



Llywodraeth Cymru  
Welsh Government

# **Delivering Justice for Wales**

---

May 2022

# Ministerial Foreword



**Mick Antoniw MS**  
Counsel General

The way in which justice services are delivered - their accessibility, effectiveness, focus, and underlying values - makes a fundamental difference to so many aspects of the lives of the people of Wales.

It affects people's power to enforce their basic rights, to make their voices heard, and to achieve redress and support when they are a victim of crime. It affects community cohesion and how safe people feel in their homes and walking their streets.

It is for these reasons that the delivery of justice services is of fundamental concern to the Welsh Government.

As in other areas of the government's work, we are committed to partnership working to achieve the best outcomes. We work closely with both devolved and non-devolved services, and with a range of staff across sectors; from police officers and court service staff, to social services and health professionals. There are many areas where this partnership working is delivering positive results in Wales - in youth justice, police liaison, responding to the coronavirus pandemic, and tackling the resultant criminal court backlogs.



**Jane Hutt MS**  
Minister for Social Justice

We also believe in the power of preventative action, that it is only by achieving social justice that we can truly address and prevent crime, reduce the numbers of family breakdowns, overcome hate and prejudice, or tackle all the other causes of the immense pressures on our justice system. As a government that is responsible for the provision of education, health, social care, and housing, we use the powers that we have to intervene early and take firm action to steer people away from the criminal justice system.

This document sets out some of the many innovative ways in which justice is currently being delivered in Wales. In many aspects, Wales is a model of how services could be better provided across the UK.

All this is against a backdrop of unprecedented challenge for the justice system. The pandemic has fundamentally altered the delivery of public services. But it is the policies of UK governments since 2010 that have served to shutter access to justice, threaten fundamental rights and protections, and cut back the vital funding on which services rely.

It is our belief that justice should be devolved to Wales. This was set out in our manifesto at the 2021 Senedd election, and it has become an important part of our programme for government. It was also a fundamental recommendation of the independent Commission on Justice in Wales, chaired by Lord Thomas of Cwmgiedd.

The question of who runs the justice system is not a narrow constitutional matter. Rather, as the Commission found, it is only by taking decisions about justice here in Wales that we can achieve better services by aligning with our distinct and developing social, health and education services, and the growing body of Welsh law.

This document sets out how we are responding to those recommendations of the Commission on Justice in Wales that are within the gift of the Welsh Government, and setting a blueprint for a future devolved system.

In particular, within our own areas of responsibility we are focused on addressing the crisis in access to justice as best we can; on supporting Wales's legal sector as a key element of delivering that access to justice, as well as a significant contributor to the Welsh economy; and on ensuring the devolved elements of the justice system are an exemplar of what Wales is able to achieve.

Fundamental to this last ambition is taking forward the Law Commission's important work on the creation of an independent, unified tribunal service for Wales.

This document sets out our response to that report published in December 2021.

# Contents

Executive Summary .....	7
Chapter 1: Introduction.....	12
1.1 Recent history.....	12
1.2 Developments since the Thomas Report.....	13
1.3 Why we have produced this document .....	14
1.4 What this paper includes .....	15
Chapter 2: Our vision for the future .....	17
2.1 Bringing justice closer to the people .....	17
2.2 UK Government response .....	20
2.3 Building a vision for the future .....	22
2.4 Commenting on our vision .....	27
2.5 An evidence-based approach .....	27
Chapter 3: Prevention and Early Intervention.....	32
3.1 Adverse childhood experiences .....	35
3.2 A trauma informed approach .....	39
3.3 Protecting children's rights.....	40
3.4 Activity in the education system.....	41
3.5 Conclusions .....	45
Chapter 4: Equality and Justice.....	47
4.1 Tackling violence against women, domestic abuse and sexual violence .....	48
4.2 Creating an anti-racist criminal justice system .....	52
4.3 Hate crime and community cohesion .....	54
4.4 Equality and rights protection.....	56
4.5 The Welsh language.....	57
Chapter 5: Family Justice .....	59
5.1 Family Justice Network.....	61
5.2 Cafcass Cymru .....	62
5.3 Reduction expectation plans for children who are looked after .....	63
5.4 Reflect services .....	65
5.5 Parental support and Private Law .....	66
5.6 Family Drug & Alcohol Courts (FDACs) .....	68
Chapter 6: Policing in Wales - building safer communities.....	70
6.1 Building strong partnership arrangements .....	72

6.2 Policing and the Pandemic .....	75
6.3 Police Community Support Officers .....	77
6.4 Partnership working to protect children and support families.....	78
6.5 Modern slavery in Wales .....	79
6.6 Policing and transport .....	80
6.7 Rural crime .....	82
6.8 Wales partnership structures and key enabling organisations.....	83
Chapter 7: Criminal Justice - Devolved Functions.....	86
7.1. Accommodation and support upon release from custody in Wales .....	87
7.2 Health protection in prisons .....	89
7.3 Education and learning in the custodial estate in Wales.....	93
7.4 Employment.....	95
7.5 Children's services.....	96
Chapter 8: Criminal Justice Reform Programmes .....	102
8.1 Women's Justice Blueprint .....	104
8.2 Youth Justice Blueprint .....	106
8.3 Problem Solving Criminal Courts.....	108
Chapter 9: Civil and Administrative Justice- laying the groundwork.....	110
9.1 Reform of the devolved tribunals .....	111
9.2 Creating a unified system for devolved tribunals .....	113
9.3 Broadening the scope of the tribunal service .....	114
9.4 Creating an Appeal Tribunal .....	115
9.5 Expanding the role of President of Welsh Tribunals .....	116
9.6 Safeguarding independence .....	117
9.7 Appointments, complaints and discipline .....	118
9.8 Tribunals reform – next steps .....	118
9.9 Civil and administrative justice beyond the devolved tribunals .....	119
Chapter 10: Access to Justice .....	122
10.1 Physical access to courts and tribunals for in-person hearings .....	123
10.2 The ability to access online hearings and use other online services.....	123
10.3 Availability of affordable, high quality and timely legal advice and representation.....	125
10.4 Information and advice services .....	128
10.5 Swift and fair justice.....	131
10.6 Accessibility of Welsh Law .....	133

10.7 Public legal education and Pro Bono work .....	136
10.8 Advancing and protecting human rights.....	139
Chapter 11: The legal sector and economy of Wales.....	141
11.1 Context .....	141
11.2 The Law Council of Wales .....	142
11.3 Welsh Government support for the legal sector.....	143
Chapter 12: Governance, constitutional issues and the law of Wales .....	147
12.1 Leadership within the Welsh Government .....	147
12.2 Collaboration with other elements of the justice system .....	149
12.3 Judicial leadership and governance.....	150
Annex – Our work programme .....	152

# Executive Summary

## Purpose of this publication

**“the people of Wales are being let down by the justice system in its present state”**

**Lord Thomas of Cwmgiedd**

A fair and effective justice system is fundamental to any country. Without it, laws can be ignored, and none of us are safe. This is a publication about building the strongest possible justice system for Wales. It does not start by asking the question who should run the justice system, but rather what reforms need to take place so that we can get the best possible results.

**Our approach to justice in Wales is one which is built on successful partnership working.**

We work closely with devolved and non-devolved partners as part of a whole-system, person-centred approach to justice. Devolved areas such as housing, substance misuse and mental health are crucial in allowing Welsh citizens to live healthy, crime-free lives. We play an active role in the current system, working with partners to deliver the best possible outcomes. This is particularly exemplified by work on the Youth Justice and Women’s Justice Blueprints, as well as our joint working on Violence Against Women, Domestic Abuse and Sexual Violence.

**Despite this, we know that our justice system could be so much better.**

Our successful partnerships happen in the broader context of a disjointed system, where services which should be tied together are instead split across devolved and non-devolved bodies. The effectiveness of these partnership arrangements and their ability to improve are therefore fundamentally limited – which impacts on our collective ability to deliver the best possible outcomes for people in Wales.

In the words of the former Lord Chief Justice of England and Wales, Lord Thomas of Cwmgiedd, “the people of Wales are being let down by the justice system in its present state”. These words are contained in the report of the independent Commission on Justice in Wales, which he chaired, following the largest ever examination of the state of the justice system in Wales, based on written evidence from more than 200 individuals, institutions and organisations, and over 150 oral evidence sessions across the whole spectrum of the justice system.

The Commission’s conclusions were clear. If the justice system is to be truly reformed, policies and decisions about justice need to be determined and delivered in Wales, so that they align with the distinct and developing social, health, social justice and education policy and services in Wales and the growing body of Welsh law. **Justice policy should be developed and funding allocated to serve the needs of, and provide greater benefits for, the people of Wales.** There is no rational basis for Wales to be treated differently from England, Scotland and Northern Ireland.

We can and do work to achieve the most effective partnership working that we can within the limitations of the current devolution settlement and we often see positive results for the people of Wales. However, only through joining up the justice system with the rest of government can we truly find effective ways of reducing crime — or indeed reducing the numbers of family breakdowns, or all the other causes of the immense pressures on our justice system.

**The experience of Covid-19 showed both the strengths and weaknesses of the current arrangements. The justice system was able to manage significant divergence in criminal law between Wales and England. Wales's collaborative working in getting the courts operational and Covid-secure was repeatedly singled out as exceptional. But success was built on relationships and voluntary actions rather than having the right system in place, while working with English-based agencies added needless complexity to decision making.**

## Planning for the longer term

It was on the basis of the Commission on Justice in Wales (Thomas Commission) findings and the Covid-19 experience that the commitment to pursue the case for devolution of justice and policing is within our **Programme for Government for 2021-26**.

That proposition was found in a number of party manifestoes, and as such it received the endorsement of a large majority of Welsh voters. We believe the case for the devolution of justice in Wales is now proven.

We also believe it is inevitable that it will happen — so we have a duty to prepare for it. We will work with experts, both academics and practitioners, to build on the recommendations of the Justice Commission and to develop and to set out how we might deliver better outcomes for Wales if powers, and the appropriate levels of funding, were to be transferred to the democratic institutions of Wales.

It is important that our vision for the future of justice in Wales is co-produced with experts and those with lived experiences of contact with the justice system; particularly those often least heard. So this publication does not attempt to set out that vision now. It is, instead, the latest stage in a conversation.

To help keep this conversation developing, we have looked to set out some of the core components of our approach to designing a devolved justice system — both within this summary and within the document.

We welcome any comments in writing on these core components of a devolved justice system — including whether there are important additional elements that should be reflected, and what some of their practical implications might be. But our primary intention is to stimulate discussion in a range of different forums about the practical implications of each of the identified components, in order to increase our preparedness.

# Core components of a devolved justice system

## In overseeing a devolved justice system for Wales, we would:

- Always uphold the Rule of Law, ensuring nobody is above the law.
- Guarantee access to justice and safeguard citizens' individual rights, including redress for victims and survivors of crime.
- Work to improve the experience of victims, witnesses and survivors when they come into contact with the justice system, including by building on the experience of providing remote evidence sites.
- Support safer communities and ensure that access to justice is truly universal, including by giving a prominent voice within the justice system to older people and to disabled people.
- Support and work with the brave, committed and hardworking people who work in the justice system.
- Take a rights based approach to law and policy making, and look to expand the incorporation of internationally agreed rights' standards into domestic law.
- Give the highest priority to tackling the national crisis of male violence against women, and the shockingly low levels of convictions for rape and sexual assault.
- Continue to work for an anti-racist Wales and strive to eradicate the unequal experiences and outcomes between people of different racial and ethnic backgrounds within the criminal justice system.
- Take a rational and evidence-led approach to policy making, delivered in partnership with experts, practitioners and those affected by any planned changes.
- Have a prevention focus, informed by our understanding that only through achieving social justice can we truly address the underlying reasons for pressures on the justice system.
- Work to reduce the size of the prison population by significantly reducing the use of short sentences, which have been shown to be counterproductive, and pursue alternatives to custody where appropriate, such as programmes to address mental health issues and support with treatment for drug and alcohol misuse.
- Ensure all practice across the system is trauma informed, based on our understanding of the potential impact of adverse child experiences on a person's future.
- Protect and promote the use of the Welsh language in the justice system, working to ensure that all activity within the justice system can be conducted in Welsh.
- Promote Wales as a place for legal service providers to live and work, and work in partnership with the Law Council of Wales to support the sustainability of Wales's legal professions, especially in rural and post-industrial areas.
- Continue to participate in England and Wales, GB-wide, UK-wide, European and international arrangements, where this is in everyone's mutual interest.

## Making change now

We have consistently made the case for change to the present UK Government, and we will continue to do so. At the time of writing, however, despite the near unarguable conclusions of the Thomas Commission, and despite the clear mandate of the Welsh people, the UK Government continues to set itself against any significant change.





This document therefore sets out how we have been seeking to engage with the UK Government on the reforms that are needed to improve the future delivery of justice in

Wales. But it also, crucially, sets out what we are doing in Wales now to support the best possible delivery of justice under the current arrangements, and what else we plan to do in the short term. As a Welsh Government, we understand that pursuing the case for devolution is not done by just talking about it. Instead, we need to pursue the case by demonstrating our values through the actions we are taking.

This publication therefore demonstrates how we are responding to those recommendations of the Thomas Commission within the gift of the Welsh Government and setting down a marker for a future devolved system.

---

### In particular, within our own areas of responsibility we are focused on:

-  managing the interface between devolved and non-devolved services, and developing joint work across governments where there is scope for agreement;
  -  addressing the crisis in access to justice inasmuch as we have any levers to do so;
  -  supporting Wales's legal sector as a key element of delivering access to justice, as well as a significant contributor to the Welsh economy; and
  -  ensuring the devolved elements of the justice system are an exemplar of what Wales is able to achieve.
- 

A big part of this last ambition is our response to the Law Commission's important work on the creation of an independent, unified tribunal service for Wales.

### That new tribunal service will be one of the first building blocks of a future justice system run from Wales.

The publication also sets out those other important areas in which our collaborative approach in Wales is *already* achieving positive change — such as in youth justice, police liaison and addressing the increase in numbers of children who are looked after.

By no means is the Welsh Government the sole cause of the strong partnership working in all those areas; but what they have in common is that agencies and people have been able to come together voluntarily, working within the constraints of the current system to achieve impressive results. Perhaps most importantly, this publication attempts to set out how the objective of improving the traditional justice system cannot be achieved without providing social justice. There is no other sustainable way of reducing pressure on the justice system. Providing social justice involves tackling society's greatest challenges, including poverty, intergenerational inequality

and building cohesive, tolerant communities. It means tackling hate, misogyny and discrimination, not just when they spill over into criminality or other breaches of the law, but through education, explanation and building a society where everyone can thrive regardless of their background.

In particular, social justice means focusing on the most formative years of people's lives, namely the early years, through early intervention; it means taking action to tackle the social and structural inequalities which can give rise to adversity and discrimination; and it means responding quickly, comprehensively and compassionately wherever possible to childhood trauma and adverse childhood experiences.

So, whilst we will continue to make the case for radical change, we will also keep working in partnership to get the best possible outcomes from the overworked, underfunded and overstretched justice system, and to reduce the pressures on it by delivering on our mission to achieve social justice.

At the end of this document, you will find a summary of all the work contained within it. In setting out this programme of work, we hope once again to stimulate conversation on what more can be done.

**However, we also hope this publication gives a sense of how much is already being done, and how it all fits together coherently — informed by those distinct Welsh values of collaboration, community spirit and desire to build a just and fair society.**

# Chapter 1: Introduction

## 1.1 Recent history

Wales is the only devolved nation within the United Kingdom that does not have its own justice system. While Scotland and Northern Ireland are able to create laws and decide how to enforce them, Wales can only do the former. Yet justice considerations spread through all aspects of governmental decision-making in Wales as they do in all of the UK's constituent countries. This is particularly the case for decisions on legislation and also in devolved areas that closely intersect with justice, such as education, housing and health. This 'jagged edge' of devolution frustrates justice being an integral part of overall policy making, often resulting in practical complexities and worse outcomes.

The Welsh Government has long recognised this situation as problematic and has sought to make the case for constitutional change for some time. In the last decade the case has been considered by two independent commissions – the first established by the UK Government, and the second by the Welsh Government.

In October 2011, the UK Government established a Commission on Devolution in Wales (the Silk Commission) to consider the financial and legislative arrangements in Wales. The Silk Commission carried out its work in two parts. In March 2014 the [second part of the report](#), concerning the powers of what was then the National Assembly for Wales, was published. It included 12 recommendations for justice and policing, including devolving policing and youth justice by 2017, and considering whether to act on the "persuasive case for the devolution of the prison service, as well as the probation service". The Silk Commission also recommended a further review to consider the case for devolution of the justice system as a whole; the suggestion was that this review should be completed *and implemented* by 2025.

The failure to act on the Silk recommendations left the concerns raised by Welsh Government and others largely unaddressed. The problems these continued to cause were comprehensively detailed in the landmark report [Justice in Wales for the People of Wales](#), of the Commission on Justice in Wales (Thomas Commission), chaired by Lord Thomas of Cwmgiedd and published in October 2019.

The Thomas Commission, which included a distinguished group of experts in different elements of the justice system, was established in 2017 and undertook the largest ever exercise in surveying the state of the justice system in Wales. It heard an unprecedented volume of evidence and laid out 78 formal recommendations as well as many other observations on how outcomes could be improved for the people of Wales. Of these, the most far-reaching was the call for the operation of the justice system, and policy relating to it, to be devolved to Wales. The report also contained recommendations both about how a devolved system might operate, and also changes that might be made prior to devolution or irrespective of whether devolution occurs.

## **1.2 Developments since the Thomas Report**

In welcoming the report, the First Minister noted in [addressing the Senedd](#) that “we face three essential tasks:

- to enact those recommendations that fall directly to the Welsh Government
- to provide co-operative leadership in those areas where the report's proposals rely on other actors in Wales, and
- to oversee discussions with the new UK Government on the Thomas proposals”.

The Welsh Government moved immediately to establish a Cabinet Sub-Committee on Justice to respond to the recommendations made by the Thomas Commission and provide strategic direction on justice matters. In particular, the Cabinet Sub-Committee is responsible for:

- providing strategic leadership for justice functions currently devolved to Wales
- directing all government activity in response to the report of the Thomas Commission
- ensuring synergy across portfolios to ensure a coordinated approach to justice matters, and
- leading discussions with the UK Government on devolution of justice.

In February 2020 the Senedd endorsed the approach that the First Minister had set out to taking forward the Thomas Commission report, voting by 38 votes to 15 to support a motion that it:

1. Welcomes the landmark report of the Commission on Justice in Wales and the unprecedented body of evidence it generated, and thanks the members and staff of the Commission for their work
2. Recognises the dedication and commitment to public service shown by the many people and organisations who work within the justice system, but nevertheless notes with dismay the central finding of the Commission that the people of Wales are let down by their justice system
3. Supports the Welsh Government's intention of both taking forward those recommendations within its current competence and working with other bodies to take forward recommendations within their responsibility
4. Notes the Commission's key finding that in order to make a lasting difference to the delivery of justice in Wales, policy must be determined and overseen in Wales, and
5. Supports the devolution of justice and policing, and full funding for each as a way of properly aligning the operation of the justice system with the wider policy objectives for Wales agreed by this Assembly.

However, shortly after this came the outbreak of Covid-19. As a result of the pressing need to reprioritise resources to tackle the pandemic, both within Welsh Government and for almost all of the key agencies operating in the justice system, much of the work on taking forward the recommendations within the report had to be paused.

While some individual recommendations have been taken forward throughout the pandemic, work re-commenced following the re-election of a Labour government in May 2021 with a clear manifesto commitment to “pursue the case for the devolution of policing and justice”. With similar commitments in the manifestos of Plaid Cymru and the Liberal Democrats, this represented a strong electoral mandate to take this work forward. As such, the Cabinet Sub-Committee on Justice was re-established and we made early contact with the UK Government to re-commence discussions that had been paused.

### **1.3 Why we have produced this document**

The impact of Covid-19 meant that the Welsh Government did not produce a direct response to the Thomas Report in 2020, as might otherwise have happened. Part of

the purpose of this document therefore is to show what has happened to the Commission's recommendations to date, and to set out our position on other recommendations which have not been progressed.

It is, however, important to recognise the extent to which justice delivery has changed since 2019 – a point at which, for example, probation services were still split between the public and private sectors. Most significantly, the pandemic has changed the way parts of the justice system work, with much of the courts and tribunal system in particular using technology to operate remotely rather than conducting in-person hearings. The death of George Floyd also prompted community outcry about policing across the globe and a focus on institutionalised racism within the justice system, while in the UK the murder of Sarah Everard has prompted an equally sharp national focus on the unacceptably high rates of violence and abuse towards women. As such, certain recommendations of the Thomas Commission have been overtaken by events and these are therefore not discussed at any length in this paper.

Another very important report has been published recently, namely the Law Commission's report on the devolved tribunals in Wales in December 2021. This report starts from the Thomas Commission's recommendations but provides more detail on a way forward, following further in-depth consultation with the sector and other experts. [Chapter 9](#) therefore focuses on that report and sets out our response and how we intend to take that forward, rather than simply focusing on the higher-level recommendations made by the Thomas Commission.

Finally, this paper builds further on the analysis within the report of the Thomas Commission in showing the many areas where agencies in Wales have been able to work together to achieve important improvements to justice for the people of Wales. Some of that work is led by Welsh Government, but much of it is not. This activity demonstrates what can be achieved even under a flawed set of constitutional arrangements, but it also hints at what more might be achieved if the whole system were able to act in unison.

#### **1.4 What this paper includes**

In keeping with the above, this paper contains the following sections:

- In [chapter 2](#), we set out our position on the core recommendation made by the Thomas Commission, that justice should be devolved to Wales, and the action we have taken and will be taking in direct pursuit of that ambition.
- In [chapters 3](#) and [4](#), we focus on the most important long-term element to improving justice – namely, preventative activity to reduce crime, family breakdown, inequality and the other causes of pressures on the justice system. While we cannot be comprehensive in detailing all activity, these chapters give some important examples of activity which will reduce pressures on the justice system, focusing on the areas of support to children and families, education and equalities.
- In [chapters 5-9](#), we look at what happens when people do need to come into contact with the justice system. The chapters look at the family justice system, policing and community safety, the operation of devolved elements of the criminal justice system, wider partnership working to improve criminal justice outcomes, and civil and administrative justice. In each area, we give examples of work that has happened and is happening in Wales to improve outcomes under the current settlement, showing the Welsh Government's contribution to that work where relevant.
- In [chapters 10](#) and [11](#) we look at two underlying challenges which cut across all elements of the justice system – namely protecting access to justice and ensuring Wales has the legal sector it needs.
- Finally, in [chapter 12](#), we look at the Thomas Commission's recommendations on constitutional reform and governance of the justice system, how we have taken forward those which fall within our own area of responsibility and how we hope to take the remainder forward through discussions with the UK Government and others.

## Chapter 2: Our vision for the future

### 2.1 Bringing justice closer to the people

In this paper, we set out things we believe can be achieved even within the limitations of the current justice framework. These are our starting point, as they can be delivered more quickly than anything requiring constitutional change. Taken together, they are a significant contribution to the improved operation of the justice system in Wales. Moreover, each of these initiatives is helping to define and embed a distinct approach to delivering justice in Wales – an approach focused on reducing crime, promoting rehabilitation, improving adherence to the law, improving the experience of victims and witnesses, supporting families in staying together, advancing individuals' rights, gaining greater trust in the justice system, reducing pressures on parts of the justice system, and contributing to a fairer, more accessible and more efficient justice system. That distinct Welsh way of doing things is increasingly embedded across the different services working in Wales.

Yet the biggest challenges will remain. While criminal justice policy and the operation of most of the justice system remains controlled from Westminster, it will never align wholly with the operation of devolved services. Policies will continue to be developed by ministers whose focus is primarily on England and which will not fit the Welsh context (contrary to the principle of subsidiarity, which states that decisions should be taken as close as possible to the people affected by them). It is already difficult and time consuming for agencies in Wales to find ways of reconciling instructions and policies designed for England with the Welsh way of doing things discussed above. This will become even more difficult over time, as law and practice diverge ever more between the two nations – a natural, desirable, and inevitable consequence of devolution.

We expect these issues to be considered by the [Independent Commission on the Constitutional Future of Wales](#), as part of the [national conversation](#) which it opened on 31 March 2022.

Arguably more importantly, though, the Commission on Justice in Wales (Thomas Commission) showed beyond doubt that the flaws in the constitution have severe practical consequences. Those range from the overly large and rising prison

population, with its attendant costs, to the dramatic reductions in the availability of legal aid, the very low rates of convictions for sexual offences and the unacceptably lengthy delays in some cases coming to trial – all of which arise to some degree from the lack of the necessary levers in Wales to address them.

The conclusions of the Thomas Commission could not have been clearer:

- “Policy and spending on justice should be aligned with other policies, particularly those which are devolved to Wales, such as health, education and social welfare”.
- “Justice should be determined and delivered in Wales so that it aligns with its distinct and developing social, health and education policy and services and the growing body of Welsh law. Policy would be developed and funding allocated to meet the needs of and provide greater benefit for the people of Wales.”
- “We are satisfied that the determination of justice policy and its delivery in Wales would, with good leadership and proper accountability, provide a much better system of justice focused on the needs of the people of Wales. This would make a significant contribution to a more just, fair and prosperous Wales.”

The Welsh Government agrees with this analysis. It is in the interests of justice, of good decision making and of empowered communities for decisions to be made by Welsh decision makers, with an eye to the views and interests of Welsh residents and communities. For all these reasons, it is inevitable that justice will be devolved to Wales, and the only questions are when and how that will happen.

We also note and strongly endorse the Thomas Commission’s observation that “devolution of justice must be accompanied by a full transfer of financial resources”.<sup>1</sup> We note the importance that was also rightly put on this by the Law Society.<sup>2</sup>

---

<sup>1</sup> Thomas Commission recommendation 60

<sup>2</sup> “[The Law Society](#) believes that the full devolution of justice to Wales must be accompanied by an adequate commitment to funding from UK Treasury”

## **Covid, Justice and Devolution**

As the pandemic evolved, a divergence of policy and law between Wales and England emerged. This reflected different community transmission levels and other local conditions such as the resilience of the NHS. Taking a Welsh-specific approach to the pandemic meant that restrictions and legal penalties differed between Wales and England. For some, the extent to which the law varied was unexpected.

In short, Wales had a different regulatory regime with different criminal offences and different penalties. Without this, the Welsh Government would not have been able to keep the Welsh public as safe by responding to local circumstances.

Some have previously argued that the police and the public would not be able to understand any significant differences in the criminal law between Wales and England – that it would be too confusing, and that people would not be aware of the legal requirements in Wales alone. If this argument was ever viable, it is no longer in the wake of the Covid experience.

Through strong working relationships with Welsh police forces, Police and Crime Commissioners and others, we were able to ensure that on-the-ground officers had access to clear guidance on Welsh regulations, and that policymaking, legislation and guidance were informed by the experience of the police. Police officers took a '4 Es approach', engaging with people, explaining the rules, and encouraging compliance, with enforcement as a last resort. More detail of how policing and government worked together is in chapter 6.

The Crown Prosecution Service also had to manage prosecuting multiple offences created in Welsh law, and defence practitioners, Magistrates and their legal advisers all regularly needed to come to terms with laws made in Wales – and were clearly able to do so.

Meanwhile, prisons, courts and other settings had to come to terms with operating under Welsh rules and guidance about keeping people safe on their premises, while still being part of a service run from London and primarily operating in England.

However, the experience of Covid also showed how dependent the system is on individual relationships. Despite the high level of funding from Welsh sources and the obvious need, there is no legal or structural requirement for police or justice system agencies to work collaboratively with Welsh Government, local government or health services, or to participate in Welsh policymaking or any operational forums. Indeed, strictly speaking there was no legal obligation for Welsh courts or prisons to follow the rules that applied to almost all other employers and public places. We were fortunate in the relationships we have, but these are clear structural failings in our ability to protect people in the most dangerous circumstances.

## 2.2 UK Government response

The emphatic conclusions from the Thomas Commission informed the manifestos that were put to the Welsh electorate at the 2021 Senedd elections. The result was a strong mandate for the incoming government to pursue the case for devolution of justice and policing, with a significant majority of votes cast for candidates and parties supporting devolution. As such, our programme for government contained a clear commitment to pursue that case.<sup>3</sup>

It is disappointing that the UK Government has rejected the central recommendation of the Thomas Commission, seemingly out of hand. However, the then justice minister Chris Philp told the House of Commons in early 2020 that while the UK Government did not intend formally to respond to the Thomas Commission's report, and it did "not agree with the conclusion that we should wholly devolve justice and create a Welsh jurisdiction", it was "of course going to discuss in detail with the Welsh Government in Cardiff the issues that it raises".<sup>4</sup> Although such discussions were then delayed by the Covid-19 pandemic, that commitment was reiterated orally and then in writing by the then Lord Chancellor, Robert Buckland, who wrote in July 2021 that "while the UK Government does not accept the report's main recommendation of devolving justice to Wales, there are elements of the recommendations that I am keen to explore".

It is also frustrating that these commitments to discussions have been slow to produce results. The First Minister responded in August 2021 welcoming the commitment and asking for conversations to begin. He also set out a potential starting point for discussions which respected the position of the UK Government while still seeking to secure the maximum possible benefit for Wales from the rigorous work of the Thomas Commission:

"It is of course disappointing to us that before conversations have begun, you should reject the report's central recommendation. Not only does that negate the evidence-led process which led to the recommendations being adopted, it also neglects to recognise that this government was recently re-elected on a manifesto which explicitly committed to pursuing the case for devolution of

---

<sup>3</sup> [Programme for government](#)

<sup>4</sup> [Commission on Justice in Wales - Hansard - UK Parliament](#)

policing and justice; and indeed that there is a large majority in the Senedd, as there was in the last Senedd, who support such devolution. We will of course continue to pursue that case, as our Programme for Government makes clear.

“Nevertheless, we have always recognised that this was likely to be your government’s position, and I hope this will not preclude us from having constructive and evidence-led discussions about individual recommendations within the report that include some elements of devolution without transferring responsibility for justice in its entirety. For example, the youth justice system requires reserved agencies to work so closely with devolved services, and the operating environment in Wales is so distinct, that irrespective of your broader position we would suggest it is hard to make any continuing case for it to be reserved. Devolution of youth justice was of course a recommendation of the Silk Commission.

“Probation services are another area where activities need to be closely aligned with devolved services, and in which the operating environment and applicable laws are very distinct. So while we believe the greatest benefits to Wales could be delivered by the wholesale devolution of justice and policing, and the opportunities that would afford for a fully joined-up approach, we would also see value in more focused discussions on particular elements of the system. I hope that you will feel able to engage in discussions along these lines, alongside conversations about improvements under the current settlement.”

