



JUSTICE IN WALES FOR THE PEOPLE OF WALES

October 2019

The Commission on Justice in Wales
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FOREWORD

Our task was to review the operation of the justice system in Wales and to make recommendations for its long-term future. This required us to examine a range of issues given that the provision of justice by the state is one of its basic duties.

Wales has a long and distinctive history of placing justice at the centre of its culture and society. Our enquiry therefore centred on whether it met the needs of the people of Wales, particularly those disadvantaged for reasons such as severe economic deprivation or being the victim of crime. Our aim was to assess whether the justice system as it currently operates in Wales is fair and just and makes a contribution to economic prosperity. With this in mind our report sets out what we found and makes recommendations focused on this objective.

We have worked as a team, both as Commissioners and with our Secretariat. As Commissioners we all have different experiences of the justice system. Those differences enabled each of us to examine the whole system in depth and question each others' views on every aspect of it. Working with the Secretariat, we subjected the evidence to careful analysis. We reached unanimous conclusions on our findings and recommendations following thorough discussion and debate. I would like to express my gratitude to each

of the Commissioners for the dedication and time they have given, and to each of the members of the Secretariat for the way in which they have worked so hard and closely with us during the period of our enquiry.

We owe an immense debt of gratitude to the many people who provided detailed and penetrating submissions, to those who gave oral evidence and answered our detailed questions, and to a small number of individuals who provided us with expert help during the final stages of our work. This has enabled us to write an evidence-based report informed solely by what we found and by what we consider is in the overwhelming interests of the people of Wales.

We address our report to the Welsh Government. It has been our privilege to be given the opportunity by the Welsh Government to undertake this task. We hope that we have discharged the heavy responsibility placed on us. The evidence we obtained about the current justice system in Wales is presented in an unvarnished manner. Our recommendations, radical though some need to be, will give the people of Wales a better means of achieving a system which provides access to justice, can be trusted to deliver justice and puts justice again at the heart of their nation and its prosperity.

EXECUTIVE SUMMARY

Our overall conclusions

1. The Commission's task has been to review for the first time in over 200 years the operation of the justice system in Wales and set a long-term vision for its future. We have unanimously concluded that the people of Wales are being let down by the system in its current state. Major reform is needed to the justice system and to the current scheme of devolution. We have reached a unanimous set of conclusions and recommendations which when implemented would deliver justice in Wales for the people of Wales.
2. Justice should be at the heart of government. 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. Under the current scheme of devolution there is no properly joined up or integrated approach, as justice remains controlled by the Westminster Government. Consequently, the people of Wales do not have the benefit which the people of Scotland, Northern Ireland and England enjoy by justice being an integral part of overall policy making. There is no rational basis for Wales to be treated differently, particularly as Wales has its own long legal tradition.
3. The reductions in the justice budget made by the Westminster Government since 2010 have been amongst the most severe of all departmental budget cuts. The impact on Wales has been significant as the interests of Wales have not been at the forefront of the Westminster Government's policy decisions. The Welsh Government has used its own money, in addition to permitting rises in council tax, to try and mitigate the damaging effects of these policies. The result is that almost 40% of the total funding is actually contributed in Wales. This is above other tax revenue that is raised from Wales and then allocated by the Westminster Government to Wales. This position is unsustainable when the Welsh Government has so little say in justice policy and overall spending.

4. 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.
5. Our conclusions were reached after consideration of over 200 written submissions from individuals, institutions and organisations; oral evidence from 150 witnesses from across the whole spectrum of the justice system – from those representing victims of crime to those making laws; previous justice reports specific to Wales and reports on the justice system in England and Wales as a whole; and further research commissioned to coincide with our work. The experiences of members of the public from a diverse range of backgrounds in over 80 meetings and events reinforced these conclusions.
6. To set our review in context, we looked beyond Wales, visiting Scotland, Northern Ireland and major English cities. We learnt from policy and practice in several European and overseas countries. 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.

Our findings about the current system

7. We summarise below our detailed findings on the current state of the justice system.

Access to justice

8. The significant cuts to legal aid made in 2012 have hit Wales hard. Proper access to justice is not available with the consequent threat to the Rule of Law. This has resulted in:
- ‘advice deserts’ in rural and post-industrial areas where people struggle to receive legal advice;
 - a serious risk to the sustainability of legal practice elsewhere, especially in traditional ‘high street’ legal services; and
 - increasing numbers of people representing themselves in courts and tribunals with a consequential adverse impact on outcomes and the efficient use of court resources.
9. The Westminster Government is responsible for the policy and delivery of legal aid. However, its policies have not been designed to meet the needs of the people of Wales. The Welsh Government has had to spend its own funds on advice services but this has not succeeded in bridging the gap caused by the cuts to legal aid. Whilst lawyers and others have provided pro bono help and advice, these efforts are insufficient to offset the impact of the significant reductions in legal aid. If, on the other hand, policy were determined and delivered in Wales, there would be overall coordination of the provision of legal aid and advice services to meet the identified needs of people in Wales.

Criminal Justice

10. In criminal justice there is no overall alignment of policy and spending which is essential if the criminal justice system is to be effective in reducing crime and promoting rehabilitation. Instead the arrangements for coordination between devolved and non-devolved bodies are overly complex, are expensive and do not provide transparent accountability for effective performance.

- 11.** The evidence we received showed that:
- despite improvement to the way in which victims are treated, much more needs to be done to include them in the justice system;
 - unlike in England, the number of police officers in Wales has not reduced because the Welsh Government has provided further funds and allowed council tax rises to provide extra funds;
 - the approach to those with mental health issues is not properly addressed within the criminal justice system;
 - a significantly greater proportion of the spending on justice is now on prisons rather than crime reduction. Wales has one of the highest, if not the highest, prison populations per head in Western Europe, even though the evidence is that robust community sentences achieve better outcomes in many cases;
 - for a series of complex reasons, the number of criminal cases prosecuted has fallen since 2013;
 - there is a lack of facilities for women offenders in Wales;
 - Black, Asian and Minority Ethnic people are over represented as offenders within the criminal justice system;
 - in common with England, there are high levels of self-harm and serious assaults in Welsh prisons; and
 - the current devolution scheme has created problems in terms of providing health services for prisoners, as well as other services such as housing which are necessary for rehabilitation on release.
- 12.** A positive development, but one which would be more effective and sustainable if there were policy and delivery alignment, is the joint working between the police and Public Health Wales to address the consequences of Adverse Childhood Experiences. An approach focused on the experiences of children and young people has also informed work to reduce the numbers of first-time entrants into the youth justice system.

Family justice

13. Family justice is another area where there is a complex division between the responsibilities of the Welsh Government and the Westminster Government. There has been an unsustainably high increase in the number of children being taken into care in Wales, with significant variations between local authorities. Often it is not in the best interests of the child to be taken into care as the consequences to the child and society can be disadvantageous.
14. The costs to local authorities and the justice system are also significant. Funds would be much better spent on support for children and their families to prevent problems arising. We welcome the Welsh Government's recent initiative to hold local authorities to account for reducing the number of children in care, those placed out of county and those removed from parents with a learning disability. However, significant further action to tackle this issue is essential in both the short and longer term.

Civil and administrative justice

15. Justice should be delivered efficiently, effectively and at a proportionate cost. This is not the current position in civil and administrative justice. In addition to a lack of legal aid, people with civil disputes are faced with high fees which deter many from pursuing a court case. Resolving a dispute is complex for many reasons, including the lack of coordination between the courts, tribunals and different forms of alternative dispute resolution.
16. The proportion of challenges to decisions made by Welsh public authorities that are heard in Wales is low. The one element of justice administration which is devolved – the Welsh tribunals – needs to be seen to be fully independent from the Welsh Government and also needs a closer relationship with other bodies that review administrative decisions in Wales. The Welsh tribunals have been under-used as a means of enforcing Welsh legislation.
17. Court and tribunal closures have left people in many parts of rural and post-industrial Wales facing long and difficult journeys to their nearest court. This is compounded by the low use of remote access facilities. The advantages of digital technology have not yet been fully realised in Wales.

Knowledge and innovation

18. Although parts of the legal professions in Wales are strong and competitive, opportunities to strengthen the legal sector more broadly have been missed. There is a need for a stronger focus from the Welsh Government and better coordination within the professions. South Wales should be promoted as a legal centre and the needs of rural and post industrial areas of Wales should be approached by a clear strategy.
19. Greater focus is needed in law schools on 'law tech', which is crucial for the success of the legal professions in Wales. A Law Council should be established to promote the interests of legal education and the awareness of Welsh law.

