriaeth, a thystiolaeth gan sefydliadau sy'n darparu gwasanaeth carchardai. Tynnodd yr adroddiad sylw at rai achlysuron lle roedd carcharorion yn osgoi defnyddio'r Gymraeg neu ofyn am wasanaeth Cymraeg yn y carchar rhag ofn gwneud eu bywyd yn anos yn y carchar; a nodwyd bod achlysuron wedi bod lle roedd rhai staff carchardai wedi ymyrryd â rhyddid carcharorion i siarad Cymraeg â'i gilydd ac â'u teuluoedd.

Caiff gwasanaethau allweddol (iechyd, gofal, addysg, llyfrgelloedd) o fewn carchardai eu darparu gan sefydliadau eraill. Yng Nghymru, mae'r gwasanaethau hyn yn ddarostyngedig i safonau'r Gymraeg neu gynlluniau iaith Gymraeg. Am resymau staffio ac oherwydd bod hawliau penodol yn cael eu creu gan ddeddfwriaeth sy'n berthnasol i Gymru yn unig, mae mwy o hawliau cyfreithiol a chyfleoedd i ddefnyddio'r Gymraeg mewn carchardai a leolir yng Nghymru na Lloegr. Mae agor CEM Berwyn yn Wrecsam wedi arwain at wella'r ddarpariaeth Gymraeg, ond mae yna dal nifer fawr o achosion lle caiff pobl o Gymru eu carcharu mewn carchardai yn Lloegr. Mae hyn yn arbennig o wir yn achos menywod gan nad oes yna yr un carchar i fenywod yng Nghymru. Mae'r diffyg darpariaeth yng Nghymru i fenywod yn fater sy'n fy mhryderu.



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Amlygodd yr arolwg bryderon eraill yn ogystal ynghylch y dull y mae HMPPS yn adrodd yn flynyddol ar gyflawniad ei gynllun iaith, sef:

- nad oes sicrwydd bod gan HMPPS ddata sy'n dangos yn union faint o garcharorion sy'n medru'r Gymraeg ar draws yr ystâd, sy'n ei gwneud yn anodd i gynllunio anghenion ac ymgyrchoedd i hyrwyddo defnyddio'r Gymraeg.
- nad oes sicrwydd bod gan HMPPS ddata manwl am lefel sgiliau iaith Gymraeg ei staff, a fyddai'n galluogi cynllunio anghenion ieithyddol y gweithlu;
- nad oes sicrwydd bod cysondeb yn y gwasanaethau Cymraeg a gynigir ar draws yr ystâd;
- nad yw S4C ar gael mewn carchardai yn Lloegr;
- nad yw'r Comisiynydd wedi gweld tystiolaeth fod y Gymraeg yn cael ei hystyried wrth benderfynu ym mha garchar i leoli carcharorion.

Llysoedd a Thribiwnlysoedd

Mae nifer o ddatblygiadau'n cefnogi'r defnydd o Gymraeg mewn llysoedd yng Nghymru. Mae Pwyllgor Ymgynghorol yr Arglwydd Ganghellor ar yr Iaith Gymraeg yn bodoli er mwyn hyrwyddo defnyddio'r Gymraeg mewn llysoedd yng Nghymru. Mae ei aelodau'n cynrychioli'r farnwriaeth, gweithwyr ym myd y gyfraith, yr heddlu, y gwasanaeth prawf a chyrrff eraill sy'n ymwneud â gweinyddu cyfiawnder, ac mae fy swyddogion yn mynychu cyfarfodydd y pwyllgor yn rheolaidd. Mae Rhwydwaith Cyfiawnder Cymru yn cydlynu hyfforddiant yn y Gymraeg ar gyfer cyrrff cyhoeddus sy'n ymwneud â gweinyddu cyfiawnder; ac mae gan GLIThM uned arbenigol sy'n hwyluso defnyddio'r Gymraeg yn y llysoedd.

Fel yn achos pob agwedd ar waith gweinyddu cyfiawnder yng Nghymru mae'n hollbwysig bod yr amodau a'r trefniadau yn eu lle i alluogi'r cyhoedd i ddefnyddio'r Gymraeg yn ôl eu



dymuniad. Ym maes cyfiawnder teuluol a rhai tribiwnlysoedd¹⁶ mae hyn yn bwysicach fyth gan eu bod yn ymwneud â phlant a allai fod yn uniaith neu yn llawer mwy hyderus yn y Gymraeg nag yn y Saesneg, neu yn fregus ac angen cyfathrebu yn eu mamiaith.

Mae GLIThEM wedi datblygu gwasanaethau ar-lein yn Gymraeg ar gyfer gwneud cais am ysgariad ac apelio i'r Tribiwnlys Nawdd Cymdeithasol a Chynnal Plant. Mae'r systemau hyn yn rhoi opsiwn i'r cyhoedd i ddefnyddio gwasanaethau ar-lein yn hytrach na ffurflenni neu sefyllfaoedd wyneb yn wyneb. Roedd darparu'r gwasanaethau hyn yn Gymraeg yn rhan o bensaerniaeth cynllunio'r gwasanaethau newydd o'r cychwyn.

Elfen hollbwysig o ddatblygu technoleg at ddefnydd sefydliadau yng Nghymru yw sicrhau fod y Gymraeg yn rhan o ddatblygu'r dechnoleg a'r dull o'i defnyddio o'r cychwyn. Mae'n hanfodol sicrhau bod unrhyw ddulliau digidol newydd a ddatblygir at bwrpas gweinyddu cyfiawnder yn cefnogi defnyddio'r Gymraeg. Yn hynny o beth mae'n gadarnhaol bod ystyriaeth wedi'i roi i'r angen am gyfieithu ar y pryd mewn llysoedd newydd sydd wedi'u hadeiladu yng Nghymru megis yng Nghanolfan Gyfiawnder Caernarfon. Mae'r ymbellhau cymdeithasol yn sgil argyfwng COVID-19 wedi ychwanegu elfen o frys ar gyfer trefnu bod modd i unrhyw barti ddefnyddio'r Gymraeg mewn llysoedd ar-lein. Rwyf wedi cyhoeddi arweiniad¹⁷ ymarferol i sefydliadau yn ystod yr argyfwng ar sut y gellid parhau i gynnig gwasanaethau dwyieithog o safon.

Gan nad oes darpariaeth ar gyfer caniatáu rheithgorau dwyieithog yng Nghymru ar hyn o bryd, mae'n bwysig sicrhau nad yw'r sawl sy'n cael ei gyfieithu neu sy'n derbyn y cyfieithiad yn colli unrhyw beth o ystyr gwreiddiol tystiolaeth, ac nad yw tyst o dan unrhyw anfantais am ddewis siarad Cymraeg. Deallaf fod ymchwil ar y gweill gan Brifysgol Aberystwyth ar fesur effaith cyfieithu ar y pryd mewn achosion llys.

Y proffesiwn cyfreithiol ac addysg

¹⁶ Er enghraifft [Tribiwnlys Adolygiad Iechyd Meddw I Cymru](#); [Tribiwnlys Anghenion Addysgol Arbennig Cymru](#)

¹⁷

<http://www.comisiynyddygymraeg.cymru/Cymraeg/Rhestr%20Cyhoeddiadau/20200507%20Cynnal%20cyfarfodydd%20fideo%20dwyieithog.pdf>



Gan fod hawl gan unrhyw barti mewn achos llys yng Nghymru i ddefnyddio'r Gymraeg a bod y Senedd yn creu deddfwriaeth yn y Gymraeg a'r Saesneg a bod testunau'r ddwy iaith yn gyfartal, mae'n hanfodol sicrhau bod digon o aelodau o'r proffesiwn cyfreithiol yn medru'r Gymraeg er mwyn hwyluso mynediad at gyfiawnder.