Despite our requests, it was not until 13 December 2021 that ministerial discussions began between the two governments. On that date the Counsel General and Minister for Social Justice met with Lord Wolfson of Tredegar QC, who was then Parliamentary Under-Secretary of State for Justice at the Ministry of Justice. In that meeting it was helpfully agreed that officials of both governments should review all of the Thomas Commission recommendations that did not involve the wholesale transfer of responsibility for the justice system, with a view to identifying the recommendations which could be taken forward in partnership.

Discussions between officials have since been taking place, some of which are reflected elsewhere in this publication (for example on the production of disaggregated data). Examples of areas we have raised through these discussions include the operation of youth justice, the age of criminal responsibility in Wales, recommendations relating to coroners' services, the position of the Welsh language and a problem-solving court pilot in Wales. Ministers met periodically during this period, up to the resignation of Lord Wolfson in April 2022. We continue to hope that we will be able to make some progress through conversations at official and ministerial levels, and joint engagement with stakeholders. However, at the time of writing there have not yet been any outputs from these discussions – indeed, we are still awaiting the appointment of a successor to Lord Wolfson.

### **2.3 Building a vision for the future**

As set out above, we await the outcome of discussions with the UK Government and will be making the case for the transferral of some functions to Wales. However, it is not enough to pursue those discussions; we must also increase our preparedness for the changes ahead. We will work with experts, both academics and practitioners, to build on the recommendations of the Thomas Commission and to develop and to set out how we might deliver better outcomes for Wales if powers, and the appropriate levels of funding, were to be transferred to the democratic institutions of Wales.

As the Thomas Commission acknowledges, **it is important that our vision for the future of justice is co-produced with experts and those with lived experiences; particularly those often least heard.** Government ministers and officials never have a monopoly of expertise, but this is particularly the case when taking on the delivery of services that have previously been provided by others. It is therefore our intention to take a co-production approach to designing this vision. This is consistent with the approach in the Well-being of Future Generations Act, and the Sustainable Development Principle which is a fundamental part of how public bodies in Wales are expected to operate. The principle is made up of five ways of working which we would apply in designing any changes to the delivery of justice.



The process of designing the vision will also be taken forward incrementally. Given that the Welsh Government does not receive funding for the administration of justice, our resource to consider how every aspect of the system would ideally work is limited. We also cannot expect stakeholders to engage on every question at the same time. Therefore, we do not see reform of the justice system in Wales being a single event, but rather a process of change over time, prioritising those areas where we can most improve outcomes for Welsh citizens.

At this stage, though, we can set out some of the core components of our approach to designing a devolved justice system. These are informed by a number of important previous pieces of work, such as the work of the former Committee for Administrative Justice and Tribunals, Wales; work of the Wales Governance Centre at Cardiff University; and of course the Thomas Commission which set out a series of principles to underlie its work in its [initial call for evidence](#) and then drew on this in its report.<sup>56</sup>

---

<sup>5</sup> [Administrative justice: A cornerstone of social justice in Wales](#), p45

<sup>6</sup> See for example [Justice in Wales: Principles, progress and next steps](#)

In overseeing a devolved justice system for Wales, we would:

1. Always uphold the Rule of Law, ensuring nobody is above the law
2. Guarantee access to justice and safeguard citizens' individual rights, including redress for victims and survivors of crime
3. Work to improve the experience of victims, witnesses and survivors when they come into contact with the justice system, including by building on the experience of providing remote evidence sites
4. Support safer communities and ensure that access to justice is truly universal, including by giving a prominent voice within the justice system to older people and to disabled people
5. Support and work with the brave, committed and hardworking people who work in the justice system
6. Take a rights-based approach to law and policy making, and look to expand the incorporation of internationally agreed rights' standards into domestic law
7. Give the highest priority to tackling the national crisis of male violence against women, and the shockingly low levels of convictions for rape and sexual assault
8. Continue to work for an anti-racist Wales and strive to eradicate the unequal experiences and outcomes between people of different racial and ethnic backgrounds within the criminal justice system
9. Take a rational and evidence-led approach to policy making, delivered in partnership with experts, practitioners and those affected by any planned changes

In overseeing a devolved justice system for Wales, we would:

- 10.** Have a prevention focus, informed by our understanding that only through achieving social justice can we truly address the underlying reasons for pressures on the justice system
- 11.** Work to reduce the size of the prison population by significantly reducing the use of short sentences, which have been shown to be counterproductive, and pursue alternatives to custody where appropriate, such as programmes to address mental health issues and support with treatment for drug and alcohol misuse
- 12.** Ensure all practice across the system is trauma informed, based on our understanding of the potential impact of adverse child experiences on a person's future
- 13.** Protect and promote the use of the Welsh language in the justice system, working to ensure that all activity within the justice system can be conducted in Welsh
- 14.** Promote Wales as a place for legal service providers to live and work, and work in partnership with the Law Council of Wales to support the sustainability of Wales' legal professions, especially in rural and post-industrial areas
- 15.** Continue to participate in England and Wales, GB-wide, UK-wide, European and international arrangements, where this is in everyone's mutual interest

**EXAMPLE 1:** “We will continue to participate in England and Wales, GB-wide, UK-wide, European and international arrangements, where this is in everyone’s mutual interest.”

In a devolved justice system, there are obvious areas where it is in our common interest to work in partnership. For example, 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.

We agree with this. There is no good reason to require lawyers to obtain separate qualifications to practise in Wales or to create new regulatory bodies.

Equally, if there was a separate Welsh legal jurisdiction with Welsh courts, there would be no need – and it would not be viable – to recruit a new Welsh judiciary, or to require every existing judge to work solely in either the English or Welsh courts. Existing judges would become judges of both the Welsh Courts and the English Courts and would sit as one or the other depending on the origins of the case in question.

Similarly, there is no reason of principle why devolution should prevent Wales opting in to UK or GB bodies such as the National Crime Agency or the Serious Fraud Office. Benefits of doing so may include economies of scale, the cross-border nature of certain challenges, and access to specialisms that might not be available on a Wales-only basis. However, the benefits of delivering on a Wales-only basis may include alignment with other areas of Welsh policy, ability to take into account local considerations, and accountability.

Finally, devolution would not prevent Wales from participating in European or international co-operation mechanisms, as for example Scotland does now.

These are examples of the types of issue we hope to consider in partnership with experts in the coming months and years.

## 2.4 Commenting on our vision

We welcome any comments in writing on these core components of a devolved justice system, including:

- whether they are correctly drawn up,
- whether there are important additional elements that should be reflected, and
- what some of their practical implications might be.

However, this is only the latest stage in a conversation which will need to continue to develop over the coming months and years, as we move towards ever greater responsibility being held by devolved Welsh institutions. In particular, it is our intention to stimulate discussion in a range of different forums about the practical implications of each of the identified components, in order to increase our preparedness. We will use existing forums to host discussions, but we also intend to set up roundtable events and other mechanisms to reach the large and diverse group of people who are affected by reforms, to bring their lived experiences to the justice system.

We welcome your comments on the proposed components of a devolved justice system set out above via:

**Email:** [justicepolicy@gov.wales](mailto:justicepolicy@gov.wales)

**Post:** Justice Policy Division  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

We will not share your personal information with anyone else. Please see the [Welsh Government's Privacy Notice](#) for more information.

## 2.5 An evidence-based approach

As noted in our core components of a devolved justice system, it is essential that policy making is driven by evidence, alongside the lived experiences of people that policy is likely to affect or has affected. That in turn requires working in close co-

operation with experts (including both academics and practitioners), up to date data, and impact assessment and evaluation.

### **Impact assessment and evaluation**

Impact assessment is a structured way to consider the factors that mean our policies affect different people's lives in different ways. Done well, impact assessment guides policymakers to better policy making and implementation, and indicates areas they might not have otherwise considered. It also prompts and guides policymakers to gather existing evidence, and if necessary, seek further evidence, to improve the development of a policy or delivery plan, or inform a change of direction in policy or delivery.

We see appraising impact – both positive and negative – as an essential part of developing policy or building delivery plans with optimum effect. From the earliest stages, they will be developed with a view to maximising social, economic, environmental and cultural well-being – not just now, but for the long term. Impact assessment helps us to target increasingly scarce resources on actions that will have maximum impact on well-being.

A good impact assessment also involves listening to citizens and demonstrating clearly that they have been heard. We know that some communities are sceptical about impact assessment and whether it truly influences policymaking, which we need to demonstrate. There is also a number of recommendations relating to the strengthening of impact assessments within the report led by Swansea University on Strengthening and Advancing Equality and Human Rights which was published in August 2021, discussed [in chapter 4](#).

This paper itself does not have an attached Integrated Impact Assessment. However, it reflects a synthesis of separate policy areas, considered by ministers through the Cabinet and its sub-committees, with impacts to be assessed at the appropriate stages. For example, the [Integrated Impact Assessment of the Substance Misuse Delivery Plan 2019-2022](#) noted the formal consultation and pre-consultation events held and the anticipated impact, as well as how progress would be monitored and evaluated. Another example is the [Integrated Impact Assessment undertaken as part of the draft Race Equality Action Plan](#).

During the policy life cycle, it is also important to measure impacts as they materialise and reflect on the lessons that can be learned. Embedding continuous reflection and review, as well as a final evaluation, into policy design from the outset is therefore critical to ensure the infrastructure is in place to allow us to measure the efficiency of the policy implementation and the difference the policy is making. Again, there are examples of evaluation being used in the individual policy areas discussed within this paper. For example the [three-year evaluation](#) of the Families First programme informed ongoing delivery by exploring lessons learned around implementation and what works best in achieving positive family outcomes, while an evaluation of the [Family Drug and Alcohol Court Pilot](#) is due to report in August 2022.

## Data

However, there is a specific set of challenges associated with impact assessment and evaluation in the context of justice, which arise from the complexity of the justice system in general, and the dispersal of responsibilities across devolved and reserved authorities in Wales in particular.

Having access to disaggregated justice data for Wales is crucial to assessing the performance of the justice system, designing policy and delivering effective devolved services. Having a transparent and timely picture of how the justice system is working in Wales is clearly in the public interest, as is the trust in the emerging patterns and data.

Some justice data can be accessed through the [UK Government's portal](#), but not all of this is disaggregated to Wales. We welcome the first version of the UK Government's newly-launched [Criminal Justice scorecards](#), which provide information at the level of individual police force areas, and the agreement on an all Wales basis of a dataset on rape and serious sexual offences. We will continue to work with our partner organisations, including the Ministry of Justice and its agencies, to develop our further data needs, and we remain grateful for their continued constructive co-operation. We are also reviewing the data collected by devolved authorities, including the Welsh Government and the devolved tribunals.

We are now aiming to build a central and systematic view of the justice data we need across Welsh Government, so we can develop a coherent and comprehensive ask of the UK Government. We have identified two overarching data needs:

- data that Welsh Government policy departments need to plan and deliver services, and to develop policy under the existing arrangements, and
- data needed for a better understanding of the system and to allow the Welsh public, the Senedd, academics and civil society to understand the need and develop the case for further reforms and improvement.

Officials are undertaking a mapping exercise which encompasses both areas, while being clear about the distinction between the two. This will be challenging and we are committed to working across areas to build a fully comprehensive map of our data needs. This work will develop over 2022/2023 and we expect to build on it over time as new needs are identified.

As we work to improve the data sets we draw on for policymaking purposes, we will also be looking to make existing data about the justice system in Wales more accessible to the public. We are considering the best methods of highlighting this information, such as publishing our internal dashboards and collating information on existing sources in one easy-to-find location. This will allow the people of Wales to scrutinise both Welsh Government and the other elements of the justice system in how they work both separately and together.

We are also strengthening our internal capability in key areas. In January 2022, we established three distinct units, each with their own evidence programme and lead.

- Equality Evidence Unit
- Race Disparity Evidence Unit
- Disability Disparity Evidence Unit

The units will work across all policy areas, including justice, to improve the availability, quality, granularity and accessibility of equality evidence. This will help us to fully understand the levels and types of inequalities across Wales and enable decision makers to develop better informed policies and to assess and measure their impact.

Finally, while it is important to impact assess and evaluate individual policy programmes, it is also important to measure the effectiveness of justice systems in achieving their objectives in the round. In December 2021 we published an updated set of national indicators by which we will measure Wales' progress towards the well-being goals set under the Well-being of Future Generations Act. The United Nations Sustainable Development Goals – in particular, Goal 16 which relates to “Peace, Justice and Strong Institutions” – recognise that an equitable access to justice is an important aspect of well-being. In line with that recognition, we will now measure against a national indicator around public confidence in the justice system. More detail on how we will measure this will follow in due course, but this will provide a benchmark against which we can try to drive improvements.

## Chapter 3: Prevention and Early Intervention

Reducing the pressure on the justice system is essential. Without a step change in funding, there is no alternative way of allowing the sustainable improvements the system needs. But even more importantly, almost invariably when an individual comes into contact with the justice system, it reflects something having gone wrong (whether that be a crime committed, a family broken down, an eviction, or a dispute that cannot be mediated). Contact with the justice system can then itself cause additional stress, re-traumatisation and harm to individuals and their families. These stresses have the potential to have long term impacts that cannot be reversed.

Whatever part of the justice system they work in, policymakers often (rightly) ask the question of how to reduce the pressures on that part of the system. There are many initiatives designed to reduce the immediate causes of those pressures, some of which are detailed elsewhere in this document. Examples include promoting mediation or arbitration services to keep disputes out of the civil courts, taking steps to support separating parents and reduce the family court workload, or reforms to the system of cautions to reduce pressure on criminal courts, prosecutors, prisons and probation services.

These measures are worthwhile: but the path to a sustainable reduction in crime and in the other pressures on the justice system starts much further back in people's lives.

Our mission is to provide social justice in Wales. Providing social justice involves tackling society's greatest challenges, including poverty, intergenerational inequality and building cohesive, tolerant communities. It means tackling hate, misogyny and discrimination, not just when they spill over into criminality or other breaches of the law, but through education, explanation and building a society where everyone can thrive regardless of their background.

In particular, social justice means focusing on the most formative years of people's lives, namely the early years, through early intervention; it means taking action to tackle the social and structural inequalities which can give rise to adversity and discrimination; and it means responding quickly and comprehensively wherever

possible to childhood trauma and adverse childhood experiences. The recent [Children and Young People's Plan](#) sets out our cross-government priorities for supporting children and young people.

This chapter gives some examples of the activity we and our partners have taken, and will continue to take, to deliver effective early intervention and create trauma-informed and responsive public services. It cannot, though, give a comprehensive picture of the activity which serves to reduce pressures on the justice system, because so much activity should contribute to this reduction, given our overarching focus on tackling socioeconomic injustice which informs our approach to healthcare, education, housing provision and social care to name but a few areas of responsibility.

For these reasons, we do not believe it is possible or desirable to separate out a strand of work as “prevention activity”; instead, addressing the root causes of pressures on the justice system is embedded in everything we do. Over the two decades of devolution, we have sought to build an environment in which all public services work together to take on those big, long-term challenges – an approach we hope and believe will pay dividends in decades to come.

### **Well-being of Future Generations Act 2015**

At the heart of our commitment to social justice lies the Well-being of Future Generations Act. This was introduced to shape the future of Wales and improve its health, social, economic, environmental and cultural well-being.

The Act recognises the fact that Wales faces a number of tough challenges now and in the future, such as tackling climate change, poverty and health and social inequalities. It gives a legally-binding common purpose – the seven well-being goals – for national government, local government, local health boards and other specified public bodies. It also details the ways in which specified public bodies must work, and work together to improve the well-being of Wales, as well as creating a Future Generations Commissioner to oversee progress.

The philosophy of the Well-being of Future Generations Act is also apparent in the implementation of the socioeconomic duty, which came into force in March 2021. The overall aim of the duty is to deliver better outcomes for those who experience socioeconomic disadvantage.

Taken together, the Well-being of Future Generations Act and the socioeconomic duty serve to require public bodies to think more about the long term, work better with people and communities and each other, look to prevent problems including contact with the justice system in Wales and take a more joined-up approach. The activities set out in this part are examples of how this approach has been reflected in practice.



### 3.1 Adverse childhood experiences

Adverse Childhood Experiences (ACEs) refer to stressful experiences or circumstances in childhood, which can have a detrimental impact on health and social outcomes across the life course. ACEs include maltreatment (physical, sexual and verbal abuse and physical and emotional neglect) and wider experiences of household dysfunction (growing up in a household affected by domestic violence, parental separation, substance misuse, mental illness or parental incarceration).

The first Welsh adverse childhood experiences study indicated that in 2015 around half of adults in Wales (47%) had experienced at least one ACE, and one in seven (14%) had experienced four or more.<sup>7</sup> However, it also shows that the prevalence of ACEs can be much higher in some parts of society, such as those who have a lived experience of homelessness or who come into contact with the criminal justice system.<sup>89</sup> For example, research with male prisoners, in Parc prison, found that nearly half had experienced four or more ACEs, with domestic violence in particular a high occurrence in childhood. The research shows that those who experience ACEs are more likely to be at risk of developing health harming and anti-social behaviours during adolescence. As well as the social cost to the individual and their family, dealing with ACEs also increases the burden on public services, including those working in the justice sector.

Growing up in the context of discrimination, violence in the community, and poverty can also increase the risk of adversity in childhood – especially if children lack access to proven protective factors such as an inclusive community, single trusted adult, support for emotional regulation and being able to guide your destiny. However, the relationship between ACEs and poorer outcomes is associative, not deterministic. Poorer outcomes are not inevitable, and the risks can be mitigated if the right support and protective factors are in place, and these are provided as soon as possible.

During the last Senedd term we prioritised action both to prevent ACEs and to mitigate their impact through the development of ACE aware public services. This paper does not attempt to list all actions which could serve to prevent ACEs and other sources of childhood adversity, but many elements can be found within our recent [Children and Young People's Plan](#).

In seeking to build on our learning about the importance of ACEs by mitigating their effects wherever possible, we supported the establishment of an ACE Support Hub for Wales, as a centre of knowledge and expertise which could support services in

---

<sup>7</sup> [Public Health Wales \(2016\) – Adverse childhood experiences study](#)

<sup>8</sup> [Public Health Wales \(2019\) - Voices of those with lived experiences of homelessness and adversity in Wales: informing prevention and response](#)

<sup>9</sup> [Public Health Wales \(2019\) – Understanding the prevalence of adverse childhood experiences \(ACEs\) in a male offender population in Wales: The Prisoner ACE Survey](#)

Wales to become ACE aware and trauma informed. Since 2017 we have provided £2.6 million of funding to support the ACE Support Hub for Wales to deliver its programme. The Hub has developed and delivered an extensive programme of training across public services in Wales and it has worked with a range of sectors to co-produce materials specific to their services. This includes education, health and housing services, as well as those active in the criminal justice system.

Building on this sector-specific experience, the ACE Support Hub has now also produced a self-assessment tool for Trauma and ACE Informed Organisations, known as the [TrACE Toolkit](#). This is designed to help organisations in embedding ACE Awareness and trauma informed practice.

We have agreed to continue funding to the Hub until at least 2025.

## **Flying Start and Families First**

Flying Start was launched in 2006. This geographically targeted early years programme aims to make a decisive difference to the life chances of children aged 4 and under in disadvantaged areas in Wales. It includes four core elements: fully funded quality childcare; parenting support; intensive health visitor support; and support for speech, language and communication.

While Flying Start was not specifically targeted at preventing adverse childhood experiences, this is one of the benefits of parenting support. Tackling speech, language and communication needs in early childhood is also an example of activity likely to impact positively on the justice system as studies have suggested that up to 60% of young people in the Youth Justice Estate may have such needs.

Currently, 36,000 children under four living in some of the most deprived area in Wales benefit from the programme. From September 2022, an additional £20 million in funding will be used to expand the Flying Start programme to reach up to 25,000 more children.

Families First is a separate programme designed to develop intergenerational cycles of positive parenting, relationships and behaviour. The programme promotes multi-agency working to ensure families receive joined-up support when they need it – this is known as the “Team Around the Family” approach. The intention of the programme is to provide services that help prevent ACEs as well as help mitigate the effects of ACEs on those who have already been exposed and help build resilience within families to help them cope during challenging times.

Local authorities are expected to commission a small number of strategic projects which have a clear and demonstrable link to community-based needs assessments and focus on early intervention and prevention. Local authorities do differ in the types of support they commission and the amount of funding invested in the various elements of the Families First programme.

Prior to the introduction of the Children and Communities Grant (CCG) in April 2019, Families First received a dedicated annual financial award of £37.6 million in 2018-19.

Since April 2019, Families First has formed part of the wider CCG, a flexible fund covering seven early intervention and prevention programmes. The CCG was worth £150 million in 2021-22.

### 3.2 A trauma informed approach

In January 2022, the Deputy Minister for Social Services published a [Written Statement](#) setting out her plans for our ACEs policy. This included a commitment to develop an ACEs Plan alongside a new national trauma informed practice framework developed jointly by the ACE Support Hub and Traumatic Stress Wales. Both are scheduled to be published in the summer of 2022. We are also committed to learning from the [Public Health Wales led study](#) into what works at the community level to reduce the prevalence and mitigate the impact of ACEs.

Work has also been undertaken across the Welsh Government to apply an ACEs lens and trauma informed approach to new and existing policy, including to the development of the Youth Justice and Female Offending Blueprints, discussed in [chapter 8](#). Both blueprints seek to adopt an ACE aware and trauma informed approach and place an emphasis on the need for services to focus on early intervention and prevention services, which can help reduce the number of young offenders and females entering the criminal justice system.

The development and adoption of the Enhanced Case Management (ECM) for young offenders is helping tailor and sequence interventions more effectively, according to the developmental and mental health needs of individual young people, and recognising trauma and adverse events they have experienced. This approach has seen positive results with young people who offend. Learning from the ECM approach is being used to help shape services under the Female Offending Blueprint, with a focus on trauma-informed approaches and early intervention and prevention for those identified as being at risk of entering the justice system.<sup>10</sup>

We have also worked closely with services working in the justice system to support the delivery of the [Early Action Together Programme](#) (EATP). This programme sought to change the policing of vulnerability in Wales through the application of an “ACE lens”. It adopted a multi-agency approach, with the four police forces, Police and Crime Commissioners, local authorities, third sector and Public Health Wales, collaborating (and utilising Home Office funding) to develop and deliver a public health approach to the policing of vulnerability.

---

<sup>10</sup>The [2017 evaluation of the Enhanced Case Management approach](#) and [2021 evaluation](#) are being compared to help inform future service delivery.

EATP has broken ground in applying public health principles to policing and criminal justice. By the time the programme's delivery ended in March 2020, nearly 6,500 police officers and staff from partner organisations had received ACE awareness training. The [evaluation of the programme](#) found increased collaboration and integration across services with clearer pathways for information sharing. Work continues to ensure the legacy of the programme.

### **3.3 Protecting children's rights**

Protecting children's rights is another of the pillars of delivering social justice. As a government we believe that children and young adults should be treated differently to adults. We have committed to ensuring that all up to the age of 18 have the basic rights to be safe, to play, to have an education, to be healthy and to be happy.

Welsh ministers have a duty to have due regard to the [United Nations Convention on the Rights of the Child](#) (UNCRC) when developing or reviewing legislation and policy. They are also responsible for ensuring that people in Wales know about, understand and respect the rights of children and young people as outlined in Article 42 of the UNCRC. To ensure that ministers are supported in this duty, we have developed the [Children's Rights Impact Assessment](#) (CRIA) which should be used to support all decisions that could/will affect children and young people. We also established the office of Children's Commissioner for Wales to support children and young people to find out about their rights and to look at how the decisions made by public bodies in Wales, including Welsh Government, affect children's rights.

Some of the practical applications of this rights-based, child first approach are set out in chapters [4](#) and [7](#) when considering the family justice and youth justice systems. Fundamentally, the approach means acknowledging that harmful behaviours will be displayed by some children, and accepting that children should be treated differently when it comes to justice. For children who are displaying harmful behaviours, it is imperative that they are treated as children first and that their needs are addressed along with the children they have harmed. A response to children displaying harmful behaviours must be on a continuum, ranging from early community-based identification and support to assessment, intervention and intensive work with those the highest risk and need.

Children's rights were also at the heart of the abolition of the defence of reasonable punishment in Wales. As of 21 March 2022, nobody in Wales is able to rely on this defence to justify physically punishing their children. This gives children the same legal protection from assault as adults.

Prohibiting the physical punishment of children is in accordance with article 19 of the UNCRC - protection from all forms of violence. The legislative change will also support our aim of supporting parents to use more positive approaches to providing guidance and discipline to their children.

The intended effect of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020, combined with an awareness-raising campaign and support for parents, is to bring about a further reduction in the use and tolerance of the physical punishment of children in Wales.<sup>11</sup> A review of longitudinal studies identified that physical punishment is not associated with positive outcomes over time, increases the involvement with child protective services and predicts worsening behaviour. The authors concluded that "physical punishment is harmful to children and that policy remedies are warranted".<sup>12</sup> Furthermore, an ecological study of 88 countries found "an association between national bans of corporal punishment in all settings and less frequent physical fighting in male and female adolescents".<sup>13</sup>

Implementation of the Act, and how we are working with the justice system, is discussed later in this document; but it is of importance here in that we expect it to lead to a society in which violence is less normalised from the all-important formative years.

### **3.4 Activity in the education system**

All the threads running through this chapter – the need to tackle differential experiences, the need to be trauma informed, and the need to treat children as children first and foremost – come together in the education system. Schools and other educational settings have to manage very challenging behaviours on occasion – but should never lose sight of their mission to guide all children in becoming

---

<sup>11</sup> [Children \(abolition of defence of reasonable punishment\)\(Wales\) Act - Explanatory Memorandum](#)

<sup>12</sup> [Physical punishment and child outcomes: a narrative review of prospective studies](#)

<sup>13</sup> [Corporal punishment bans and physical fighting in adolescents: an ecological study of 88 countries](#)

productive contributors to society. In doing so they will help reduce future demand on the justice system, and create a virtuous circle.

In March 2021 we published our [Framework on embedding a whole-school approach to emotional and mental wellbeing](#), statutory guidance for schools and local authorities. The framework places an emphasis on early identification and prevention to address the wellbeing needs of learners. It also recognises that some learners are at higher risk of facing poor well-being and experiencing adverse outcomes and that we need to be taking an inclusive and non-stigmatising approach to ensuring good well-being for all learners, regardless of circumstance. We believe that it is important to acknowledge that some learners may need additional support at different times and more targeted early intervention to prevent negative experiences.

Examples of additional support include making additional counsellors and educational psychologists available to organise and provide additional counselling sessions for children and young people. In 2021-22, we allocated just over £2 million in additional funding to local authorities to help them expand their school and community-based counselling services. They estimated this would enable them to provide much needed counselling support to an additional 5,800 children and young people. We also allocated additional funding of approaching £750,000 to help local authorities provide additional training opportunities for teachers and other school staff to help them better support children and young people with mental health and wellbeing difficulties. Examples of the type of training and specific interventions include the Seasons for Growth Programme, Mental Health First Aid and many more.

Schools have an important role to play in supporting learner wellbeing and school senior leadership teams will need to consider their learner and parent/carers population when developing well-being or improvement plans. They will have to accommodate the needs of any learners who are part of one or more vulnerable or historically marginalised groups, including children and young people who are engaged with the youth justice system.

This funding can also be used to provide targeted support for early identification of young people at risk of disengaging from education who are more vulnerable to ending up in the criminal justice system. Specific priority programmes include Circle

of Security Classroom, Emotion Coaching, Emotional Literacy Support Assistants, Draw and Talk sessions, Empathy Lab work, trauma informed practice and other similar initiatives.

We also invest around £2 million per year in the Wales Police Schools Programme, which is match funded by the four Welsh Police Forces. The programme provides lessons and support on topics including substance misuse, wider community and personal safety issues. It is a programme tailored to school year groups from reception to year 13, and allows children to express and discuss issues and problems that affect their lives and give them support to deal with emerging crime and threats facing young people. The programme does not just focus purely on a lesson-based approach but also has a “whole school” approach, with a wider pastoral role for the Schools Police Officers that is adapted to the specific needs of particular schools or units.

A final example of preventative work in the education system is with respect to the provision of education other than at school (EOTAS). Local education authorities are obligated to make arrangements for the provision of suitable education for those children of compulsory age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them.

The Welsh Government supports EOTAS provision and published a [Framework for Action](#) in 2017 to ensure high quality and consistent provision across Wales. In support of this we commissioned research on other issues closely linked to EOTAS, to better understand their impact, including managed moves, the “off-rolling” of pupils, and involvement with crime and the criminal justice system (including the impact of county lines).

We are now working in partnership with the Violence Prevention Unit (VPU), discussed in [chapter 6](#), on a data linking project to better understand the links between educational risk factors and criminal activity. The educational vulnerabilities and crime project aims to link education and crime data to identify variables which indicate a child or young person is at a greater risk than their peers of becoming involved in crime or of being exploited by organised criminal gangs. The project will be making use of the Secure Anonymised Information Linkage (SAIL) databank

process to link the data between the VPU and education data sets. This is because the SAIL databank provides a safe and secure process for creating anonymised linked datasets. Analysis and research would then only be undertaken by accredited researchers, i.e. researchers trained in the safe use of secure microdata.

### **School Exclusions**

Excluding a child from a school is a decision which will likely have a major bearing on that child's life chances, with strong correlations between those who are excluded from schools and those who go on to enter the criminal justice system. It is therefore particularly important that these decisions are made fairly and in a way that commands the greatest possible confidence of the child and their parents/guardians.

Currently, where a school has made a decision to exclude a child and that decision is appealed, the relevant local authority constitutes a panel to consider whether the appeal should be upheld. Safeguards are in place to ensure the independence of these panels from the school or the local authority.

Nevertheless, in its [review of the devolved tribunals in Wales](#) (see [chapter 9](#)), the Law Commission identified some concerns from parents about appeal panels being established by the local authorities where the school exclusion decisions were taken, and questioned whether parents could ever be confident about the independence of such panels even where all possible steps had been taken by the relevant authority. More worryingly still, some participants in the panels themselves questioned whether the panels operated independently, and some local authorities (particularly those which received small numbers of appeals) were unsure as to whether they had the expertise to conduct hearings fairly and consistently with decisions elsewhere.

The Law Commission therefore recommended that appeals from school exclusions should pass to the Education Chamber of the proposed new First-tier Tribunal for Wales. This in part to secure consistency in handling appeals and in part to ensure and be seen to ensure independence in this crucial decision-making process.

Our view is that this appears to be a strong case, and we are therefore minded to accept the Law Commission's recommendation. However, some local authorities took a contrary view, talking particularly of the importance of local knowledge - so it is important that we consider the objections raised and whether an approach can be found which gives confidence to all local authorities as well as other partners in the process. We will therefore engage with those affected by the Law Commission's proposals as we work through the detail of them and consider how to proceed.