Welsh language

20. The current justice system does not consistently treat the Welsh language on a basis of equality with the English language. There are too many gaps in the provision and too much dependence on the goodwill of individuals rather than establishing bilingual systems. Coroners in Wales cannot issue documents in Welsh. There is a lack of teaching materials on Welsh law and in the medium of Welsh.

Immediate action to be taken

21. Whilst there are areas of good practice across the justice system which can be built on, serious failings must be addressed. Some significant steps can be taken immediately to achieve the long-term vision we have identified.
22. In the first instance, a clearer focus on justice in the Welsh Government is needed, including:
 - coordinated leadership, through a single Minister or Deputy Minister in the Welsh Government with oversight of all justice matters;
 - closer liaison between the Welsh Government and the judiciary on proposed legislation, as well as on work to improve outcomes for children at risk of being taken into care; and

- given the importance of the legal sector to the Welsh economy and the potentially greater economic contribution the sector could make, a collective drive to promote the sector in Wales and to attract new businesses offering technology-based services.

23. Further changes should be taken forward without delay to improve both access to justice and outcomes, including:

- establishing problem-solving criminal courts and Family Drug and Alcohol Courts in Wales;
- improving access to digital court services;
- proceeding urgently to establish alternatives to custody for women across Wales; and
- providing specific justice data for Wales, including at local authority level.

Such changes would need the support of the Ministry of Justice. We hope that this would be forthcoming for the benefit of the people of Wales.

24. The current arrangements for oversight and coordination of justice in Wales are overly complex and should be streamlined and improved. We recommend that:

- the large All Wales Criminal Justice Board should be replaced with a streamlined and strategic Wales Criminal Justice Board, and that it should report on progress to the Assembly;
- the role of the Family Justice Network for Wales should be strengthened;
- an independent board should be established to give strategic direction for funding both legal aid and third sector advice; and
- there should be an independent board to oversee developments in civil and administrative justice and to promote greater coordination between the work of ombudsmen, those providing alternative forms of dispute resolution, and courts and tribunals.

- 25.** The judiciary should:
- provide a consistent leadership role in Wales and closer interaction with the Assembly and the Welsh Government; and
 - consider greater use of intensive alternatives to custody and of a problem-solving approach in criminal and family justice when appropriate.
- 26.** Wales should be put in a similar position to Scotland and Northern Ireland regarding the appointment of a judge to the Supreme Court.

The long-term vision for the future of justice in Wales

- 27.** Although essential for the immediate future, the steps outlined above will not amount to a sustainable medium or long-term solution. The fundamental problem lies in the split between two governments and two legislatures of responsibilities for justice on the one hand and social, health, education and economic development policies on the other. This results in:
- an inability to allocate spending in a coordinated manner;
 - a lack of accountability;
 - a level of complexity which is wasteful of resources;
 - failure to develop and implement a coherent set of overall policies;
 - a lack of innovation directed to the needs of the people of Wales; and
 - serious disadvantages to the people of Wales which people in England, Scotland and Northern Ireland do not experience.
- 28.** We considered whether executive devolution, giving executive powers to the Welsh Government while leaving primary legislative powers with the Westminster Parliament, would provide a solution. We concluded it would not. Coherent policies cannot be devised, delivered, reviewed and amended without control over policy, the allocation of resources and legislation.

- 29.** Only full legislative devolution, combined with executive powers, will overcome the obstacles of the current devolution scheme. It will:
- enable the proper alignment of justice policy and spending with social, health, education and economic development policies in Wales, to underpin practical long-term solutions;
 - place justice at the heart of government;
 - enable clearer and improved accountability;
 - enable advantage to be taken of Wales' size and ability to innovate, for example by integrating legal aid and third sector advice, bringing health and justice resources together to tackle drug abuse, and providing better means of dispute resolution through ombudsmen services; and
 - strengthen the constitution of the UK.
- 30.** For full legislative devolution to succeed, it will require a full transfer of the funding for the justice system and must be accompanied by the development in Wales of capacity, capability and leadership.
- 31.** The law applicable in Wales should be formally identified as the law of Wales, distinct from the law of England, for the following reasons:
- the Assembly has passed distinctive legislation which has incorporated international principles of human rights and sustainable development and established new public roles to promote those rights, including the rights of children, older people and future generations;
 - further divergence between Welsh law and English law is inevitable as the Assembly passes further laws; and
 - it is confusing that Welsh law and English law are held to be part of a single legal system, in contrast with Scottish law and Northern Irish law.
- 32.** The present system under which the legal professions practise and are regulated should continue on an England and Wales basis as this is consistent with an open, competitive and innovative approach to the provision of legal services.

- 33.** Specifically, we recommend that:
- the Assembly should be empowered to establish a separate judiciary up to the level of the Court of Appeal;
 - the administration of justice in Wales should be unified and organised on the same basis as courts and tribunals in Scotland;
 - the Welsh Government and the Assembly should determine a court, tribunal and overall dispute resolution system which enables access to justice at an affordable cost and at suitable locations; and
 - matters of governance and inspection of police, prisons and probation, along with other aspects of the justice infrastructure, should be determined in Wales.
- 34.** The independence of the institutions of justice must be maintained. This would apply to the judiciary, the prosecution authorities and the police.

Implementation

- 35.** The Welsh Government should begin the process of reform immediately. The Assembly should monitor and review progress. The cooperation of the Westminster Government will be needed and, subsequently, legislation by the Westminster Parliament.

Justice in Wales for the people of Wales

- 36.** The people of Wales both need and deserve a better system. Justice is not an island and should be truly integrated into policies for a just, fair and prosperous Wales.

LIST OF RECOMMENDATIONS

Chapter 3: Information, advice and assistance

1. The funding for legal aid and for the third sector providing advice and assistance should be brought together in Wales to form a single fund under the strategic direction of an independent body¹.
2. Support Through Court should be expanded so that there is availability at courts and tribunals across Wales².
3. Criminal legal aid policy and delivery should be designed in Wales to meet needs across Wales and based on the approaches to public defender schemes adopted by the Nordic nations³.

Chapter 4: Criminal justice: reducing crime and promoting rehabilitation

4. A new Wales Criminal Justice Board should be created. It should set an overall criminal justice strategy for Wales and provide the means for accountability within Wales for the delivery of that overall strategic approach⁴.
5. The Wales Criminal Justice Board should have responsibility for ensuring the rights of victims are respected and there is proper delivery of services to victims⁵.
6. Each of the police, Crown Prosecution Service, the judiciary and HM Prison and Probation Service should publish a strategy in respect of Black, Asian and Minority Ethnic people in Wales and report annually on the strategy to the Assembly⁶.

¹ [Para 3.66.](#)

² [Para 3.66.](#)

³ [Para 3.84.2.](#)

⁴ [Para 4.31.](#)

⁵ [Para 4.56.](#)

⁶ [Para 4.76.](#)

7. The Welsh Government and the Home Office should agree long-term arrangements for police apprenticeship funding which do not disadvantage Welsh police forces compared to their English counterparts⁷.
8. Policing and crime reduction policy, including drug abuse and mental health related issues, should be determined in Wales so that it is aligned and integrated with Welsh health, education and social policy⁸.
9. Problem-solving courts should be established in Wales along the Northern Ireland model⁹.
10. Building on the reducing numbers of children and young people in custody and those entering the criminal justice system, youth justice policy should be determined and delivered in Wales¹⁰.
11. The age of criminal responsibility should be raised to at least 12 years old in Wales¹¹.
12. The basic design principles for probation set out in the 2018 annual report of the then Chief Inspector of Probation should be applied to the design of the new integrated National Probation Service of Wales and the outcomes should be strictly measured on a regular basis and be made public¹².
13. The comprehensive network of services and centres as alternatives to custody for women in Wales must be established rapidly and sustained over time¹³.
14. Sentencing policy and the delivery of integrated offender management and rehabilitation should be determined in Wales so that it is an integral part of and aligned with Welsh health, education and social policy¹⁴.