Mewn araith i nodi hanner canmlwyddiant Deddf yr Iaith Gymraeg 1967 dywedodd Yr Arglwydd Ustus Lloyd-Jones bod y '[F]arnwriaeth Gymraeg ei hiaith wedi datblygu. Gan gynnwys y Farnwriaeth ran-amser, mae heddiw 40 o farnwyr sy'n rhugl yn y Gymraeg. Mae chwarter y Barnwyr Cylchdaith a'r Barnwyr Rhanbarth yng Nghymru yn gallu cynnal achosion yn Gymraeg [...]Cyn belled ag y bo penodi barnwyr yn y cwestiwn, mae bellach yn bosibl nodi bod y gallu i siarad Cymraeg yn hanfodol ar gyfer penodiad i swydd benodol, ac mae hyn yn digwydd yn aml. Yn yr un modd, mae'n bosibl ers 2010 i hysbysebu am ynadon sy'n gallu siarad Cymraeg. Mae dros 200 o ynadon sy'n gallu cynnal achosion yn Gymraeg ar hyn o bryd a bydd hyn yn sicrhau bod modd cynnal os nad cynyddu'r nifer o ynadon sy'n medru'r Gymraeg.'

Gallai bod gofyn ar gyfreithwyr, bargyfreithwyr a barnwyr i ymdrin ag achosion sy'n ymwneud â chyfraith Cymru sy'n ddwyieithog yn benodol, yn ogystal â chyfraith Cymru a Lloegr. Y tu hwnt i ddehongli'r gyfraith ei hun yn achos deddfwriaeth ddwyieithog gallasai sefyllfaoedd godi lle byddai angen dehongli a darllen testunau Cymraeg yn unig mewn perthynas ag achosion sy'n ymwneud â chyfraith Cymru a chyfraith Cymru a Lloegr.

Eisoes mae modd astudio modiwlau a chredydau mewn troseddeg a'r gyfraith trwy gyfrwng y Gymraeg mewn nifer o brifysgolion yng Nghymru. Mae hynny yn rhannol yn deillio o weithgareddau'r Coleg Cymraeg Cenedlaethol yn y meysydd hyn. Mae cynlluniau academiaidd y Coleg yn amlinellu'r ddarpariaeth sydd ar gael yn y prifysgolion i'w canfod ar wefan y Coleg¹⁸.

¹⁸ <https://www.colegcymraeg.ac.uk/cy/ycoleg/cynllunioacademaidd/>



Cysylltodd rhai aelodau'r cyhoedd â'm rhagflaenydd i fynegi pryder na fyddai'r arholiad newydd i gyfreithwyr a gyflwynir gan Awdurdod Rheoleiddio Cyfreithwyr ar gael yn Gymraeg. Trafodwyd y mater â'r Awdurdod Rheoleiddio Cyfreithwyr yn ogystal â'r Bwrdd Gwasanaethau Cyfreithiol a'r Cwnsler Cyffredinol, Jeremy Miles AC, a chyflwynwyd cyngor¹⁹ o dan Adran 4 Mesur y Gymraeg (Cymru) 2011 i'r Awdurdod Rheoleiddio Cyfreithwyr yn gofyn iddo ailystyried y penderfyniad i beidio â gwneud yr arholiad ar gael yn Gymraeg. Rwyf mewn cyswllt rheolaidd â'r Awdurdod i drafod cynnig arholiad newydd yr SQE yn Gymraeg, ac ar 5 Mehefin 2020 derbyniais lythyr gan Brif Weithredwr yr Awdurdod yn cadarnhau y bydd yr arholiad yn cael ei chynnig yn Gymraeg, a bod hyn i ddigwydd mewn cyfres o gamau dros bedair blynedd. Datblygiad cadarnhaol arall yn ddiweddar oedd bod yr Awdurdod, rhwng Chwefror a Mai 2020, wedi ymgynghori ar gynnig i ddiwygio ei egwyddorion er mwyn cynnwys gofyniad i gyfreithwyr cymwys ddangos gallu ieithyddol yn y Gymraeg neu'r Saesneg, yn hytrach na'r Saesneg yn unig. O ddiwygio'r egwyddorion yn y modd hwn, bydd gofynion ieithyddol yn sicrhau nad yw ymgeiswyr sy'n dymuno dangos eu gallu ieithyddol yn y Gymraeg o dan anfantais, a bydd yn adlewyrchu cymdeithas ddwyieithog Cymru a'r egwyddor na ddylid trin y Gymraeg yn llai ffafriol na'r Saesneg.

Rhan 2: Sut y gallai'r system gyfiawnder weithredu'n fwy effeithiol yng Nghymru

Rwyf wedi cyflwyno darlun cyffredinol o'r sefyllfa bresennol yn Rhan 1, a thynnu sylw at rai meysydd sy'n peri pryder. Yn Rhan 2 rwy'n cyflwyno rhai datrysiadau posibl i'r pryderon hynny.

Dyletswyddau iaith

Mae tystiolaeth glir bod safonau'r Gymraeg wedi arwain at wella profiadau pobl wrth



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ddefnyddio gwasanaethau. Mae'r safonau hefyd wedi arwain at greu sefyllfa lle mae gan weithwyr ragor o gyfleoedd i ddefnyddio'r iaith yn eu gwaith a lle mae dyletswydd i ystyried yr iaith mewn penderfyniadau polisi. Er mwyn sicrhau cysondeb ar draws sefydliadau ac ar draws y gwahanol elfennau o weinyddu cyfiawnder, byddai'n fanteisiol gosod safonau ar y Weinyddiaeth Gyfiawnder a GLIThEM.

Addysg a hyfforddiant cyfreithiol a galwedigaethol

Mae'n angenrheidiol fod addysg a hyfforddiant cyfreithiol a galwedigaethol yn adlewyrchu anghenion a realiti gweithio o fewn cyd-destun gwlad ddwyieithog. Golyga hyn y dylai hyfforddiant ac arholiadau cyfreithiol ar bob lefel fod ar gael drwy gyfrwng y Gymraeg. Golyga hefyd fod angen i gyrsiau'r gyfraith ddysgu, enghreifftio a dehongli deddfwriaeth ddwyieithog Cymru a sicrhau bod myfyrwyr yn llawn ymwybodol o'r gwahaniaeth rhwng deddfwriaeth Cymru a Lloegr wrth i bwerau'r Senedd ehangu. Yn ogystal, mae myfyrwyr yn mynd o Gymru i astudio yn Lloegr a bydd myfyrwyr o Loegr yn dod i Gymru i astudio'r gyfraith ac fe allant weithio yn y pendraw ym myd y gyfraith yng Nghymru neu yn Lloegr. Rwyf o'r farn felly, fod angen i ysgolion y gyfraith mewn prifysgolion ar draws awdurdodaeth Cymru a Lloegr ymdrin â materion sy'n ymwneud â deddfwriaeth ddwyieithog a gweinyddu cyfiawnder yng Nghymru wrth addysgu'r broses o ddehongli statudau.

Mae angen parhau i gynyddu'r cyfleoedd i astudio'r gyfraith drwy gyfrwng y Gymraeg yn ogystal â chynnal ymgyrch i dynnu sylw at yr angen hwn i fedru defnyddio'r ddwy iaith ym maes y gyfraith. Ymhellach, rwyf o'r farn fod angen sicrhau hyfforddiant ieithyddol lefel uchel i fyfyrwyr sy'n astudio'r gyfraith er mwyn eu paratoi ar gyfer sefyllfa lle bônt yn drafftio neu yn dehongli deddfwriaeth yn ddwyieithog, gan gynnwys datblygu arbenigedd mewn datblygu terminoleg gyfreithiol.

Datblygu'r gweithlu

Nid yw'n bosibl i sefydliadau yng Nghymru ddarparu ystod lawn o wasanaethau Cymraeg heb gyflenwad digonol o staff dwyieithog i wneud hynny. Mae dyletswydd ar y sefydliadau sy'n ddarostyngedig i safonau'r Gymraeg i gasglu data am sgiliau ieithyddol y gweithlu,



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ond oherwydd bod rhai sefydliadau yn parhau i weithredu cynlluniau iaith, nid yw'r disgwyliad hwn yn gyson ar draws y sector. Mae angen asesiad trylwyr o sgiliau iaith gweithwyr ym maes cyfiawnder gan gynnwys yr heddlu, swyddogion prawf, barnwyr, ynadon ac ymarferwyr eraill megis cofiaduron sy'n rhan o wrandawiadau llys, a dylid sicrhau y bydd digon o bobl â sgiliau Cymraeg i alluogi'r cyhoedd i gael mynediad at gyfiawnder ac i gael gwrandawiadau teg yn y Gymraeg a'r Saesneg. Y mae'r diffyg cysondeb presennol yn tanlinellu ymhellach pam y bydda'n fanteisiol gosod safonau ar y Weinyddiaeth Gyfiawnder a GLIThEM.