### 3.5 Conclusions

This chapter has given multiple examples of activity which is expected, or in some cases has been demonstrated, to reduce demand on the justice system. In most cases, however, this is not the principal purpose of the activity; it is a by-product of activity which maximises the chances of children of whatever background going on to live happy, healthy lives, and of adults being able to live with the trauma caused by their own adverse childhood experiences.

There are many more examples which could have been given of such activities which have an important preventative impact – such as in the areas of tackling substance misuse or in mental health. Novel initiatives like the [Basic Income Pilot for Care Leavers in Wales](#), to be delivered in this Senedd term as part of the [Programme for Government](#), may also provide valuable insights in relation to young people's engagement with criminal justice in Wales. International evidence about basic income suggests that recipients partake less in criminal activity compared to their peers.

Some of those further examples of preventative activity are discussed later in the document, such as activity to tackle misogyny and reduce violence against women and girls, or work to prevent family breakdown and protect children from the impacts.

While there is too much of this activity to list comprehensively, this chapter is intended to demonstrate that there are consistent threads linking through Welsh Government activity, and that these are increasingly reflected in joint working arrangements with other public bodies and with third sector partners. Partner organisations within the justice system are in some cases found within those working arrangements, despite their accountability running constitutionally to Westminster rather than to devolved institutions.

However, those partner organisations within the justice system will always have to manage demands emanating from UK government ministers which risk conflicting with the prevailing approach in Wales – in particular when they take a more punitive approach, as has been the case for example with children's rights or with substance abuse. Allowing the agencies of the justice system to work with other public services unimpeded, on a consistent basis, is one of the significant systemic advantages of devolving justice.

Finally, one of the major structural flaws in UK's current constitutional arrangements is that this investment from Welsh Government which produces savings for the justice system does not lead to those savings being reinvested in Wales.

Nevertheless, until such a time as this anomaly is rectified, we will continue to expend our energies in pursuit of social justice, even if in this one respect Wales does not benefit as much from that as ought to be the case.

## Chapter 4: Equality and Justice

As set out in [chapter 3](#), the path to a safer Wales requires action to tackle the social and structural inequalities which can give rise to adversity and discrimination – in other words, it requires social justice. Not every individual who experiences inequality, hate and discrimination will experience poorer outcomes in life, let alone come into contact with the criminal justice system – but at a population level, there is a clear and undoubted link between the prevalence of these factors and pressure on the justice system.

More importantly, though, every experience of hate and discrimination is a departure from the values that the majority of people in Wales hold dear, and a blot on its reputation. For the person or people who experience it, the impact it can have is seismic; although sadly, all too many have become accustomed to experiencing unfair treatment just because of their identity. So we are committed to the elimination of hate and discrimination for its own sake – but a by-product of building a fairer society should be fewer instances where people need to come into contact with the justice system.

It is not just the criminal justice system which manages the consequences of prejudice and hatred. Discrimination is one of the more common causes of action in employment tribunals. Family courts have to address the consequences of family breakdown in which domestic abuse is all too often a factor. But criminal actions are, by definition, the gravest violations of people's basic rights, and so we need an approach that not only tackles the long-term drivers of discrimination and hate but also reduces their prevalence here and now.

Many groups of people can be subject to prejudice and hate, including disabled people, LGBTQ+ people, older people, people of particular religions, immigrants or the Gypsy, Roma and Traveller community, to name but a few. There can be some commonalities between the experiences of people from these different groups, but each takes different forms and each needs proper care and attention from government and the justice system. It is also important not to lose sight of intersectionality – the experience of being black and female is not the same as being white and female. Each individual's identity is a complex patchwork of factors that

may include gender, race, class and sexuality among many others. This means everyone will have their own unique experiences of discrimination and oppression.

Although it can be difficult, particularly with individuals who understandably distrust authority, we believe it is a government's duty to hear the voices of all its citizens, and particularly those that are most vulnerable to hate and prejudice. Our approach to social justice is therefore founded on working to listen to and understand the lived experience of people who live with discrimination and its impact; and to ensure that all the different communities of Wales, but particularly the most vulnerable, play their part in shaping the policies we adopt.

This publication cannot do justice to all of the work that institutions and individuals across Wales are doing to attempt to tackle hate and discrimination. It is necessarily focused on those forms of prejudice which make the largest direct impact on the operation of the justice system. More detail on areas of work not covered within this paper can be found in other publications. Ultimately though, we know there will still be individuals and groups we have not managed to reach, and we would welcome being told of any further work we can do to reach those people and better understand the challenges they are facing.

#### **4.1 Tackling violence against women, domestic abuse and sexual violence**

According to the World Health Organisation, violence against women – particularly intimate partner violence and sexual violence – is a “major public health problem”. Estimates published by the WHO indicate that “globally about 1 in 3 (30%) of women worldwide have been subjected to either physical and/or sexual intimate partner violence or non-partner sexual violence in their lifetime”.<sup>14</sup>

We will not accept such fundamental violations of human rights here in Wales and our Programme for Government commits firmly to eradicate and deter any such behaviour. It is a statutory requirement under s3(1) of the landmark Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015, to develop and publish a National Strategy to prevent gender-based violence, domestic abuse and sexual violence and to protect and support victims.<sup>15</sup> Alongside key partners, we

---

<sup>14</sup> [Violence against women \(World health Organisation\)](#)

<sup>15</sup> [Violence against Women, Domestic Abuse and Sexual Violence \(Wales\) Act 2015](#)

have been developing our next iteration of the National Strategy through public consultation, and are imminently publishing the final strategy.

The National Strategy is the vehicle for delivering on the Programme for Government commitments to make Wales the safest place in Europe to be a woman, including by:

- creating a new focus on violence against women in the street and workplace as well as the home; and
- expanding the 'Ask and Act' and 'Don't be a Bystander' training and awareness campaigns.

The strategy has been developed alongside a group of key partner organisations including the police and specialist sector. Central to it is recognising that tackling male violence, and the misogyny and gender inequality that lie behind it, is how we will break the cycle and address the root causes of violence against women, domestic abuse and sexual violence (VAWDASV). We must challenge attitudes and change behaviours of those who behave abusively. It is not for women to modify their behaviour, it is for abusers to change theirs, and the partnership working in Wales is intended to ensure this understanding is embedded consistently across the criminal justice system.

The draft National Strategy outlines the importance of a comprehensive understanding of VAWDASV to address the problem for everyone in Wales including children, older people, Black, Asian and Minority Ethnic people, disabled people and LGBTQ+ communities. The impact of VAWDASV is not uniform, affecting different people in different ways, and therefore we will ensure the National Strategy aligns to our Strategic Equality Plan, the Anti-Racist Wales Action Plan, the LGBTQ+ Action Plan and the Disability Rights Action Plan as they are developed.

These issues also link to safeguarding. Whilst VAWDASV is not captured by statutory safeguarding duties and guidance, it is essential that our response is joined up with action to protect children and adults at risk of abuse.

Delivery of the National Strategy will be through a Blueprint approach – namely, a delivery structure and action plan that is jointly owned by devolved and non-devolved organisations. This builds on the established success of the Criminal Justice

Blueprints discussed in [chapter 8](#). The benefit of the Blueprint approach is that it creates a sense of shared ownership for the delivery of the strategy and encourages accountability as well as peer support and challenge. This is achieved through the governance structure which has at the top a new co-chaired ministerially led National Partnership Board.

Membership of the board will reflect those bodies who have key duties in tackling VAWDASV and will include police, the Crown Prosecution Service (CPS), Police and Crime Commissioners (PCCs), HM Prison and Probation Service (HMPPS) and the Welsh Local Government Association (WLGA). Voices from survivors and the specialist sector will be included at every level. The board will oversee the work of the regional boards and also sub-groups expected to cover street-based harassment and abuse, workplace harassment and abuse, tackling perpetration, sustainable commissioning and user engagement.

The Welsh Government continues to fund VAWDASV regions and specialist services to provide invaluable and lifesaving support to all victims of VAWDASV. This includes early intervention, preventative and educational support, perpetrator intervention programmes, and Independent Domestic Violence Advocates for high-risk victims as well as therapeutic recovery interventions for the ongoing support of those impacted by VAWDASV. This funding ensures that no matter where a victim lives in Wales, there is a strong public and specialist service ready to help.

During 2020/2021, the Welsh Government also provided over £420,000 to VAWDASV regions to enhance remote court hearing facilities across Wales. The grant has enabled regions to purchase equipment to help victims to present secure evidence in criminal cases safely by video link. Nine sites have already gone live across Wales as of February 2022, with a further four due to be implemented over the next few months.

The 13 new facilities will give victims of VAWDASV the ability to make their voices heard in a way which reduces the fear, stress and anxiety commonly associated with giving evidence in open court. The sites are all within VAWDASV services across Wales, which enables specialist support to be available on site and offers a more relaxed, supportive environment. This makes these sites unique to Wales in comparison to remote evidence sites across the UK. It will also aid with obtaining the

best evidence and may reduce victim attrition rates. We hope that these specialist facilities will improve the experience of survivors, reduce the amount of witnesses who withdraw from the justice process and ultimately increase convictions.

The initial success of the sites created an appetite for the expansion of the types of cases where evidence from victims of VAWDASV can be heard at the sites, and we have now agreed that the sites can be used in family and other civil proceedings once planned changes to the relevant court procedural rules have come into effect. This work has also been supported by an internal awareness campaign as well as a public communications campaign. An evaluation of this work is due to be completed in 2022.

### **Sexual Assault Referral Centres**

One specific area where Welsh Government works in partnership with the NHS, the Police and the third sector is to provide access to Sexual Assault Referral Centres in Wales. This joint working ensures access to trained and experienced professionals for help and support, and to provide advice for victims of sexual assault.

There are collaborative working arrangements in place to ensure a multi-agency response to victims of sexual abuse through the Sexual Assault Services Programme Board. The Programme Board is overseen and driven by a new Programme Director, hosted in the NHS Collaborative. The aim is to improve health outcomes for victims and survivors of sexual assault. All partners have agreed and are working towards a new, more integrated service delivery model for sexual assault referral services in Wales.

We have also established Traumatic Stress Wales to improve the support available following a traumatic event. This includes a specialist work stream focused on improving support for people who have experienced sexual assault.

Within the sexual assault referrals services programme, there is a commitment to developing an NHS led forensic medical service. Following initial discussions, the focus will be on using existing policy and procurement levers – rather than legislative change – with Welsh Government and the NHS Collaborative working collaboratively with the Police and Crime Commissioners and the health boards in Wales.

## 4.2 Creating an anti-racist criminal justice system

There is no escaping that criminal justice systems the world over have serious, institutionalised problems with racism. It was policing – casually racist, murderous policing – which was the spark that led to the global Black Lives Matter protests in 2020. The tragedy of George Floyd’s killing was that it resonated not because it was extraordinary, but because it was such a common occurrence, in many places across the world and not just in the USA.

In the UK, people from ethnic minorities – above all black people – are dramatically overrepresented at every level of the criminal justice system, except in administering it. Black people are more likely to be stopped and searched, to be arrested, to be convicted, to receive a prison sentence, and to die in police custody. They are less likely to be police officers, legal professionals, magistrates or judges. Wherever statistics can be found, these things are shown to be as true in Wales as they are elsewhere.

For example, between April 2020 and March 2021 in Wales, Black people were around four times as likely to be arrested as White people – there were 53 arrests for every 1,000 Black people, and 13 arrests for every 1,000 White people (by self-defined ethnicity). This is noticeably higher than the rates for England and Wales as a whole, which are themselves already concerning (29 arrests for every 1,000 Black people, compared to 9 arrests for every 1,000 White people).

Likewise, between April 2020 and March 2021 in Wales there were 8 stop and searches for every 1,000 White people, compared with 56 for every 1,000 Black people.<sup>16</sup>

While at present we cannot provide all the necessary statistics for Wales alone, we know it is vitally important to be able to do so. As referenced earlier in the paper, in January 2022, we established an Equality Evidence Unit and a Race Disparity Evidence Unit to work across all policy areas, including justice to improve the availability, quality, granularity and accessibility of equality evidence. We already know enough, however, to know that action is needed now.

---

<sup>16</sup> [Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2021](#)

An Anti-racist Wales Action Plan is the Welsh Government's commitment to take action with its partners, to make changes so that the lives of Black, Asian and Minority Ethnic people are considerably better in all spheres of society.

The Plan has been co-constructed with key delivery bodies and Black, Asian and Minority Ethnic people. It is guided by lived experience, data and research findings highlighting areas of racial disparity, together with the huge body of evidence in the form of previous reports, public inquiries and other recommendations for change.

During the development of and [consultation on An Anti-racist Wales Action Plan](#), criminal justice was frequently identified as an area in which there has been manifest and increasing racial injustice. The consultation responses identified areas where real and meaningful change needs to happen:

- improving hate crime reporting and criminal justice responses;
- examining and strengthening initial police responses, and other parts of the justice system's roles in dealing with hate crimes and incidents;
- addressing the lack of discrimination support services; and
- improving resources in training, education and funding.

We know that we cannot deliver real change in this area without our partners, so we are using our strong relationships with justice partners in Wales to tackle discrimination and to seek to embed an anti-racist approach to criminal justice across the Welsh system. We are working with Criminal Justice in Wales partners, including Policing in Wales and HMPPS in Wales, to develop a Criminal Justice Anti-Racism Action Plan for Wales.

The Criminal Justice Anti-Racism Action Plan for Wales will set out the concrete and tangible action we will take forward together with justice partners to tackle inequality and seek to create an anti-racist criminal justice system, sitting alongside our An Anti-Racist Wales Action Plan. It will be clear that practice needs to be transformed, and that partners across the system are committed to an anti-racist approach in Wales. The Plan is being developed in partnership with stakeholders, including the Welsh Government who have been closely involved. It also draws on insights from people with lived experiences of the justice system, who have been candid about the discrimination they have faced.

Work on the Plan is still being developed, but it is likely to set out a series of actions to realise an anti-racist justice system in practice. This is likely to include:

- challenging racism, supporting victims and building trust;
- an ethnically diverse workforce and leadership representation and participation;
- better data on race disparity to support better policy and decision making;
- prevention, early intervention and rehabilitation;
- eliminating hateful attitudes and supporting victims of racially motivated hate crime
- tackling Islamophobia and anti-Semitism; and
- involving, listening and taking action.

Additionally, where we have direct levers we will continue to use them. For instance, as part of the terms of the funding we provide for Police Community Support Officers, forces must apply a policy of equal opportunities in employing people regardless of race, gender/gender identification, sexual orientation, religion and belief, age or any disability. Again, more detail on the action we are taking will be available in An Anti-racist Wales Action Plan, which is due to be published in June 2022.

#### **4.3 Hate crime and community cohesion**

Hate crime is defined by the Police and CPS as “any criminal offence which is perceived by the victim, or any other person, to be motivated by hostility or prejudice, based on a person's disability or perceived disability; race or perceived race; or religion or perceived religion; or sexual orientation or perceived sexual orientation or transgender identity or perceived transgender identity”. Experiencing hate crime, as a victim or a witness, will leave indelible marks, and so we strive to eradicate it in all its forms.

The Hate and Community Tension Board Cymru is a standing group to advise Welsh Ministers and policy makers on hate crime and community tensions, and provide leadership across criminal justice agencies in Wales. The membership consists of representatives from the four police forces in Wales, British Transport Police, the Offices of the PCCs, the CPS, Victim Support Cymru and third sector organisations.

The Board meets four times a year to explore positive interventions to support victims and discourage perpetrators; share and discuss data and information in relation to current hate crime trends across Wales; share best practice by exploring case studies provided by members; and respond flexibly to emerging issues in relation to hateful attitudes and hate crime.

Through the Board, the Welsh Government has developed strong relationships with hate leads in each police force in Wales. This proved invaluable as part of our joint response to tackling hate crime during the start of the Covid-19 pandemic, when officials met with police representatives on a weekly basis to discuss emerging trends and community tensions, and how to address them.

Police forces in Wales continue to work closely with Welsh Government funded projects in this area, such as the Community Cohesion Programme and the Wales Hate Support Centre run by Victim Support Cymru, via referrals to its support services, and through training and engagement activity. Police forces in Wales have also supported the Welsh Government with the sharing of messaging to raise awareness of hate crime and to encourage people to report incidents, such as the campaign Hate Hurts Wales, which was launched in 2021.

The Community Cohesion Programme funds eight Regional Community Cohesion Teams to implement a range of activities, including the monitoring and mitigation of community tensions and training and awareness raising activity. The Regional Community Cohesion Officers attend and feed into tension monitoring meetings in partnership with police forces in Wales, helping to ensure a joined up approach and provide interventions and solutions to issues as they arise.

This is an area in which we know there is much still to do. For example, we know that LGBTQ+ people are hesitant to report hate crime. The 2017 Stonewall publication [\*LGBT in Britain – Hate Crime\*](#) followed a survey of 5,000 LGBT people in the UK. It reported that four in five LGBT people (81%) who had experienced a hate crime or incident didn't report it to the police. Likewise Gallup's [\*Hate Crime Report 2021\*](#) report found that only one in eight of the 523 respondents reported their experiences to the police (13%). There are a number of potential reasons for this, including lack of trust in police, previous poor experience of the criminal justice system, lack of knowledge of what is a hate crime, and fear of repercussion.

Our draft [LGBTQ+ Action Plan](#) contains an action to “work with Police and Crime Commissioners and Chief Constables, along with other criminal and social justice partners, to review the under-reporting of LGBTQ+ hate crimes with the aim of acting to further improve the levels of reporting.”

Following a substantial response to the draft LGBTQ+ Action Plan consultation a full analysis was undertaken which is being used to develop and take the work forward to strengthen the plan. We have had extensive engagement and involvement from across our LGBTQ+ communities in Wales to date, an approach that will continue in the development of the final version of the plan – including through reconvening our independent LGBTQ+ Expert Panel.

#### **4.4 Equality and rights protection**

This chapter has focused largely on the most egregious acts of hate fuelled abuse and violence, which pose the most direct challenge to the criminal justice system in particular. However, the law and the justice system are not just tools for addressing criminality; they have a role to play in many other areas of people’s lives, and can be powerful forces in creating a better society. A prime example of this is laws that are designed to protect rights.

Our intention is to strengthen and advance equality and human rights in Wales. The Programme for Government commits us to incorporate both the UN Convention on the Rights of Disabled People (UNCPRD) and the Convention on the Elimination of all Discrimination against Women (CEDAW) into Welsh law. We are considering both taking these forward separately or a more holistic approach, such as a Welsh Human Rights Bill, which might also allow us to incorporate other UN Conventions and international agreements, including those relating to racial discrimination, older people’s rights, and social and economic rights, as well as building on the Children’s Rights Measure 2011 to further incorporate the UN Convention on the Rights of The Child into Welsh law.

Our research into Strengthening and Advancing Equality and Human Rights (SAEHR) in Wales has also explored a range of related issues, such as guidance on human rights, public legal education, impact assessment and the operation of the public sector equality duty. This research, commissioned in 2020, was led by Swansea University, in collaboration with Bangor University, Diverse Cymru and

Young Wales. Their [report](#) was published in August 2021 and points the way in relation to safeguarding and promoting equality and human rights of individuals and communities in Wales.

The recommendations in the research have been shared across the Welsh Government, in the context of our Programme for Government commitments, to consider how they might be integrated into ongoing and future planned work. This work has been overseen by our SAEHR Steering Group, chaired by the Minister for Social Justice, with the Counsel General also attending meetings. The Welsh Government's response to the SAEHR report was considered by the Steering Group in April 2022, following which an implementation plan will be developed to take forward agreed actions. We would consult on any legislative models that may emerge.

#### **4.5 The Welsh language**

A million Welsh speakers is the Welsh Ministers' strategy for the promotion and facilitation of use of the Welsh language, prepared in accordance with section 78 of the Government of Wales Act 2006. As this strategy increases use of spoken Welsh, so too will the demand for public services to be delivered in Welsh increase. It is clearly therefore an essential element of equality that those who come into contact with the justice system are able to do so in their language of choice.

This is particularly important in court proceedings, where decisions are made that determine people's liberties, their livelihoods or their futures. The risks are unthinkable if all involved are unable to communicate as clearly as possible. Under section 22 of the Welsh Language Act 1993, any party, witness or other person has a statutory right to speak Welsh in any legal proceedings in Wales. This covers all types of proceedings, whether in criminal or civil courts or tribunals, and whether devolved or not. It covers anyone involved in the proceedings, whether members of the public, lawyers, judges or court staff.

For this right to be meaningful, the relevant authorities need to take active steps to facilitate the use of the Welsh language. HM Courts & Tribunals Service (HMCTS) has adopted the principle that in the conduct of public business and the administration of justice in Wales it will treat the Welsh and English languages on a basis of equality. Its Welsh Language Scheme has a statutory underpinning through

the regulatory regime for Crown bodies in the Welsh Language Act 1993. HMCTS ran a consultation in March 2022 on the provision of its services in the Welsh Language.<sup>17</sup> On the launch of the consultation, Hywel Hughes, Head of Welsh Language Services at HMCTS, said:

“We’re seeing an increased demand for Welsh language services across the public sector in Wales. From our experience in our courts and tribunals, it is plain to see users vastly appreciate being able to use Welsh when they contact or access our services. The language is an integral part of their identity and if they can’t use it, they feel incomplete and alienated. The changes proposed in our revised Welsh Language Scheme cement our commitment to providing equal access to justice for Welsh speakers.”

The relevant Practice Direction makes clear that the existing law does not permit the selection of jurors in a manner which enables the court to discover whether a juror does or does not speak Welsh.<sup>18</sup> Nor does the law enable a jury to be secured whose members are bilingual to try a case in which the Welsh language may be used. It is therefore entirely possible, and increasingly likely, that the majority of jury members in some courts in Wales, where use of the Welsh language is greatest, will wish to use the Welsh language during their consideration of a case but will be unable to do so. This is because the confidential nature of jury deliberations does not permit translators to be present for those jury members unable to speak or understand the Welsh language. This is an issue which we have raised in response to this consultation.

---

<sup>17</sup> [HMCTS launches Welsh Language scheme consultation](#)

<sup>18</sup> [Practice direction relating to the use of the Welsh language in cases in the civil courts in, or having a connection with, Wales](#)

## Chapter 5: Family Justice

The family justice system in Wales performs a vital role in protecting vulnerable children in Wales. The family courts offer a means by which the best interests of children can be considered in terms of all important questions such as the discharge of parental responsibility and guardianship. When they are able to operate as intended, the courts, and crucial advocacy and support services that sit alongside them, offer essential safeguards to children who can otherwise be at very significant risk, as well as providing a route by which adults obtain justice in matters such as the terms of a divorce or the exercise of parental responsibilities.

The Commission on Justice in Wales (Thomas Commission) noted that ‘the position in relation to family justice, and in particular the law, the courts, practice and procedure relating to children, in Wales is complex. This is largely because it straddles the “jagged edge” between non-devolved and devolved matters under the current devolution scheme’.<sup>19</sup> The Thomas Commission recommended that a degree of that complexity should be removed from the operation of family justice by devolving its operation, so that the system was accountable to the same institutions with responsibility for the main services with which it comes into regular contact, such as health and social services, and of course Cafcass Cymru.

We agree with the recommendation of the Thomas Commission that better outcomes could be achieved for children and families in Wales if the family justice system were devolved. However, as with many other areas of the justice system, we recognise that at present the UK Government has shown no indication that it is willing to consider devolution. It is in any case our responsibility to conduct our own functions under the current flawed settlement to the best of our capacity, and so this will continue to be our approach.

Much of our work being taken forward therefore involves Welsh Government and partners in Wales working with the UK Government and stakeholders on an England and Wales basis to help make sure the Welsh context is taken into account in the

---

<sup>19</sup> [Commission on Justice in Wales](#), p.293

development, delivery and implementation of new and continuing work/policy relating to family justice.

Like other parts of the justice system, the family justice system has seen highly challenging reductions in expenditure in recent years and has also had to adapt to the particular challenges caused by Covid-19. Much of our work since the publication of the Thomas Commission has been a response to these challenges and working to ensure that the Welsh perspective is central to all decisions on the future operation of the system.

However, we have also retained a continual focus on tackling the numbers of children in care in Wales, which was the other principal focus of the Thomas Commission in regard to family justice. The Commission highlighted the costs to local authorities and the justice system of taking a child into care, noting that ‘funds would be much better spent on support for children and their families to prevent problems arising’.

This approach is reflected in our current Programme for Government which has a clear focus on supporting children to remain with their families. Our broad policy approach is to target early support and intervention. Strong leadership is required to address risk aversion in decision making, and promote restorative and strengths-based approaches to practice that focus on keeping families together, through early help and preventative services.

The Programme for Government also includes the delivery of a package of commitments relating to children who are looked after and children on the edge of care including:

- Explore radical reform of current services for children who are looked after and care leavers.
- Eliminate private profit from the care of children who are looked after during the next Senedd term.

Delivering these commitments will help shape and drive reform of services for looked children who are looked after and those on the edge of care over the coming years and hopefully improve their life chances.

This chapter sets out the current administrative landscape for family justice in Wales, before then going on to discuss how Welsh Government is working with partners to support the improved operation of the family justice system, and particularly with regard to reducing numbers of children in care.

## **5.1 Family Justice Network**

The Family Justice Network (FJN) was created by the Welsh Government as a vehicle to keep abreast and monitor the performance and operation of the family justice system in Wales. It is facilitated by Welsh Government officials and is chaired by the Chief Social Care Officer for Wales. It includes participation from all the key organisations within the family justice system in Wales, namely: the judiciary; Cafcass Cymru; Her Majesty's Courts and Tribunals Service (HMCTS); the Welsh Government; and local authorities.

The network provides valuable information to help develop policy initiatives, maintain standards, and seek continual improvements to family justice in Wales. It supports and informs the work of the UK Government-run Family Justice Board for England and Wales, by advising on the Welsh context and ensuring the Board takes into account Welsh perspectives on non-devolved issues in relation to the family justice system in Wales. The FJN formally supports engagement with Cafcass Cymru and local authorities providing a further forum whereby family justice policy (for example around reducing numbers of children who are looked after and improving outcomes) can be informed by the operational experience of Cafcass Cymru and local authorities.

A Family Justice Network Strategic Plan has been developed outlining the role of the FJN in supporting the significant programme of reform underway across the Family Justice system in England and Wales. The Plan covers the period 2020-23 and contains the key areas of focus for the FJN. While the UK Government holds most of the levers for delivery of family justice reform, the Plan helps focus on the areas where action could be delivered in Wales, working together with LFJBs. The Plan has three strands -

- Directing families away from Court proceedings
- Developing a more cohesive family justice system for Wales
- Co-ordinating a recovery from Covid-19

## 5.2 Cafcass Cymru

Cafcass Cymru delivers a demand-led operational service under the Children Act 2004 to the family courts in Wales on behalf of Welsh Ministers. It provides expert child-focused social work advice and support to safeguard children, and ensure their voices are heard in family courts across Wales so that decisions are made in their best interests. During 2020/2021, Cafcass Cymru worked with over 11,000 of the most vulnerable children and young people in Wales who are subject to family court proceedings.

Cafcass Cymru operates as a devolved operational body within a non-devolved family justice system. It works closely with the President of the Family Division, Ministry of Justice (MoJ) and HMCTS to ensure the needs and rights of children and young people in Wales are respected and accounted for in the family justice system which serves Wales and England. During the Covid-19 pandemic, the majority of engagement at an England and Wales system level has taken place remotely and via '*virtual*' means. This has worked positively and constructively and ensured the needs of Wales have been strongly promoted, and at times recognised. For example, in the radical reform agenda of '*private law*' (separated families in dispute), it is encouraging to note that North Wales has been identified as a pilot site alongside that of Dorset in England (see in [part 5.5 of this chapter](#)).

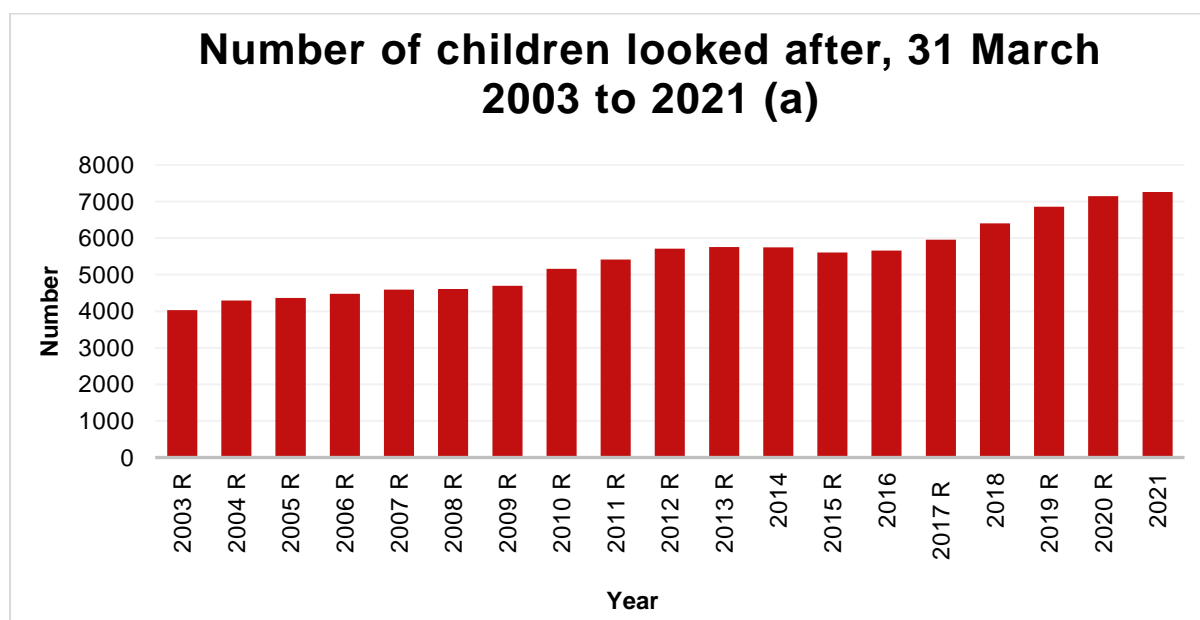
Cafcass Cymru also works closely with local authorities in Wales, and other agencies and groups centred on a Wales focus. For example, it strongly supports Welsh Government attention on improving the outcomes and experience of children who are looked after. Working as a devolved body within a non-devolved system means that Cafcass Cymru at times encounters issues, where there is a lack of clarity as to where responsibility begins and ends between the devolved and non-devolved. This plays out to some extent in the '*out of court*' space involving separated families, such that their particular needs are not always addressed and '*joined up*' to a wider vision.