7 [Para 4.131.](#)

8 [Para 4.146.](#)

9 [Para 4.178.](#)

10 [Para 4.194.](#)

11 [Para 4.195.](#)

12 [Para 4.244.](#)

13 [Para 4.276.](#)

14 [Para 4.290.](#)

15. An integrated and whole system approach to offender management should be established with a single rehabilitative strategy in Wales that is underpinned by a strong evidence base, accurate data, clear governance and accountability arrangements, coherent action plans, a realistic timetable and resources realigned accordingly¹⁵.
16. Intensive alternatives to custody should be developed as soon as possible in Wales. They should have judicial oversight and be formally evaluated¹⁶.
17. Needs assessments of Welsh offenders should be conducted and collated to identify by volume and character the range of interventions required in both prisons and the community and to ensure that they are sequenced properly for optimal effect¹⁷.
18. Administering the sentences of the court should be the responsibility of a single public sector body in Wales and the core function of that body should be managing offenders and promoting rehabilitation to reduce reoffending¹⁸.
19. There should be an integrated approach in Wales to improve leadership and provision of mental health services including support for front line services to enable them to respond better to individuals with mental health needs¹⁹.

Chapter 5: Civil justice

20. Digital court services and other dispute resolution services that are being developed and introduced must be fully accessible to people throughout Wales and free assistance must be available to help individuals use them²⁰.
21. Dispute resolution before courts, tribunals, alternative dispute resolution and ombudsmen, as well as dispute resolution in respect of administrative law, should be promoted and coordinated in Wales through a body chaired by a senior judge²¹.

15 [Para 4.290.](#)

16 [Para 4.290.](#)

17 [Para 4.290.](#)

18 [Para 4.290.](#)

19 [Para 4.290.](#)

20 [Para 5.22.](#)

21 [Para 5.55.](#)

22. Courts and tribunals which determine disputes in both civil and administrative law should be under one unified system in Wales²².
23. The feasibility of a low cost and effective resolution method for civil disputes through the use of a comprehensive ombudsmen scheme, taking into account the online court, should be examined in Wales²³.

Chapter 6: Administrative justice and coroners

24. It should be compulsory under the Civil Procedure Rules for cases against Welsh public bodies which challenge the lawfulness of their decisions to be issued and heard in Wales²⁴.
25. All public bodies, ombudsmen and other tribunals which have been established under Welsh law or by the Welsh Government, which make judicial or quasi-judicial decisions, and are not currently subject to the supervision of the President of Welsh Tribunals, should be brought under the supervision of the President²⁵.
26. The Administrative Court should have the power to stay court proceedings whilst the Public Services Ombudsman for Wales investigates a complaint. The Ombudsman should have the power to refer a point of law to the Court²⁶.
27. The Welsh Tribunals Unit should have structural independence and the Welsh tribunals should be used for dispute resolution relating to future Welsh legislation²⁷.
28. The recommendations for coordinating and rationalisation made for civil justice should also be applied to administrative justice²⁸.
29. Challenges relating to inquests into all deaths in Wales should be issued and heard in Wales²⁹.

22 [Para 5.56.](#)
23 [Para 5.58.](#)
24 [Para 6.27.](#)
25 [Para 6.50.](#)
26 [Para 6.55.](#)
27 [Para 6.59.2.](#)
28 [Para 6.60.](#)
29 [Para 6.68.](#)

30. 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 applied³⁰.

Chapter 7: Family justice: children

31. The law relating to children and family justice in Wales should be brought together in one coherent legal system aligned with functions in relation to health, education and welfare³¹.
32. Pending further research and the development of a long-term strategy, an all Wales approach to family justice should be developed and led in Wales through the Family Justice Network for Wales and the Local Family Justice Boards. The approach should be followed by all local authorities for dealing with child protection referrals with the objective of avoiding care proceedings when family support would be more appropriate³².
33. It should be a matter of routine practice prior to the first hearing in care proceedings to examine the feasibility of problem-solving and the form it might take, with a view to finding what steps short of taking a child into care can be put in place³³.
34. The voice of the child should be heard at every stage of the proceedings³⁴.
35. Family Drug and Alcohol Courts should be established in Wales³⁵.
36. There should be vigorous support for a programme of research to underpin reform of Welsh family justice and associated preventative services. The overarching aim should be the reduction in the numbers of children taken into care and the provision of far better evidence of the impacts of intervention on family life³⁶.

30 [Para 6.74.](#)
31 [Para 7.20.](#)
32 [Para 7.107.](#)
33 [Para 7.107.](#)
34 [Para 7.107.](#)
35 [Para 7.107.](#)
36 [Para 7.111.](#)

- 37.** A carefully thought through long-term policy for reducing the numbers of children taken into care should be developed after the conclusions of the research and then implemented³⁷.
- 38.** Legal advice should be available to each parent in private family law disputes prior to the commencement of proceedings up to a maximum fixed amount in each case³⁸.

Chapter 8: Delivering justice: locality and structure

- 39.** 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 Wales³⁹.

Chapter 9: The legal sector and the economy of Wales

- 40.** The Welsh Government should, in close consultation with the legal professions, provide fully funded legal apprenticeships to enable people to qualify as legal professionals in Wales⁴⁰.
- 41.** There should be greater transparency about the level and distribution of expenditure on external legal services by the Welsh Government, each Welsh local authority and all other public bodies in Wales. The procurement of barristers' services should be reformed to help build the capacity of the Bar in Wales⁴¹.
- 42.** The Welsh Government should develop and implement as soon as possible our proposed strategy to reinvigorate the rural and post-industrial legal sector in Wales⁴².
- 43.** The Welsh Government should provide strong support for investment in technology, especially in post-industrial and rural Wales⁴³.

³⁷ [Para 7.111.](#)

³⁸ [Para 7.118.](#)

³⁹ [Para 8.40.](#)

⁴⁰ [Para 9.51.](#)

⁴¹ [Para 9.66.](#)

⁴² [Para 9.76.](#)

⁴³ [Para 9.80.](#)

44. The Welsh Government must provide clear leadership and support for the legal services sector. This should be targeted, user-friendly, flexible and attractive to potential inward investors especially with establishing a technology-based nearshoring centre as an objective⁴⁴.
45. The Welsh Government, legal professionals in Wales, the Law Society, the Bar Council, other professional bodies and academia should work in partnership. They should develop and promote the capabilities of the legal sector, promote South Wales as a legal centre and increase the export of legal services⁴⁵.

Chapter 10: Knowledge, skills and innovation

46. Welsh law schools must reassess their undergraduate programmes to take advantage of the scope for comparative studies and transferable qualifications⁴⁶.
47. Law tech must be taught to all students and the professions across Wales⁴⁷.
48. All university and college education providers in Wales should teach Welsh law as part of the ordinary undergraduate syllabus and work together to produce the necessary materials⁴⁸.
49. The place of Welsh law and the distinctiveness of the law in Wales should be properly reflected in professional and continuing legal education and training⁴⁹.
50. Wales specific data should be collected and published on a sufficient scale to enable disaggregation, with a view to proper evidence-based policy development and as a basis for research⁵⁰.
51. The Welsh Government should lead the development and implementation of an action plan to promote and support public legal education, particularly for children and young people⁵¹.

44 [Para 9.89.](#)
45 [Para 9.92.](#)
46 [Para 10.30.](#)
47 [Para 10.35.](#)
48 [Para 10.44.](#)
49 [Para 10.44.](#)
50 [Para 10.48.](#)
51 [Para 10.53.](#)

Chapter 11: The Welsh language

52. All justice bodies should be subject to the Welsh Language Measure 2011⁵².
53. The Bar, CILEx and the Law Society should provide courses on using Welsh in the workplace, similar to those used by the Judicial College⁵³.
54. Digital services that are being introduced must be accessible, free help must be available and all must be available in Welsh at the same time as the English version⁵⁴.
55. Professional legal education for those wishing to practise in Wales must be available in the Welsh language with the phased introduction of the availability of all professional examinations in Welsh⁵⁵.
56. Welsh law schools must collaborate on Welsh medium legal education, especially as regards the provision of teaching materials⁵⁶.
57. All coroner services should be available in the Welsh language⁵⁷.

Chapter 12: Governance, the law of Wales and the judiciary

Recommendations on devolution of justice

58. There should be legislative devolution of justice. Restrictions and reservations governing the Assembly's power to legislate on all forms of justice, including policing and offender management and rehabilitation, should be removed, so that it corresponds more closely with the position of the Northern Ireland Assembly and the Scottish Parliament⁵⁸.
59. In tandem with the removal of reservations and restrictions on the Assembly's powers, responsibility for executive functions in relation to justice in Wales should be transferred to the Welsh Government⁵⁹.