Dylai'r angen am staff sy'n medru'r Gymraeg gael ei adlewyrchu mewn polisiau cyflogi a pholisiau datblygu proffesiynol sefydliadau a chyrrff rheoleiddio a chyrrff proffesiynol y y sector. Dylai'r maes cyfiawnder yn ei gyfanrwydd sicrhau bod yr anghenion hyn yn cael eu hadlewyrchu mewn cyrsiau academaidd ar lefel addysg uwch ac addysg bellach a bod myfyrwyr yn llawn ymwybodol o'r cyfleoedd sydd ar gael iddynt yn y maes cyfiawnder os ydynt yn gallu gweithio trwy gyfrwng y Gymraeg.

Yn y cyd-destun hwn, dylid diwygio'r datganiad polisi a gyhoeddwyd gan Lywodraeth y DU ar system fewnfudo yn seiliedig ar bwyntiau. Mae'r datganiad yn nodi y bydd rhaid i bob ceisydd dinasyddiaeth ddangos eu bod yn gallu siarad Saesneg. Nid wyf o'r farn fod hynny'n adlewyrchu statws swyddogol y Gymraeg yng Nghymru nac ychwaith yr angen am weithlu sy'n medru siarad Cymraeg.

Carchardai

Cyflwynir 17 o argymhellion yn yr adroddiad Cymraeg yn y carchar, ac rwy'n eich annog i ystyried y ddogfen hon fel rhan o'r broses ymgynghori. O safbwynt argymhellion sy'n ymwneud â chydbwysedd pwerau cyfiawnder, mae argymhellion yn ymwneud â lleoli carcharorion a darparu gwasanaethau yn Gymraeg.

Argymhellir lleoli carcharorion sydd angen gwasanaethau Cymraeg mewn carchardai sydd fwyaf abl i ddarparu'r gwasanaethau hynny; ac y dylid sicrhau bod anghenion menywod sy'n siarad Cymraeg yn cael eu hystyried yn llawn fel rhan o unrhyw gynlluniau i



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ddatblygu'r ddarpariaeth i droseddwyr benywaidd dan strategaeth y Llywodraeth. Dylid cryfhau trefniadau monitro argaeledd ac ansawdd y gwasanaethau Cymraeg a gynigir o fewn carchardai, a rhoi cefnogaeth i garchardai gynnig y gwasanaethau hynny; a sicrhau bod gwasanaethau a gynigir o fewn carchardai gan sefydliadau allanol yn cydnabod y ffaith fod gwasanaethau Cymraeg yn arwain at ganlyniadau gwell i siaradwyr Cymraeg.

Diolch unwaith eto am y cyfle i ymateb i'r ymgynghoriad hwn, ac rwy'n gobeithio y bydd y sylwadau hyn o ddefnydd i'r pwyllgor.

Yr eiddoch yn gywir,

Aled Roberts
Comisiynydd y Gymraeg



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10/06/2020

Dear Chair

Consultation on making justice work in Wales

Thank you for the opportunity to respond to this consultation. Language has a key role to play in ensuring the fair and effective administration of justice; and the evidence below focuses specifically on the need for the justice system and the law to operate in Welsh as well as English in order to protect the rights of citizens.

In part one, in accordance with the consultation's terms of reference, I note the facts regarding the current situation and draw specific attention to some strengths or weaknesses that have come to light. In the second part, I identify which changes I believe need to be introduced to improve how the justice system works, for the benefit of the Welsh language and its speakers.

Part 1: Establishing the facts and looking to the future

Legislative background

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Individuals' rights to use the Welsh language in the field of justice has evolved over time, and now Welsh is one of the two languages of law and the administration of justice in Wales.

- The Welsh Courts Act 1942¹ and the Welsh Language Act 1967² gave individuals the right to speak Welsh in court proceedings.
- In 1993, the Welsh Language Act³ established the principle that 'in the conduct of public business and the administration of justice in Wales the English and Welsh languages should be treated on a basis of equality.'
- Article 6 of the European Convention on Human Rights⁴ gave any person accused of a crime the right to a fair trial which includes being informed promptly, in a language which they understand and in detail, of the nature and cause of the accusation against them.
- In accordance with the Wales Act 2006⁵ and the Senedd and Elections (Wales) Act 2020⁶, the English and Welsh texts of any Measure or Act by Senedd Cymru, which are in both English and Welsh when enacted, and any subordinate legislation which is in both English and Welsh when it is made, are to be treated for all purposes as being of equal standing.
- The Welsh Language (Wales) Measure 2011⁷ established the office of the Welsh Language Commissioner and gave the Welsh language official status in Wales. It also established the Commissioner's powers to impose standards on organisations and regulate these organisations, ensuring they uphold the standards and powers to receive and investigate complaints; as well as its function to promote and

¹ <http://www.legislation.gov.uk/ukpga/Geo6/5-6/40/enacted>

² <http://www.legislation.gov.uk/ukpga/1967/66/enacted>

³ <http://www.legislation.gov.uk/ukpga/1993/38/contents>

⁴ https://www.echr.coe.int/Documents/Convention_ENG.pdf

⁵ <http://www.legislation.gov.uk/ukpga/2006/32/section/156>

⁶ <http://www.legislation.gov.uk/anaw/2020/1/schedule/2/paragraph/1/enacted/welsh>

⁷ <http://www.legislation.gov.uk/mw/a/2011/1/contents/enacted/welsh>



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facilitate use of the Welsh language, investigate any suspicions of breaching the standards and investigate whether a person's freedom to use the Welsh language has been prevented. The Measure also established a Welsh Language Tribunal⁸ to hear cases relating to the Commissioner's decisions regarding the standards.

As a regulator, the Welsh Language Commissioner's role is an integral part of the administrative justice landscape in Wales and a research report,⁹ jointly published by academics from the universities of Bangor and Cardiff, details the role of the establishment in the national context. Sections 8-10 of the Measure gave the Commissioner permission to initiate or intervene in legal proceedings in Wales and England, and I can also provide legal assistance to individuals. As an office, we have published a framework document explaining how we will use these powers.¹⁰

As members of the Lord Chancellor's Standing Committee on the Welsh Language, we work with the sector to share specialist information as necessary. In March 2020, the Commissioner was appointed a 'permitted person' in order to be part of Family Court cases if necessary.

Implementing justice functions

In accordance with Section 21 of the Welsh Language Act 1993, the Ministry of Justice¹¹ and Her Majesty's Courts and Tribunals Service (HMCTS)¹² have Welsh language schemes, which require them to treat the Welsh and English languages on a basis of equality. The Welsh language schemes explain what services they will provide in Welsh, when and how. The legislation allows me as Commissioner to conduct statutory investigations if there is any suspicion they are failing to fulfil the Welsh language schemes.

⁸ <https://welslanguagetribunal.gov.wales/>

⁹ <https://mk0nuffieldfounpg9ee.kinstacdn.com/wp-content/uploads/2019/11/Public-Administration-and-a-Just-Wales-Final-Full.pdf>

¹⁰ <http://www.comisiynyddygybraeg.cymru/English/Publications%20List/Judicial%20review%20and%20other%20legal%20proceedings.pdf>

¹¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705855/HMCTS_Welsh_Language_Scheme_2018.pdf

¹² <http://www.comisiynyddygybraeg.cymru/English/Publications%20List/welsh-language-scheme-2018-web-welsh.pdf>



The Welsh Language (Wales) Measure 2011 introduced a new framework of statutory duties for organisations in the form of standards. The standards regime builds on the success of Welsh language schemes by raising expectations with regard to organisations' use of the Welsh language. In accordance with the objectives of the Measure, it is expected that an increase will be seen in the use of Welsh language services over the coming years as organisations implement the standards. Since March 2017, Welsh police forces and five tribunals¹³ have been required to comply with standards in five areas, namely service delivery, policy making, operational, promotion and record keeping standards. The Measure provides for imposing standards on the Ministry of Justice and HMCTS, with the consent of the Home Secretary, but until that happens, both organisations will be implementing Welsh language schemes. I have powers to investigate and enforce compliance with the Welsh language standards, but I have no powers to enforce compliance with Welsh language schemes.