Cafcass Cymru's service is regularly inspected by Care Inspectorate Wales (CIW). CIW measures performance against set practice standards underpinned by the Children Act 2004 and Cafcass Cymru is inspected as a national organisation taking into consideration its Welsh focus and context.

### 5.3 Reduction expectation plans for children who are looked after

Reducing the number of children in care and helping children to remain in the care of their families are key priorities for the Welsh Government in this Senedd Term. The Programme for Government includes a number of commitments that will help shape children's social services. The Government's vision is to redesign how we look after children and young people so we can do the best for our young people, their families and communities by providing services that are locally based, locally designed and locally accountable.

The First Minister has been clear that too many children are removed from their families into the care system and there is a need to redress the imbalance between placing children in care and the provision of support to keep families together.



Source: SSDA903; [Looked after children census](#)

(a) Excluding children looked after in short-term placements

(r) The data has been revised since previously published

To drive a particular focus on reducing the number of children who are looked after in Wales, in 2019 the First Minister asked for a targeted approach to be developed with local authorities. The First Minister set the following priority areas for reduction:

- the number of children in care;
- the number of children placed out of county;
- the number of children placed out of Wales

- the number of children removed from parents with a learning disability.

Local authorities were also asked to disaggregate from the total number of children in care, the number of:

- Unaccompanied Asylum Seeking Children (UASC).
- Children placed with own parents or other person with parental responsibility.

Reduction Expectation Plans are designed to re-balance the system and support families to care for their own children, including undertaking additional reunification activity so children can return home once family issues have been resolved.

In Year 1 (2019–20) the number of children who were looked after increased by 4%.<sup>20</sup> In Year 2 the number of children who were looked after increased by 2% when compared to the previous year. Existing data currently being collated for the final year of reporting (2021–22) indicates a reduction in the numbers of children looked after. Over the course of the 3-year period of reduction plans, this indicates a considerable slowing of the growth in numbers, with numbers stabilising before finally reducing.

2021–22 is the final year of our 3-year reduction expectation journey and local authorities are continuing to report against their plans. We will continue to monitor data provided by local authorities against these plans up to the end of April 2022, at which point the data will be analysed to and we will consider next steps.

The work of the Family Justice Network has focussed on whether children and young people can be safely diverted away from becoming subjects of public law proceedings (and so removing the prospect that they be placed into care), and the timeliness of decisions once they are subject to proceedings. In doing this it has aligned with the overall objectives of the Public Law Working Group set up by the President of the Family Division to manage the recovery from Covid-19 and tackle the workload challenges of the Family Courts. In particular, the three Local Family Justice Boards in Wales have helped to develop consistency of approach across Wales and identify key local issues - for example, the need for an online bi-lingual Family Justice Hub. They have also established common structures and task groups

---

<sup>20</sup> [Improving Outcomes for Children Programme](#)

concentrating on training, performance and communications, often with a focus on 'pre-proceedings'. The Public Law Working Group's report supports our policy around reducing the number of children who are looked after and intensifying our focus on how we can best increase support to our kinship care and Special Guardianship Orders.

Finally, to support further reductions, we have committed in our Programme for Government to fund advocacy services for parents whose children are at risk of coming into care. Funding is being made available from 2022/23 to ensure a parental advocacy service is available to parents in each of the seven regions of Wales.

#### **5.4 Reflect services**

Reflect aims to break the cycle of children being taken into the care system and give women the opportunity to develop new skills and responses that can help them create a more positive future, outside of the justice system.

During 2017-18, funding was allocated to support the roll out of Reflect across all Welsh regions. This enabled all seven regions to employ two dedicated full-time workers to manage and run the scheme, building on established models where they existed, and provide holistic support to women who have had children taken into care.

Those involved on the programme are offered emotional support alongside practical help. This includes contraceptive advice and access to housing, education and employment advice with both sexual health and psychological services supporting service delivery. The intensive evidence based holistic support aims to modify harmful patterns of behaviour to reduce risks and achieve positive outcomes for the women on the programme.

This project clearly plays a valuable part in providing emotional and practical help to women who have had a child taken into care and helping reduce the risk of further children being removed. This is important as we know recurrent care proceedings have such a significant human cost on the mothers themselves, their children and their families. The Children's Social Care Research and Development Centre (CASCADE) at Cardiff University undertook an evaluation of Reflect in Gwent in 2018. The findings were positive and suggested that not only is Reflect meeting a

key gap in support provision for a highly vulnerable group, but that it is also having positive impact despite the high level, varied and multi-faceted needs of parents.

## **5.5 Parental support and Private Law**

The pressures on the Family Courts do not simply arise from cases involving children in care (public law proceedings); there are also significant pressures across England and Wales with regard to private law cases, which typically concern divorce and separation settlements and the treatment of children affected by parental separation. The overall number of private law applications have increased by 39% in Wales, from 2440 applications in 2007 to 3390 applications in 2018.<sup>21</sup> Cafcass Cymru supports children in these proceedings as well as public law proceedings, so this growth in cases places pressure on both reserved and devolved organisations.

More importantly, breakdown and/or unresolved conflict in couple relationships is associated with several negative impacts on children, including socio-economic disadvantage, lower educational achievement, behavioural problems and physical and mental health problems. Reducing inter-parental conflicts before they reach an adversarial stage would therefore not just reduce justice system workloads but would also improve and protect the mental and emotional health and wellbeing of parents, care givers and their children.

As such, the Welsh Government and Cafcass Cymru have been keen to support approaches which support inter-parental relationships and potentially reduce the backlog of private law cases in England and Wales. We commissioned research to identify what services are currently supporting separating families and to consider the options available for the creation of child-focused local alliances to support families experiencing relationship difficulties or breakdown.<sup>22</sup> We are considering the pros and cons and feasibility of a range of options in the report, which highlights the benefits of a ‘one stop shop’ for separating families in Wales to access help and support to avoid the court process reducing costs and stress – ultimately reducing inter-parental conflict and therefore minimising the harm to children of the separating family.

---

<sup>21</sup> [Uncovering private family law: who's coming to court in Wales?](#)

<sup>22</sup> Supporting Separated Family Alliance: [A scoping study](#); Cascade (Children's Social Care Research and Development Centre)

In addition, we have taken practical steps to improve the support available to separating families, particularly through additional funding to local authorities to upskill their parenting support workforce, and the provision, free of charge, of evidence based digital courses which can be accessed directly by parents, or used by parenting practitioners who are supporting separating families.

### **Preventing parental separation – example activity**

In 2020-2021 universal free access across all local authority areas in Wales was also provided to three evidence based digital courses for families, developed by relationship charity OnePlusOne. Parents can access the courses directly if they prefer, without going through a support service, but ‘Train the Trainer’ training for two members of staff in each LA has also been delivered to help parents get the most from the resources, blending personal interaction with the flexibility and accessibility of online technology.

The three courses are:

- Me, You and Baby Too – designed to help new and expectant parents cope with the changes that could happen in their relationship when they become parents, and learn how to cope with stress and conflict constructively.
- Arguing Better – designed to raise awareness of the impact parental conflict can have on children and help parents develop better ways of managing stress and arguments together.
- Getting it Right for Children – designed to support separated parents, helping them to avoid the harmful situation of their children getting caught up in the middle of their conflict.

The phase one [Me, You and Baby Too evaluation](#), for the pilot of this digital resource funded by Department of Work and pensions, found that couples who completed this course together saw a significant reduction in the level of conflict in their relationship and improved relationships with each other and their children. We are monitoring and evaluating the uptake and outcomes of the three digital resources available in Wales, before longer term decisions about their availability will be made.

## 5.6 Family Drug & Alcohol Courts (FDACs)

A Family Drug and Alcohol Court (FDAC) is an alternative family court for children's care proceedings and is designed to work with parents who struggle with drug and alcohol misuse problems. The court looks to take a problem-solving approach to proceedings, which parents can choose to enter rather than going through standard care proceedings.

The Thomas Commission report recommended that 'Family Drug and Alcohol Courts should be established in Wales'.<sup>23</sup> Welsh Government committed to implement this recommendation, and proposed a pilot FDAC Programme be set up to evaluate the FDAC approach, with a view to using the lessons from the pilot to support the extension of the FDAC model to other areas if it is judged to be successful.

Significant work was undertaken to develop the FDAC pilot in Wales. In June 2020, funding was allocated to the Centre for Justice Innovation (CJI) to help develop the pilot. CJI is experienced and have proven to be successful in providing operational support to set up FDACs in England.

CJI developed a pilot model for Wales in collaboration with stakeholders, testing a problem-solving approach to cases involving parental substance abuse, brought to the family court. Following a competitive Expression of Interest process, the South East Wales Local Family Justice Board was awarded the pilot with a programme with associated funding to cover the duration of the programme up to July 2023. The service will be available for families referred by Cardiff and the Vale of Glamorgan local authorities, operating from the Cardiff Family Court. It is anticipated the court will hear 30 cases per annum.

The FDAC pilot in Wales was formally launched on 25 November 2021 and took its first case in December. In March 2021, through additional Welsh Government funding, CJI procured CASCADE at Cardiff University to evaluate the pilot. If the pilot is deemed successful then lessons from this can be used to support the extension of the FDAC model to other areas in Wales.

The evaluation will explore if the FDAC pilot is implemented as intended and whether it operates in a way that enables it to be easily scaled. The evaluation will aim to

---

<sup>23</sup> Recommendation 35

support effective delivery of FDACs in Wales, and enable a rigorous large-scale evaluation, by identifying key elements and any differences from previous delivery of FDACs.

The CASCADE interim evaluation report is due in August 2022. The interim report will present initial findings on relevant research questions around the implementation process and operating model, based on the first six months of pilot implementation.

## **Chapter 6: Policing in Wales - building safer communities**

The safety of our communities is crucial and every person and family in Wales should feel safe in their local community, whoever they are and wherever they live. We recognise that promoting and maintaining safety requires a range of partners to work together to protect communities and prevent crime. The Welsh Government is fully committed to this, working closely with partners such as police forces, local authorities, Local Health Boards and third sector organisations to make our villages, towns and cities safer places to live and work in. We stand against hate and violence in all of its forms and we work in partnership to promote safety and prevent harm. We have embedded this partnership approach against the context of declining investment from the UK Government.

Unlike in Scotland and Northern Ireland, where policing is largely devolved, ministerial responsibility for policing in Wales sits with the UK Government, whose Home Secretary answers to the UK Parliament for the provision of an efficient and effective Police Service. Wales, as it stands, remains without any central control or jurisdiction over the police forces who serve us and who may be responsible for enforcing laws made in Wales.

It is clear that Wales does not benefit from this UK Government led approach. In 2010 there were 7,369 police officers in Wales and by 2019 this had fallen to 6,898, a reduction of 471 police officers. Even considering the Home Office's scheme to employ additional officers in England and Wales, police numbers in Wales will still be lower in 2023 than in 2010.

That is why we have stepped in to provide support over and above our core grant. Despite policing not being devolved, Welsh Government provides funding for additional resources which includes over £22 million annually for the employment of 600 Police and Community Support Officers (PCSOs). This shows our determination to ensure that communities in Wales are safe and secure places where everyone can thrive.

As with similar Welsh Government expenditure which covers shortfalls in UK Government funding, if the justice system makes further savings through the success of PCSOs in preventing crime, associated savings for national agencies like HM Courts and Tribunals Service (HMCTS), the Crown Prosecution Service (CPS) or HM Prison and Probation Service (HMPPS) will not necessarily be reinvested in Wales.

Through our funding support and our partnerships with police colleagues we work closely together to tackle the root causes of crime. Addressing issues such as serious violence, anti-social behaviour, county lines and drug supply cannot be done in isolation, as devolved services play a fundamental role in addressing the drivers of offending behaviour. This has been underlined through [comments made by Sir Thomas Winsor](#), Her Majesty's Chief Inspector of Constabulary, in 2020:

“My assessment of the criminal justice system shows how essential it is that our public services work well together. The intensity of the interdependence of policing, education, housing, and health and social care must be fully recognised. We cannot, of course, separate policing from the rest of the criminal justice system.

For policing to be effective, the other public services must also be as efficient and effective as possible. If they are not, many more people may be drawn to crime, enter into cycles of offending, become victims, and lose confidence in policing.”

The interconnectedness of our public services, and the cross-cutting nature of the problems they face, means that we must work closely together in partnership to ensure services work effectively. Until such time as we are charged with the responsibility of policing in Wales, we remain committed to building and re-enforcing strong working relationships between the four Police Forces in Wales, our central and local governments and our welfare, medical and social partners. This is supported by the strong partnership and governance arrangements detailed later in this chapter.

This chapter then gives examples of ways in which the Welsh Government has worked with Policing in Wales and will continue to do so in the future.<sup>24</sup> In particular, this chapter provides case studies on:

- how the Welsh Government worked with the police in relation to legal restrictions resulting from the response to coronavirus
- Police Community Support Officers
- work on hate crime and community cohesion
- collaborative working to protect children
- tackling modern slavery
- traffic and road policing, and
- tackling rural crime.

The chapter concludes with a discussion of governance arrangements in place to support these and other instances of partnership working. Our collaboration with policing colleagues is wide-ranging, and this chapter is designed to bring out some representative examples rather than to offer a fully exhaustive picture of our joint working. There are also other examples of joint working with police and community safety organisations elsewhere in this document, including work on areas such as tackling violence against women, domestic abuse and sexual violence (VAWDASV), creating an anti-racist justice system (see [chapter 4](#)) and through our £2 million annual funding of the Wales Police Schools Programme.

## **6.1 Building strong partnership arrangements**

Given the context outlined above, the Welsh Government agrees with the report of the Commission on Justice in Wales (Thomas Commission) which states that:

*“Wales, in short, needs a police service which is able to work within the same overall policy and legislative frameworks as the other public services which have such a large bearing on its work, in health, local government and beyond”.*

---

<sup>24</sup> Policing in Wales is a strategic group consisting of the Police & Crime Commissioners and Chief Constables of the four Welsh police forces, as well as key members of their own teams. It aims to identify and pursue opportunities to collaborate, seeks to improve the service provided to communities across Wales and provides a platform through which to collectively represent Welsh policing during engagement with partners such as Welsh Government.

The case for the devolution of policing is abundantly clear. As noted by the Thomas Commission, policing and the prevention of crime is intrinsically tied to devolved functions such as mental health, substance misuse and accommodation. Yet despite the high level of funding from sources within Wales and the obvious need for such funding, there is no legal or structural requirement for the police or the justice system to work collaboratively with the Welsh Government, local government or health services. Nor is there any requirement for the police or justice system to participate in any Welsh policymaking or operational forums. The current devolution settlement creates a fractured landscape of responsibility even in areas which are fundamentally intertwined on the ground and it is only through strong personal relationships at all levels that this difficult situation is made to work.

There are arguments for the devolution of policing at every level. From a constitutional perspective, Wales finds itself in a surreal position where it can make laws but cannot enforce them. The Senedd is the only parliament in the common law world that we know of which can legislate without the jurisdiction to enforce its own laws. This is clearly not a sustainable arrangement. And from a practical perspective, we know that justice is better delivered at a localised level, where it can be tailored, prioritised and influenced according to societal needs. Devolution would also allow us to go further faster on crucial issues such as embedding an anti-racist approach to policing.

A good example of the complexity and dysfunction of the current system is the funding of police apprenticeships. As far back as 2019 the Thomas Commission noted the need for “long-term arrangements for police apprenticeship funding which do not disadvantage Welsh police forces compared to their English counterparts”. After an extended period of negotiation, the Home Office agreed to contribute towards the cost of apprenticeships. In 2021/22 this contribution was £1 million and in the 2022/23 settlement (following further negotiation) £2.4 million was allocated. The Home Office state that this will ‘address this issue in full’.

Despite this contribution, Policing in Wales believe there continues to be a shortfall. This was discussed at the most recent [Policing Partnership Board for Wales](#) (see below) in March 2022. This means that this issue remains unresolved after years of discussion, showing all the frustrating complexity of the current arrangement. This is

despite police partners continuing to pay their apprenticeship levy in full, even though they do not get what they see as a fair outcome from it.

We are proud of our partnership working with police colleagues and other justice partners but we also recognise that we could go so much further and achieve so much more with a devolved policing service.

And we are clearly not alone in this. Under the current settlement, all police forces in England and Wales are independent, with operational control resting solely with the Chief Constable of each force. Each force is overseen by an elected Police and Crime Commissioner (PCC) who, after consultation with the public, create a 'Crime Plan' for their area and attribute funding according to local priorities. There are four PCCs in Wales, one in each police force area. It is very encouraging that all of the PCCs in Wales are supportive of the devolution of policing.

We will continue to make the case for the devolution of policing in discussions with the UK Government. It is disappointing that the level of financial contribution from Welsh sources has not led to responsibility passing to the elected institutions of Wales, that policing priorities and performance measures can be dictated from Whitehall and that police forces are not accountable to the Senedd. We will also make the case once more to the new independent and cross-party Constitutional Commission and hope that other stakeholders will come forward to support this position.

In the meantime we are fortunate to have strong operational relationships. We work closely with PCCs and Chief Constables to deliver the best outcomes possible for people in Wales under the current system.

The Policing and Partnership Board for Wales (the Board) meets quarterly and is chaired by either the First Minister or the Minister for Social Justice. The Police Liaison Unit (discussed below) provides the secretariat for the Board which is attended by all Chief Constables and Police and Crime Commissioners (PCCs), Ministers relevant to the discussions taking place, representatives from Public Health Wales, the Welsh Local Government Association, and other key stakeholders. More recently, the Secretary of State for Wales is a regular attendee alongside officials

from the Home Office and Ministry of Justice. The Minister of State for Crime and Policing at the Home Office attends annually.

The Board seeks to draw together all key partners across devolved and non-devolved services to consider progressive and innovative approaches in key policy areas across Wales.

The Police Liaison Unit (PLU) works for and reports to the four Chief Constables and PCCs in Wales and is hosted by the Welsh Government. It forges links to, and advises on, policy developments affecting policing at UK and Welsh Government levels to support operational service delivery on the ground in Wales. The principal goal for the PLU is to secure the best possible outcomes for policing in Wales through active partnerships with all stakeholders, including the Welsh Government. The PLU has links to the Crime and Justice Team in Welsh Government but serving a non-devolved function, it is not responsible or accountable to officials in that team.

The requirement for and benefit of a PLU reflects the fact that many of the areas Welsh Government are responsible for cross over into policing such as health, social services and education. By working within the Welsh Government, the PLU is able to advise how particular policies and strategies may work at an operational level – finding ways to work together and deliver effective services despite the broader dysfunction of the current devolution settlement.

## **6.2 Policing and the Pandemic**

The Covid-19 pandemic has given a vivid illustration of how partnership working can be developed to achieve distinct objectives in Wales even where structures do not naturally support it. In response to the pandemic, and despite not being funded to have the equivalent of a Home Office, we developed a regular rhythm of communication with police forces and PCCs in Wales that facilitated a mutual exchange of ideas and evidence. This in turn helped inform our policy and legislative decisions.

As the pandemic evolved, a natural divergence of policy and law between Wales and England arose as the Welsh Government sought to safeguard the people of Wales within the context of Wales' specific circumstances and our legislative responsibilities.

Taking a Wales-specific approach to the pandemic meant that legal restrictions and enforcement penalties differed between England and Wales and the enforcement of Wales specific regulations relied primarily upon the reserved police forces.

Where there were differences between regulations applicable to England or to Wales, we worked with police forces in Wales and their PCCs to ensure on-the-ground officers had access to clear information. Such strong and effective communication of police perspectives in Wales contributed to:

- ensuring that policy and legislation reflected reality and police capacity in Wales
- ensuring that the penalty structure was appropriate, evidenced and proportionate and dealt with emerging issues, and
- providing police with early warning where possible of impending changes so that they could make practical and administrative changes.

In partnership with the National Police Chiefs Council (NPCC), the College of Policing produced specific guidance to assist police officers in understanding the Welsh regulations and their role in enforcement. CPS Cymru-Wales undertook a similar role for its prosecutors. Shared intelligence enabled tracking of local and national issues and allowed our Government to respond proportionately and effectively. Finally, close dialogue ensured that the Welsh Government and police were connected in community messaging.

On the ground in Wales, the police adopted an approach which focussed on reacting to local situations, assisting the most vulnerable and helping to keep Wales safe. When it came to enforcement, police officers took a '4 Es approach', first engaging with people, explaining the rules and encouraging compliance, with enforcement action only taken as a last resort.

Partnership working across devolved and reserved areas of responsibility was clearly evident at a local level. Police forces worked with local authorities to undertake joint enforcement activity targeting particular hotspots, dealing with contraventions of coronavirus regulations and with anti-social behaviour. Forums such as Public Service Boards played a critical role, coordinating the response at a regional level and encouraging a joined-up approach across services.

The pandemic evidenced the importance of working towards a one-public sector approach in Wales. We are truly thankful to the policing staff who worked with us at all levels to keep people in Wales safe across the unprecedented challenge of the pandemic.

### **6.3 Police Community Support Officers**

Police Community Support Officers (PCSOs) are crucial to a wide variety of work, protecting people and communities across the length and breadth of Wales. PCSOs are at the heart of neighbourhood policing teams, acting as the link between communities and the police services that protect them. PCSOs are also a visible presence in communities, providing confidence and pride in our local areas.

The Welsh Government Programme for Government 2021-2026 commits to maintain funding for 500 PCSOs and increase their number by 100. In August 2021, the Welsh Government announced an extra £3.7 million for additional PCSOs across Wales, bringing the total budget to over £22 million and by the end of the 2021-2022 financial year, the majority of these additional PCSOs were in post, making an even bigger difference than before to our streets and communities.

Despite the fact that policing remains a reserved area, this additional funding commitment demonstrates the importance that our government places on the values of community, equality and social justice.

PCSOs have demonstrated exemplar courage and empathy during the recent pandemic. Since March 2020 they have provided a stabilising and educational presence on the streets of Wales and they have been critical in their engagement with the public to reinforce the Health Protection Regulations. They have played a vital role in engaging, explaining and encouraging the public to follow the regulations using enforcement only as a last resort.

Such an approach complements our government's aspiration to solidify community cohesion and ensure that the public are listened to. PCSOs have embraced technological changes during the pandemic. Some PCSOs were instrumental in working with partners to support local community cohesion during an unsettled and frightening time, helping to find housing solutions for vulnerable homeless people or

engaging with their communities through social media, radio, podcasts and even holding virtual youth clubs.

The work of PCSOs in Wales is overseen by a steering group which includes representation from Welsh Government, Police Forces, British Transport Police, and PCCs.

#### **6.4 Partnership working to protect children and support families**

A prominent example of work between Welsh Government, policing and other partners was the preparation for the removal of the defence of reasonable punishment in cases involving assault of children (see [chapter 3](#)). Section 1 of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020 came into force on 21 March 2022 and abolished the common law defence of reasonable punishment. This means all physical punishment is illegal in Wales.

As discussed during scrutiny of this legislation in the Senedd, a small number of individuals may be charged or prosecuted in Wales in circumstances where, prior to the law change, that would not have happened. The law in this respect has not changed in England where the defence of reasonable punishment remains. This is the first example of a difference in core criminal law between Wales and England.

Given this context, we have worked closely with the police (including through the Police Liaison Unit), Police and Crime Commissioners, Crown Prosecution Service (CPS), local authorities and other stakeholders throughout development of the legislation. We consulted with the key stakeholders every step of the way and worked through detailed points of process through a task and finish group, chaired jointly by the police and social services and supported by Welsh Government.

This included work with the police on possible mitigations regarding the criminalisation of parents. While we understood that the law change could result in a small number of individuals being charged and receiving a criminal record, in many cases a rehabilitative approach, allowing the individual to learn about and practise positive parenting, could be more beneficial to both the parent's and the child's mental, emotional and physical health and wellbeing.

We have also worked closely with the CPS, police and local authorities to develop tailored out of court parenting support which can be offered as a condition of an out

of court disposal and a rehabilitative alternative to prosecution. If a community resolution or community caution is offered and accepted by the individual, they will be referred to tailored out of court parenting support which will provide an alternative to going to court and help to reduce re-offending. A parenting worker in each local authority will take referrals from police and work with parents and carers who have accepted responsibility and agreed to engage in this tailored one to one support. This approach is designed to encourage and support parents in adopting positive parenting techniques whilst making it absolutely clear to everyone that the physical punishment of children is unacceptable in all circumstances.

The Welsh Government has agreed to fund the out of court parenting support up to £500,000 in the last financial year (2021/22) with indicative funding of up to £810,000 per annum for 3 years from April 2022. We expect the out of court parenting support scheme to continue into the future. Indicative funding has been agreed through to March 2025, and during that time we will be monitoring the uptake of the out of court parenting support and will keep under review the demand for the support and whether the funding needs to be adjusted accordingly.

## **6.5 Modern slavery in Wales**

Modern slavery is one of the most serious of all crimes and it is a tragedy that it still happens in Wales. It encompasses slavery, servitude, forced or compulsory labour, and human trafficking. Modern slavery victims can often face multiple forms of exploitation, for example if they are sold to another trafficker and then forced into another form of exploitation. Modern slavery causes suffering in communities across Wales. Modern slavery is linked to many other illegal activities, including Violence against Women, Domestic Abuse and Sexual Violence (VAWDASV), hate crime, the violation of workers' rights, County Lines drug-related offences, organised immigration crime and financial crime.

The Welsh Government works alongside partner organisations to tackle this crime. Collaboration between the Welsh Government and other governmental and non-governmental agencies is essential to the modern slavery agenda. While modern slavery is a reserved matter, the Welsh Government works with the UK Government and with other devolved governments to:

- prevent modern slavery from taking place
- increase disruptions of modern slavery and bring perpetrators to justice
- protect workers in Welsh, UK and global supply chains, and
- support victims and survivors in rebuilding their lives.

We work with partners in Wales, the UK and internationally to tackle modern slavery. This includes work with law enforcement agencies including the police, the National Crime Agency, and the Gangmasters and Labour Abuse Authority, as well as collaboration with partners in other sectors. We continue to seek to take a preventative approach where possible. For example, we organise the Wales Anti-Slavery Leadership Group and its national sub-groups. We also support and provide strategic direction for regional partnerships across Wales. These bring together key partners in Wales such as local authorities, law enforcement, and third-sector organisations.

In addition, the Welsh Government has produced a Code of Practice on Ethical Employment in Supply Chains. The Code of Practice seeks to limit the risk of modern slavery and labour exploitation in our supply chains. Over 400 organisations have signed up to the Code and we are working to raise awareness, update the Code's accompanying guidance and improve its impact. In partnership with others, we have made available a suite of [Modern Slavery information, advice and guidance](#) which is tailored for individuals, organisations and practitioners.

## **6.6 Policing and transport**

Whilst our current devolution settlement allows us to legislate for matters connected to the environment and transport, new regulation must be agreed with and enforced by local authorities *and* the police in Wales. A great deal of work has been undertaken in partnership with the police, working closely and collaboratively with them to create and design the implementation and enforcement of laws and regulations which relate specifically to Wales. The Welsh Government funds 22 Police Community Support Officers (PCSOs) in the British Transport Police as part of our wider commitment to PCSOs, which demonstrates the importance of our joint work.

Examples of such initiatives include 20mph pilot areas and 50mph low emissions zones. We are determined to try to improve the safety of our roads for all users by looking at the impact of a 20mph speed limit on residential roads and busy pedestrian streets across Wales. We also want to tackle outdoor air pollution, which is recognised by the World Health Organization as the largest environmental threat to health. As a government we have therefore been working closely with the four police forces in Wales with a view to implementing and eventually enforcing some permanent reduced speed limits and corresponding average speed camera schemes to ensure compliance.

These changes have been facilitated by [Go Safe / the Wales Road Casualty Reduction Partnership](#) which is the largest partnership of its type in the United Kingdom and is an exemplar of partnership working in Wales. The Partnership is made up of 27 equal partners including the 22 local authorities in Wales, four Welsh police forces and the Welsh Government. We also work closely with Public Health Wales and fire services in Wales.

GoSafe carries out intelligence led enforcement, supplemented and supported by additional communications from both police and local authorities. The Welsh Government has supported road traffic policing with additional funding to ensure teams can carry out operations that will enforce the speed limits within these pilot areas.

The GoSafe partnership is responsible for red light and speed camera enforcement but the approach has not been limited to enforcing the law. Instead, through education and permanent engineering solutions to roads, the partnership is also encouraging motorists to drive legally and safely. All four police forces in Wales are committed to road safety and the education of drivers. GoSafe have for many years seen the benefit of dealing with a number of traffic offences by way of an educational course rather than prosecution. The rationale is based on the notion that an educational course is more likely to achieve improved driving behaviour than a prosecution that would simply result in a fine and penalty points.

Finally, in line with our suicide prevention and reduction strategy, we have worked with our police forces in Wales in a continued effort to identify locations where repeat attempts of suicide have occurred. We hope to decrease the number of such

tragedies by ensuring that all is done to reduce access to the means or location of a possible suicide, for example a high motorway or rail bridge.

## **6.7 Rural crime**

The first ever all-Wales Wildlife and Rural Crime Coordinator was appointed in July 2021. The role involves coordinating the work of the police and key partner agencies to reduce rural crime, including livestock offences, raptor persecution, fly tipping and farm machine, vehicle and fuel theft. The post was created by the Welsh Government.

The coordinator is leading on Wales' first Wildlife and Rural Crime Strategy and works with schools to help children gain a better understanding of wildlife and rural crime issues and how they affect communities. The Wildlife and Rural Crime Strategy will be informed by the [Rural Crime Study Wales survey](#), which is the first nationwide assessment of the nature and extent of rural crime in Wales. It is hoped that this survey will build on work which informed the Dyfed-Powys Rural Crime Strategy 2017-2021 which introduced specialist police officers, greater accuracy in the recording of rural crime and implemented dedicated social media strategies and that it will also explore perceptions of the effectiveness of such initiatives.

The Rural Crime Study Wales survey, delivered by Aberystwyth University, is open to both farmers and rural residents served by the four police forces in Wales. It particularly aims to capture farmers' experiences of rural crime and policing and their satisfaction with the police response to rural crime incidents.

While the Welsh Government is leading on the strategy, operational agencies are at the forefront of activity against rural crime. For example, [Future Farms Cymru](#) is a project in development, jointly funded by Police and Crime Commissioners in North Wales and Dyfed-Powys. The project will aim to encourage farmers to use technology to tackle rural crime and provide advice and contacts to enhance farm security. Another aim of Future Farms Cymru is to help tackle mental health issues and the high suicide rate in the farming community by providing advice and links to organisations that can provide support.

Activity to be undertaken by Future Farms Cymru includes piloting of Low Power Long Range Wide Area Access Network (LoRaWAN) technology which can also be

used to help tackle farm thefts. The Welsh Government has heavily invested in this technology through the Farming Connect Network and farms across Wales are trialling the devices. LoRaWAN smart sensors can detect when farming vehicles such as tractors and quad bikes are moved. Data on the movements is logged in an app. If movements are unauthorised, the police are alerted.