52 [Para 11.13.](#)

53 [Para 11.17.](#)

54 [Para 11.28.](#)

55 [Para 11.32.](#)

56 [Para 11.36.](#)

57 [Para 11.38.](#)

58 [Para 12.63.](#)

59 [Para 12.63.](#)

60. Devolution of justice must be accompanied by a full transfer of financial resources, including all identifiable administrative and capital resources relating to Wales⁶⁰.

Recommendations to be implemented under the current scheme of devolution

61. Clear and accountable leadership on justice in the Welsh Government must be established under the current scheme of devolution⁶¹.
62. The Assembly should take a more proactive role in appropriate scrutiny of the operation of the justice system⁶².
63. The Welsh Government should address policy issues relating to justice by using external experts who can report jointly with civil servants to Ministers⁶³.
64. The Welsh Government and the legal sector should develop a joint leadership programme⁶⁴.
65. A Law Council of Wales should be established to promote the interests of legal education and the awareness of Welsh law, to ensure proper provision of teaching the law in Welsh, and to assist students in their education and training as future practitioners⁶⁵.
66. The organisation of the senior judiciary in Wales should be changed to provide the necessary working relationships and leadership within Wales⁶⁶.
67. 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 Court⁶⁷.

60 [Para 12.68.](#)
61 [Para 12.73.](#)
62 [Para 12.83.](#)
63 [Para 12.96.](#)
64 [Para 12.96.](#)
65 [Para 12.111.](#)
66 [Para 12.145.](#)
67 [Para 12.161.](#)

Recommendations for implementation with legislative devolution

68. With legislative devolution, there must be a new Justice Department in the Welsh Government led by a Cabinet Minister⁶⁸.
69. The office of Counsel General should continue as an office that provides independent legal advice to the Welsh Government and heads the Government Legal Service in Wales⁶⁹.
70. Legislative devolution will require the establishment of a Justice Committee in the Assembly⁷⁰.
71. Where there is overlap between the roles of local, regional and national boards, committees and partnerships, they should be merged⁷¹.
72. With legislative devolution, the governance arrangements for the police should be re-examined⁷².
73. The law applicable in Wales should be formally identified as the law of Wales, distinct from the law of England⁷³.
74. The present system where legal practitioners can practise in England and Wales and the legal professions are jointly regulated should be continued⁷⁴.
75. Legislation should provide for a High Court and a Court of Appeal of Wales to be established by the Assembly⁷⁵.

68 [Para 12.73.](#)

69 [Para 12.73.](#)

70 [Para 12.83.](#)

71 [Para 12.89.](#)

72 [Para 12.102.](#)

73 [Para 12.123.](#)

74 [Para 12.134.](#)

75 [Para 12.159.](#)

76. With legislative devolution, a Welsh Courts and Tribunals Service should be developed from the base of a Welsh Tribunals Unit reformed on the model of the Scottish Courts and Tribunals Service⁷⁶.
77. With legislative devolution, the Welsh Government will need to review, and keep under continuing review, the justice infrastructure for Wales⁷⁷.

Action to be taken now by the Welsh Government and the Assembly

78. The Welsh Government should begin the process of reform by listing the recommendations it will seek to implement whilst the current scheme of devolution continues. The Assembly should make arrangements to monitor and review the process of reform⁷⁸.

76 [Para 12.165.](#)

77 [Para 12.176.](#)

78 [Para 12.187](#)



CHAPTER 1

*Our approach:
a more just, fair
and prosperous Wales*

1. Our terms of reference

- 1.1 The Commission on Justice in Wales is an independent commission appointed by the Welsh Government in December 2017, with the following terms of reference:⁷⁹

To review the operation of the justice system in Wales and set a long-term vision for its future, with a view to:

- **promoting better outcomes in terms of access to justice, reducing crime and promoting rehabilitation;**
- **ensuring that the jurisdictional arrangements and legal education address and reflect the role of justice in the governance and prosperity of Wales as well as the distinct issues that arise in Wales; and**
- **promoting the strength and sustainability of the Welsh legal services sector and maximising its contribution to the prosperity of Wales.**

- 1.2 Our review under these terms of reference is the first review of the operation of the justice system in Wales for at least 200 years. Since 1997, when the people of Wales voted for a National Assembly for Wales (the Assembly), there has been a succession of reforms and reviews of governance and powers in Wales. Independent commissions have played a significant part in informing and shaping these reforms. Notably, in 2004, the Richard Commission⁸⁰ conducted a broad and deep analysis of the then devolution scheme in Wales. It led to the formal separation of the Assembly, which was constituted as a single corporate body by the Government of Wales Act 1998, into an executive and a legislature and paved the way for an extension of the Assembly's legislative powers. However, although it dealt with the legislature and the executive, it did not deal with the third branch of government usually found in any democratically governed nation – the judiciary. In 2011, the Silk Commission⁸¹, established by the UK Government, reviewed the financial and constitutional arrangements in Wales. Its the second part of its report, published in March 2014, made recommendations on the extent of the Assembly's legislative powers, including in relation to policing and justice; we consider this at paragraph [2.24](#).

79 *The Commission on Justice in Wales (2018) Terms of reference.*

80 *Richard Commission (2004) Final Report.*

81 *Silk Commission (2011) Empowerment and Responsibility: Financial Powers to Strengthen Wales*

2. Guiding principles to our approach

- 1.3 In our call for evidence⁸², we identified principles as the basis for our recommendations. They are listed in Appendix C.
- 1.4 Consistently with our call for evidence, our approach to the evaluation of the evidence did not commence by examining constitutional principles. Rather our approach has been to address the following principal factors, which are set out fully in paragraph [12.3](#):
- 1.4.1 Justice is at the heart of any system of democratic government of a nation.
 - 1.4.2 The needs of the people of Wales must be met.
 - 1.4.3 A whole system approach with alignment of justice with other policies should be adopted.
 - 1.4.4 Funding and resources must be related to the whole system approach.
 - 1.4.5 Leadership, capacity, capability and confidence are essential to delivering justice.
 - 1.4.6 Advantage must be taken of Wales' relatively small size.
 - 1.4.7 There must be clear and easy to understand accountability.
 - 1.4.8 A long-term and sustainable approach must be taken.
 - 1.4.9 Governance and devolution schemes must strengthen the constitution of the UK.
- 1.5 Throughout, we have sought to have regard to how the justice system impacts differently on people depending on their characteristics and circumstances, and whether these differences in outcomes are fair.

82 *Commission for Justice in Wales (2017) [Call for Evidence](#).*

- 1.6 By far the greater part of our report considers justice in Wales within its wider social, economic, geographic and cultural context and the particular legislative and constitutional context of Wales. We seek to identify where the people of Wales are not well served by the current system and to map out the changes required to arrive at better, sustainable solutions.
- 1.7 Following our examination of the changes that we recommend be made in respect of each aspect of justice, we examined governance, devolution and constitutional principles to see what we should recommend as to the scheme of devolution. We tested our views primarily by asking what will best deliver the changes needed for the benefit of the people of Wales and how the responsibility for justice policy and delivery can be made clear to enable the public to understand who is responsible and hold them to account.
- 1.8 The conclusions and the recommendations we have reached are unanimous.

3. The Rule of Law

- 1.9 The justice system underpins the Rule of Law, a term most often used by lawyers and those interested in the constitution. Its meaning, importance and relevance may not be readily apparent to the overwhelming majority of citizens⁸³, who may see the Rule of Law as something remote from their day to day lives. Our aim underlying the entire report is to make the Rule of Law through access to justice relevant to everyone as the means by which the right to just, equal and fair treatment in all aspects of life is realised and Wales as a nation is just, fair and prosperous.
- 1.10 The Rule of Law has never been better explained than by Lord Bingham of Cornhill⁸⁴, the former Lord Chief Justice and Senior Law Lord, in his last book. He analysed its key principles⁸⁵:

⁸³ *R (on the application of Unison) v Lord Chancellor* [2017] UKSC 51, para 66, Lord Reed.