Particular challenges include ensuring that organisations who are involved in the administration of justice comply with their legal duties regarding the Welsh language, and ensuring that the Welsh language is treated no less favourably than the English language. The biggest challenge in this regard is keeping an eye on the performance of organisations who work in accordance with two different regimes, and the particular challenges that arise when these organisations work together or with other organisations.

Police forces

The Commissioner's annual assurance reports¹⁴ on the performance of organisations when carrying out their Welsh language duties draw attention to some of the actions that have been taken to improve the way the Welsh language is treated. Within police forces, these actions have included increasing the Welsh language skills of the workforce by

¹³ [Mental Health Review Tribunal for Wales](#); [Special Educational Needs Tribunal for Wales](#); [Residential Property Tribunal for Wales](#); [Valuation Tribunal for Wales](#); [Agricultural Land Tribunal Wales](#)

¹⁴ <http://www.comisiynyddygymraeg.cymru/English/Organisations/Compliance/assurancereports/Pages/The-Welsh-Language-Commissioner%E2%80%99s-Assurance-Reports.aspx>



developing their recruitment, promotion and training processes, and introducing self-regulation procedures to identify gaps and celebrate successes. As part of my regulatory work, and in order to improve and moderate the use of the Welsh language, I share successful practices between organisations, and police forces have been an integral part of this work.

The prison and probation service

Her Majesty's Prison and Probation Service (HMPPS) operates in accordance with the Ministry of Justice's Welsh language scheme.

In December 2018, my predecessor published a report 'The Welsh language in prisons: a review of the rights and experiences of Welsh speaking prisoners'¹⁵. The report was based on a series of interviews with prisoners, reviews of documentation and legislation, and evidence from organisations who provide prison services. The report highlighted some instances where prisoners avoided using the Welsh language or asking for Welsh services in prison because they feared it would make their lives in prison more difficult. It was also noted that there had been instances where some prison staff had impeded prisoners' freedom to speak Welsh with each other and their families.

Key prison services (health, care, education, libraries) are provided by other organisations. In Wales, these services are subject to Welsh language standards or Welsh language schemes. For staffing reasons, and because specific rights are established by legislation exclusively applicable to Wales, there are more legal rights and opportunities to use the Welsh language in prisons in Wales than in England. The opening of HMP Berwyn in Wrexham has led to an improvement in Welsh language provision, but there are still many instances where people from Wales are held in English prisons. This is particularly true

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<http://www.comisiynyddygymraeg.cymru/English/Publications%20List/20181130%20DG%20S%20The%20Welsh%20language%20in%20prisons%20-%20final.pdf>



with women as there are no women's prisons in Wales. The lack of provision for women in Wales is a cause for concern.

The review also highlighted other concerns about HMPPS's annual reports on the fulfilment of its Welsh language scheme:

- there is no certainty that HMPPS possesses data which shows exactly how many prisoners can speak Welsh across the estate. This makes it difficult to plan in terms of Welsh language needs and campaigns to promote the use of the language;
- there is no certainty that HMPPS has detailed data about the Welsh language skills of its staff, which would enable it to plan for the linguistic needs of the workforce;
- there is no certainty about the consistency of Welsh language services offered across the estate;
- S4C is not available in prisons in England;
- the Commissioner hasn't seen evidence that the Welsh language is considered when deciding to which prison prisoners are sent.

Courts and Tribunals

Many developments support the use of the Welsh language in Welsh courts. The Lord Chancellor's Standing Committee on the Welsh Language exists to promote the use of the Welsh language in the courts in Wales. Its members represent the judiciary, legal workers, police, the probation service and other bodies involved in the administration of justice, and my officers regularly attend the committee's meetings. The Justice Wales Network coordinates Welsh-medium training for public bodies involved in the administration of justice; and HMCTS has a specialist unit which promotes the use of the Welsh language in courts.

As is the case with all aspects of administering justice in Wales, it is vital that conditions and arrangements are in place to enable the public to use the Welsh language according to their preference. This is even more important with regard to family justice and some



tribunals¹⁶ as they deal with children who could be monolingual or far more confident speaking Welsh than English, or who are vulnerable and need to communicate in their mother tongue.

HMCTS has developed Welsh online services where applications for divorce and appeals to the Social Security and Child Support Tribunal can be processed. These systems give the public the option to use the online services rather than using forms or face to face interactions. Providing these new services in Welsh was built-in as part of the planning process from the outset.

A crucial element when developing technology for organisations in Wales is ensuring that the Welsh language is part of its development and use from the outset. It's crucial to ensure that any new digital approaches developed for the administration of justice support the use of the Welsh language. In that regard, it is encouraging that the need to provide interpretation is considered when new courts are built in Wales, such as the Caernarfon Criminal Justice Centre. Social distancing in light of the COVID-19 emergency has contributed a sense of urgency in terms of ensuring that any party is able to use the Welsh language in online courts. I have published practical guidance¹⁷ for organisations on how to continue to offer quality bilingual services during the emergency.

As there is currently no provision for allowing bilingual juries in Wales, it's important to ensure – for the individual being translated and those receiving the translation – that none of the evidence's original meaning is lost, and that witnesses aren't under any disadvantage for choosing to speak Welsh. I understand that Aberystwyth University is currently conducting research into measuring the impact of interpreting in court proceedings.

The legal profession and education

¹⁶ For example [Mental Health Review Tribunal for Wales](#); [Special Educational Needs Tribunal for Wales](#)

¹⁷ <http://www.comisiynyddygydraeg.cymru/English/Publications%20List/20200507%20Holding%20bilingual%20video%20meetings.pdf>



As any party in court proceedings in Wales has a right to use the Welsh language, and as the Senedd produces legislation in Welsh and English where texts in both languages are equal, it is crucial that a sufficient number of members of the legal profession can speak Welsh in order to facilitate access to justice.

In a speech to mark the 50th anniversary of the Welsh Language Act 1967, Lord Justice Lloyd-Jones said that the 'Welsh speaking judiciary has developed. Including the part-time Judiciary, there are currently 40 judges who are fluent Welsh speakers. A quarter of Circuit Judges and District Judges in Wales can conduct proceedings in Welsh [...] As far as appointing judges is concerned, it is now possible to include Welsh speaking ability as an essential requirement for specific posts, and this occurs often. Similarly, it has been possible to advertise for Welsh speaking magistrates since 2010. Currently there are over 200 magistrates who can conduct proceedings in Welsh, and this will ensure that the number of magistrates who can speak Welsh can be maintained or even increased'.

Lawyers, barristers and judges could be required to deal with cases pertaining to Welsh law, which is specifically bilingual, as well as the laws of England and Wales. Beyond interpreting the law itself in the case of bilingual legislation, situations may arise where Welsh language only text would need to be interpreted and read with regard to cases relating to Welsh law and the laws of England and Wales.

Criminology and law modules and credits can already be studied through the medium of Welsh in many Welsh universities. This partly stems from the work of the Coleg Cymraeg Cenedlaethol in these areas. The Coleg's academic plans, which outline existing university provision, can be found on its website¹⁸.

Some members of the public contacted my predecessor expressing concern that the new exam for solicitors introduced by the Solicitors Regulation Authority (SRA) will not be

¹⁸ <https://www.colegcymraeg.ac.uk/en/thecoleg/academicplanning/>



available in Welsh. The matter was discussed with the SRA, the Legal Services Board and the Counsel General, Jeremy Miles MS, and advice¹⁹ was presented to the SRA under Section 4 of the Welsh Language (Wales) Measure 2011, asking it to reconsider the decision not to offer the exam in Welsh. I am in regular contact with the SRA to discuss offering SQE's new exam in Welsh, and on 5 June 2020 I received a letter from its Chief Executive confirming that the exam will be offered in Welsh, and that this will be introduced in a series of phases over the next four years. Another positive development recently was that the SRA, between February and April 2020, had consulted on a bid to amend its principles to include a requirement for qualified solicitors to show their Welsh and English language abilities, rather than English only. Amending the principles in this way would mean language requirements will ensure that applicants who wish to show their Welsh language ability are not under disadvantage. It will also reflect the bilingual society in Wales and the principle that the Welsh language should not be treated less favourably than English.