## **6.8 Wales partnership structures and key enabling organisations**

Every Welsh local authority area will have a range of multi-agency arrangements in place, working together to protect communities and deliver services. These existing partnerships will include Public Service Boards, Regional Partnership Boards, Regional Safeguarding Boards, Regional or Local Community Safety Partnerships, Regional VAWDASV Boards and many more. Through these arrangements, devolved and non-devolved services work together at regional and local levels to protect individuals, plan services and support the wellbeing of our communities. Community and voluntary organisations also play a vital role in these partnerships.

The **Wales Safer Communities Network** plays a particularly important role in enabling effective use of these arrangements, as well as supporting national policy work. The Network was created following the Welsh Government's Working Together for Safer Communities review, strengthening regional partnerships and helping to fill the gap left by Home Office regional teams. It supports future Welsh community safety policy and practice development and is helping to build the appropriate skills and knowledge required to implement changes and reflect evidence-based best practice across Wales.

The Network works collaboratively with members to champion and support community safety partnership working and to influence the shaping and development of local practice. Activity being taken forward by the Network includes:

- influencing the shaping and development of national policy and local practice on Community Safety
- acting as a source of information and best practice for community safety practitioners, as well as providing toolkits, guidance, peer reviews and supporting mentoring
- taking forward public information campaigns and developing work on involving communities in community safety activity

- running training events and seminars to upskill practitioners and raise awareness on key and/or emerging fields of practice
- commissioning, undertaking and highlighting relevant research on Community Safety, and
- supporting and developing the work programme for the Wales Data Analysis Innovation and Improvement Network (WDAIIN) which is chaired by a Police and Crime Commissioner with the Head of the Network as the deputy chair.

The Wales Safer Communities Network is overseen by the Wales Safer Communities Board which is co-chaired by a Police and Crime Commissioner and the local government spokesperson on community safety. The Board has members from the Police, Police and Crime Commissioners, Fire and Rescue Service, local authorities, HMPPS, Public Health Wales and the third sector. The Welsh Government has provided £562,000 of funding to support the establishment of the network from the 2020/21 financial year through to 2022/23. The Network is now looking to move to a sustainable funding model, supported by partners across Wales.

The [Wales Violence Prevention Unit](#) (VPU) has also played a crucial role in Wales since it was established in 2019. The VPU is a partnership which works to prevent all forms of violence through a public health approach. The Wales VPU has challenged the notion that violence is inevitable and champions a preventative public approach to violence, demonstrating how violence can be predicted and prevented like any other health problem.

The VPU is a multi-agency partnership which includes core members from police forces, PCCs, Public Health Wales, local authorities, NHS Wales, fire and rescue services and the voluntary sector. The VPU is supported by additional associate members from over 30 Welsh partners, under the remit of the All Wales Violence Prevention Board.

To support the implementation of a public health approach to violence prevention in Wales, the Wales VPU:

- brings partners together to build skills, capacity and knowledge for violence prevention in Wales

- works with policy makers, commissioners and service providers in Wales to deliver evidence-informed policy and programmes to prevent violence
- carries out research and evaluation to support partners and service providers in Wales to deliver programmes and interventions that work for Wales
- provides knowledge, capacity and capability in responses to crises, including working with partners to understand and mitigate the impact of the Covid-19 response on violence, and
- commissions innovative projects and programmes to prevent violence in Wales.

The VPU is funded by the Home Office and is supported by additional funding and resource commitments from Welsh partner agencies under the remit of the All Wales Violence Prevention Board. The Home Office has recently confirmed a three-year funding settlement to continue the work of the VPU in Wales with additional commitments from partners including Public Health Wales, PCCs, and police being sustained. Over the course of the next three years, the VPU will look to develop a sustainable funding model, supported by partners across Wales.

The [VPU Website](#) provides greater detail on the work undertaken by the VPU, including on the services they directly commission to prevent violence.

## Chapter 7: Criminal Justice - Devolved Functions

Wherever possible, our approach will be to divert people away from the criminal justice system and if that is not possible, from sentences which involve imprisonment. However, as a last resort, we accept that imprisonment is a necessary part of any criminal justice system. Prisons deliver the sentences passed down by courts, protect the public and act to rehabilitate offenders when this is strictly necessary. In particular, victims and witnesses of crimes may not come forward, and put themselves through the process of supporting criminal prosecutions, without some belief that there will be due punishment for crimes, even if in many cases that punishment can never undo the hurt and damage caused.

However, we also believe that imprisonment is overused as a response to criminality and that in many cases other approaches will (over time) reduce crime levels as well as saving public money. It has long been the case that those who serve the shortest sentences have the highest rates of re-offending and, for example, the proven reoffending rate for adults released from custodial sentences of less than twelve months between January 2020 and March 2020 was 57.5%.<sup>25</sup> This is clearly not a system which is successfully working to rehabilitate people. It is a system which traps people in a damaging cycle of reoffending – one which lets down people and communities.

The progress made on youth justice in recent years makes it clear that things do not need to be this way. The Youth Justice Board annual published statistics for 2020-21 show that the number of Welsh young people in custody decreased by 85% from the year ending March 2011 to the year ending March 2021, from 109 to 17. The number of first-time entrants into the youth justice system has also fallen year on year in Wales, from over three thousand young people in 2011 to under four hundred in 2021.<sup>26</sup>

We believe that more can be done to prevent re-offending, working both with those who are serving custodial sentences and those who are not. And we believe that it is

---

<sup>25</sup> [Proven reoffending statistics: January to March 2020](#)

<sup>26</sup> [Youth Justice Statistics 2020-21 - supplementary tables](#), ch 2

important for criminal justice processes in Wales to guard proactively against racism, sexism, ageism or any other form of discrimination.

This chapter and the next one look at how the Welsh Government interacts with the criminal justice system once someone has been apprehended for committing a crime. This chapter gives some key examples of areas that are currently devolved which are important to the successful operation of the criminal justice system, and confirms the approach we are taking to those services. The [next chapter](#) then goes on to look at partnership programmes established within the criminal justice system in Wales to tackle areas that span devolved and reserved responsibilities.

### **7.1. Accommodation and support upon release from custody in Wales**

A large proportion of people from Wales who leave custody find themselves experiencing homelessness upon release. This occurs for a number of reasons including loss of their previous home, rent arrears, family and relationship breakdowns or a decline in their health, whether physical and/or mental meaning that their previous home is no longer suitable. Released offenders may also not be able to return to their previous address or even area due to victim issues and exclusion requirements.

Some reports suggest that two-thirds of prisoners need help to find accommodation when approaching a release date. Resettlement is often difficult and many prison leavers find themselves homeless, or in temporary and unstable homes. As a result, these individuals may be more vulnerable to re-entering the justice system.

Criticisms have been made about the level of statutory support available for prison leavers and the lack of housing options available on release. Some people face a myriad of challenges upon release from prison including the ability to meet a landlord's requirements including: lack of references, bank statements, identification or bills, deposit and rent in advance. Issues also exist when it comes to accessing the private rented sector where landlords may be unwilling to let their properties to people with previous criminal convictions and/or those who suffer from medical conditions or substance or alcohol misuse. Older prisoners may also need specific and additional support to find appropriate housing when they are released, particularly if they have health and care needs that require specific adaptations to properties.

Her Majesty's Prison and Probation Service (HMPPS) and the Welsh Government recognise the need to work collaboratively with our stakeholders, including local authorities, police forces across Wales, courts, the Women's Blueprint Programme and homeless prevention teams amongst others, to try to end homelessness for this cohort.

The Accommodation in Wales Strategic Framework is a joint Strategic Framework between HMPPS, Welsh Local Government Association and the Welsh Government. It sets out Wales' key aspirations and vision for providing housing solutions for people from Wales who are in or at risk of entering the criminal justice system, and is supported by a programme of work which encourages improved partnership and collaborative approaches with a focus on prevention and early intervention. The plan sets priorities nationally which can then be implemented regionally and locally in partnership with local authority housing teams and supported by the HMPPS Regional Homelessness Prevention Taskforces.

As part of the Welsh Government priority to ensure that homelessness is rare, brief and non-repeated, the current Programme for Government makes the firm commitment "fundamentally [to] reform homelessness services to focus on prevention and rapid rehousing".

In essence, a "Rapid Rehousing" approach to providing homelessness services is to focus on providing a quicker and more efficient pathway through services and forms of temporary accommodation with the focus on securing settled, permanent accommodation as quickly as possible. This focus on providing settled accommodation is in recognition of the benefits that a stable home can have for the resettlement and recovery of anyone who falls into homelessness. It allows people to begin to address other support needs through coordinated wraparound support and case management. This represents a fundamental shift in the approach to provide homelessness services and, as a result, will require a transition phase to allow key services and in this context, HMPPS and local authorities to support the capacity building process and ensure that prevention services are able to work in alignment with resettlement services.

The Rapid Rehousing approach also includes preventing homelessness through intensive models of support, like the internationally acclaimed Housing First

approach which has been proven to help even the most complex and vulnerable individuals get their lives back on track and live independently.<sup>27</sup> The adoption of the recovery-orientated model, aimed at people who have been sleeping rough with complex or co-occurring mental health and substance misuse issues and who are often those in need of increased levels of support, has been widely praised for its effectiveness, and has become a focus of Welsh Government homelessness policy over the past few years. A key element of [the Rapid Rehousing transformation](#) will be to increase the capacity of Housing First services across Wales, including for those who are in prison.

## 7.2 Health protection in prisons

Although the Ministry of Justice is responsible for the operations of prisons in Wales, the delivery of health care is a devolved responsibility and lies with Health Boards (apart from HMP Parc which is a private prison, but healthcare for this site will transfer to the health board later in 2022).

The needs of prisoners are considerable: as [Cais](#), [Hafal](#) and [the Welsh Centre for Action on Dependency and Addiction](#) have noted, prisoners are often “people who for many reasons tend not to access mainstream services and who often fall between gaps in existing services”.<sup>28</sup> The same bodies have suggested that as many as 9 out of 10 prisoners may have either a diagnosable mental health or substance misuse problem (or both). The prison population is also aging which will create a need for additional specific support.

It is in the interests not just of the individuals themselves but of wider society that the maximum possible advantage is taken of the opportunity which can be presented in some cases for access to treatment through a prison stay.

A [Partnership Agreement for Prison Health](#) was agreed in September 2019. This is a collaborative agreement between Welsh Government, HMPPS, Health Boards and Public Health Wales. It sets out agreed priorities for improving prison health. It states that “prison should be a place where an individual can reform their lives” and commits to a “shared objective of ensuring those in prison can live in environments

---

<sup>27</sup> [National Housing Federation - Housing First](#)

<sup>28</sup> [Health and Social care in the Adult prison estate - inquiry by the Health, Social Care and Sport Committee: A joint response by CAIS, Hafal and WCADA](#)

that promote health and well-being and where health services can be accessed to an equivalent standard of those within the community”.

The priorities are built around the agreement that this is a whole prison approach to improving the health and wellbeing outcomes of prisoners in Wales – including:

- mental health and the development of agreed standards for mental health services in prisons,
- substance misuse and the development of a new Substance Misuse Treatment Framework for prisons,
- a focus on the extent to which (Royal Pharmaceutical Society developed) standards for medicines management are currently being met in prisons in Wales, and
- improving the wider prison environment in recognition of its contribution to improving health and wellbeing outcomes.

In taking this work forward we are also informed by the March 2021 report of the Health, Social Care and Sport Committee (HSCS) on [Health & Social Care Provision in the Adult Prison Estate in Wales](#). This followed an inquiry exploring the effectiveness of the current arrangements for planning health services for prisoners held in Wales, the barriers to improving the prison health care system, the demands and pressures on services and the resources available. The report contains 27 recommendations which have either been accepted or accepted in principle by the Welsh Government. These include performance indicators, training for prison staff working with older prisoners, and developing a dementia pathway for prisoners including screening and early diagnosis. We will be working with HMPPS and other stakeholders in order to take forward work on the recommendations.

It is also important to reflect that healthcare needs for people convicted of crimes extend beyond those who are committed to Wales’ prisons. Across Wales, substance misuse treatment for those within the criminal justice system, within the community, is currently commissioned via HMPPS and the Offices of Police and Crime Commissioners. The level of integration varies across Wales, with some areas have fully integrated services and others currently having distinct separate arrangements.

The joint [HM Inspectorate of Probation and Care Quality Commission report](#) into community based treatment for people under probation was published in August 2021 and covers England and Wales. The report concluded that probation services overall are responding poorly to drugs misuse issues and needs. While the report focused on England and Wales, some distinctions were made relative to the Welsh context. The Inspectorate noted that “devolution in Wales has helped to protect the investment in drug services and we found a stronger partnership approach there” and that “Wales has also led the way with new medicine to treat opiate addictions”. Officials will be working with HMPPS and other stakeholders to consider the recommendations within a Welsh context, but we note this as another example of where Wales has been able to take advantage of greater freedoms to provide better outcomes.

### **Support for veterans in the criminal justice system**

Evidence suggests that ex-armed service personnel (ex-ASP) who enter the criminal justice system are more likely to have mental health difficulties or physical health problems.

The Supporting Transition of Military Personnel (SToMP) project commenced in 2016 and concluded on 31 March 2021. The project helped design, implement and embed a consistent whole-system approach to identifying and supporting ex-ASP across Wales, from arrest to their exit from the criminal justice system.

Although the SToMP project has been moved into business as usual activity, ex-ASP remain a priority area of focus, as identified in the [framework to support positive change for those at risk of offending 2018-2023](#). Work continues to respond to recommendations provided by the project’s evaluation, sustain achievements to date, monitor recording and maintain joint work practices and relationships.

[Veterans NHS Wales](#) is also able to support veterans in the prisons in Wales through initial assessments and referrals via the prison health teams – and there are also plans to pilot access to remote treatment for service-related mental health.

## **Education in the adult estate in Wales**

Providing excellent learning and skills provision in prisons supports individuals to develop the skills, knowledge and confidence they need to move towards employment and self-employment. Learning in prisons should be relevant and responsive to the individual learner's identified needs, supporting them with a second chance to access education and learning, and help raise their career aspirations. It should also be linked clearly and responsively to labour market needs, meeting industrial standards and include delivery of core employment skills as part of preparation for reintegration into the community.

The Welsh Government promotes the use of a holistic curriculum that engages and inspires prisoners to learn to develop their confidence and skills. The priorities in prisons should reflect the Welsh Government's priorities of raising attainment of disadvantaged learners and tackling the aspiration gap, improving life chances for all learners, and increasing the numbers of adult learners in Wales. This will include supporting prisoners to access the skills based formal and informal learning they need to increase their employability prospects.

We are committed to supporting individuals with Additional Learning Needs (ALN), with a focus for all learners in prisons to be assessed for any neurodiversity needs and arrange for special educational provision. The information from these assessments should be used to ensure that the learner is provided with relevant learning and resources to deliver effective support to learners with ALN in the prison classroom.

The results of these assessments form part of the Personal Learning Plan that each learner should have in place. The Plan is designed to tailor to the learner's previous education and employment and will specify the educational activity that should be undertaken during their sentence, linked to the individual learner needs, aspirations and realistic employment goals. This plan forms the pathway for the prisoner to enter employment on release.

The Personal Learning Plan is an opportunity to capture all learning undertaken in prison – including third sector provision, distance learning, peer mentoring, and work-based – so all learning is recorded in one place. Learners are encouraged to progress throughout their learning journey to reach their full potential. The Plan is therefore accessible to all delivery partners working with that individual so all aspirations and achievements can be logged on this one plan and be used on release as a record of learning.

All learners have the opportunity to progress with their learning, and those that are able are offered access to further and higher education provision; this can be facilitated by the Prisoner's Education Trust who can support learners to access a range of courses.

### 7.3 Education and learning in the custodial estate in Wales

The Welsh Government currently funds the education and learning provision (including prison libraries) for adults in Welsh public sector prisons (as well as for children in the youth justice system, discussed later in this section). This is operated through a joint Memorandum of Understanding (MoU) with HMPPS.

HMPPS Wales continue to lead the way in ensuring that each prison has access to specialist leader roles across the network of teachers where teachers (and broader prison staff) across the prison network in Wales can refer for advice, support and resources on how to engage and embed learning in these areas. These networks engage with colleagues from our further education and higher education sectors to share curriculum expertise and explore the potential for secondment and development opportunities. The Welsh Government, working with HMPPS Wales, continues to review the options and potential to maximise the [Hwb Platform](#) for the benefit of prison teachers to access a central resource to share resources and innovative practice in offender learning.

Further to the publication of David Hanson's independent review of prison education, [Reforming Outcomes: A review of Offender Education in Wales](#), the Welsh Government committed to developing a Prison Education Policy to ensure that all stakeholders including prisoners, prison staff, and members of the public have a clear understanding of the learning and skills provision we aim to deliver within prisons. Due to the mixed economy of prisons, the Welsh Government does not currently directly fund all learning and skills provision in Wales; however, we will expect all prisons operating in Wales to take into consideration the policy document when planning and commissioning services.

The policy document is being developed to reflect the new programme for government and will provide a clear outline of our policy expectations and ambitions, as well as an overview of the key roles and responsibilities of all those involved in prison education in Wales. The aim is to have this published in summer 2022. We intend this document to cover:

- *Female Offender Learning Pathway*<sup>29</sup>

Building on work previously undertaken with HMP Eastwood Park and female prison leavers, the aim is to develop a learning pathway for female offenders that provides an opportunity for Welsh Government to create a complementary learning offer which can help address gaps in the system and support women in their rehabilitation. This piece of work complements and enhances the developments underway through the Women's Justice Blueprint.

- *Prison Libraries in Wales*<sup>30</sup>

The Welsh Government, working alongside HMPPS Wales, is committed to developing and delivering an inclusive offender learning environment that engages and inspires prison learners, especially through their educational journeys. In an effort to fully support prisoners within their education, it is equally as important having access to a more inclusive library service within prisons.

- *Offender Learning in the Community*

For those offenders given a community sentence or due to transition out of prison and resettling in Wales at the end of their sentence, facilitating engagement with community learning is within the purview of the probation service in Wales through the resettlement teams.

While much of the work done with these individuals is aimed at getting them in to work, for those who want to continue or re-engage with studies started before going into custody, it can be a frustrating experience. Access to further and higher education is primarily focused on those leaving school. The academic year reflects

---

<sup>29</sup> Chwarae Teg was commissioned to undertake a short scoping exercise on existing provision for Female Offender educational pathways and provided an initial findings report to Welsh Government at the end of March 2020. The report reflected on the current suite of services and programmes currently available to women who come in to contact with the criminal justice system (CJS). The main theme that ran through it was the need to recognise the gender bias inherent in the CJS and the complex nature of the reasons behind why women offend. Based on the evaluation of evidence gathered during the scoping exercise, Chwarae Teg recommended a holistic, individualised approach should be taken in developing [a female offender learning pathway](#). The report promotes embedding and promoting learning through the nine Pathways to reducing reoffending.

<sup>30</sup> [The Welsh Libraries Annual Review 2016](#) reported that up to 46% of the Welsh population used library services within their local authority as well as up to ten million books being loaned out to the public. Libraries are usually stereotyped as used by the older generation, but this report has since revealed that 51% of the overall findings of using library services were within the age range of 15-24yrs. This report shows how useful and used libraries are within society, so would be even more beneficial to have an up to date service within the prison estate.

that of compulsory education and is neither flexible nor agile enough to accommodate those, such as ex-offenders, wishing to continue or re-engage with adult learning, without expecting them to conform to established norms. Given that while in the adult secure estate these learners have been given access to flexible and bespoke education, to be faced with these barriers to entry can be defeatist to the rehabilitative journey these individuals have undertaken.

## **7.4 Employment**

The Welsh Government published [Stronger, Fairer, Greener Wales: A Plan for Employability and Skills](#) in March 2022. It sets out our plans to tackle economic inequality and nurture a learning for life culture and details how we will address some of the key labour market challenges and future employability trends. This plan includes extending the Young Person's Guarantee to those in prison. The Young Person's Guarantee is the Welsh Government's key commitment to offer everyone under the age of 25 living within Wales support to gain a place in education or training and help them to get into work or become self-employed. During 2022, via the Working Wales service, we will ensure this offer extends to young prisoners, ensuring they have the advice and guidance they need to make informed choices about the employability training and skills provision available to them.

As well as making the Young Person's Guarantee available to those in prisons, the plan includes a commitment to explore the development of targeted support for those due to leave the prison estate and to improve employability support and skills training for learners in the prison estate in Wales. Employability hubs in prisons will begin to work with Regional Skills Partnerships (RSPs) to identify opportunities for prisoners which directly reflect the needs of the regions. RSPs can provide support with detailed analysis looking at where jobs are, the number of people applying for each type of job and the potential to develop niche skills. This will allow learning and skills provision to be directly linked to the relevant local labour market information projections, to ensure individuals are receiving the skills required to enhance their employment opportunities on release.

Prisoners also have access to Welsh Government's flagship employability support and advice service, Working Wales who, alongside the Department for Work and Pensions (DWP) work coaches and prison employment leads, provide a funnel for

the employability programmes and support services (financial, health, and housing) available within prison and through the gate into the community. Digital skills and tools are also a very important part of this picture: UK Government [research](#) shows that prisoners' experience during the Covid-19 pandemic "supercharged" digital exclusion, meaning many are completely unprepared to navigate the digital world. Focusing on the development in delivering relevant training and qualifications to prison and community sentenced learners in the future will be vital to ensuring that this group are able to take advantage of the employment opportunities offered by the [Digital Strategy for Wales](#).

Working collaboratively with our partners we will explore the opportunity of prisoners being able to access other employability programmes<sup>31</sup> whilst still in prison to ensure they are embedded within the support services available as they leave prison. This will enable direct links to employers who have invested in the training provision within the prison and committed to employing learners on release, or who recognise the benefits of employing offenders.

## **7.5 Children's services**

Early support for children and families is crucial in protecting children and young people in care, as well as those on the edge of care, against criminalisation. Close joint work between children's social care, youth offending services, the police and criminal justice agencies is needed to protect children who are looked after and divert them away from criminalisation.

In the last ten years, there has been a significant reduction in the numbers of children arrested, convicted of offences and sentenced to custody. Those who remain within the youth justice system in Wales are often from some of the most disadvantaged backgrounds and many have complex needs including learning and mental health difficulties, and are often themselves victims of crime.

To improve wellbeing outcomes for future generations of children and young people in Wales, we are supporting services to work together to:

---

<sup>31</sup> For example, DWP's [Work and Health Programme](#); Welsh Government's [Personal Learning Account Programme](#); The Wallich's [Building Opportunities, Skills and Success \(BOSS\) Project](#)

- transform the lives of children who have experienced adversity and are at risk of self-harming behaviour and criminal exploitation
- reduce the number of victims of youth crime and improve support for those who are victims (including those who offend).

This requires close collaboration between the UK and Welsh Governments and the services in their areas of executive competence. This whole-system approach is vital to ensuring that children in, or at risk of entering the youth justice system, have access to services that act in their best interests, are non-discriminatory, encourage their active participation in decisions which affect them and ensure their access to rights and entitlements.

For example, in collaboration with the Home Office, we recently published an [All Wales Protocol](#) that promotes practice to reduce the criminalisation of care experienced children and young adults (see box below). The protocol will help those who come into contact with care experienced children and young adults while carrying out their work share a common framework of principles and expectations informed by an approach that actively promotes children's rights and which safeguards and promotes their wellbeing.

We are also exploring how children leaving custody might be included within the [Basic Income for Care Leavers pilot](#).

Another example is the Promoting Positive Engagement for Young People at Risk of Offending (PPE) fund, which is part of the Children and Communities Grant. The current fund offers preventative and diversionary support for children at risk of entering and also support for those already within the youth justice system. Youth offending services and other partners can draw on the fund to deliver projects which support the following strategic objectives:

- reducing the number of first-time entrants to the youth justice system in Wales
- reducing the rate of proven reoffending by young people in Wales
- reducing the proportion of young people who receive a conviction in court and then receive custodial sentences

- improving the number of hours of suitable education, training or employment children and young people receive while within the youth justice system
- improving access to suitable accommodation for young people in the youth justice system
- improving access to substance misuse assessment and treatment
- improving access to CAMHS assessment and treatment.

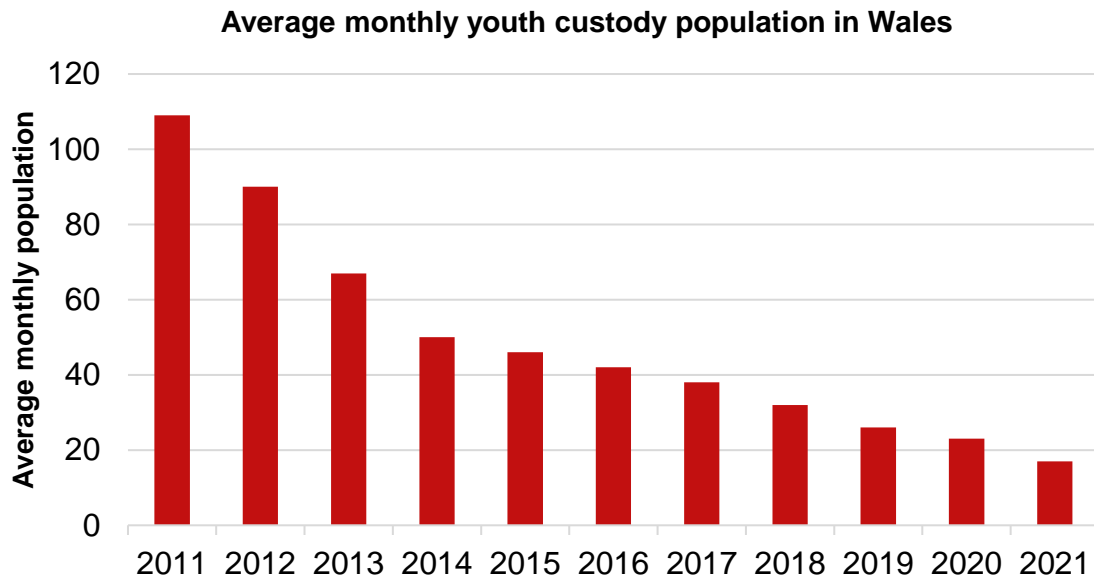
The funding helps to break the cycle of disadvantage and inequality, develop positive behaviours through formative years and ensure young people reach key developmental milestones to attain jobs and wider good health and well-being. Applicants also need to ensure that work supported by the PPE fund links to the Youth Justice Blueprint which is covered in the next chapter.

Finally, the Wales Youth Justice Advisory Panel is jointly convened by the Welsh Government and the Youth Justice Board Cymru. Its primary purpose is to assist the Welsh Government and the Youth Justice Board to implement policy which prevents offending and reoffending by children and young people in Wales, and in addition it provides scrutiny and support to the implementation of its Blueprint for Youth Justice (see the [following chapter](#)).

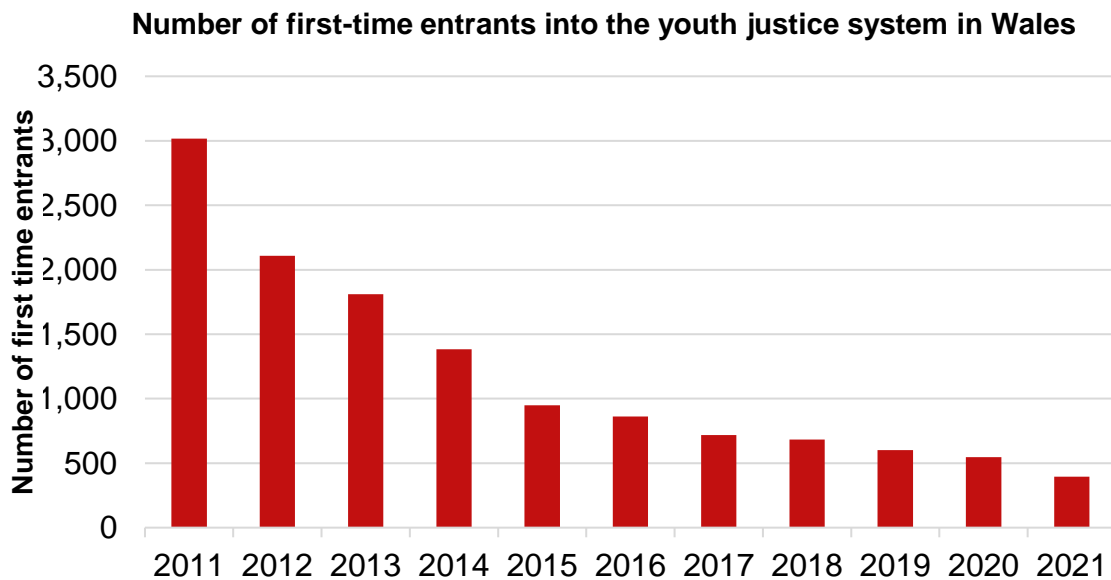
The Wales Youth Justice Advisory Panel is established to:

- understand the data and evidence behind youth offending
- consider ways in which collaboration can help to address some of the challenges, and
- inform the advice provided to ministers.

We are very grateful to the members of the Panel for their continuing efforts, which have been borne out by clear achievements. The Youth Justice Board Cymru annual published statistics for 2020-21 show an 84% decrease in the number of Welsh young people in custody from year ending March 2011 to March 2021, from 109 to 17. The March 2021 figure of 17 is an all-time low.



Likewise, the number of first-time entrants into the youth justice system continues to fall year on year in Wales - from over three thousand young people in 2011 to under four hundred in 2021.<sup>32</sup>



These figures show what we can achieve by working together with a clear sense of how the system needs to change.

---

<sup>32</sup> Exact figures are 3017 in 2011 to 395 in 2021, see [youth justice statistics](#)

## **Reducing the criminalisation of care experienced children and young adults**

Many care experienced children, young people and young adults will have experienced trauma and/or abuse before coming into care. Those young people abused through harm such as child sexual exploitation (CSE) or child criminal exploitation (CCE) experience the added trauma of emotional, psychological, physical and/or sexual abuse. They may have experienced multiple abuses and breaches of trust.

These experiences can impact on the ways in which children and young people act and engage with others. The fact that children may be perceived as uncooperative, aggressive, and unwilling to engage and as 'risk taking' can mean that they are misunderstood and negatively perceived by practitioners.

Sometimes incidents occur because practitioners put in places rules and sanctions with the intention of keeping children safe and managing risks. Children may react to the enforcement of these rules and sanctions in a way that escalates situations. Engaging in behaviours seen by adults as 'risky' can often be understood by children as a way to cope and assert some control.