⁸⁴ *Cornhill in the Welsh county of Radnor*

⁸⁵ *Bingham, T. (2011) The Rule of Law.*

- 1.10.1 The law must be accessible and so far as possible intelligible, clear and predictable.
- 1.10.2 Questions of legal right and liability should be resolved by application of the law and not the exercise of discretion.
- 1.10.3 The laws of the land should apply equally to all, except where objective differences justify differentiation.
- 1.10.4 Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not acting unreasonably or arbitrarily.
- 1.10.5 The law must afford adequate protection of fundamental human rights.
- 1.10.6 The law should provide access to justice, especially where people cannot resolve inter-personal disputes themselves.
- 1.10.7 Courts and tribunal processes should be fair.
- 1.10.8 The state should comply with international law.

- 1.11 These principles also underlie our approach and recommendations.

4. The provisions of Welsh law relating to sustainability, future generations and international standards on fundamental rights

- 1.12 We have clearly had to take into account the divergence of some aspects of law between Wales and England in areas such as children. However, it had not been widely appreciated outside Wales until 2019⁸⁶ that there is a very different approach in Wales to embedding in the making of policy and its delivery and decisions on particular matters (a) principles relating to long-term considerations such as sustainability and the environment and (b) the adoption of rights based in international conventions.
- 1.13 The provisions of the Well-being of Future Generations (Wales) Act 2015⁸⁷ (the Future Generations Act) is the prime example of Wales setting its own course for the benefit of its people by establishing a long term vision and shared goals and ways of working for public bodies in Wales. We consider this in greater detail in our chapter on administrative justice at paragraphs [6.8](#) and following.
- 1.14 The different approach adopted by Wales to standards in international conventions embodying basic rights is illustrated by the recognition of the rights of the child⁸⁸. This approach embodies one of the principles of the Rule of Law identified by Lord Bingham that the law should adequately protect fundamental human rights; it also aligns with our view that fundamental rights should be seen as putting justice at the heart of society and access to justice is essential to the safeguarding of those rights. Welsh legislation creating Commissioners for children, older people and the Welsh language, as well as a Future Generations Commissioner, further illustrates the distinct emphasis in Wales on promoting rights as part of a fair and just system of public administration.

86 For exception, see Lord Young's answers of 20 and 26 June in House of Lords which show acknowledgement of the divergent policy direction.

87 [Well-being of Future Generations \(Wales\) Act 2015](#), Para 4.126, 6.8 et seq, 7.80, 10.50, 11.40, and 12.61 et seq.

88 [Rights of Children and Young Persons \(Wales\) Measure 2011](#).

5. The evidence we obtained

- 1.15 We approached our work with a commitment to base our recommendations on the evidence. We began our work in December 2017. We were greatly assisted in formulating our approach by a round table of experts on 26 January 2018 at the Wales Centre for Public Policy, Cardiff⁸⁹.
- 1.16 In summary:
- 1.16.1 We issued a call for evidence in February 2018 and received 205 written submissions from individuals, institutions and organisations⁹⁰.
 - 1.16.2 We followed this with a series of oral evidence sessions from November 2018 to June 2019, during which we heard from 150 people with experience and expertise from across the whole spectrum of the justice system and beyond – from those representing victims of crime to those making laws⁹¹.
 - 1.16.3 We had meetings with leaders and professionals in the justice and legal systems, in academia in each of the Welsh universities (including visits to Bangor, Wrexham Glyndŵr, Aberystwyth and the Treforest campus of the University of South Wales), in the third sector and in politics.
 - 1.16.4 We received no evidence from UK Government Ministers, though we met informally with them. The Secretary of State for Wales wrote to us in May 2019 to say that he “*did not think it would be appropriate for UK Government Ministers or officials to give evidence on reserved policy to a Commission established by a devolved administration.*” He explained that “*The Government of Wales Act 2017 provides a lasting devolution settlement and followed a cross-party process and political mandates under which justice remains a reserved matter. The single legal jurisdiction between England and Wales has been a key part of our constitution and the shared*

89 [Wales Centre for Public Policy](#)

90 [Appendix D](#)

91 [Appendix D](#)

history of our nations for centuries. Sharing a jurisdiction has allowed both nations to enjoy a flourishing, dynamic, and internationally renowned legal system. It is also a key part of the local economy where legal firms based in Wales attract a significant portion of work from the City and elsewhere.”

- 1.16.5 We engaged with members of the public to hear their experiences of the justice system in Wales and what they think a better system would look like. By holding events in Butetown, Pontypridd and Rhyl and attending others, such as Cymorth Cymru’s May 2019 conference in Cardiff, we met people who represent the diverse range of voices and experiences in Wales. We listened to prisoners at Berwyn and Cardiff prisons. We met students at Bangor University, Wrexham Glyndŵr and the University of South Wales at Treforest. We met also a group of people with disabilities convened by Disability Wales, representatives of women’s groups and a group of young people who had been in care convened by Voices from Care.
- 1.16.6 The evidence we received at these sessions was vital as it informed us of the experience of diverse people ‘at the sharp end’ of the justice system.
- 1.16.7 We met David Lammy MP to discuss his review⁹² of the treatment of and outcomes for Black, Asian and Minority Ethnic (BAME) individuals in the criminal justice system.
- 1.16.8 Alongside this engagement, we ran an online survey from 20 August 2018 to 12 April 2019, asking for people’s views. We received responses from a wide range of locations and backgrounds⁹³.
- 1.16.9 We have also used social media channels; Twitter, Facebook and LinkedIn, in particular to engage with people not directly involved in the justice system.

92
93

Lammy Review (2017) [Final Report](#).
Commission on Justice in Wales (2019) [Online Survey Findings](#).

- 1.17 We wish to acknowledge the contribution of independent research programmes which have coincided with our work.
- 1.17.1 Research by the Wales Governance Centre at Cardiff University into Justice and Jurisdiction, which was jointly funded by the Economic and Social Research Council, the Welsh Government and Cardiff University. We have benefitted from reports on (1) *Justice at the jagged edge in Wales*⁹⁴, (2) *International evidence on driving down imprisonment rates: What Wales could be?*⁹⁵ (3) *Public spending on the justice system in Wales*⁹⁶ (4) *The legal economy in Wales*⁹⁷ and (5) *Fiscal implications of devolving justice*⁹⁸.
- 1.17.2 The Institute for Criminal Policy Research at Birkbeck, University of London, conducted research funded by the Nuffield Foundation entitled ‘Achieving Accessible Justice: A study of the implications of vulnerability and the meaning of participation in courts and tribunals’. As part of its research over 60 observations of various court and tribunal hearings in Cardiff and Newport were taken⁹⁹.
- 1.17.3 Ongoing collaborative research at Aberystwyth, Bangor Cardiff and Cardiff Metropolitan Universities funded by the Nuffield Foundation into the accessibility of administrative justice in Wales, which is scheduled to run until February 2020. We refer to this work at paragraph [10.45](#).
- 1.18 We visited Scotland in May 2018 and Belfast in September 2018 and April 2019 to examine the ways in which justice policy is made and justice is delivered. We heard from the most senior judiciary in both countries, the Cabinet Secretary for Justice in Scotland and representatives from the Justice Committees of the Scottish Parliament and Northern Ireland Assembly, Scottish Ministers, senior government officials in both administrations and those heading police, probation, courts and prison services, as well as academics, third sector organisations, barristers and law firms.

⁹⁴ *The jagged edge is the complex and sometimes interwoven issues at the interface between devolved and non devolved matters. See Jones, R and Jones R W (2019) [Justice at the Jagged Edge in Wales](#): 11.*

⁹⁵ *Wales Governance Centre (2019) [International evidence on driving down imprisonment rates: What wales could be?](#)*

⁹⁶ *Wales Governance Centre (2019) (2019) [Public spending on the justice system in Wales](#).*

⁹⁷ *Wales Governance Centre (2019) [The legal economy in Wales](#).*

⁹⁸ *Wales Governance Centre (2019) [Fiscal implications of devolving justice](#).*

⁹⁹ [Para 3.48](#).