Part 2: How could the justice system in Wales operate more effectively

I have presented a general portrayal of the current situation in Part 1, and drawn attention to some areas of concern. In Part 2, I present some possible solutions to those concerns.

Language duties

There is clear evidence that the Welsh language standards have led to an improvement in people's experiences of using services. The standards have also brought about a situation where workers have more opportunities to use the language in their work and there is a duty to give consideration to the Welsh language in policy decisions. To ensure

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<http://www.comisiynyddygydraeg.cymru/English/Publications%20List/20180305%20LL%20S%20Awdurodd%20Rheoleiddio%20Cyfreithwyr.pdf>



consistency across organisations and different elements of the administration of justice, it would be beneficial to impose standards on the MOJ and HMCTS.

Legal and vocational education and training

Legal and vocational education and training need to reflect the requirements and reality of working within the context of a bilingual country. This means that exams and legal training should be available in Welsh at all levels. It also means that law courses need to teach, exemplify and interpret bilingual Welsh legislation and ensure that students are fully aware of the difference between Welsh and English legislation as the Senedd's powers are expanded. Likewise, students from Wales move to England to study and students from England come to Wales to study law and they could end up working in the legal profession in either country. I therefore believe that university law schools across the jurisdiction of England and Wales need to deal with matters relating to bilingual legislation and the administration of justice in Wales when teaching the process of interpreting statutes.

We need to continue to provide further opportunities to study law through the medium of Welsh and conduct campaigns to highlight the need to be able to use both languages in the field of law. Furthermore, I believe that high level linguistic training needs to be given to law students in order to prepare them for situations where they will be required to draft or interpret bilingual legislation, including expertise in developing legal terminology.

Workforce development

It is impossible for organisations in Wales to provide a full range of Welsh language services without a sufficient supply of bilingual staff. The organisations subject to the Welsh language standards have a duty to collect data regarding language skills in the workforce, but because some organisations are still implementing Welsh language schemes, this expectation is inconsistent across the sector. A thorough assessment of workers' language skills is needed in the field of justice, including the police, probation officers, judges, magistrates and other practitioners such as recorders who are part of court hearings, and there should be sufficient numbers of people with Welsh language



skills to enable the public to access justice and to be given a fair hearing in Welsh and English. The current lack of consistency further underlines why it would be beneficial to impose standards for the MOJ and HMCTS.

The need for Welsh speaking staff should be reflected in the employment policies and professional development policies of regulatory bodies and organisations, and professional bodies in the sector. The entire justice system should ensure that these needs are reflected in higher education and further education academic courses, and that students are fully aware of the opportunities available to them in the field of justice if they are able to work through the medium of Welsh.

In this context, the policy statement published by the UK Government regarding the points-based immigration system should be amended. The statement indicates that every person applying for citizenship must demonstrate they can speak English. I don't believe this reflects the official status of the Welsh language in Wales nor the need for a Welsh speaking workforce.

Prisons

17 recommendations are presented in the Welsh Language in Prisons report, and I urge you to consider this document as part of the consultation process. In terms of recommendations regarding the balance of judiciary powers, the recommendations relate to locating prisoners and the provision of Welsh language services.

It is recommended that prisoners who need Welsh services in prisons are located in the prisons most able to provide those services; and the needs of Welsh speaking women should be fully considered as part of any plans to develop the provision for female criminals under the Government's strategy. The arrangements for monitoring the availability and quality of Welsh language services offered in prisons should be enhanced, and support should be given to prisons to offer those services. It should also be ensured that the prison services provided by external organisations acknowledge that Welsh language services lead to better results for Welsh speakers.



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

Thanks again for the opportunity to respond to this consultation. I hope the committee will find these comments useful.

Yours sincerely,

Aled Roberts

Welsh Language Commissioner

Senedd Cymru
Y Pwyllgor Deddfwriaeth, Cyfiawnder
a'r Cyfansoddiad
Gwneud i Gyfiawnder weithio yng
Nghymru
MJW 11
Ymateb gan: Bwrdd Cyfiawnder
Ieuenctid

Welsh Parliament
Legislation, Justice and Constitution
Committee
Making Justice work in Wales

Response from: Youth Justice Board

Introduction

1. The YJB welcomes the opportunity to provide comment and respond to the Legislation, Justice and Constitution Committee inquiry on Making Justice work in Wales. This response does not seek to give an opinion on each of the fact finding, looking forward and analysis questions posed, but rather to address those areas which the expertise of the YJB can contribute to and are pertinent to children in, or at risk of entering, the youth justice system specifically.

Youth Justice Board (YJB) Vision

2. We are working toward a youth justice system that sees children as children, treats them fairly and helps them to build on their strengths so they can make a constructive contribution to society. This will prevent offending and create safer communities with fewer victims.

Who we are

3. The Youth Justice Board for England and Wales (YJB) is a non-departmental public body (NDPB) established by the Crime and Disorder Act 1998. Its primary function is to monitor the operation of the youth justice system and the provision of youth justice services. It has a legal duty to advise the Secretary of State on matters relating to the youth justice system, to identify and share examples of good practice and to publish information about the system: reporting on how it is operating and how the statutory aim of the system ('to prevent offending by children and young people') can best be achieved. The YJB is the only official body to have oversight of the whole youth justice system and so is uniquely placed to guide and advise on the provision of youth justice services. While the YJB is responsible for overseeing the performance of youth justice services including multi-agency youth offending teams (YOTs), the YJB does not directly deliver or manage these services.
4. The YJB team in Wales (YJB Cymru) has oversight of the system in Wales where youth justice is delivered through collaboration between devolved and non-devolved services. There are 17 Youth Offending Teams in Wales,

they are multi-agency partnerships made up of police, probation, education, health, housing and social services.

5. Our Board has established four Youth Justice System Aims which are not only for the YJB to work towards but for the youth justice community. They are:
 - Reduce the number of children in the youth justice system
 - Reduce reoffending by children in the youth justice system
 - Improve the safety and well-being of children in the youth justice system
 - Improve outcomes for children in the youth justice system

Our Child First Principle and Children' Rights

6. The "child first" principle is at the centre of all YJB's work.
7. In Wales, YJB recognises all our work relates to children's rights in some way and we place a strong focus on children's rights in alignment with the Rights of Children and Young Persons (Wales) Measure 2011.
8. The YJB believes, in line with Article 12 of the United Nations Convention on the Rights of the Child (UNCRC), that all children in the youth justice system should have the opportunity to get involved in decisions about their care and supervision; access to the services they need; and a say in how those services work.
9. Approaches to preventing crime and addressing the needs and concerns of victims are more likely to be effective if they are informed by and co-designed with children. Engaging with and listening to children is essential in achieving these aims and should be at the heart of service design and delivery.
10. To achieve this in Wales, YJB Cymru has worked closely with officials from Welsh Government, the Children's Commissioner for Wales and all other relevant services to consult with children on matters that affect them.

Youth Justice in Wales

11. Youth justice services in Wales are made up of a range of local, regional and national agencies working together. While the UK Government retains responsibility for youth justice, most services for children in Wales have been devolved to the Welsh Government. Policies such as education, housing, substance misuse, health, and social services and the needs of looked after children are all devolved to Welsh Ministers. All are significant to the delivery of youth justice in Wales. The youth justice system deals with

children between the ages of 10 and 17. The system exists to deal with children who commit crime and helps children who are at risk of entering the youth justice system. The Youth Justice System in Wales has three main parts:

- **17 Youth Offending Teams** (YOTs) which are part of Local Authorities and include devolved services (health, social services and education) and nondevolved agencies (police and probation). Their role is to manage community sentences and help prevent children from getting into the system.
- **Youth Courts** deal with all children who have been charged with a crime. In very serious cases a youth court might decide to send a child for trial by a Crown Court.
- **Custody** – there are two secure establishments in Wales. Most, but not all, Welsh children are placed in these establishments. Parc Young Offender Institute (YOI) in Bridgend and Hillside Secure Children’s Home (SCH) in Neath. Children from North Wales are placed in Werrington YOI in Staffordshire. A very small number of children have needs that are not met by the system in Wales. This can result from capacity issues in secure estate, geography (e.g children from North Wales being placed in secure accommodation in the North of England due to proximity) or the inability to access specialist services, or capacity issues within the secure estate necessitates them being accommodated elsewhere in England.