The protocol recognises a risk that in a residential centre, certain behaviours can lead to police involvement when they would otherwise have been managed by parents in a domestic setting. It states that the police should not be used for behaviour management or matters a reasonable parent would not have called the police over. Consideration should always be given to whether the police would be called if the incident had occurred in a domestic setting.

Instead, the protocol provides that when incidents arise at the place where the child lives, carers should attempt to manage them in a way informed by the individual's care and support plan, through application of the positive behaviour policy and through internal resolutions such as restorative approaches, without police involvement wherever possible and appropriate. Positive behaviour policies should include a cooling off period allowing all parties time to reflect, unless the incident is so serious that more immediate action is required. These policies, and training for carers and staff on how to apply them, should allow practitioners to understand challenging behaviour in the context of children's experiences and take a more considered and positive approach.

### **Education in the youth estate in Wales**

Whilst the UK Government retains responsibility for justice and policing, including the provision of the Secure Estate for adults and children in Wales, all services relating to the wellbeing of children are the responsibility of Welsh Government. This includes a number of policy areas involved in the delivery of, and follow on from, the Secure Estate for children, such as health, education, housing and social services.

Currently Welsh children (aged 10 -18) in the Secure Estate are placed in HM Prison Parc Young Offenders' Institution (YOI) in Bridgend, Hillside Secure Children's Home in Neath Port Talbot or in secure provision in England. At Parc YOI, education is commissioned by G4S whilst at Hillside education is funded by the local authority and commissioned from a local school.

As set out in '[The vision for Welsh children in the Secure Estate](#)' (March 2021) we want children in the Secure Estate to have the best opportunity to access all the services required for them to leave custody and resettle and fulfil their potential. This includes having access to the Welsh curriculum and receiving an education which is able to meet their linguistic, cultural and developmental needs, and access to support for Additional Learning Needs where needed.

## Chapter 8: Criminal Justice Reform Programmes

The previous chapter focused on areas where devolved services have (at least nominal) lead responsibility; but the reality is that achieving significant improvements in any part of the criminal justice requires collaboration across multiple agencies, and almost invariably that will include a combination of reserved and devolved agencies.

As set out elsewhere in the document, effective collaboration is intrinsically made more complex by this “jagged edge”, especially when this means policies require the agreement of two governments elected on differing mandates for different geographical areas; but we have not and will not let this stand in the way of seeking to deliver reforms that can improve outcomes for Wales.

We work together with a range of stakeholders, including HM Prison and Probation Service (HMPPS) in Wales, Policing in Wales and Youth Justice Board (YJB) Cymru, to find ways to collectively build on and strengthen our working arrangements. Our joint work is allowing us to improve the lives of people in contact with or otherwise involved in the criminal justice system in Wales, embedding a rehabilitative and trauma-informed approach and improving how services work together.

A key milestone in this journey together is the [Framework to support positive change for those at risk of offending in Wales](#), which was published in March 2018. This document, which was jointly developed by Welsh Government and HMPPS in Wales, sets out how organisations in Wales work closely together to provide support to any offender who requires it. It aims to ensure positive outcomes are achieved not only for offenders but also those at risk of offending, as well as their families and our communities.

The Framework puts an emphasis on strengthening collaboration and early intervention, working to reduce demand on services and to keep communities safe.

In particular, the Framework identified six areas for action:

- reducing the number of women in the criminal justice system
- tackling domestic abuse
- improving support for ex-armed forces personnel in the criminal justice system
- providing support for young adults and care leavers

- supporting offenders' families following sentencing, and
- prioritising the needs of ethnic minority people

The Framework is being delivered through the Integrated Offender Management Cymru Board, with senior oversight through the Criminal Justice in Wales Board, which brings together senior representatives from Welsh Government, HMPPS in Wales, Police Forces, Police and Crime Commissioners (PCCs), Her Majesty's Courts and Tribunal Service (HMCTS), Youth Justice Board (YJB) Cymru and other key stakeholders together to discuss strategic criminal justice issues.

Building on the Framework, we jointly launched two Blueprints for criminal justice in 2019, setting out our key aspirations and guiding principles for women and young people in or at risk of entering the criminal justice system. The Blueprints were developed jointly by Welsh Government, HMPPS and YJB Cymru alongside other key stakeholders such as Policing in Wales, setting out our collective vision for a holistic, preventative and rehabilitative criminal justice system in Wales.

The joint ownership of the Blueprints, their differing but linked cohorts and the need to work across boundaries complicates the normal project structure. There is joint ownership of the Blueprints between HMPPS in Wales, Policing in Wales, Youth Justice Board Cymru and the Community Safety Division in Welsh Government. A dedicated Programme Board has also been established which includes partners from HMPPS, HMCTS, YJB Cymru, Police Forces, PCCs and the Home Office.

As part of the 2021/22 budget, Welsh Government allocated over £1 million to the Blueprint programme which has supported projects which strengthen links between women in prison and their children and help progress the delivery of trauma informed practice to Youth Justice Practitioners. This investment in the Blueprints helps provide meaningful multi-generational improvements in the lives of some of the most vulnerable people in our society.

Implementation plans against each Blueprint are published on an annual basis, with the latest versions due to be published very shortly. The perceived success of the Blueprint approach is leading to it now being adopted in a further area of priority identified under the Framework, namely tackling violence against women, domestic abuse and sexual violence (VAWDASV).

This chapter looks at progress made and future plans on these areas – all of which require multi-agency working to tackle the significant challenges. It then considers some potential areas for future partnership working.

## **8.1 Women's Justice Blueprint**

The [Women's Justice Blueprint for Wales](#) sets out our key aspirations for women in, or at risk of entering, the criminal justice system, and the guiding principles through which we aim to deliver these changes. It is predicated on the basis of early intervention and prevention, considering how we can further divert people away from crime in the first place and working with women currently in contact with the justice system in a holistic and rehabilitative way. It also takes into consideration how different oppressions, like race or disability for example, intersect to multiply the experience of discrimination.

At the core of the Women's Justice Blueprint is the Women's Pathfinder initiative which was established in 2013 to improve outcomes for women coming into contact with the criminal justice system in Wales. We continue to provide funding for the [Women's Pathfinder Whole System Approach](#) in South Wales and Gwent, which we deliver alongside HMPPS in Wales and PCCs, as a key part of our approach to diversion and support, with £190,205 provided in 2021/22 and a proposed £390,000 for 2022/23. An [evaluation of the Women's Pathfinder Diversion Scheme pilots](#) found a 26% reduction in re-offending and found that the overall re-arrest rates in pilot sites was around half of that in the comparison sites (17.8% compared with 35%).<sup>33</sup> The evaluation also identified significant cost savings to policing.

Diversion services for women are now in place across each of the four police force areas in Wales. This includes the North Wales Women's Pathfinder Diversion Scheme, which was launched in October 2019 by the North Wales PCC, and the Dyfed Powys Diversion Scheme, which launched in November 2019. The Women's Pathfinder is also supporting a pilot to strengthen support for young women's transition from youth to adult services in South Wales and Gwent.

We recognise the case for further developing the Pathfinder model and building on these successes. As part of the Women's Blueprint, we have begun engagement

and research which will help us to develop an end to end, integrated service delivery model for women across Wales (incorporating diversion), based on learning gathered to date. This will be an opportunity to further embed good practice, and to embed radical change where it is needed.

The Residential Women's Centre, which was announced in May 2020 by the Ministry of Justice, will provide a further level of support under the Blueprints framework. The Centre will provide accommodation for vulnerable women with complex needs as an alternative to a conventional custodial sentence in a prison environment. It aims to tackle the underlying causes of offending, such as substance misuse and mental health problems, and provide transitional support to allowing them to re-integrate to life in the community.

The Welsh Government had called for the creation of a Residential Women's Centre for some time, and the creation of a Residential Centre (or, more precisely, a network of such centres) was also a recommendation of the Thomas Commission.<sup>34</sup> We are continuing to engage closely with the Ministry of Justice who are responsible for this important programme of work. The announcement of the site for the Centre in May 2022 is a major step forward for this work, which will help to change the lives of women in Wales.

The Centre is particularly important because Wales does not have a women's prison, which means, by default, that all women sentenced in Wales to periods of incarceration will serve their time in prisons in England, away from family and local support structures. Incarcerating women far from their home is detrimental both to the women themselves and to their children and families. We believe that custodial sentences should remain the last sentencing resort, in line with the Women's Pathfinder Whole System Approach. Having a Residential Women's Centre in Wales will be a vital step forward in terms of increasing the rehabilitative provision for Welsh women in the justice system.

Given this situation, we have launched the 'Visiting Mum service' for women held at HMP Eastwood Park in Gloucestershire and HMP Styal in Cheshire. We jointly fund this initiative with HMPPS, providing a service that identifies women in prison who

---

<sup>34</sup> "A comprehensive network of services and centres as alternatives to custody for women in Wales must be established rapidly and sustained over time"

are at risk of losing contact with their children and offers specialist support to help strengthen family ties during the time that they are serving their sentences.

The service offers practical support to help children visit their loved ones in prisons, as well as providing one-to-one and programme support for women in custody. This helps Welsh mothers to maintain positive relationships with their children throughout their prison sentence. An [evaluation of the 'Visiting Mum' pilot](#), which ran at HMP Eastwood Park between 2014 to 2017, by Cardiff University and CASCADE, found that it reduced the risk of self-harm for mothers whilst also improving long-term outcomes for their children. We are delighted to support it now as an ongoing service, with funding confirmed for the three year spending review period from 2022/3 through to 2024/5.

## **8.2 Youth Justice Blueprint**

Preventing children from entering the criminal justice system, minimising their contact with it and maximising opportunities for diverting them away from courts are essential in supporting them to lead crime free lives. The statutory aim of the youth justice system is to prevent offending by children. The Social Services and Well-being (Wales) Act 2014 and the Well-being of Future Generations (Wales) Act 2015 both set out requirements to ensure local services are provided to prevent children from offending and to promote their future welfare.

It has long been recognised that health, education, social care and other devolved services form an integral response to a child or young person's offending. It is critical that our devolved services work together seamlessly not simply to address the symptoms of unwanted behaviour but also treat the cause. Our aim is to ensure that all of our socio-medical and welfare services within our devolved control in Wales intervene with at-risk children and families before their problems manifest themselves in offending.

The [Youth Justice Blueprint](#), published in May 2019, gives a practical example of our approach to the delivery of justice services in Wales. This approach has a clear focus on early intervention and prevention, one that focuses on how we provide support to divert people away from crime in the first place, but also one which takes a holistic and rehabilitative approach to those who slip through that net. This includes

work on pre-court diversion, resettlement and transitions as well as community support.

The Blueprint includes an objective to explore options for all Welsh-resident children being placed in secure accommodation in Wales and near to their home communities. This will include reciprocal arrangements with England so that cross-border arrangements are in place for individual cases on an exceptional basis.

The vision for the future, which has been agreed by the UK and Welsh Governments, is to move away from the existing provision towards small, regional homes which better meet the needs of Welsh children and align with the vision and principles set out in the [\*vision for Welsh children in the secure estate\*](#) paper published in March 2021. We are working with the Ministry of Justice and other partners to define this 'Small Homes' model.

Other examples of developments under this Blueprint include the publication in July 2020 of [\*principles and guidance on youth to adult transitions\*](#) to be a joint protocol for managing the cases of young people moving from youth offending services to the probation service. Further consideration is being given to establish what needs to be done to further the use of the published transitions guidance.

Trauma-informed practice is embedded across all of this work. As noted in [\*chapter 3\*](#) of this document, adverse childhood experiences (ACEs) can have a significant effect on mental well-being throughout life leading to negative outcomes such as involvement in crime. Those with four or more ACEs are 15 times more likely to commit violence and 20 times more likely to be imprisoned. Policy is therefore focused on preventing and minimising the impact of ACEs, on stopping inter-generational problems and developing resilience to improve life chances. Workstreams are also considering the [Trauma-Informed Wales](#) work which has been developed by the ACEs Hub and Traumatic Stress Wales.

Also building on [\*chapter 3\*](#) of this document, delivery of the Youth Justice Blueprint reflects our commitment to children's rights in Wales, and takes account of the relevant articles of the United Nations Convention on the Rights of the Child. It sets out the ambition for a rights-based and trauma-informed system, which will support services to deliver positive outcomes for children in Wales.

### **Children remanded in police custody**

It has long been recognised that police cells or custody suites within police stations are not suitable places to accommodate children and young people, regardless of the reasons that have brought them there. Remanding children or young people in police custody until such time as they are placed before a court should always be the last resort.

When a child or young person is charged with an offence and the custody officer authorises their continued detention, the custody officer must make arrangements for the child to be taken into the care of a local authority to be detained. Under [PACE section 38\(6\)](#) this should happen unless it is impracticable to do so, or (for children and young people aged 12 or older) no secure accommodation is available and other accommodation would not be adequate to protect the public from serious harm from the young person.

Sometimes, when a local authority remand accommodation is requested for a child or young person, the practical shortage of suitable accommodation may mean that the only option available to the police is to house the child or young person in the custody suite, often overnight.

Recognising that holding children and young people in police cells is unacceptable, we have started to explore alternative options for meeting the needs of children and young people who have been denied bail. As part of this initiative we developed and provided £75,000 in funding for a pilot in July – October 2021 to provide a safe bed at the Rosedale Residential Home in Newport. The hope was that this would present a short-term option to provide accommodation for young people on bail who would have otherwise had to stay overnight in a police custody suite. Whilst the allocated accommodation was not used during the period of the pilot, it provided a valuable insight into the very complex needs of the children and young people involved.

Welsh Government will continue to work with partners to explore the options in this space to support children and young people who have been denied bail once charged with an offence.

### **8.3 Problem Solving Criminal Courts**

Problem Solving Criminal Courts are specialised courts that put judges at the centre of rehabilitation. They offer intensive community sentences with specific components for a particular cohort with underlying needs. The methodology has similarities to the Family Drug and Alcohol Courts discussed in [chapter 5](#). The Thomas Commission

recommended that “problem-solving courts should be established in Wales along the Northern Ireland model”.<sup>35</sup>

The UK Government’s recently passed Police, Crime, Sentencing and Courts Act made provision for the establishment of further problem-solving court pilots. We have made clear that we would support a pilot taking place in Wales, although any pilot brought forward in Wales will require a significant level of co-operation from devolved services such as social services, and it will therefore be important to monitor the impact on those services.

More broadly, the Welsh Government is aware that both internationally and within the United Kingdom, robust evaluation of the long-term effectiveness of problem-solving courts in reducing reoffending is scarce.<sup>36</sup> It will, for example, skew any evaluation if the offenders who are offered the opportunity to benefit from a problem solving approach are selected on the basis that they are pre-identified as the most likely to succeed in staying away from criminal behaviour in the future; this will not allow for fair comparison of the effectiveness of problem-solving and more traditional approaches. The utility of learning from previous pilots was also limited by the short-term nature of their duration in the United Kingdom compared to other countries.

Our support for a pilot in Wales is therefore on the basis that the criteria for success needs to be agreed before any pilot commences. We would like to consider problem solving court pilots in Wales on the basis that the long-term impact on offenders going through this route is properly identified and considered against a cohort of similarly eligible offenders progressing through the traditional justice system routes. There are also questions to be asked about accessibility to those living in remote regions.

---

<sup>35</sup> Rec 9

<sup>36</sup> [Problem-solving courts: An evidence review](#)

## Chapter 9: Civil and Administrative Justice- laying the groundwork

The civil and administrative courts and tribunals system that operates in Wales is generally reserved and responsibility for it is not devolved to Wales. England and Wales share County Courts, the High Court and the Court of Appeal. In addition, a number of reserved tribunals operate on an England and Wales or wider GB or UK basis. These courts and tribunals are administered by H.M. Courts and Tribunals Service (HMCTS), an executive agency sponsored by the Ministry of Justice (MoJ). The Supreme Court, with its own separate administration, is the final court of appeal in the UK for civil cases as well as for criminal cases from England, Wales and Northern Ireland.

While the administration of courts and tribunals is largely reserved, certain existing tribunals are devolved, and within its areas of competence the Senedd is able to establish further tribunals or allocate new functions to the existing devolved tribunals. Section 59 of the Wales Act 2017 defined a particular set of devolved tribunals as “the Welsh tribunals” and created the office of the President of Welsh Tribunals with supervisory responsibility for them and for representing their views to the Welsh Ministers and the Senedd. The provisions of the Wales Act 2017 notwithstanding, the tribunals constituting the Welsh tribunals have each been established by separate legislation and continue to be governed by their own statutory frameworks.

The tribunals listed in section 59 of the Wales Act 2017 are the:

- Adjudication Panel for Wales
- Agricultural Land Tribunal for Wales
- Education Tribunal for Wales
- Mental Health Review Tribunal for Wales
- Registered Schools Inspectors Appeal Tribunal and the Registered Nursery Education Inspectors Appeal Tribunal
- Residential Property Tribunal for Wales
- Welsh Language Tribunal.

In addition to the Welsh tribunals, there are also other devolved tribunals in Wales that do not fall under the definition of Welsh tribunals set out in the Wales Act 2017, and which do not come under the supervision of the President of Welsh Tribunals. As a result of this piecemeal statutory development of individual tribunals, the system of tribunals is complicated, inconsistent and lacks coherence. It is now our intention to address those flaws and in so doing take a first step towards designing a coherent and high performing justice system for Wales.

This chapter focuses primarily on our plans to reform the devolved tribunals, before briefly addressing other recommendations from the Commission on Justice in Wales (Thomas Commission) concerning the civil and administrative justice system in Wales.

### **9.1 Reform of the devolved tribunals**

The origin of the Law Commission's work lay in its 13th Programme of Law Reform and a commitment to work with the Welsh Government to identify a Wales project, which the Commission would support through its core funding. In July 2018, the then First Minister approved the commencement of a project to consider the law governing the devolved tribunals and to make recommendations relating to a new Tribunals Bill for Wales designed to regulate the operation of a single system for tribunals in Wales.<sup>37</sup> This complemented the work taking place at that time by the Thomas Commission to review the operation of the justice system in Wales. In its report published in October 2019, the Thomas Commission stated "*we welcome the Law Commission review as it is able to consider the more detailed issues in relation to the Welsh tribunals*".<sup>38</sup>

The Law Commission commenced its work in the summer of 2020 and published its report and recommendations on 9 December 2021.<sup>39</sup> The work followed a consultation which took place between December 2020 and March 2021. It also built upon the earlier work of the Committee for Administrative Justice and Tribunals, Wales (CAJTW), which was established by the Welsh Government in 2013 to advise on the administrative justice system in Wales.

---

<sup>37</sup> [Written statement: Welsh tribunals - Law Commission project](#)

<sup>38</sup> "Justice in Wales for the People of Wales" paragraph 6:58 at page 284.

<sup>39</sup> "Devolved Tribunals in Wales Report" Law Com No.403

### **The Law Commission's recommendations**

The Law Commission has made 53 recommendations for reform of the devolved tribunals in Wales. They are, collectively, intended to create a single, unified and coherent system of tribunals to support:

- the development of a standardised approach for rules and procedures, including appointments of judicial and other tribunal members
- handling complaints and disciplinary issues in a consistent manner
- centralised supervisory oversight of devolved tribunals
- judicial independence and greater structural independence for the way in which tribunals are administered
- future-proofing the system of devolved tribunals to reflect the development of justice policy.

### **The Welsh Government's response**

It is clear that the review undertaken by the Law Commission provides a detailed and robust evidence base for taking forward reform of the devolved tribunals in Wales. Having carefully considered the recommendations made by the Law Commission, our conclusion is they very much align with the objectives we had for the project when the then First Minister agreed to it proceeding. We strongly endorse the fundamental principle emerging from the recommendations for the creation of a unified, single structurally independent system of tribunals in Wales. The reforms set out by the Law Commission suggest a structure for our tribunals in Wales that is simple, modern and fair. In short, the Law Commission's proposals go a long way to creating the capability for Welsh legislation to be enforced through Welsh institutions. In doing so, they chime with the findings of the Thomas Commission on the importance of building capacity in the justice system in Wales.

While we agree with the broad thrust of the recommendations, we recognise that there is still some thinking to do as we develop and take forward our policy for reform. This particularly extends to those affected by the structural changes proposed by the Law Commission and the current devolved tribunals which do not fall within "the Welsh tribunals" as defined by the Wales Act 2017 that the Law Commission considers should be incorporated into the unified system of tribunals on

its creation. We will engage with those affected as we work through the issues and important questions to develop firm proposals for reform.

Our further detailed response in respect of particular recommendations is set out below.

## **9.2 Creating a unified system for devolved tribunals**

The first ten recommendations made by the Law Commission are focused on the structure of a tribunals system for Wales and serve to set the agenda for taking forward reform of the devolved tribunals.

We agree with the principle of the Law Commission's proposals for a unified First-tier Tribunal for Wales divided into chambers replacing the Welsh tribunals listed in section 59 of the Wales Act 2017, with the judicial leadership for each chamber provided by chamber Presidents supported by Deputy Presidents where necessary.<sup>40</sup> These proposals align with the project's objectives we envisaged, namely that they are framed around the principle of creating a unified system for devolved tribunals.

We agree with the Law Commission that the Welsh Ministers should have the power to make subordinate legislation subdividing the First-tier Tribunal into chambers and allocating work to those chambers, and that the President of Welsh Tribunals should have a role in that process.<sup>41</sup> The President would head the unified tribunals system for Wales and will be positioned to advise on the efficient distribution of work across the tribunals' service. This will future-proof the system of tribunals as legislation is made over the coming years, allowing Ministers to assign new functions to chambers or to create new chambers without having to create wholly new bodies and administrative arrangements.

Further work is required to finalise the chambers that are needed and as we undertake that work and develop our firm proposals for reform, we will consider the structure of chambers the Law Commission has proposed for the First-tier Tribunal for Wales on its creation.<sup>42</sup> The structure will in part depend on which devolved

---

<sup>40</sup> Law Commission recommendations 1 and 2.

<sup>41</sup> Law Commission recommendation 3.

<sup>42</sup> Law Commission recommendations 4, 5, 8, 9 and 10.

tribunals in addition to the Welsh tribunals are incorporated into the First-tier Tribunal.

### **9.3 Broadening the scope of the tribunal service**

In addition to the tribunals currently underneath the umbrella of the President of the Welsh Tribunals, the Law Commission recommended incorporating the Valuation Tribunal for Wales and school exclusion appeal panels into the new First-tier Tribunal for Wales on its creation.<sup>43</sup> The Law Commission also recommended that while the work of school admission appeal panels should not be incorporated into the Education Chamber of the new First-tier Tribunal, there should be an onward appeal route from those panels into that chamber, on points of law or other grounds of particular importance.<sup>44</sup> The Law Commission has also reviewed the position of other decision-making bodies, of which there are a range and considered their inclusion in the unified system.<sup>45</sup> We will consider the issues as we take forward our policy for reform of the devolved tribunals.

The rationale for incorporating the Valuation Tribunal for Wales within the First-tier Tribunal for Wales is that it would lead to efficiency savings in terms of its current separate administration, increase the profile of the tribunal and provide judicial leadership by bringing it under the supervision of the President of Welsh Tribunals. The Law Commission proposes the Valuation Tribunal for Wales be incorporated into a Valuation Chamber of the first-tier Tribunal. In the alternative, the Law Commission recommends that if the Valuation Tribunal for Wales remains outside the unified system, it should nonetheless be subject to the supervision of the President of Welsh Tribunals.<sup>46</sup> Our initial position is that it would be anomalous if the Valuation Tribunal for Wales was not within the unified system. We recognise, however, the need to work through the detail of the Law Commission's proposals and we will engage with the President of the Valuation Tribunal for Wales and the Valuation Tribunal's Governing Council as we consider how to proceed.

In terms of school exclusion appeal panels, excluding a child from a school is a decision which will likely have a major bearing on that child's life chances, with

---

<sup>43</sup> Law Commission recommendations 4 and 5.

<sup>44</sup> Law Commission recommendations 15 and 16.

<sup>45</sup> Law Commission recommendation 7.

<sup>46</sup> Law Commission recommendation 20.

strong correlations between those who are excluded from schools and those who go on to enter into the criminal justice system. It is therefore particularly important that these decisions are made fairly and in a way that commands the greatest possible confidence of the child and their parents or guardians. The Law Commission identified some concerns from parents about appeal panels being established by the local authorities where the school exclusion decisions were taken and questioned whether parents could ever be confident about the independence of such panels even where all possible steps had been taken by the relevant authority. More worryingly still, some participants in the panels themselves questioned whether the panels operated independently, and some local authorities (particularly those which received small numbers of appeals) were unsure as to whether they had the expertise to conduct hearings fairly and consistently with decision-making elsewhere in Wales.

The rationale for the Law Commission's recommendation to amalgamate school exclusion appeal panels in the jurisdiction of an Education Chamber is therefore in part to secure consistency in handling appeals and in part to ensure and be seen to ensure independence in this crucial decision-making process. Our view is that this appears to be a strong case, and we are therefore minded to accept the Law Commission's recommendation. However, some local authorities took a contrary view, stressing the importance of local knowledge for panels. The Law Commission did not consider that the desirability of local knowledge could take precedence over other concerns identified, but it is nonetheless important that we consider the objections raised and whether an approach can be found which gives confidence to all local authorities as well as other partners in the process. We will therefore engage with those affected by the Law Commission's proposals as we work through the detail of them and consider how to proceed.

#### **9.4 Creating an Appeal Tribunal**

We strongly endorse the principle of creating an Appeal Tribunal for Wales.<sup>47</sup> The creation of an appellate body in Wales represents an important symbolic step toward the creation of a devolved justice system in Wales. A uniform route of appeal would make the system easier to understand and navigate for tribunal users and improve

---

<sup>47</sup> Law Commission recommendation 11.

access to justice as a result. It would build confidence and capacity in the justice system in Wales and it would seem to be incongruous in the context of taking forward proposals for a modern tribunal service for Wales if the route of appeal was not to a Welsh appellate body.

We agree with the Law Commission that the Welsh Ministers should have the power to make subordinate legislation to establish chambers of the Appeal Tribunal and allocate appellate jurisdiction.<sup>48</sup> This will future-proof the system of tribunals as legislation is made over the coming years. We consider the creation of an Appeal Tribunal for Wales mirroring the unified system at first instance, will contribute to a coherent structure for devolved tribunals which will be flexible and responsive to Wales' emerging justice system.

We recognise, though, that some Members of the current devolved tribunals consider that certain cases considered by a First-tier Tribunal might require different appeal routes. This would be theoretically possible within the proposed new structure. We will listen to and consider suggestions for categories of case which might require different appeal routes.

### **9.5 Expanding the role of President of Welsh Tribunals**

The post of President of Welsh Tribunals is currently the most senior within the devolved judiciary. We are therefore very supportive of the Law Commission's proposals to extend the supervisory role of the President of Welsh Tribunals and for conferring a judicial role on the President to sit as a judge in each of the chambers in the First-tier Tribunal for Wales and in the Appeal Tribunal.<sup>49</sup> We consider an expanded and broader role for the President of Welsh Tribunals will help shape the functioning of the new tribunal service for Wales as well making the office attractive to potential holders of it.

In this regard, we agree that the President of Welsh Tribunals should have a leading role in making and maintaining common procedural rules across the chambers of the unified tribunal service. At present, the rules for the devolved tribunals are inconsistent and complex and could be improved for tribunal members and tribunal users to facilitate better case management. We therefore agree with the principle of

---

<sup>48</sup> Law Commission recommendation 12.

<sup>49</sup> Law Commission recommendations 17 and 18.

the Law Commission's recommendations to reform the structure of and processes for making procedural rules, including the establishment of a Tribunal Procedure Committee for Wales, chaired by the President of Welsh Tribunals, to keep rules under review and up-to-date.<sup>50</sup>

Broadening the supervisory role of the President of Welsh Tribunals was also a recommendation of the Thomas Commission in respect of the rationalisation and better co-ordination of the civil justice system in Wales. Taking forward the Law Commission's recommendations in this area will therefore deliver on the findings of the Thomas Commission.

### **9.6 Safeguarding independence**

The Thomas Commission considered the structure and operation of the Welsh tribunals, recommending that the administration of justice (undertaken by the Welsh Tribunals Unit) should have structural independence from the Welsh Government. The Law Commission concurs and proposes that the administrative support for the unified system of tribunals should be delivered by a non-ministerial department.<sup>51</sup>

We strongly endorse the principle set out by both the Thomas Commission and the Law Commission that the administration of justice should be, and be seen to be, separate from government so as to promote the fundamental principle of the independence of the judiciary. We agree a remodelling of the administration of justice will be a necessary part of our journey towards building a justice infrastructure for Wales which is capable of managing the ever greater divergence of law from England.

While the non-ministerial department model recommended by the Law Commission is one option to achieve structural independence, there are alternatives which we will need to consider in ensuring the new body has the right governance, powers and funding arrangements. We will engage with stakeholders as we work through this to ensure we are providing the required degree of structural independence.

In particular, we of course currently recognise and uphold the principle of judicial independence. This has guided and will continue to guide the way in which judicial

---

<sup>50</sup> Law Commission recommendations 21 to 30.

<sup>51</sup> Law Commission recommendation 51.

institutions are supported in Wales. We therefore agree the principle of the Law Commission's recommendations for supporting and being seen to support judicial independence in Wales.<sup>52</sup>

### **9.7 Appointments, complaints and discipline**

The Law Commission's conclusions about the appointment of members of the devolved tribunals is that the current system is fair, open and transparent. It is, however, complex and with different appointing authorities across tribunals. This complexity arises largely because of the ad hoc way in which each tribunal has been created over time, governed by its own stand-alone legislation. We therefore agree with the principle of the Law Commission's recommendations to reform appointment processes<sup>53</sup> where the President of Welsh Tribunals would have responsibility for appointing members of the First-tier Tribunal and the Welsh Ministers responsibility for appointing chamber Presidents and Deputy Presidents in the First-tier Tribunal and with the agreement of the President of Welsh Tribunals, members of the Appeal Tribunal for Wales.

Similarly, the Law Commission concludes a reformed, uniform approach be adopted in relation to complaints and disciplinary matters across the unified, single system of tribunals. We agree with the principle of the Law Commission's recommendations that there should be consistent complaints and disciplinary processes that apply to all chambers of the First-tier Tribunal for Wales, permitting for variations for individual chambers where necessary, and apply to the Appeal Tribunal for Wales.<sup>54</sup>

### **9.8 Tribunals reform – next steps**

We welcome the Law Commission's report and recommendations and strongly endorse the fundamental principle of the recommendations made. Not only do the Law Commission's proposals address the shortcomings in the current ad hoc structures in place in Wales, but they future-proof the system of tribunals, enabling new functions to be conferred by future legislation without having to create wholly new bodies and administrative arrangements. We are working through the detail as we develop the policy to take forward.