- 1.19 We visited London and Manchester to examine executive devolution of policing, and Leeds, Manchester and Bristol to understand the approach to legal services in those cities.
- 1.20 We had the benefit of an international seminar arranged by the Institute for Criminal Policy Research¹⁰⁰. We were told of the changes made to penal policy in Catalonia, Finland, Ireland, Latvia, the Netherlands, Norway and Portugal with the benefit of evidence from experts from those nations.
- 1.21 We have found it difficult to obtain disaggregated data for Wales. Information is usually provided on an England and Wales basis. We are grateful to the Home Office and the Ministry of Justice for all they have done to disaggregate data (one example is [Figure 4](#) at paragraph [3.11](#)). As we explain at paragraph [10.45](#) and following much more is required by way of study and also as we say at paragraph [12.44](#) by way of disaggregated data. The Welsh Government and the Ministry of Justice have agreed to establish a small working group to consider the user needs for Welsh justice data and how they could be met. No timescale has been provided.
- 1.22 We are also grateful to the Home Office for the very considerable amount of evidence they provided to us. We were told in April 2019 that all requests to UK Government Ministries and entities needed to go through the Secretary of State for Wales. This caused significant delay in our receiving the further evidence we sought.
- 1.23 We used video links, including Skype and Telepresence, to conduct many of the oral evidence sessions and engagement events. We have no doubt from our extensive experience that this is an effective method of taking evidence and engaging with people, providing it is properly supported and the equipment, bandwidth and connections are robust.
- 1.24 We are immensely grateful to all those who contributed their knowledge, insights and evidence.

¹⁰⁰ *Institute for Criminal Policy Research, Birkbeck, University of London.*

6. Other reports

1.25 As we mentioned at paragraph 1.2, issues relating to justice and devolution were considered briefly by the Richard Commission and in somewhat greater depth by the Silk Commission. There have been other reports pertinent to our work which we have considered.

Other reports relating to the justice system in Wales

- The Advice Services Review March 2013, commissioned by the Welsh Government¹⁰¹.
- Commission on Public Service Governance and Delivery (Williams Commission), January 2014¹⁰².
- David Hanson MP's review of offender education in Wales¹⁰³ published in March 2019.
- Wales Centre for Public Policy report on family justice in Wales dated March 2019 and published in May 2019¹⁰⁴.
- The legal sector in Wales – a rapid review by Jomati Consultants LLP, July 2019.
- The Independent Expert Advisory Group on Justice in Wales first reported in July 2019.

101 Welsh Government (2013) *Advice Services Review*. Para 3.40.

102 Williams Commission (2014) *Public Service Governance and Delivery*. Para 4.135.

103 Hanson, D (2019) *Reforming Outcomes: Prisoner Education in Wales*. Para 2.31.3 and 11.21.

104 Wales Centre for Public Policy (2019) *Analysis of Factors Contributing to High Rates of Care* Para 7.26.

- 1.26 There are independent reports relating to the justice system in England and Wales as a whole which have informed our work, including in particular those set out below.

Independent reports relating to the justice system in England and Wales

- The Corston Report on vulnerable women in the criminal justice system, published in March 2007¹⁰⁵.
- The Lammy Review into the treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the criminal justice system, published in September 2017¹⁰⁶.
- The Care Crisis Review, led by the Family Rights Group, June 2018¹⁰⁷.
- The Report by the Prison Reform Trust on domestic abuse as a driver to women’s offending, *There’s a reason we’re in trouble*, 2017¹⁰⁸.
- The Taylor review of the Youth Justice system, December 2018¹⁰⁹.
- The Leveson Review of efficiency in criminal proceedings, January 2015¹¹⁰.
- The Report of the Commission on Access to Justice chaired by Lord Bach, September 2017 (established by the Fabian Society)¹¹¹.
- The Report of the Commission chaired by Lord Low CBE on the Future of Advice and Legal Support, December 2012 (established by the Legal Action Group)¹¹².
- The report of the Farmer Review, *Importance of strengthening prisoners’ family ties to prevent reoffending and reduce intergenerational crime*, August 2017¹¹³.
- Report by Lord Laming for the Prison Reform Trust, 2016. *In Care, Out of Trouble*¹¹⁴.
- National Audit Office Report, 2018, *Early progress in transforming courts and tribunals*¹¹⁵.

105 Corston, J (2007) *A review of women with particular vulnerabilities in the Criminal Justice system*. Para 4.260. *op cit n. 92*. Para 4.57.

107 *Family Rights Group (2018) Care Crisis Review*. Para 7.62.

108 http://www.prisonreformtrust.org.uk/Portals/0/Documents/Domestic_abuse_report_final_lo.pdf. Para 4.262.

109 Taylor, C (2016) *Review of the Youth Justice System in England and Wales*.

110 Leveson Review (2015) *Review of Efficiency in Criminal Proceedings*. Para 4.83 *et seq*.

111 Bach Commission (2017) *The Right to Justice*: 6. Para 3.54.

112 Low Commission (2012) *Future of Advice and Legal Support*. Para 5.50.

113 Farmer Review (2017) *Importance of strengthening prisoners’ family ties to prevent reoffending and reduce intergenerational crime*.

114 Lord Laming (2016) *In Care, Out of Trouble*.

115 National Audit Office (2018) *Early progress in transforming courts and tribunals*.

1.27 Parliamentary Select Committees and Assembly Committees have made important contributions which we also considered. Some are set out below.

Parliamentary and Assembly Committees

- The Welsh Affairs Committee reported on prison provision in Wales, in May 2019¹¹⁶.
- The Justice Committee has conducted a number of inquiries relevant to our work, including reports on access to justice issues following courts and tribunals reforms; Prison Population 2022: Planning for the Future; Transforming Rehabilitation; Criminal Legal Aid; and Young Adults in the Criminal Justice system¹¹⁷.
- Justice Committee, 2009. Cutting crime: the case for justice reinvestment report¹¹⁸.
- The Home Affairs Committee reported on Policing for the Future (10th report, October 2018)¹¹⁹.
- The Public Accounts Committee has reported in the last two years on mental health in prisons; on offender monitoring tags; contracts for Community Rehabilitation Companies¹²⁰; reducing modern slavery; transforming courts and tribunals; the financial sustainability of police forces; transforming children’s services; and Transforming Rehabilitation¹²¹. It reported on implementing reforms to civil legal aid in 2015¹²².
- The Health, Social Care and Sport Committee of the current Assembly has undertaken inquiries into mental health in policing and police custody; and the provision of health and social care in the adult prison system¹²³. Inquiries in the previous Assembly included the powers of the Public Services Ombudsman for Wales (prior to the Public Services Ombudsman Wales Act 2019); and the establishment of a separate Welsh jurisdiction¹²⁴.

116 Welsh Affairs Committee (2019) *Prison provision in Wales*.

117 *Justice Committee inquiries*. Para 4.194, 4.253, 4.195, and 4.228 et seq. Ministry of Justice (2013) *Transforming Rehabilitation: A Strategy for Reform*. *Young adults in the criminal justice system; and youth custodial estate inquiry*.

118 Justice Committee (2009) *Cutting crime: the case for justice reinvestment*.

119 Home Affairs Committee (2018) *Policing for the future*. Para 4.82.

120 Para 4.228 et seq.

121 Para 4.228.

122 *Implementing reforms to civil legal aid* Para 4.228.

123 OE034 Elin Jones: 2.

124 National Assembly for Wales (2012) *Inquiry into the establishment of a separate Welsh jurisdiction*. Para 6.52.

1.28 We have sought to build on and take forward these reports, setting them for the first time in the context of an overview of the justice system in Wales as a whole and its role in creating a just, fair and prosperous Wales.

1.29 Throughout the report, we use the following abbreviations:

- Alternative Dispute Resolution (ADR)
- Artificial Intelligence (AI)
- Black, Asian And Minority Ethnic (BAME)
- Children and Family Court Advisory and Support Service (Cafcass)
- Centre for Innovation and Entrepreneurship in Law (CIEL)
- Crown Prosecution Service (CPS)
- Family Drug and Alcohol Court (FDAC)
- Her Majesty’s Courts and Tribunals Service (HMCTS)
- Her Majesty’s Prison and Probation Service (HMPPS)
- Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)
- National Probation Service (NPS)
- Police and Crime Commissioners (PCCs)
- Secure Anonymised Information Linkage (SAIL)
- Solicitors Regulation Authority (SRA)
- Solicitors Qualifying Examination (SQE)

We also refer to the Social Services and Well-being (Wales) Act 2015 as the Social Services Act and the Wellbeing of Future Generations (Wales) Act 2015 as the Future Generations Act.