12. The youth justice system in Wales operates in a complex delivery landscape: the system is funded from various sources including statutory partners (local authorities, Health, the Police and Probation Service), the YJB, Welsh Government, Police and Crime Commissioners and others; there is increasing divergence in policy and legislation; and rural, cultural and linguistic differences must be considered when working with children and developing and delivering services.

13. Leadership for youth justice in Wales is therefore delivered as a partnership between devolved and non-devolved organisations. The YJB and Welsh Government have a long-standing formal working agreement and established joint governance in the form of the Wales Youth Justice Advisory Panel; chaired by Welsh Government and the YJ Board Member for Wales. The Panel analyses a high-level overview of performance of the whole system in Wales, considering how each part of the system is performing and making recommendations for improvement; and acts as a strategic reference group for change programmes in Wales.

14. This partnership and previous incarnations has overseen the joint strategies for the delivery of youth justice in Wales since 2004 and has been effective in working together to:

- set the strategic direction for youth justice in Wales
- plan for effective delivery
- monitor performance
- exchange relevant information
- foster an environment in which youth justice services can help children achieve positive outcomes
- identify and disseminate effective practice
- provide reciprocal advice on the interface between devolved and nondevolved policy
- ensure the voice of children is heard and that young people have a say in the development of the services they receive in line with Article 12 of the United Nations Convention on the Rights of the Child (UNCRC).

15. Despite the complex landscape, the youth justice system in Wales is a success. This is a direct result of the holistic approach, commitment and joined up work of agencies across Wales with policy and delivery partners placing young people at the centre of their work.

16. The YJB team in Wales is in a unique position, with the ability to advise UK Government Ministers and influence the development of policy in reserved matters and, through our partnership with Welsh Government do the same in Wales. It benefits too from an established approach which recognises that delivery needs to reflect the circumstances in Wales where these are different. The effective partnership between YJB and the Welsh Government has helped to overcome the challenges of increasing divergence between devolved and non-devolved policy.

17. Having a YJB presence in Wales, working closely with devolved partners has advantages in being able to engage directly with key policy leads from the devolved areas to drive holistic practice that is trauma informed and puts children first.

Challenges

18. Youth justice in Wales is a success story but challenges remain:

- YOTs continue to deliver prevention and diversion programmes which have led to significant reductions in the number of first-time entrants to the system. This is funded, to a considerable extent, by Welsh Government and the YJB annual YOT Grant allocation. Prevention and

diversion work accounts for almost 50% of YOT work in Wales, however this previously ring-fenced funding has been absorbed into flexible funding for Local Authorities in the form of the CCG. This risks prevention and diversion funding being diverted to other services. Continued investment is vital to maintaining the reduced number of children in the system and ensuring the downstream impact on other services resulting from successful diversion.

- YOTs are based in Local Authorities but are not as prominent as other children's services. As a multi-agency partnership, the effect of budget reductions for each partner (both devolved and non-devolved) add up to a greater cut for the YOT partnership. YJB has fought to protect YOT grant allocation, and this year has increased the YOT grant by 2% over the previous budget year. We also provide targeted funding to support priority areas such as serious youth violence and exploitation, disproportionality and resettlement.
- As the numbers of children in the system have reduced, those who remain tend to face the most significant barriers to achieving their potential. They are often disengaged or excluded from mainstream services and are among the most vulnerable in our society. They may be regarded as at high-risk to themselves or others and they often face significant barriers to fulfilling their potential which stem from childhood adversity and the nature of their offending behaviour. Children in contact with the youth justice system are more likely to have impaired development, experience emotional distress and mental health conditions, problematic drug or alcohol use and a background of emotional trauma and adverse childhood experiences (ACEs). It is vital health, education, social care and other services work together to ensure children's needs are met and they are given the right help and support to stop offending.
- In terms of custody: responsibility for managing the youth secure estate now lies with the newly established Youth Custody Service. Previously YJB held this responsibility and, in Wales, YJB and Welsh Government worked together to make significant improvements in Parc YOI and Hillside SCH. We also fostered effective information sharing links between the secure estate and community to help integrate practice and improve transitions into and out of custody. While the secure provision in Wales is achieving good outcomes for children, there is room for improvement.
- Policy and legislation made by both governments must be implemented by practitioners. Applying reserved policy in a devolved context sometimes adds complexity, especially where legislation is different in

Wales. Additionally, when policy on reserved matters is developed without consideration of the devolved context it can result in policy being applied which does not entirely fit in Wales e.g. the recently published Home Office serious violence strategy. This can have significant impacts on devolved services. For youth justice, through the YJB, there is an established route by which to ensure that operational issues relating to devolution can be worked through with MoJ policy officials.

19. In 2018 the YJB provided advice to UK and Welsh Government ministers setting out the challenges faced by the system in Wales and recommending how best to meet the challenges in a sustainable way; through practice that is trauma informed and rights-based. This included a bold vision for the secure estate in Wales.

Youth Justice Blueprint

20. In May 2019, Jane Hutt AM Deputy Minister and Chief Whip announced the publication of the Youth Justice Blueprint and the Implementation Plan. The Youth Justice Blueprint aims to enhance and transform the youth justice system in Wales.

21. The Blueprint project brings together senior UK and Welsh Government officials along with influential key stakeholders to form a project board and six workstreams to deliver blueprint recommendations

22. This model of joint leadership and cooperation provides the basis for building on the success of the past and developing a world-leading youth justice system in Wales that is truly child first and trauma informed.

23. With the reduction of the number of children in the system, with those remaining facing the most significant barriers to reaching their potential, blueprint implementation plans are focused on recommendations that can make the most positive impact on the most vulnerable children in our society.

24. There is sufficient capacity within the secure estate in Wales for the children who receive custodial sentences, but the current system does not fully meet their needs. There are concerns about the distant-placing of Welsh children away from their home area and whether their cultural and linguistic needs are fully met in establishments in England.

25. There is a lack of secure in-patient provision in Wales for children with mental ill health and no detoxification provision for those with acute substance misuse problems. Hillside SCH is the only establishment in Wales which accommodates children on secure welfare orders but has insufficient capacity.

Welfare beds are not always available which can lead to the placement of Welsh children outside of Wales.

26. Consistent care and support is essential to improving outcomes and lessening the likelihood of a return to custody or other type of secure facility. We believe that with the right investment, from both UK and Welsh Governments, the opportunity exists to transform the secure estate in Wales and deliver a multidisciplinary, therapeutic model that will meet the needs of both justice and wider health and welfare services. This would put Wales at the forefront of global practice.
27. The advice underpinning the blueprint was based on the delivery landscape at the time; while it provides a sound evidence base for building on the success of the past and ensuring holistic service delivery to help children reach their potential, the current global COVID-19 pandemic has changed the landscape. The lessons learned during the crisis will be incorporated into implementation plans to help ensure the delivery of sustainable solutions to the challenges faced by the most vulnerable children in our society and truly shape a system that is fit for Wales.

Conclusion

28. The YJB believes that the successful delivery of youth justice in Wales is based on partnership between all delivery and policy agencies. We need to maintain the most effective elements of this approach while building on the successes in both the community and custody. This requires the commitment of all partners, devolved and non-devolved, to deliver the blueprint and ensure that children involved with youth justice in Wales, from prevention to resettlement will experience a Child First approach.
29. All delivery partners must identify, and invest in, innovative practice that contributes to the sustainable agenda and helps children overcome the barriers to reaching their potential while also building safe, resilient communities. Practice, whether by devolved or non-devolved services must consider the rights of the child paramount, with safeguarding and a developmental understanding of childhood experience of equal importance.
30. YJB has an operating model in Wales that enables us to work effectively in partnership with Welsh Government, UK Government and delivery agencies. This model is not predicated on constitutional matters, it is based on effective relationships and partnership working. As such it is flexible and adaptable and will continue to deliver positive outcomes for children in the future as decisions are made about the devolution settlement.