---

<sup>52</sup> Law Commission recommendations 52 and 53.

<sup>53</sup> Law Commission recommendations 31 to 37.

<sup>54</sup> Law Commission recommendations 38 to 50.

The Law Commission has provided a clear set of recommendations to address the difficulties which our tribunals currently face. Many of the recommendations are ones that we agree with wholeheartedly and can accept without equivocation but some will require discussion with stakeholders to plot the right way through, which we are starting to take forward.

Creating a new, unified system of devolved tribunals in Wales will require primary legislation. We intend to bring forward that legislation to create an integrated tribunal system for Wales once we have completed the discussions and consideration set out above. We will also draw on the earlier advice that has shaped the reform agenda for devolved tribunals in Wales, in particular that provided by CAJTW in its final report.<sup>55</sup> Timings of the legislation will be confirmed in due course in the usual manner.

We will also look to make improvements to the operation of the tribunals ahead of legislation coming forward; for example, we intend to explore with the President of Welsh Tribunals what more can be done to evaluate the performance of individual tribunals and to measure the diversity of tribunal members.

In parallel, we will also need to prepare for the impact of Mental Health Act reforms on the caseload of the Mental Health Review Tribunal for Wales.

### **9.9 Civil and administrative justice beyond the devolved tribunals**

In its examination of the state of the civil and administrative justice system in Wales, the Thomas Commission concluded that “*resolving a dispute is complex for many reasons, including the lack of co-ordination between the courts, tribunals and different forms of alternative dispute resolution*”.<sup>56</sup> As such, beyond the reforms to the devolved tribunals already discussed, the Thomas Commission made a number of additional recommendations for rationalisation and co-ordination to provide a more effective justice system for the people of Wales.

The most important recommendation is for “the creation of a unified system of courts and tribunals in Wales for determining civil and administrative law disputes”. This is recommended in the light of observations about whether the current division of responsibilities between courts and tribunals is rational and comprehensible to

---

<sup>55</sup> [Administrative Justice: A Cornerstone of Social Justice in Wales](#)

<sup>56</sup> “Justice in Wales for the People of Wales” Executive Summary paragraph 15.

service users. The desirability of achieving such a reform is a good reason why responsibility for courts and tribunals should sit with a single government (as this rationalisation is not possible under the current complex division of responsibilities) and we propose to examine the potential benefits and mechanics of this approach as we move towards taking on responsibility for the civil courts.

Other recommendations which could be pursued sooner include:

- dispute resolution before courts, tribunals, alternative dispute resolution and ombudsmen, as well as dispute resolution in respect of administrative law, being promoted and coordinated in Wales through a body chaired by a senior judge
- examining the feasibility of a low cost and effective resolution method for civil disputes through the use of a comprehensive ombudsman scheme, taking into account the online court
- broadening the supervisory jurisdiction of the President of Welsh Tribunals to encompass all public bodies that make judicial or quasi-judicial decisions
- the Administrative Court having the power to stay court proceedings while the Public Services Ombudsman for Wales investigates a complaint, and the Ombudsman having the power to refer a point of law to the Court.

These recommendations would each require the involvement of a number of different parties if taken forward at present, including the judiciary and the MoJ. In the first instance, we have prioritised engagement with the Law Commission's consultation, but we have received some views on these proposals from bodies that would be affected and would welcome any further views. In particular, we are seeking the views of the judiciary and of the MoJ through the regular channels of discussion we have with both.

Finally, there are three recommendations in the Thomas Report with regard to coroners' services – namely that:

- there should be a distinct organisation for coroner services in Wales with funding available on an all Wales basis to ensure that uniform standards and services are applied

- challenges relating to inquests into all deaths in Wales should be issued and heard in Wales
- all coroner services should be available in the Welsh language.

In order to achieve these we will require the agreement of others or the devolution of responsibility for the coroners' courts (which would be logical, given that they are funded through local authorities). We do though agree with the last of these recommendations, and would be minded to agree with the other two. We have raised all three recommendations with the UK Government to understand its position.

## Chapter 10: Access to Justice

---

“Courts are, and should be, a last resort but they should be a last resort which is accessible to all, rich and poor alike ... society will be the loser if everyone does not believe that the law is there for them”

*Baroness Hale of Richmond, 2011*

---

Access to Justice is fundamental to ensure the rule of law. Without access to justice, we cannot safeguard citizens’ individual rights, including redress for victims and survivors of crime. Key elements of access to justice include:

- physical access to courts and tribunals for in-person hearings;
- the ability to access online hearings and use other online services;
- availability of affordable, high quality and timely legal advice and representation;
- availability of information and advice services;
- justice being secured swiftly and fairly; and
- the ability to use courts and tribunals in the language of choice (discussed in [chapter 4.5](#)).

Access to justice also includes being able to understand what laws exist; the majority of people seek not to break laws but to live within them. This chapter considers each of the above in turn.

While the administration of justice is so largely reserved, our ability to influence access to justice is limited. We raise issues with UK Government Ministers frequently and repeatedly, and in particular made repeated representations against the programme of court closures over the last decade and against the diminution of legal aid availability resulting from the Legal Aid, Sentencing and Punishment of Offenders Act 2012. We continue to respond to Ministry of Justice consultations, so far as possible, providing evidence-based explanations of the implications for Wales of approaches designed most often in London.

### **10.1 Physical access to courts and tribunals for in-person hearings**

The Welsh Government recognises that access to justice is as vulnerable as the individual who seeks such access. In an increasingly digitalised world it is easy to forget that large rural geographical areas served nominally by one court may result in no local court being within a reasonable travelling distance even for those who have access to private cars and especially for those with medical conditions and /or caring responsibilities (among others). Against a background of an increasing population, 29 courts and tribunals have been closed in Wales since 2010 and inevitably this has severely curtailed or inconvenienced court attendees including those not directly involved in the proceedings but wishing to see them, including relatives.

Physical attendance at court may be the first time that one of the main parties in a trial meets their legal representative. Such a face-to-face meeting is often essential, especially for those who may have a mental health condition, as it helps build trust and may provide the legal professional with insights into their client which facilitates understanding of their case. As new court initiatives emerge such as problem-solving courts, frequent, even fortnightly, court attendance may be an essential element of the process. The closure and failure to replace so many courts present challenges in ensuring that justice solutions are equally accessible to all.

Within the existing estate there may remain particular issues around full access for disabled people attending certain venues, and this has, on occasion, meant that disabled people experienced delays in their hearings because justice was not equally accessible for them.

### **10.2 The ability to access online hearings and use other online services**

Technological advance has allowed an increasing number of elements of the justice system to be delivered online – a process clearly significantly accelerated by the need to respond to the Covid-19 pandemic. The extent to which the courts and tribunal systems and those involved in them were able to adapt rapidly to the challenges from March 2020 was impressive, and the public owes a debt of gratitude to all those who designed and operated new services in such trying circumstances. There are clearly many elements of the justice system that can be delivered effectively online and cost savings may arise from online delivery of services.

For many people, there may also be access to justice benefits from online delivery of services, in terms of improvements to the accessibility of the courts and tribunals from the removal of requirements to travel. For others the loss of intimidation associated with physical attendance in a court may be a particular benefit. Legal professionals with childcare or other caring responsibilities and professional expert witnesses are among those who can benefit significantly from remote access to hearings, with knock on positive implications for who is able to enter and advance within a legal career.

Nevertheless, online access to justice is not a solution which in itself can resolve the difficulties presented by the closure of court buildings over the last 12 years.

We know from our own National Survey of Wales that there remains a real problem in accessing online services in Wales, with 7% of those aged 16 and over in Wales being digitally excluded (do not personally use the internet).<sup>57</sup> Of those who do use the internet, nearly a quarter do not have the five recognised basic digital skills (Handling Information and Content, Communicating, Transacting, Problem Solving and Being Safe & Legal Online) considered necessary to engage with digital, including online services.<sup>58</sup> This is a particularly marked issue for older people; a majority of those aged 75 and older who have access to the internet do not have the five basic digital skills needed for the completion of forms and online documentation. Lack of a stable internet provision may itself result in associated low levels of digital skills in the population and is a problem encountered in both urban and rural areas. Many people who do have internet access are restricted to smartphones, which may be inadequate for viewing or participating in court proceedings or for completing complex forms.

The Covid-19 pandemic ensured the rollout of many online services and increased use of the internet by many previously reluctant users for wide-ranging purposes including shopping and virtual family contact. At the start of the pandemic, as the move to increased online court hearings became inevitable, the Welsh Government asked the Ministry of Justice to ensure that a full evaluation of the fairness of

---

<sup>57</sup> The National Survey for Wales 2021-22 (April to June 2021) data is a fully randomly selected sample with internet use questions asked of 3,450 households and internet skills asked of circa 1,500.

<sup>58</sup> [Internet skills and online public sector services \(National Survey for Wales\): April 2019 to March 2020](#)

outcomes for virtual compared to in-person hearings be undertaken, to inform decisions for increased online services in the future. Despite assurances, this essential evaluation has not been undertaken. Instead, HM Courts and Tribunals Service (HMCTS) commissioned research to “*provide robust evidence on court and tribunal users’ characteristics, experiences and perceptions*”. This research, which painted a mixed picture, was published in December 2021, but no research which systematically considers the comparative outcomes of similar hearings whether held virtually (in whole or part) or physically, has been published.<sup>59</sup>

We remain concerned that those who have no option but to act as litigant in person may also be those adversely impacted by increased use of online hearings. We are also concerned that many people may not have a quiet, private environment from which they can participate in court hearings. Victims of violence against women, domestic abuse and sexual violence (VAWDASV) may be able to take advantage of the remote evidence sites which we have established within VAWDASV services, in some types of court proceedings, and this may help to some degree, but similar options are not available for most participants in most proceedings.

The Welsh Government therefore remains of the view that without a robust evaluation of the outcome of online hearings, there is a very real risk that the developing online justice system is not offering equality of justice to all.

The Thomas Commission recommended 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 is one of the recommendations we are exploring with the Ministry of Justice.

### **10.3 Availability of affordable, high quality and timely legal advice and representation**

In March 2022 the UK Government published its response to the Independent Review of Criminal Legal Aid, chaired by Sir Christopher Bellamy QC. The serious issues identified by Sir Christopher included the annual underfunding of existing legal services by £135 million, a figure which does not take into account the growth

---

<sup>59</sup> [Evaluation of remote hearings during the COVID 19 pandemic](#)

in demand for legal aid provision arising from promised additional police resources. As such, he emphasised that “the sum of £135 million was the minimum necessary as the first step in nursing the system of criminal legal aid back to health after years of neglect” and that further sums may be necessary in the future to meet public interest objectives.

It is therefore profoundly disappointing that the UK Government’s response is so widely seen as having fallen short of even that minimum.

Analysis undertaken by the Law Society of the impact assessment, which accompanied the UK Government response and consultation, identified that the package of remuneration measures for solicitors amounted to only 9%, or an annual uplift of only £58-£66 million, figures reportedly confirmed by the Ministry of Justice.<sup>60</sup> As a result, the Law Society has advised its members to think “long and hard” about whether they wish to continue to undertake publicly funded work, with the Law Society president Stephanie Boyce noting that “it is no good just part of the system being economically viable if the system as a whole is not”.’

Likewise, the chair of the Criminal Bar Association (CBA), Jo Sidhu QC has said that the UK Government’s response “betrays a wholesale failure to recognise the severity of the crisis currently engulfing our criminal justice system and the urgency needed to address that huge challenge”.<sup>61</sup> At time of writing the CBA has adopted a “no returns” policy, following a ballot in which over 94% of its members voted in favour.

We have been discussing with legal practitioners in Wales the implications of the UK Government’s proposals (which do include some measures which are welcome) and we will be responding to the consultation. While the viability of legal practices is important in its own right, foremost in our considerations will be highlighting that people all across Wales will be left without access to the services they need at the most important moments of their lives.

It is not only in the area of criminal legal aid that access to justice is so chronically underfunded as to put equality before the law at risk. The Solicitors Regulation Authority (SRA) has commissioned new research to take a wide-ranging look into the

---

<sup>60</sup> [News focus: Is the government's criminal legal aid cash pledge too little, too late?](#) and [MoJ has 'botched' criminal legal aid response](#)

<sup>61</sup> [Barristers to press ahead with legal aid action](#)

gaps in legal advice provision across England and Wales, and what impacts this may have on different groups of consumers. It will include an in-depth examination of how factors such as ethnicity and socio-economic status impact on access to legal services.

Grave concerns about equality before the law are also raised by court fees charged by the government. The 2017 Supreme Court decision in the 'Unison' case made clear that:

“The question whether fees effectively prevent access to justice must be decided according to the likely impact of the fees on behaviour in the real world. Fees must therefore be affordable not in a theoretical sense, but in the sense that they can reasonably be afforded. Where households on low to middle incomes can only afford fees by sacrificing the ordinary and reasonable expenditure required to maintain what would generally be regarded as an acceptable standard of living, the fees cannot be regarded as affordable.”<sup>62</sup>

The exact same may be said to be true of the affordability of accessing high quality, timely legal advice and legal representation in court.

The travesty of the Horizon Post Office wrongful prosecutions of innocent individuals unable to afford to access quality legal advice to defend themselves illustrates the severity of the scale of in-equitability already inherent in the justice system. For innocent people to feel they have no option but to plead guilty to crimes they never committed and to be imprisoned illustrates the scale of the problem of affordable access to quality legal advice: it simply does not exist for all.

Financial imbalances between two parties to a case of this magnitude will always risk grotesque injustices of this nature, as can equally be seen in civil and family cases if there are not rules in place to discourage or prevent misuse of court proceedings. Otherwise, there is no 'equality of arms' in the justice system, a point made repeatedly by Sir Christopher Bellamy. Protecting access to justice is particularly important in the case of ensuring that it is possible and financially feasible to bring

---

<sup>62</sup> [Supreme Court decision on the 'Unison' case, paragraph 93](#)

legal actions against arms of the State. In access to justice on environmental matters, for example, the UK Government has been found to have a prohibitively expensive justice system for those seeking to take action, in contravention of the Aarhus Convention.

Part of our response is to make our own legislation as easy to use as possible, as discussed in the later stages of this chapter. Given that legal advice and representation are not available for all, we also strive to ensure that the procedures and practices of all our devolved tribunals allow for full participation without the need for legal representation.

Fundamentally, however, we believe that the restrictions imposed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 went too far. For this reason, as the Thomas Commission recognised, we have considered it necessary to divert resources which could otherwise be spent on devolved functions, to help meet the gap imposed by the UK Government in the provision of free legal advice. Under the current settlement, it is in this area where we feel we can make most difference to those that need help the most.

#### **10.4 Information and advice services**

The Welsh Government has a longstanding commitment to supporting information and advice services so that some of the most vulnerable people in our society have access to the free and impartial advice that they need to resolve problems with debt, employment, housing, discrimination and welfare benefits. In recent years this has also included supporting people with specific challenges arising first from Brexit (see box overleaf) and then from the Covid-19 pandemic, and we are now working to mobilise the support necessary for refugees arriving from Ukraine. #

As noted earlier in this section, we have considered it necessary to expand advice provision partly to help fill the gap created by reductions in legal aid availability. Sadly, the current cost of living crisis is only going to increase the demand for all of these kinds of advice services.

The Welsh Government is maintaining this commitment through the Single Advice Fund (SAF), introduced in January 2020. The SAF grant funds a framework of

strategically planned services across Wales that provides access to generalist/specialist advice and other on social welfare problems.

### **Support for EU Citizens**

Since 2019 the Welsh Government has funded Newfields Law, a specialist immigration law firm based in Wales, Citizens Advice Cymru and third sector organisation 'Settled' to provide free advice and support to EU citizens and EEA and Swiss Nationals who wish to continue to live and work in Wales following the UK's exit from the European Union.

This free support has meant that EU citizens and their family members have been able to access digital support with their applications for pre-settled or settled status, get help with basic queries about eligibility, access advice on social welfare issues and workplace rights and obtain free specialist immigration advice.

Despite the passing of the deadline for applications to the EU Settlement Scheme (EUSS) on 30 June 2021, there continues to be a significant ongoing need for support. This is now wider than assistance with EUSS applications, covering late applications, appeals against refusals of applications, conversions from pre-settled to settled status, applications to join family members, rights and entitlements and general information sharing.

The Welsh Government has recognised the need to continue its provision of free support and is continuing to fund Newfields Law, Citizens Advice Cymru and Settled until at least October 2022.

In addition to this, the Welsh Government continues to facilitate meetings of the EU Settlement Scheme Wales Co-ordination Group. This Group brings together external third sector organisations funded by the Home Office, along with the other key delivery partners and agencies to support and co-ordinate the successful delivery of EUSS advice and support services in Wales.

The SAF's innovative and collaborative delivery model is proving successful at targeting advice to those who need it the most. SAF services also help people deal with multiple problems. Since the introduction of the SAF in January 2020, 116,174 people have been supported by a SAF service to deal with over 532,534 social welfare problems and people have been helped to claim additional income of over

£67 million and had debts totalling £20 million wrote off. In a financial year, the Welsh Government typically makes available over £11 million of grant funding for the provision of advice services delivered through the SAF. The available funding is allocated between six regional services and a national remote advice service.

As the Commission on Justice in Wales (Thomas Commission) noted, this expenditure by the Welsh Government is required at least in part because of a failure by the UK Government to provide adequate funding for legal advice and support through the form of legal aid. This expenditure is taken from what could otherwise have been invested in devolved functions. As with other such expenditure to cover shortfalls in UK Government expenditure, the situation is compounded by the fact that if the justice system then makes further savings (for example, because weak claims are diverted from court or strong ones are successfully mediated), those savings will not be reinvested in Wales.

The Welsh Government also recognises the important role played by advice services in enabling people to have access to civil justice. Through the Single Advice Fund (SAF) the Welsh Government is funding an integrated advice service delivery model as we know that people rarely experience only one social welfare problem. The SAF services include employment and discrimination advice. People experiencing discriminatory employer conduct can access specialist advice, including representation before Employment Tribunals.

It was noted in the Thomas Commission report that when the SAF was established, some providers reported they were excluded from accessing SAF grants due to their limited negotiating power in the formation of the regional consortia. To guide future decisions on grant funding for advice services, an independent evaluation of the SAF will be undertaken during 2022. The evaluation will also examine the feasibility of an unstructured grant-funding stream being developed, that would not only complement the mainstream SAF framework of advice services, but also further remove barriers preventing smaller advice providers accessing Welsh Government grant funding.

The National Advice Network has developed an [Information and Advice Action Plan](#) with Welsh Government officials which prioritises maintaining quality assurance across the advice sector, undertaking a needs analysis to guide prioritisation of future provision, supporting the Regional Advice Networks which have been

developed to assist with effective collaboration between providers and ensuring that equalities, diversity and inclusion are embedded in advice provision.

Finally, it is also important to acknowledge the role that trade unions play in providing advice and support to their members (including within the justice system). This is a historical role which has been made increasingly difficult, but we certainly see a significant role for these services in a future devolved justice system in respect of access to justice.

### **10.5 Swift and fair justice**

Justice delayed is justice denied.

This adage has possibly never been more true than now. Those who died before 2021 after their wrongful sentence in the Horizon Post Office scandal will never have secured justice. Those who survived to see a successful Court of Appeal case overturn their incorrect Horizon conviction will never recover the lost decades of their lives and any payments in compensation may be all but lost to legal fees incurred in proving their innocence.

Victims who see trials collapse due to witness attrition in the time it takes before trial proceedings are commenced, as well as witnesses traumatised by their recollection of an event, are impacted when there are extensive delays to the commencement and conclusion of a trial hearing.

It is equally true that offenders of crime are denied justice in that they may be unable to secure the support and assistance they need to change offending behaviour and address challenging life conditions which precipitated their behaviour. Those accused of crime may be held on remand for an alleged offence for which they are ultimately found not guilty or if guilty, for which they do not receive a custodial sentence. This experience will inevitably be life changing for many, especially children, but adults may also lose their homes through being unable to work, lose their marriages, indeed lose their entire future.

Drawing upon the [Youth Justice Statistics for 2020-21](#), Penelope Gibbs from Transform Justice highlights that three quarters of all children remanded do not go on to receive a custodial sentence. This rises to 86% for cases which are entirely

dealt with in the magistrates'/youth court.<sup>63</sup> She continues to say that perhaps “the most concerning of the statistics is not about over-use overall, but about over-use for specific groups. 4% of 15-17 year-olds are black, but 34% of all children remanded are black. 60% of children in custody on remand are from minoritised communities.”

Through its social services, the Welsh Government will inevitably have to assist citizens of Wales for whom justice has been delayed, denied or incorrectly administered, and whose life circumstances have been significantly and adversely impacted. This illustrates why it is imperative that the UK Government proactively informs the Welsh Government of statistics relating to Welsh citizens who are held within the reserved justice system.

Following the enforced closure of courts across the UK in March 2020, close working between the various agencies involved within the criminal justice system, through a newly established Criminal Justice Steering Group (CJSG), enabled criminal courts in Wales to reopen before any region in England. Wales therefore was able to outpace every English region in addressing the Covid-19 related backlog in the magistrates' courts. This is testament to the strength of partnership working within Wales. The CJSG includes representatives from police forces, the CPS, Police and Crime Commissioners and Public Health Wales in addition to HM Courts and Tribunals Service and HM Prison and Probation Service. The leadership shown by the Presiding Judges and other judges was also important. The Lord Chief Justice confirmed that, in the context of the international response of justice systems during the crisis of the coronavirus pandemic, it was clear that the courts in England and Wales were leading the way and that within that jurisdiction, and specifically within the criminal justice system, Wales was at the forefront.

Such concerted action on addressing the Covid-19 related backlog within the criminal courts in Wales proved that the pre-pandemic courts backlog could be addressed. We share though the concerns of the House of Commons Public Accounts Committee in their report '[Reducing the Backlog in Criminal Courts](#)' which highlighted that “The criminal courts' backlog of cases has rocketed, *both before* and since the onset of the Covid-19 pandemic [our emphasis].” It is simply not acceptable that the pre-pandemic backlog of court cases can ever be considered as ‘business

---

<sup>63</sup> [Making child remand a last resort - Transform Justice](#)

as usual'. The delays associated with such a backlog deny justice to many and prevent swift justice. Nor are backlogs in any way limited to the criminal courts. While the Welsh Government stands willing to support all efforts to reduce backlogs, we remain concerned that this is a further issue where the underlying problem is a history of underfunding of justice by the UK Government.

### **10.6 Accessibility of Welsh Law**

The problems with inaccessibility of legislation within the UK are well recognised and well documented, including by the Commission on Justice in Wales. The Welsh Government has been conscious of the problem for many years and has been taking action (where we have been able to do so) to improve the accessibility to Welsh law since 2011.

In 2019, the Senedd enacted legislation which commits the Government to take action. The purpose of the Legislation (Wales) Act 2019 (which implements recommendations of the Law Commission in its report on The Form and Accessibility of the Law in Wales) is to make Welsh law more accessible, clear and straightforward to use.<sup>64</sup> It makes provision about the interpretation and operation of Welsh legislation and requires the Counsel General and the Welsh Ministers to take steps to improve the accessibility of Welsh law.

Although resolving the issues of inaccessible law will require collective effort within the Senedd, the Welsh Government and beyond, the Counsel General has the responsibility of overseeing the accessibility of Welsh law as a whole. It is intended that this will be achieved by requiring the Counsel General to keep the accessibility of Welsh law under review, and for the Welsh Ministers and the Counsel General to bring forward a programme of projects designed to make the law more accessible. This enables a long-term focus to be brought to what will need to be a sustained effort to create a modern, well-ordered, and bilingual statute book for Wales.

For each Senedd term, the Welsh Ministers and the Counsel General must develop and implement a programme of activity designed to improve the accessibility of Welsh law. The specific content of each programme will be a matter for the Welsh Ministers and the Counsel General of the time, but each programme must make

---

<sup>64</sup> Law Commission no 366, October 2016

provision to consolidate and codify Welsh law, maintain codified law, promote awareness and understanding of Welsh law, and facilitate use of the Welsh language. Details of the first programme are below.

We also continue to work with the Law Commission of England and Wales on projects relating to Welsh law. The Law Commission published its report on [Regulating Coal Tip Safety](#) in Wales in March 2022 and as discussed earlier in this paper have also recently reported on their work on Devolved Tribunals for Wales. Both projects consider the current legislative frameworks for these areas and make recommendations about how the law in these areas can be simplified, modernised and developed.

Future projects will be identified as part of our ongoing work with the Law Commission, which could include law reform projects or reviews of technical areas of the law, such as the electoral law underpinning local and Senedd elections, or the law governing online publication of statutes and statutory instruments. These are illustrative examples of areas of the law where the Law Commission could support the Government's ambitions to simplify and modernise the law.

In 2021-26, the Government will:

- Bring forward four consolidation Bills, including one on historic environment legislation and one on planning law. Consolidation Bills are ones which bring together all or most of the (generally primary) legislation on a specific subject restating it into a single new Act so that it can easily be found, and by modernising the form and drafting of the law make it easier to understand and apply;
- Bring forward a statute law repeal Bill (this is a Bill which removes obsolete and spent provisions from the statute book, so helps to declutter legislation);
- Undertake the restatement of a number of statutory instruments (subordinate legislation) to help improve their accessibility in a similar way to that of the consolidation of primary legislation;
- developing and expand the [Cyfraith Cymru / Law Wales website](#);
- classify existing legislation by subject and expand the functionality on the [legislation.gov.uk website](#) (operated by The National Archives), so as to enable Welsh law to be searched for and located by its subject matter;
- ensure that the English and Welsh language texts of Welsh law held on the legislation.gov.uk website is available in its up-to-date form in both languages (currently this is only the case for some of the English language texts of our legislation);
- develop the Government's approach to preparing bilingual legislation, using linguistic technology to its full potential as we seek to improve efficiency, continue to ensure accuracy and use natural syntax and 'plain language'; and
- explore the potential for using machine learning and artificial intelligence to make Welsh law more accessible.

As other projects develop, they will be added to the programme.

The Counsel General will report on progress against the Government's programme to improve the accessibility of Welsh law each year, with the first report due in September 2022.

A particularly important, albeit temporary, contribution to increasing accessibility of the law was made through the publication of guidance on the implications of emergency legislation brought forward to respond to Covid-19. While many governments across the world produced guidance for their citizens, the guidance produced in Wales was notably extensive, tailored to particular local areas when restrictions differed across geographical boundaries, and of course was also bilingual. At the peak of the pandemic, certain guidance pages were receiving hundreds of thousands of visits within days of being published.

While the pace of its production meant that on occasion the guidance ran the risk of oversimplifying the legal position, feedback consistently demonstrated that the guidance was widely welcomed and helped a great many people navigate the unprecedented restrictions placed on everyday life.

### **10.7 Public legal education and Pro Bono work**

Taken together, we hope that the steps set out so far in this chapter are improving access to justice and in particular lessening the impact of legal aid cuts. However, we are under no illusions that they are sufficient to compensate for the level of damage done to access to justice. As such, we continue to work with partners to identify and explore other areas where we can help people understand the law and secure the support they need, when they need it.

One element of this is public legal education. This covers a wide range of activities aimed at helping people increase their knowledge and understanding of the law and develop their skills and confidence to manage legal issues they may face. The scope of public legal education is wide. It may include classroom and community-based education programmes, awareness-raising campaigns, online services and resources, and information leaflets and videos.

The recent [\*Strengthening and advancing equality and human rights in Wales Review\*](#) was a reminder of the need for equality and human rights education to be delivered in Wales, including through research, development of handbooks, manuals or

training materials and awareness raising activities. The [Cyfraith Cymru / Law Wales](#) website, which provides information and explanation about Welsh law and the constitution of Wales, is an important tool towards this end.

In schools, the new curriculum will be rolled out from September 2022 initially for all primary schools and those secondary schools who wish to roll out to year 7. For secondary schools the new curriculum will not be mandatory until 2023, with roll-out to Years 7 and 8 together and then year on year afterwards.

Legal contexts are part of the [Statements of What Matters](#) in the Humanities Area of Learning and Experience, meaning that they are mandatory learning for all learners and all schools. Supporting this, the statutory guidance, which all schools must have regard to, states that learners should develop an understanding of how systems of government in Wales operate and affect people's lives, and how they compare with other systems. Within the [Relationships and Sexuality Education Code](#), there is mandatory learning about learners understanding the legal protections and rights around relationships and knowing how and where to seek safety and support.

The new curriculum allows for a broadening of learning, supporting schools to be more flexible in their approaches, and provides education leaders and practitioners with greater agency, enabling them to be innovative and creative. It gives schools a clear framework but also gives them the flexibility to meet the needs of their specific learners in local communities. A key part of that flexibility will be enabling practitioners to decide which topics, subjects and resources will best contribute to their learners' understanding.

As autonomous bodies, universities in Wales are responsible for higher education curricula and for deciding what programmes and courses to offer. Examples of public legal education have though been evidenced in at least two of our Welsh institutions through their [Civic Mission](#) work. One institution linked with a local school and provided the opportunity for a pioneering scheme which encourages and rewards young people for trying new activities, allowing the pupils to meet staff, tour the campus and to experience lectures and workshops. Another institution offers public understanding of law 'Street Law' workshops in secondary schools and community groups with the aim of promoting a greater understanding of law and legal issues.

Through the interactive workshops, audiences engage on legal issues that are of particular relevance to them through a range of activities.

Finally, public legal education includes the work undertaken by the Welsh Government to promote awareness of welfare benefit entitlements through national publicity campaigns, along with work to train frontline workers in various agencies to recognise their clients' welfare entitlements and identify help with their financial literacy.

It is also important to recognise that lawyers across Wales voluntarily provide a significant amount of legal advice and representation free of charge to citizens, community groups and charities. While this pro bono legal work is an integral part of the sector, it can only meet a proportion of the need, so it can only be an adjunct to a proper system of publicly funded legal services and not a substitute for it. For example, the Law Society has a [Pro Bono Charter](#), which is a public statement inviting law firms, in-house legal teams and alternative business structures to sign to show a commitment to improving access to justice. An award-winning illustration of a Welsh pro bono scheme is Cardiff Lawyers Care, which received the LawWorks Cymru Award in December 2021. This is a partnership between Cardiff & District Law Society, the University of South Wales Law Clinic, LawWorks Cymru and The Wallich to provide pro bono legal help to people experiencing homelessness in Cardiff.

The Bar Council supports the charity Advocate which facilitates barristers in providing pro bono legal advice and representation without charge to those in need. Advocate has appointed its first caseworker based in Wales, to identify the pro bono need in Wales and develop support for barristers in Wales seeking to undertake more pro bono work. The Wales and Chester Circuit of the Bar are in dialogue with Advocate about increasing the involvement of barristers in Wales in pro bono work.