CHAPTER 2

Past and present

2. Introduction

2.1 Our focus on justice in Wales and its contribution to developing a just, fair and prosperous society must be seen in the context of Wales' long-established cultural, social and political history. Wales has its own long history of law, but, in contrast to the position in Scotland, this is not well known. In Part 1 of this Chapter, we consider the historic legal identity of Wales and the development of the current scheme of devolution. In Part 2, we explain the considerable overall complexity of the current scheme of devolution. In Part 3, we explain the structure of the courts and tribunal system in Wales. In Part 4, we consider the current finance and resources for the justice system in Wales.

Part 1: The historic legal identity of Wales

1. The Welsh legal tradition

2.2 At times during the history of Wales, the law was made in Wales and delivered by a Welsh court system; at times the law was partly English law and partly Welsh law but administered by an English court system; at times English law governed Wales but was administered by a Welsh court system; and subsequently, until devolution, both the law and the courts in Wales were English. Wales is once again developing its own identifiable Welsh legislation, though as part of the law of England and Wales; but the courts remain, as they have been for 190 years, conjoined with those of England.

2. Welsh law and Welsh courts

2.3 It was during the reign of Hywel Dda, (d. c.950), that the native laws of Wales were codified. By the standard of the day his laws were considered just and good, with higher status enjoyed by women than in most contemporary legal systems. These were Welsh laws, administered by a Welsh legal system which was well-developed and sophisticated¹²⁵, covering the law, procedure, judges¹²⁶ and

125 *Jenkins, J (1986) The law of Hywel Dda.*

126 *The Laws set out very stringent requirements for judges; see The Justices' Test Book. Book III.*

administration¹²⁷. The system of law was significantly different from England at that time, but on a par with it and those of the other nations of Europe. Welsh was the language of the law and with this came the natural development of Welsh legal terminology.

- 2.4 The laws of Wales adapted over the centuries by applying the principles which emerged with the development of Welsh law to meet new situations. These laws provided an identity and focus of unity for the people of Wales and also helped define them as a nation despite there being no one ruler following Hywel's death. This was the period when Wales had its own laws and courts, and Welsh justice was an integral part of Welsh life.
- 2.5 The incursions of the Norman barons into the South and West of Wales and along the borders with England saw the first change in the system with the introduction in the Marches of many different legal systems. However, in the parts of Wales that had not been conquered, the law continued as before. Magna Carta itself illustrates the complex position by references to the different laws in operation across the nation – Welsh, English and the Marches.
- 2.6 The conquering barons brought with them some of the laws of England but in some cases also kept some of the laws of Wales. They administered their Lordships as if they were their private domain, as they had acquired them by right of conquest, including the right to impose the death penalty. In some of the Lordships, the Lord would employ the full panoply of the common law of England that was developing, with no appeal to the King's courts. In others, certain aspects of the law depended on the nationality of the person; English law applied to the English and Welsh law to the Welsh. In boroughs, trading customs were adopted from communities with which they were associated. For example, in Brecon the customs of Breteuil, a small town in Normandy, were followed. Even though the royal writ did not run in the Marches, the Statute of Westminster of 1275 provided that English law should have effect in the Marches of Wales.

127 *Watkin, T G (2007) The Legal History of Wales: 26-43.*

- 2.7 The conquest of Wales in 1282 by Edward I saw the imposition of direct English royal control over the principalities of North Wales and South Wales. The power of the King of England was reflected in both the laws and delivery of justice in Wales as set out in the Statute of Rhuddlan of 1284 (also known as the Statute of Wales).
- 2.8 The Statute of Rhuddlan established the basic principles that were to govern those conquered parts of Wales until 1535; the Marches remained outside this system. The Statute established a new administrative structure. Gwynedd was divided into the shires of Caernarfon, Anglesey and Merionydd under the Justice of Snowdon; Carmarthen and Cardigan were placed under the Justice of West Wales. Flint was assigned to the jurisdiction of the Justice of Chester, whilst Pembroke and Glamorgan had a status of their own. It was at this time that the officers of the English shire system, sheriffs (who then held courts), coroners and bailiffs, were introduced into those parts of Wales directly under the control of the English King as well as Chanceries and Exchequers. Although the criminal law was the law of England, much of the civil, land and family law under which the Welsh lived was the law of Wales as developed through custom and Welsh common law. For example, the English system of the right of succession of the first-born son was not part of Welsh law; instead, Welsh law continued under the system where the inheritance of land was divided equally amongst the male heirs.
- 2.9 Wales had a system where the judiciary, courts and processes were modelled on those of England, but they administered and applied the distinctive law of Wales in many important areas of law.

3. Union and assimilation

- 2.10 The Acts of Union of the reign of Henry VIII not only formally unified England and Wales but applied royal power and English law to what was described in the 1543 Act as the dominion, principality and country of Wales. The Acts provided that:
- 2.10.1 Welsh law and customs were abolished and extinguished; in particular the Welsh laws of inheritance. Instead, English law was to apply in Wales.
 - 2.10.2 English was made the language of the courts and the use of Welsh was effectively discouraged.
 - 2.10.3 A new court system for Wales was established, including the Courts of Great Sessions which was unique to Wales.
- 2.11 As a result of the Acts of Union, Wales lost its distinct law. However, its court system distinct from that of England continued through the establishment of the Court of Great Sessions. Although different from the English court system it applied only English law through the English language.
- 2.12 The Courts of Great Sessions were organised into four circuits. Each circuit had its own Attorney General and other law officers. From 1575, Wales had eight part time judges at a time when there were only 12 full time judges for the whole of England. The tenure of the judges was for life. Appointments were much sought-after, as the judges were able to continue practising, to sit in Parliament and were also well paid. Out of the 217 judges appointed during the three centuries that the Courts of Great Sessions operated, only 30 were native born Welshmen, though others may have been of Welsh descent.
- 2.13 The Courts of Great Sessions were the subject of two Parliamentary Select Committees in 1817 and 1820-21 and were given further consideration as part of a Commission of Enquiry into the Superior Courts of Common Law in 1829. Despite evidence suggesting that most of the people of Wales were against the abolition of the Courts of Great Sessions and that only one Welsh Member of Parliament spoke in favour of it, the Great Sessions were abolished in 1830; the money saved was used to provide three more judges for the courts of common

law in England. It was only at this point that the administration of justice in Wales became fully integrated with that of England. Wales was made part of the circuit system, with two circuits, one in North Wales and Chester and the other in South Wales. They were amalgamated into the Wales and Chester Circuit in 1945.

4. Gradual recognition and administrative devolution

- 2.14 The first UK Parliament statute to apply only to Wales was enacted in 1881: the Sunday Closing (Wales) Act. The Act required the closure of all public houses in Wales on Sundays and was a formal acknowledgement of the separate identity of Wales. This set a precedent for future legislation, and during the 20th century Wales slowly developed a very small body of distinct Welsh legislation. The Welsh Courts Act 1942 repealed Henry VIII's earlier measures prohibiting the use of Welsh, but it limited the use of Welsh to instances where the speaker would have been disadvantaged by having to speak English. It was not until the Welsh Language Act 1967 and the Welsh Language Act 1993 that it was recognised that, in the conduct of public business and the administration of justice, the English and Welsh languages were to be treated on a basis of equality¹²⁸. In addition, until the Welsh Language Act 1967, any reference to England in legislation was deemed to include Wales¹²⁹.
- 2.15 The beginning of administrative devolution in Wales was the establishment of the Welsh Board for Education in 1907. Throughout the first part of the 20th century, Welsh Boards, Commissions or departments within Ministries were established, including for health and agriculture. In 1964, the office of Secretary of State for Wales was created and in the following year this newly created Department, the Welsh Office, took on responsibility for housing, local government, planning and related matters. Over the years further functions continued to be transferred to the Secretary of State for Wales, including education and training, health, industrial development, roads, tourism, the environment, agriculture and fisheries. None of the functions in relation to justice was transferred; they were retained by the Home Office and the then Lord Chancellor's Department (now the Ministry of Justice)¹³⁰.

128 Para 11.7, *Welsh Language Act 1993* (preamble).

129 In an Act in 1746 to enforce rates and duties on houses, windows and lights, it was declared that where "England" was only mentioned in an Act of Parliament it was deemed to include Wales and Berwick upon Tweed.

130 Lord Morris of Borth y Gest (2000) Lecture- *Legal Wales: Its Modern Origins and Its Role After Devolution: National Identity, the Welsh. Language and Parochialism*, in Watkin, T (ed.) (2001) *Legal Wales: Its Past, Its Future*.