Senedd Cymru
Y Pwyllgor Deddfwriaeth, Cyfiawnder
a'r Cyfansoddiad
Gwneud i Gyfiawnder weithio yng
Nghymru
MJW 12
Ymateb gan y Cwnsler Cyffredinol -
Llywodraeth Cymru

Welsh Parliament
Legislation, Justice and Constitution
Committee
Making Justice work in Wales
Response from the Counsel General -
Welsh Government

Rwyf yn falch iawn bod cylch gwaith eich Pwyllgor bellach wedi'i ehangu i gynnwys cyfrifoldeb dros fater pwysig cyfiawnder ac rwyf yn cymeradwyo'r Pwyllgor am fynd ati i weithio yn y maes mor gyflym drwy gynnal yr ymchwiliad "Gwneud i Gyfiawnder Weithio yng Nghymru".

Mae'r Pwyllgor wedi nodi telerau eang iawn ar gyfer yr ymchwiliad hwn. Ymdriniwyd â llawer o'r tir hwn gan y Comisiwn ar Gyfiawnder yng Nghymru, o dan gadeiryddiaeth yr Arglwydd Thomas o Gwmgiedd a hyderaf nad yw'r Pwyllgor yn ceisio ailadrodd gwaith y Comisiwn, sy'n awdurdodol ac yn eang ei gwmpas.

Roedd casgliadau'r Comisiwn ar Gyfiawnder yn glir ac yn ddiamwys, sef bod pobl Cymru yn cael eu siomi gan y system gyfiawnder yn ei chyflwr presennol. Safbwynt hirsefydlog Llywodraeth Cymru yw y dylai pwerau'r sefydliadau datganoledig fod yn seiliedig ar set gydlynol o gyfrifoldebau. Dylai cyfiawnder fod wrth graidd Llywodraeth a bod yn gyson â pholisïau sydd eisoes wedi'u datganoli i Gymru. Mae'r Llywodraeth yn cytuno â barn y Comisiwn bod angen diwygio'r system gyfiawnder yn sylweddol.

Byddwch yn gwybod bod y Prif Weinidog wedi symud yn gyflym i ymateb i argymhellid y Comisiwn ar gyfer arweinyddiaeth glir ac atebol ym maes cyfiawnder yn Llywodraeth Cymru

ac fe sefydlodd is-bwyllgor o'r Cabinet i ddarparu trosolwg Gweinidogol ar faterion cyfiawnder ar draws y Llywodraeth. Er yr effeithir yn anochel ar y broses o ddiwygio'r system gyfiawnder wrth inni ymateb i bandemig y coronafeirws, mae mynd ar drywydd amcanion adroddiad y Comisiwn, serch hynny, yn parhau'n ymrwymiad clir gan y Llywodraeth. At hynny, mae'r pandemig wedi rhoi mwy o amlygrwydd i ddatganoli ac yn benodol wedi tanlinellu'r rhyng-ddibyniaethau rhwng cyfrifoldebau Llywodraeth Cymru a'r rhannau hynny o'r system gyfiawnder sy'n parhau i fod wedi'u cadw yn ôl.

Yn y cyfnod hwn o gasglu tystiolaeth ar gyfer eich ymchwiliad, hoffwn dynnu sylw'r pwyllgor at y dystiolaeth a gyhoeddwyd isod:

1. Tystiolaeth ysgrifenedig Llywodraeth Cymru i'r Comisiwn ar Gyfiawnder yng Nghymru.

Cyflwynodd Llywodraeth Cymru gyfres o dystiolaeth i'r Comisiwn ar gyfiawnder yng Nghymru a oedd yn nodi safbwynt y Llywodraeth mewn perthynas â chyfiawnder yng Nghymru yn fanwl.

Cyhoeddwyd ein dystiolaeth mewn cyfres o ddogfennau yn ymdrin â phynciau penodol ac maent ar gael ar-lein. Rwyf wedi gofyn i'm swyddogion ddarparu dolenni i Glerc y Pwyllgor.

2. Datganiad Llafar y Prif Weinidog ar 29 Tachwedd 2019 a Chofnod cysylltiedig y Trafodion.
3. Cofnod y Trafodion ar gyfer y ddadl o dan arweiniad y Llywodraeth a gynhaliwyd ar 4 Chwefror 2020

Byddwn wrth gwrs yn hapus i ymgysylltu â'r Pwyllgor ymhellach wrth i chi ymgymryd â rhan 2 o'ch ymchwiliad.

Written evidence of the Welsh Government to the Commission on Justice in Wales:

<https://gov.wales/sites/default/files/publications/2018-06/Submission-from-welsh-government-en.pdf>

<https://llyw.cymru/sites/default/files/publications/2018-06/Submission-from-welsh-government-cy.pdf>

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<https://llyw.cymru/sites/default/files/publications/2019-04/Tystiolaeth%20i%27r%20Comisiwn%20-%20Bil%20Llywodraeth%20a%27r%20Gyfraith%20yng%20Nghymru.pdf>

Supplementary evidence of the Welsh Government to the Commission on Justice in Wales:

Education and Employment

<https://gov.wales/sites/default/files/publications/2018-08/supplementary-evidence-welsh-government-commission-justice-in-wales-education-employment.pdf>

<https://llyw.cymru/sites/default/files/publications/2018-08/tystiolaeth-atodol-llywodraeth-cymru-ir-comisiwn-ar-gyfiawnder-yng-nghymru-addysg-a-chyflogaeth.pdf>

Supplementary evidence of the Welsh Government to the Commission on Justice in Wales:

Family Justice

<https://gov.wales/sites/default/files/publications/2018-08/supplementary-evidence-welsh-government-commission-justice-in-wales-family-justice.pdf>

<https://llyw.cymru/sites/default/files/publications/2018-08/tystiolaeth-atodol-llywodraeth-cymru-ir-comisiwn-ar-gyfiawnder-yng-nghymru-cyfiawnder-teuluol.pdf>

Supplementary evidence of the Welsh Government to the Commission on Justice in Wales:

Law and the Constitution

<https://gov.wales/sites/default/files/publications/2018-08/supplementary-evidence-welsh-government-commission-justice-in-wales-law-and-constitution.pdf>

<https://llyw.cymru/sites/default/files/publications/2018-08/tystiolaeth-atodol-llywodraeth-cymru-ir-comisiwn-ar-gyfiawnder-yng-nghymru-y-gyfraith-ar-cyfansoddiad.pdf>

Supplementary evidence of the Welsh Government to the Commission on Justice in Wales:

The role of Legal Services and the Legal Profession in the Welsh Economy

<https://gov.wales/sites/default/files/publications/2018-08/supplementary-evidence-welsh-government-commission-justice-in-wales-the-role-of-legal-services-and-legal-profession-in-welsh-economy.pdf>

<https://llyw.cymru/sites/default/files/publications/2018-08/tystiolaeth-atodol-llywodraeth-cymru-ir-comisiwn-ar-gyfiawnder-yng-nghymru-rol-gwasanaethau-cyfreithiol-ar-proffesiwn-cyfreithiol-yn-economi-cymru.pdf>

Supplementary evidence from the Cabinet Secretary for Local Government and Communities:

<https://gov.wales/sites/default/files/publications/2018-08/supplementary-paper-commission-justice-in-wales-welsh-government-cabinet-secretary-for-local-government-and-communities.pdf>

<https://llyw.cymru/sites/default/files/publications/2018-08/papur-atodol-comisiwn-ar-gyfiawnder-yng-nghymru-llywodraeth-cymru-ysgrifennydd-cabinet-dros-lywodraeth-leol-a-chymunedau.pdf>

Supplementary evidence from the Leader of the House:

Access to justice and human rights

<https://gov.wales/sites/default/files/publications/2018-09/Supplementary-evidence-to-the-justice-commission-from-welsh-government-access-to-justice-and-human-rights.pdf>

<https://llyw.cymru/sites/default/files/publications/2018-09/Supplementary-evidence-to-the-justice-commission-from-welsh-government-access-to-justice-and-human-rights.pdf>

Supplementary evidence from the Minister for Health and Social Services:

<https://gov.wales/sites/default/files/publications/2019-04/Submission%20from%20the%20Minister%20for%20Health%20and%20Social%20Services%20%28Eng%29.pdf>

<https://llyw.cymru/sites/default/files/publications/2019-04/Submission%20from%20the%20Minister%20for%20Health%20and%20Social%20Services%20%28Wel%29.pdf>

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Ymateb gan: Y Cwnsler Cyffredinol –
Llywodraeth Cymru

Welsh Parliament
Legislation, Justice and Constitution
Committee
Making Justice work in Wales

Response from: The Counsel General –
Welsh Government

I am very pleased that the remit of your Committee is now widened to include responsibility of the important matter of justice and I commend the Committee for seeking to get to work in the field so quickly by undertaking the inquiry on “Making Justice work in Wales”.