A roundtable meeting of key organisations is being planned for the summer of 2022 in order to consider how pro bono work by solicitors, barristers and law students can be further supported and coordinated in Wales.

The SRA is also currently leading on two initiatives to help improve access to justice. The first is considering how technology can help remove barriers for people to

access legal advice and is being developed with universities in both Wales and England. The second is a public legal education project and is being developed with other legal services regulators and the Office of the Immigration Services Commissioner. It will produce consumer focused information for those in need of legal advice about immigration and asylum issues.

### **10.8 Advancing and protecting human rights**

Finally, an important element of access to justice is ensuring people are able to rely on and, where appropriate, enforce their human rights. As set out more fully in [chapter 4.4](#), our intention is to strengthen and advance equality and human rights in Wales, including by incorporating both the UN Convention on the Rights of Persons with Disabilities (UNCRPD) and the Convention on the Elimination of all Discrimination against Women (CEDAW). We are considering both taking these forward separately or a more holistic approach, such as a Welsh Human Rights Bill while taking forward work on guidance on human rights, public legal education, impact assessment and the operation of the public sector equality duty.

While we take steps in Wales to attempt to expand rights protection, regrettably we also need to remain vigilant in identifying and responding to the possibility of further reductions in access to justice arising from the UK Government. We remain concerned about the UK Government's future intentions with regard to limiting judicial review, but the greatest current threat may be the proposal to replace the Human Rights Act.

The Minister for Social Justice and the Counsel General and Minister for the Constitution issued a [joint statement](#) on 12 January 2022 making it clear that the Welsh Government will not tolerate any dilution of rights, and responded to the UK Government's consultation on 7 March. Our response noted, among many other points, that:

- vulnerable and disadvantaged people are being unfairly targeted by these proposals, which appear to weaken or reduce the rights of some groups. It is particularly concerning that the proposals seek to distinguish between “deserving” and “undeserving” people or cases;
- the positive contributions of the Human Rights Act and Convention have been downplayed. We are disappointed that the UK Government has ignored much

of the positive evidence gathered during the [Independent Human Rights Act Review](#) led by Sir Peter Gross;

- many of the proposals are not supported by evidence, or use evidence unfairly or inappropriately. They rely on extreme cases to justify change and misrepresent how UK courts have acted, which overwhelmingly is proportionate and responsible in applying international human rights laws with full respect for the laws of the UK; and
- the consultation is a missed opportunity to explore the extension of social and economic rights.

The requirement that legislation passed by the Senedd must be compatible with the Human Rights Act means that the Act is fundamental to the Welsh devolution settlement (as it is to the other devolution settlements of the UK). As such, it would be a matter of serious concern if the UK Government were to contemplate acting in this area without the agreement of all of the UK's national legislatures.

## Chapter 11: The legal sector and economy of Wales

A strong legal sector is the bedrock of a fair and effective justice system. Whatever steps governments take to prevent people coming into contact with the legal and justice systems, and whatever they do to simplify the use of those systems, there will always be many circumstances that individuals and businesses cannot navigate without legal advice and representation. A vibrant legal sector is essential for ensuring all people, businesses and communities across Wales can access the advice and support they need when they need it, and for supporting our vision for a better justice system for the people of Wales. As well as being important socially, the legal sector makes a significant contribution to the Welsh economy. This chapter highlights our work with the legal sector to grow its presence in Wales and beyond, increase the vital contributions it makes to the economy, and improve the sustainability and diversity of the sector, and its ability to meet the needs of people and businesses.

### 11.1 Context

The legal sector in Wales has faced considerable challenges during the past decade. In [chapter 10](#), we identified the direct impacts on access to justice of the significant reductions in legal aid eligibility and funding which the UK Government introduced through the Legal Aid, Sentencing and Punishment of Offenders Act 2012. As well as preventing people receiving the legal support they need, these reductions have had very serious adverse impacts on the viability of law firms and legal practitioners. Inevitably, the cuts have impacted most significantly smaller high street law firms in more remote and less affluent areas of Wales with their focus on providing private client legal services to people in their local communities.

Although criminal law practice is by no means the only part of the sector affected, the changes to criminal legal aid are illustrative of this. Sir Christopher Bellamy QC, in his independent review of criminal legal aid, published in December 2021 and discussed in [chapter 10](#), highlighted a dilemma facing law schools advising students considering a career in criminal legal aid work. Should law schools encourage students to enter an area of practice with few opportunities for social mobility and progression, or advise them against doing so, in which case without new talent there

are serious risks to the future of criminal defence practitioners? This has been the reality in Wales since 2013, with a reducing and ageing cohort of duty solicitors, as highlighted in evidence to the Thomas Commission. Another stark finding of the Commission was that data provided by the Legal Aid Agency showed spending on criminal legal aid per head of population was 30% higher in England than in Wales (£15.00 in England compared to £11.50 in Wales).

Other justice reforms introduced by the UK Government over the past decade have also had serious adverse impacts on the legal sector in Wales, not least the significant programme of court closures. Of course, the scale of the challenges has increased markedly during the past two years through the significant impacts of the Covid-19 pandemic.

## **11.2 The Law Council of Wales**

Addressing these challenges, and making the most of opportunities for the legal sector in Wales, requires strong and effective partnership working. For this reason, the Welsh Government prioritised working with the sector to establish a new Law Council of Wales, recommended by the Thomas Commission, at the earliest opportunity after the Covid-19 crisis had abated sufficiently to allow any focus on longer-term objectives.

The Law Council launched in November 2021, bringing together senior representatives from the legal professions, law schools, judiciary and others with a stake in the legal sector in Wales. While it is independent of both the Welsh and UK Governments, we expect the Law Council will play a leading role in encouraging close collaboration across the sector with its ability to mobilise the main elements of the legal community. We engaged the legal sector from early 2020 to develop a shared vision for the Law Council. Based on clear and consistent feedback from the sector, its remit extends beyond legal education and training, and accessibility of Welsh law, as envisaged by the Thomas Commission, to also cover economic development of the sector, and legal technology and innovation.

The Law Council provides a vital forum to enable the Welsh legal community to come together to agree priorities, establish working groups, and collaborate to support the growth of the sector and further the interests of the law in Wales. Its executive committee represents the key elements of the sector to enable it to

consider the challenges facing the sector in Wales, and formulate and follow up on collective action for addressing those challenges. It is expected the Law Council will determine its constitution, working arrangements, and priorities and work programme during its first establishment year.

### **11.3 Welsh Government support for the legal sector**

Given the wide range of Thomas Commission recommendations for increasing the strength and sustainability of the legal sector in Wales, we will need to continue prioritising how we use the Welsh Government's limited resources to support the sector. We envisage working in close partnership with the Law Council, and the wider legal sector, to align those priorities with key recommendations of the Thomas Commission relating to:

- business support for the legal sector: for commercial firms, high street firms, the Bar and in-house settings;
- legal education and training, and pathways into the legal professions;
- sustainability of the sector and legal practice, particularly in post-industrial and rural areas of Wales; and
- inward investment in the sector, and the promotion of South Wales as a legal centre.

In the meantime, we are continuing to build stronger relationships with stakeholders across the legal sector, including representative bodies, regulators and the judiciary, to ensure measures are in place to support the long-term development of the sector. For example:

- We are investing in legal technology infrastructure in Wales to help equip the sector for 21<sup>st</sup> century legal practice. This includes £3.9 million of European Regional Development Funds in a four-year programme supporting the launch and work of the Legal Innovation Lab Wales at the Hillary Rodham Clinton School of Law in Swansea.
- We are working with the sector to provide £100,000 of funding to enable legal practices in Wales to gain cyber security accreditation through a scheme managed by the Law Society. With cyber-attacks becoming increasingly

prevalent, this investment will make a significant contribution to enabling the legal sector to become more cyber-resilient.

- Business Wales provides information, advice and guidance to support the micro and SME businesses in the legal sector to become more resilient, innovate and grow. Targeted support is available through events and advisory services in areas such as accessing finance, human resources and employment practices, tendering and procurement, becoming resource efficient, marketing and digital exploitation.
- Business Wales also works with businesses in the legal sector to inform them about and help them access opportunities across government and in the wider business support ecosystem. Tailored support is available through the Accelerated Growth Programme for businesses facing exponential growth.
- We are looking at how pathways into the legal professions can be extended to support more young people to enter the law from a range of backgrounds with the joint aims of diversifying the legal sector workforce and retaining more of our home-grown talent in Wales.
- We have been working with the Chartered Institute of Legal Executives (CILEX), who play an important role in the provision of non-traditional access to the legal profession, on the introduction of two new CILEX qualifications in Wales: a paralegal qualification at level 3; and an advanced paralegal qualification at level 5. Following a consultation in January, a new apprenticeship framework for those qualifications was issued in April 2022. CILEX is working with the legal sector and us on promoting this new apprenticeship career pathway, with the aim of recruitment starting by late spring and the programme being operational this September.
- We will shortly be commissioning a workforce skills needs analysis for the legal sector to assess the added value solicitor apprenticeships could bring to the sector, including their potential use in smaller law firms in more remote and less affluent areas of Wales.
- We have developed in partnership with the Law Society's Wales office a webinar series for legal practices on business and digital support, cyber

security, and legal technology and innovation, which launched in November 2021.

- We have been engaging with the Solicitors Regulation Authority (SRA) regarding the new Solicitors Qualifying Examination (SQE) and its availability through the medium of Welsh. The SRA introduced the SQE in September 2021 as a new route to qualifying for solicitors. It is designed to assure consistent, high standards for all qualifying solicitors and remove unjustifiable barriers to entry, and it will become the single assessment for all aspiring solicitors in England and Wales. Following extensive consultation in Wales, the SRA has confirmed it intends to introduce the SQE in Welsh on a phased basis, with candidates able to take the whole examination in Welsh by 2024. The SRA is currently undertaking pilots to support the development of this, to provide the best experience for candidates. As part of the phased approach, the SRA has advised it will be providing on its SQE assessment website a range of supporting materials to help candidates who take the SQE in Welsh. This will include the development and publication of a glossary of Welsh legal terms for use in the assessments.
- We have continued to develop our outsourcing of legal work. The National Procurement Service Solicitors Framework includes a panel of member firms to support Welsh Government policy and operational teams on projects with significant public law, public policy, or multi-disciplinary aspects that cannot be supported fully in-house. We have a separate panel of approved barristers, which we renewed in March 2021, and the proportion of barristers based in Wales has increased from 39% to 47%.
- Alongside this, we have initiated discussions with the leaders of the Wales and Chester Circuit of the Bar about growing the public law Bar in Wales. We are in the process of setting up a working group of senior representatives of the Circuit and the Welsh public sector to take this forward and strengthen relationships between the public sector and the Circuit.
- An amendment to the Civil Procedure Rules has been made, adding a new Rule 7.1A, to require claims brought in the Administrative Court against Welsh public bodies challenging the lawfulness of their decisions to be issued and

heard in Wales. This was one of the first Thomas Commission recommendations implemented, with one of the upshots being retaining more legal work in Wales.

- We have been consistently pressing the Ministry of Justice about the poor condition and facilities of the Cardiff Civil Justice Centre, and the increasingly urgent need to replace it with 21st century premises properly equipped for litigants, lawyers and judges. A Civil Justice Centre fit for a capital city is an essential component of a vibrant and growing Welsh legal sector and attracting more legal work to Wales.

## Chapter 12: Governance, constitutional issues and the law of Wales

In this document we have considered both the development of a long term vision for justice and specific actions that can be taken before we are able to put that vision into place. There are also improvements to the governance of justice matters which can be made under the current devolution settlement, some of which (such as the creation of the Law Council of Wales or giving greater structural independence to the administration of the devolved tribunals) have been covered elsewhere in this document. This chapter considers other improvements to governance not already discussed elsewhere.

### 12.1 Leadership within the Welsh Government

The Commission on Justice in Wales (Thomas Commission) recommended that “clear and accountable leadership on justice in the Welsh Government must be established under the current scheme of devolution”.<sup>65</sup> It noted a number of different functions within the Welsh Government that were either directly concerned with the delivery of justice (such as the administration of the devolved tribunals) or impacted on the justice system (such as the design of legislation, or the prevention of various forms of criminal activity), and concluded that these responsibilities were not being discharged in a sufficiently coordinated manner, “in part because there is no clear leadership structure”.<sup>66</sup>

We accepted this recommendation and took immediate steps to address it through the creation of a Cabinet Sub-Committee on Justice. This first met in early 2020 and has met periodically since. It was initially chaired by the First Minister and attended by the then Counsel General and Deputy Minister and Chief Whip. The aims of the Sub-Committee are to:

- provide strategic leadership for justice functions currently devolved to Wales;
- direct all governmental activity in response to the report of the Commission on Justice in Wales;

---

<sup>65</sup> [Justice in Wales for the People of Wales](#), Recommendation 61

<sup>66</sup> Paragraph 12.71

- ensure synergy across portfolios to ensure a coordinated approach to justice matters;
- agree Welsh Government positions on justice initiatives arising from the UK Government; and
- lead discussions with the UK Government on devolution of justice.

Following the 2021 Senedd elections, governance arrangements were further strengthened by the clear allocation of responsibility for “justice policy” to a specific minister – namely, the Counsel General and Minister for the Constitution (hereafter referred to as just “the Counsel General”). The Counsel General was also given responsibility for specific areas of justice policy, such as:

- the response to the report of the Thomas Commission;
- tribunals’ policy;
- liaison with the legal sector; and
- accessibility of Welsh law.

Since taking on these responsibilities, the Counsel General has also assumed the chair of the Cabinet Sub-Committee on Justice. The other standing members of the Cabinet Sub-Committee are the First Minister and the Minister for Social Justice, who has responsibility for a number of other functions relating to the justice system, including:

- relations with the UK Government in respect of prisons and the probation service;
- relations with Police and Crime Commissioners, police and other criminal justice agencies;
- community safety;
- Youth Justice and Women’s Justice blueprints;
- Anti-slavery;
- tackling violence against women and girls, domestic abuse and sexual violence;
- equality and human rights; and
- Advice and Advocacy Services.

Other ministers attend the Cabinet Sub-Committee as required; for example, the Deputy Minister for Social Services attended to discuss the Family Drug and Alcohol Court pilot. External stakeholders can also be invited – for example, Police and Crime Commissioners have attended. In this way, we are able to ensure that all relevant perspectives are represented in decision making that impacts the justice system.

Within the civil service, there is also for the first time a dedicated, if small, Justice Policy Division which supports the Counsel General and the Cabinet Sub-Committee in overseeing the response to the Thomas Commission and in attempting to ensure a co-ordinated approach to justice matters across the Welsh Government.

## **12.2 Collaboration with other elements of the justice system**

At many points within this document, we have provided examples of how the Welsh Government interacts with elements of the justice system, for example:

- through the Policing Partnership Board and the hosting of the Police Liaison Unit;
- through participation in the Criminal Justice Board for Wales;
- through the governance of the two Blueprints;
- through participation in the Family Justice Network;
- through the regular meetings between the First Minister, Counsel General and the Lord Chief Justice and (separately) the President of Welsh Tribunals; and
- through the Justice in Wales Strategy Group, co-chaired by Welsh Government and HM Prison and Probation Service.

The new Law Council of Wales, discussed in [chapter 11](#), will be another important part of this architecture.

Another new vehicle for co-operation will be the proposed interministerial group on justice between the four governments of the UK, once this is established. The creation of this group is a planned outcome of the review of intergovernmental relations carried out by the four governments, and like other such groups on health, education and so on, is designed to provide for stronger co-operation between the governments – although in the context of justice, Wales is a clear outlier as its government has so little influence over the operation of its justice system.

The above makes for a complex governance structure. It also does not include those elements of justice governance which are entirely comprised of members of the reserved justice system and in which the Welsh Government does not participate. We therefore agree with the Thomas Commission that governance should be simplified, both to improve decision-making and to provide for clearer lines of accountability. However, given the dispersal of responsibilities between Wales and Westminster, no significant simplification can be achieved by Welsh Government alone.

One improvement in accountability which we have welcomed is the establishment of a committee in the Senedd with responsibility for the oversight of justice matters – namely, the Legislation, Justice and Constitution Committee. While that Committee has a great many other responsibilities, it is nonetheless an important part of the infrastructure for improving justice outcomes that there should be a point of accountability to the democratic institution of Wales. Increasing the size of the Senedd has the potential to further strengthen its ability to scrutinise justice matters, which would be of clear benefit to Wales.

### **12.3 Judicial leadership and governance**

The Thomas Commission's [report](#) also includes commentary on the current structures of judicial governance in Wales. As currently constituted, these are matters for the Lord Chief Justice, with the exception of the Supreme Court.

The composition of the Supreme Court is partly determined by statute, and partly by the discretion of the Court in determining the factors it will consider in recruiting and selecting new judges. In particular, the Constitutional Reform Act 2005 requires a selection commission to “ensure that between them the judges will have knowledge of, and experience of practice in, the law of each part of the United Kingdom”; but the Act goes on to define the “parts of the United Kingdom” as meaning (a) Scotland, (b) Northern Ireland and (c) England and Wales”.<sup>67</sup>

An inevitable consequence of legislative devolution is that the law applying in Wales has diverged considerably from, and will continue to diverge from, the law applying in England. We consider that this divergence is already significant enough as to render

---

<sup>67</sup> Sections 27(8) and 60(1) of the Constitutional Reform Act 2005

it inappropriate to consider “the law of England and Wales” to be a single entity, and of course that divergence will only grow. This alone could be considered sufficient reason for a change to the Constitutional Reform Act to provide that there must be at least one judge on the Court with experience of practice in and knowledge of the law of Wales.

However, we acknowledge that there are differences of view as to whether that divergence in laws is sufficient to require specific Welsh representation on the Court. On the other hand, what is unarguable is that the Court has an important constitutional role in determining the boundaries of the UK’s devolution settlements, which differ between Wales, Scotland and Northern Ireland. It is the Supreme Court, and the Supreme Court alone, which rules on the legislative competence of Wales’ Parliament, the Senedd. It is not tenable to suggest that such judgments could reasonably be made by a Court with no Welsh representation on it, and still command the confidence of the Welsh public – a point noted by the Court’s then Chief Executive in a review in 2015.<sup>68</sup>

To its credit, the Court has recognised this, and we are grateful to successive Presidents of the Court for maintaining a dialogue with the Welsh Government and for ensuring that the desirability of knowledge and experience of Welsh law and practice has been a factor considered by selection panels. Nonetheless, at time of writing, albeit because of exceptional circumstances that are no fault of the Court, there is no judge with such knowledge and experience on the Court.<sup>69</sup>

The Thomas Commission recommended that even under the present scheme of devolution, Wales should be put in a similar position to Scotland and Northern Ireland in the Supreme Court as regards the appointment of judges to the Supreme Court. We agree with this and have called on the UK Government to act upon it – perhaps in the review of the Constitutional Reform Act to which it has already committed.

---

<sup>68</sup> [Report of my review of the process followed by Selection Commissions making recommendations for appointment to The Supreme Court](#)

<sup>69</sup> Lord Lloyd Jones and Lord Thomas of Cwmgiedd are both on the supplementary panel which means that they can be asked to sit on particular cases.

# ANNEX: OUR WORK PROGRAMME

## What we've done and what we're planning to do

### Prevention and early intervention

**Note:** activities under this heading are not all part of our justice work programme, but are examples of activity which contributes to delivering social justice, reducing crime levels and reducing levels of demand on the justice system.

#### What we've done:

---

Passed the Wellbeing of Future Generations Act.

---

Brought in the socioeconomic duty.

---

Promoted a Child First approach.

---

Developed the Children's Rights Impact Assessment to support ministers in giving due regard to the United Nations Convention on the Rights of the Child.

---

Established the office of Children's Commissioner for Wales.

---

Established Flying Start and Families First programmes.

---

Supported establishment of the ACE Support Hub for Wales.

---

Supported the adoption of Enhanced Case Management for young people in contact with the justice system.

---

Supported the delivery of Early Action Together programme.

---

Prohibited the physical punishment of children by abolishing the defence of reasonable punishment.

---

Developed a framework on embedding a whole school approach to emotional and mental wellbeing.

---

Diverted an extra £2m to local authorities for school and community – based counselling services.

---

Invested around £2m per year in the Wales Police Schools Programme.

---

#### What we're planning to do:

---

Continue to fund the ACE Support Hub until at least 2025.

---

Develop an ACEs Plan.

---

Support work on a new trauma-informed practice framework.

---

Explore how children leaving custody might be included within the Basic Income for Care Leavers pilot

---

Work with Violence Prevention Unit on data linking project to understand links between educational risk factors and criminal activity.

---

Develop a prevention framework for young people at risk of coming into contact with the justice system.

---

Work with partners on the next steps for the Women's Pathfinder programme and further embedding prevention and diversion activity in Wales.

---

# EQUALITY AND JUSTICE

## What we've done:

Passed the Violence Against Women, Domestic Abuse and Sexual Violence (VAWDASV) Act 2015.

---

Consulted on a National Strategy to prevent gender-based violence, domestic abuse and sexual violence and to protect and support victims.

---

Funded 13 remote court hearing facilities across Wales for victims of VAWDASV.

---

Established Traumatic Stress Wales.

---

Established three Evidence Units to collect and monitor Welsh data on equality, race disparity and disability disparity.

---

Developed and consulted on An Anti-racist Wales Action Plan, including criminal justice.

---

Run the Hate and Community Tension Board Cymru.

---

Funded projects such as the Community Cohesion Programme and the Wales Hate Support Centre.

---

Consulted on a draft LGBTQ+ Action Plan.

---

## What we're planning to do:

Incorporate both the UN Convention on the Rights of Disabled People (UNCRPD) and the Convention on the Elimination of all Discrimination against Women (CEDAW) into Welsh law.

---

Consider the case for a Welsh Human Rights Bill.

---

Take forward recommendations from Swansea University-led research into Strengthening Equality and Human Rights.

---

Publish and drive forward actions relating to justice system within final agreed VAWDASV strategy and establish the VAWDASV blueprint in Wales.

---

Publish and drive forward actions relating to justice system within final agreed LGBTQ+ Action Plan.

---

Publish and drive forward actions relating to justice system within An Anti-Racist Wales Action Plan, and hold criminal justice system to account for its own Anti-Racism Plan.

---

Expand the use of remote court hearing facilities for vulnerable witnesses into family and other civil proceedings.

---

Explore the case for allowing juries in criminal trials to deliberate in Welsh.

---

# FAMILY JUSTICE

## What we've done:

Created and run the Family Justice Network to monitor the performance and operation of the family justice system in Wales.

---

Monitored local authorities against Reduction Expectation Plans.

---

Funded "Reflect" services aimed at avoiding children and women entering the care and justice system.

---

Provided free access to digital courses designed to prevent or manage parental separation.

---

Established a Family Drug and Alcohol Court pilot in Cardiff and the Vale of Glamorgan.

---

## What we're planning to do:

Explore radical reform of current services for children looked after and care leavers, and eliminate private profit from the care of children looked after during the next Senedd term.

---

Continue to implement the Family Justice Network Strategic Plan.

---

Monitor and evaluate digital courses on parental separation.

---

Participate in the Private Law Working Group established by the Family Justice Board and in the evaluation of the North Wales pathfinder project.

---

Evaluate the Family Drug and Alcohol Court pilot and consider wider rollout.

---

# POLICING AND COMMUNITY SAFETY IN WALES

## What we've done:

Worked with Wales' four police forces to ensure successful enforcement of Covid-19 regulations.

---

Invested over £22m per year to fund 600 Police Community Support Officers in Wales.

---

Provided funding to establish the Wales Safer Communities Network.

---

Engaged with policing in Wales on joined-up work to address VAWDASV and peer-on-peer sexual harassment.

---

Produced a Code of Practice on Ethical Employment in Supply Chains.

---

Pursued the provision of UK Government funding for police apprenticeships.

---

Established the Go Safe / the Wales Road Casualty Reduction Partnership to support 20mph pilot areas and 50mph low emissions zones.

---

Worked with police forces on suicide prevention and reduction strategy.

---

Created the post of all-Wales Wildlife and Rural Crime Coordinator.

---

## What we're planning to do:

Pursue the devolution of policing in discussions with the UK Government.

---

Fund out of court parenting support scheme for parents who use physical punishment.

---

Re-commission the Wales Hate Support Centre for a further 3 years.

---

# CRIMINAL JUSTICE: DEVOLVED FUNCTIONS

## What we've done:

Jointly agreed a Partnership Agreement for Prison Health.

---

Published the Framework to support positive change for those at risk of offending in Wales, developed jointly with HMPPS in Wales.

---

Agreed an All Wales Protocol to reduce the criminalisation of care experienced children and young adults.

---

Developed a revised service specification for the Forensic Consultation and Treatment Service (FACTS) for young people in the justice system.

---

Funded Promoting Positive Engagement for Young People at Risk of Offending to provide preventative and diversionary support for children within or at risk of entering the youth justice system.

---

Designed and implemented 'Supporting Transition of Military Personnel' (SToMP) project to support veterans caught in the criminal justice system.

---

## What we're planning to do:

Take forward the Accommodation in Wales Strategic Framework.

---

Increase the capacity of Housing First services across Wales, including for those who are in prison.

---

Take forward our responsibilities under the Partnership Agreement on Prison Health, including agreed standards for mental health services, development of a new Substance Misuse Treatment Framework for prisons and work on Medicines Management.

---

Publish and implement a Wales Prison Education Policy.

---

Ensure that young people in the secure estate can access and benefit from the support available through the Young Person's Guarantee.

---

Explore the development of targeted employability support for those due to leave the prison estate.

---

Explore the opportunity of prisoners being able to access other employability programmes whilst still in prison.

---

Keep following through on the recommendations in the evaluation of the SToMP project.

---

# CRIMINAL JUSTICE REFORM PROGRAMMES

## What we, and partner organisations have done:

Agreed a framework to support positive change for those at risk of offending in Wales.

---

Agreed and progressed implementation of Women's Justice and Youth Justice Blueprints.

---

Embedded diversionary services for women across Wales.

---

Delivered and evaluated Women's Pathfinder initiative.

---

Established Women's Pathfinder Case Conferences in each probation delivery unit in Wales.

---

"Visiting Mum" service for women held at HMP Eastwood Park and HMP Styal.

---

Launched a Sentencer Engagement Strategy, including training for professionals.

---

Agreed a vision for Welsh children in the secure estate.

---

Piloted alternative approach to remanding children in police custody.

---

## What we're planning to do:

Open the first Residential Women's Centre as a pilot.

---

Consider what can be done to further the use of the Youth to Adult Transitions principles and guidance.

---

Develop work on future models for secure youth provision in Wales.

---

Engage in work with partners to reduce the number of children held on remand.

---

Develop a practical prevention framework for youth justice, identifying and further embedding existing good practice and collaboration.

---

Further embed a trauma-informed approach in youth secure environments in Wales.

---

Push for a problem solving court pilot in Wales.

---

# CIVIL AND ADMINISTRATIVE COURTS AND TRIBUNALS IN WALES

## What we've done:

Commissioned the Law Commission to review the devolved tribunals.

---

Started to develop the detailed policy to take forward reform of the devolved tribunals in Wales.

---

## What we're planning to do:

Create a unified first tier Tribunal for Wales as part of a structurally independent Tribunal Service.

---

Create an Appeals Tribunal for Wales.

---

Transfer appeals against school exclusions to the new first tier Tribunal (subject to consultation).

---

Expand the role of President of Welsh Tribunals.

---

Explore the most effective production and publication of Welsh tribunals data.

---

Prepare for the impact of Mental Health Act reforms on the caseload of the Mental Health Review Tribunal for Wales.

---

Engage with stakeholders to take forward recommendations of the Commission on Justice in Wales to co-ordinate and rationalise civil and administrative dispute resolution in Wales.

---

Discuss with UK Government the Thomas Commission recommendations relating to coroners' services.

---

# ACCESS TO JUSTICE

## What we've done:

Introduced the Single Advice Fund ("SAF"), with annual funding of c.£11m, supporting advice services across Wales to some 120,00 people annually.

---

Enacted the Legislation (Wales) Act 2019 to make Welsh law more accessible, clear and straightforward to use.

---

Published our first programme of activity under the Act, setting out our commitment to projects to achieve that goal over the life of the Senedd.

---

Produced a range of guidance on Covid-19 regulations.

---

## What we're planning to do:

Evaluate the SAF and examine the feasibility of an unstructured grant-funding stream.

---

Report on progress against our programme to improve the accessibility of Welsh law.

---

Work with the Law Commission of England and Wales to identify further projects relating to Welsh law.

---

Make the case for the evaluation of outcomes of remote hearings and for a strategy for remote and physical access to courts in Wales.

---

Keep making the case for the fuller implementation of the recommendations of Sir Christopher Bellamy's Independent Review of Criminal Legal Aid.

---

Work with the legal professions to expand public legal education and identify how we can best support pro bono services.

---

Oppose any proposals that will reduce the level of rights protection in the Human Rights Act.

---

# THE LEGAL SECTOR AND ECONOMY OF WALES

## What we've done:

Worked with the legal sector to establish the Law Council of Wales.

---

Invested £3.9 million of European Regional Development Funds in the Legal Innovation Lab Wales.

---

Provided funding to enable legal practices in Wales to gain cyber security accreditation.

---

Issued a new apprenticeship framework to support two new CILEX qualifications in Wales, at paralegal and advanced paralegal levels.

---

Supported an amendment of the Civil Procedure Rules to require claims brought in the Administrative Court against Welsh public bodies challenging the lawfulness of their decisions to be issued and heard in Wales.

---

## What we're planning to do:

Work in partnership with the Law Council of Wales and the wider legal sector to identify key actions to improve the sustainability of the legal sector in Wales.

---

Commission a workforce skills needs analysis to consider the case for funding solicitor apprenticeships.

---

Take forward a working group on growing the public law Bar in Wales.

---

Continue to make the case for an appropriate replacement for Cardiff Civil Justice Centre.

---

# GOVERNANCE, CONSTITUTIONAL ISSUES AND THE LAW OF WALES

## What we've done:

Created the Cabinet Sub-Committee on Justice in response to the Commission on Justice in Wales' recommendation for clear and accountable leadership on justice.

---

Collaborated with other justice agencies to secure the best outcomes for Wales under the current devolution settlement, including the Policing and Partnership Board for Wales, the Criminal Justice Board for Wales and the Blueprints for Youth Justice and Female Offending.

---

Established inter-ministerial dialogue with the UK Government on the recommendations of the Commission on Justice in Wales.

---

Welcomed the Legislation, Justice and Constitution Committee's oversight of justice matters, providing a point of accountability to the Senedd.

---

## What we're planning to do:

Continue to collaborate with other elements of the justice system, including the proposed four UK nations inter-ministerial group on justice.

---

Pursue the case for guaranteed Welsh representation on the Supreme Court.

---