The Committee has set out very wide terms for this inquiry. Much of this ground was covered by the Commission on Justice in Wales, chaired by Lord Thomas of Cwmgiedd and I trust that the Committee is not seeking to repeat the work of the Commission, which is authoritative and vast in its scope.

The conclusions of the Commission on Justice were clear and unequivocal, namely that the people of Wales are being let down by the justice system in its current state. The Welsh Government’s longstanding position is that the powers of the devolved institutions should be founded on a coherent set of responsibilities. Justice should be at the heart of government and aligned with policies that are already devolved to Wales. The Government agrees with the Commission’s view that major reform is needed to the justice system.

You will know that the First Minister moved quickly to respond to the Commission’s recommendation for clear and accountable leadership on justice in the Welsh Government and established a sub-committee of the Cabinet to provide Ministerial oversight for justice issues across government. Whilst progressing reform of the justice system is inevitably affected as we respond to the coronavirus pandemic, pursuing the objectives of the Commission’s report nevertheless remains a clear commitment of the Government. Furthermore, the pandemic has given greater prominence to devolution and in particular has highlighted the interdependencies between the Welsh Government’s responsibilities and those parts of the justice system that remain reserved.

At this evidence gathering stage of your inquiry, I would draw the committee’s attention to the following published evidence:

1. Welsh Government written evidence to the Commission on Justice in Wales.

The Welsh Government submitted a suite of evidence to the Commission on Justice in Wales which set out the Government position in relation to Justice in Wales in detail.

Our evidence was published in a series of subject specific documents and they are available online. I have asked my officials to provide the committee clerk with links.

2. The First Minister's Oral Statement of 29 November 2019 and the associated record of proceedings.
3. The record of proceedings for the government led debate held on 4 February 2020

We will of course be happy to engage with the Committee further as you undertake part 2 of your inquiry.

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<https://llyw.cymru/sites/default/files/publications/2018-06/Submission-from-welsh-government-cy.pdf>

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<https://llyw.cymru/sites/default/files/publications/2019-04/Tystiolaeth%20i%27r%20Comisiwn%20-%20Bil%20Llywodraeth%20a%27r%20Gyfraith%20yng%20Nghymru.pdf>

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<https://llyw.cymru/sites/default/files/publications/2018-08/tystiolaeth-atodol-llywodraeth-cymru-ir-comisiwn-ar-gyfiawnder-yng-nghymru-rol-gwasanaethau-cyfreithiol-ar-proffesiwn-cyfreithiol-yn-economi-cymru.pdf>

Supplementary evidence from the Cabinet Secretary for Local Government and Communities:

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<https://llyw.cymru/sites/default/files/publications/2018-08/papur-atodol-comisiwn-ar-gyfiawnder-yng-nghymru-llywodraeth-cymru-ysgrifennydd-cabinet-dros-lywodraeth-leol-a-chymunedau.pdf>

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<https://llyw.cymru/sites/default/files/publications/2018-09/Supplementary-evidence-to-the-justice-commission-from-welsh-government-access-to-justice-and-human-rights.pdf>

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<https://gov.wales/sites/default/files/publications/2019-04/Submission%20from%20the%20Minister%20for%20Health%20and%20Social%20Services%20%28Eng%29.pdf>

<https://llyw.cymru/sites/default/files/publications/2019-04/Submission%20from%20the%20Minister%20for%20Health%20and%20Social%20Services%20%28Wel%29.pdf>

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Ymateb gan: Plismona yng Nghymru

Welsh Parliament
Legislation, Justice and Constitution
Committee
Making Justice work in Wales
Response from: Policing in Wales

Policing in Wales, comprising the four Chief Constables and four Police and Crime Commissioners, is pleased to provide an initial response to the consultation by the Senedd's Legislation, Justice and Constitution Committee.

We consider it important to provide early thoughts to allow for further engagement as the Committee develops its work. On that basis, we would like to highlight to you the submissions made to the Commission on Justice in Wales, both in writing and orally as the views expressed by both Chief Constables and Police and Crime Commissioners are still pertinent. In addition, we have taken the opportunity to flag some other emerging issues for consideration at the appropriate time.

The links to the original submissions are set out below followed by the additional views of Policing in Wales for consideration by the Committee.

Original Submissions to the Commission on Justice in Wales

Police and Crime Commissioners

<https://gov.wales/sites/default/files/publications/2018-08/Submission-alun-michael-police-and-crime-commissioner-south-wales.pdf>

<https://gov.wales/sites/default/files/publications/2018-07/Submission-from-police-and-crime-commissioner-for-north-wales-arfon-jones.pdf>

<https://gov.wales/submission-justice-commission-police-and-crime-commissioner-dyfed-powys>

<https://gov.wales/submission-justice-commission-police-and-crime-commissioner-gwent>

<https://gov.wales/sites/default/files/publications/2019-04/Oral%20evidence%20to%20the%20Justice%20Commission%20from%20the%20Police%20and%20Crime%20Commissioners.pdf>

<https://gov.wales/sites/default/files/publications/2019-04/Oral%20evidence%20to%20the%20Justice%20Commission%20from%20the%20Police%20and%20Crime%20Commissioners.pdf>

Chief Constables

<https://gov.wales/sites/default/files/publications/2019-01/Submission%20to%20Commission%20on%20Justice%20in%20Wales%20from%20the%20Welsh%20Chief%20Constables.pdf>

<https://gov.wales/sites/default/files/publications/2019-03/Oral%20evidence%20to%20the%20Commission%20from%20Chief%20Constables.pdf>

Additional Comments

Further to the oral and written evidence originally submitted to the Commission on Justice in Wales, the four Police and Crime Commissioners and four Chief Constables acting as Policing in Wales, would offer further observations as follows:

- In addition to fulfilling our statutory duties, Policing in Wales contributes positively and proactively to important cross cutting work addressing criminal and social justice issues in Wales. These include community cohesion and work to both prevent and reduce Violence Against Women, Domestic Violence and Abuse and Sexual Violence. The highly successful work between Welsh Government, Policing and Wales and other partners on the latter, was highlighted at the Policing Partnership Board for Wales meeting chaired by the First Minister on June 18th 2020, along with areas where more progress can be made. In spite of the constitutional position of policing operating as a non-devolved service within a largely devolved delivery environment, joint working to deliver improvement has proved effective.
- The ongoing Covid 19 public health crisis has posed a range of challenges for Policing in Wales and as we move out of a response position to one of recovery, delivery of effective criminal and civil justice services are critical. Although accurate data is currently not available to establish the full extent of backlogs that have continued to build up across the system in Wales, it is known that that they are significant and accelerating. Policing in Wales has sought to innovate and generate a sense of urgency in addressing this issue, working across devolved and non-devolved agencies and departments and other partners. Progress has been made, but the demand that is building up in the justice system is significant and without concerted effort, there is a risk that offenders and perpetrators will not be brought to justice and victims will be denied the justice that they urgently need.
- In Wales there are already 662 cases waiting for a Crown Court trial – though the true total is much higher because of the large number of cases that have not passed through the magistrates courts in recent months. Of those, 117 are multi-handed cases. Ten of those involve 7 or more defendants. At best the use of Court Buildings will meet 25% of the total demand as long as social distancing is required in the second half of this year when there is a

need for at least 200% of normal capacity to avoid a large and increasing backlog.

- A further challenge emanating from the current pandemic has been the divergence of approach in terms of regulations and guidance across the administrations of the United Kingdom, with announcements from Central Government often failing to make clear which details apply only to England. From the start the four Commissioners pressed the Policing Minister on this issue. Great credit can and should be given to Police Officers and PCSOs on the measured and sensitive way in which regulations have been implemented, with enforcement being utilised as a last resort. There will be an appropriate time, however, when all parties reflect on the experience of developing and implementing the Health Protection Regulations, the impact of the divergence in approach between administrations and what learning can come about to support future delivery.