2.16 In 1966, a Royal Commission chaired by Lord Beeching was established to examine the court system in England and Wales. It had no Welsh member. A draft report was prepared by October 1967; it proposed the division of England and Wales into regions, with Wales being partitioned between the northern and the western regions of England. In January 1969, members of the Royal Commission met representatives of the Wales and Chester circuit to put their views on partitioning Wales. It was only when the Royal Commissioners appreciated the outcry that this would cause that this partition was abandoned. Following political pressure by influential Welshmen¹³¹, the final report in September 1969 acknowledged that “*the special circumstances in Wales are such that the Circuit should be treated as a single unit and that it should be administered from Cardiff*”¹³².

5. Democratic devolution

2.17 In September 1997, the people of Wales voted for the establishment of a National Assembly for Wales and democratic devolution. The current scheme of devolution has evolved over four main phases¹³³ which we will describe in turn: (1) executive devolution under the Government of Wales Act 1998; (2) separation of the legislature and executive; (3) the giving of power to the Assembly to pass Acts; and (4) the change to a reserved powers model.

a) Phase 1

2.18 The Government of Wales Act 1998 established the Assembly as a single corporate body in the first phase of devolution¹³⁴. Most of the functions of the Secretary of State for Wales, as described in paragraph 2.15, transferred to the Assembly. The Assembly therefore had executive powers, including powers to make secondary legislation, but it had no powers to make primary legislation. Since then the laws made by the Assembly and the Welsh Ministers have been made in the English and Welsh languages and both versions have been treated as equal.

131 Lord Thomas of Cwmgiedd (2017) *The Past and the Future of the Law in Wales*.

132 Royal Commission Report (1969) Lord Beeching.

133 Torrance, D. (2018) “*A process not an event*”: *Devolution in Wales, 1998-2018*.

134 Rawlings, R (2003) *Delineating Wales: Constitutional, Legal and Administrative Aspects of National Devolution*.

2.19 The Scotland Act 1998 established the Scottish Parliament, with primary legislative powers, and the Scottish Executive (now the Scottish Government). The Northern Ireland Act 1998 also established a devolved legislature with primary powers. In both, justice was devolved. The third branch of government, a separate judiciary, existed and was continued in both Scotland and Northern Ireland.

2.20 The devolution legislation is underpinned by a Memorandum of Understanding between the UK Government and the devolved administrations in Wales, Scotland and Northern Ireland which sets out the principles which underlie relations between them¹³⁵. It was first agreed in 1999 with the latest version in 2013.

b) Phase 2

2.21 Following the report of the Richard Commission¹³⁶ which recommended significant changes to the Welsh devolution scheme, in June 2005 the UK Government published a White Paper, *Better Governance for Wales*. This led to the second phase of devolution under the Government of Wales Act 2006, which formally separated the Assembly and the Welsh Assembly Government, thus providing for two of the three branches of government normally found in democratically governed nations. The 2006 Act enabled the Assembly to gain powers incrementally (through specific provisions in Acts of the UK Parliament and Orders in Council¹³⁷) to pass Measures, a form of primary legislation, in specified areas. The same Act also provided that a referendum could be held in the future to decide whether the Assembly should be able to pass laws on all matters in equivalent areas.

c) Phase 3

2.22 Following the report of the All Wales Convention¹³⁸ in 2009 and an affirmative vote in a referendum in March 2011 (the third phase of devolution) the Assembly acquired powers to pass Acts in the areas of competence listed in Schedule 7 to the 2006 Act, under a system of devolution known as a “*conferred powers model*”¹³⁹.

¹³⁵ Welsh Government (2014) *Memorandum of Understanding*.

¹³⁶ *op cit n. 80*.

¹³⁷ *The Welsh Assembly Government had to negotiate the scope of each Legislative Competence Order (LCO) with Whitehall, following which the draft had to be approved by the Assembly and both Houses of Parliament. An LCO could only relate to areas in which the Welsh Ministers already had executive powers. David Moon and Tomos Evans, 'Welsh devolution and the problem of legislative competence' (2017) 12 British Politics 335.*

¹³⁸ *All Wales Convention (2009)*.

¹³⁹ *Jones, R W and Scully, R. (2012) Wales Says Yes: Devolution and the 2011 Welsh Referendum. Huckle, T (2015) 'Fixes, Fudges and Falling Short? The Need for a coherent and lasting devolution settlement for Wales.*

2.23 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. It carried out its work in two parts. The first part was published in November 2012 and recommended that some taxation and borrowing powers be transferred to the Assembly. As a result of this part, the UK Government introduced the Wales Act 2014 which provided that the Assembly could enact primary legislation imposing some taxes in Wales.

2.24 In March 2014 the second part of the report, concerning the powers of the Assembly, was published¹⁴⁰. It included 12 recommendations for justice and policing, including devolving policing and youth justice. The following timeline was suggested:

By 2017: devolution of youth justice system

By 2017: devolution of the police

By 2018: completion of the review of devolution of prisons and probation

On-going: administrative devolution of the court system

By 2025: completion and implementation of the review of legislative devolution of other aspects of the justice system.

2.25 Following publication of the second part of the Silk report most of the recommendations, except for those on policing and justice, were incorporated into what has become known as the St David's Day Agreement¹⁴¹ in 2015 between the then Secretary of State for Wales and the main political parties in Wales. The St David's Day Agreement was accompanied by a further UK Government White Paper¹⁴². On the question of devolution of policing, youth justice and (in the longer term) the justice system, it simply recorded "no consensus". A draft Wales Bill to give effect to the proposals in the White Paper was published in October 2015¹⁴³.

2.26 In 2016 the Welsh Government produced an alternative draft Bill, the Government and Laws in Wales Bill. This draft Bill proposed to recognise Wales as a legally distinct territory and separate the laws of

140 Commission on Devolution in Wales (2014) *Empowerment and Responsibility: Legislative Powers to Strengthen Wales*.

141 *St David's Day Agreement* (2015).

142 HM Government (2015) *Powers for a Purpose: Towards a Lasting Devolution Settlement for Wales*.

143 Wales Governance Centre and The Constitution Unit (2016) *Challenge and Opportunity: The Draft Wales Bill 2015*.

England from the laws of Wales. This would not automatically involve the establishment of a separate system for the administration of justice, with separate institutions, judiciary and professions. Judges and the professions could continue to sit and practise across England and Wales. The draft Bill also proposed that powers in relation to the justice system were to be “deferred matters” meaning that they could be devolved with effect from 1 March 2026 (or such later date as might be determined with the agreement of both the Welsh Parliament and the UK Parliament). The UK Government did not adopt the proposals set out in the Welsh Government’s draft Bill.

d) Phase 4

- 2.27 The Wales Act 2017 brought about the fourth phase of devolution and introduced a reserved powers model, similar in concept to the Scottish system, under which the devolved Parliament can make laws on any matter except those specifically reserved to the UK Parliament¹⁴⁴. In relation to justice, the Wales Act 2017 expressly recognised the Welsh tribunals (which had come into existence as part of the original scheme of devolution in 1998, as we will describe in paragraph 2.77) and provided for a President of Welsh Tribunals, the first senior judicial appointment since 1830 relating solely to Wales.
- 2.28 During the passage of the Wales Act 2017, the UK Government made a commitment to establish an Independent Advisory Committee on Justice in Wales to bring together experts and officials from the UK and Wales to review the operation of justice in Wales and make recommendations as to where justice can be delivered more effectively. The Committee published its first report in July 2019¹⁴⁵. It made recommendations for improving accessibility to laws made in Wales and improving the arrangements for dealing with the impacts of divergence in the law applicable in Wales and the law applicable in England for delivery bodies, stakeholders, practitioners and legal education providers. However, this is within the constraints of the existing division of powers, resources and responsibilities.
- 2.29 Although the main changes that have resulted in the current scheme of devolution have occurred in four phases in a period of under 20 years,

144 Richard Rawlings, R (2018) ‘The Strange Reconstitution of Wales’ (2018) *Public Law* 62.

145 Independent Advisory Committee on Justice in Wales (2019) *First Report*.

there have been several other changes in the scheme over that period; one example relevant to justice was the transfer of Children and Family Court Advisory and Support Service (Cafcass) in 2005 as we describe at paragraph [7.6.5](#).

Figure 1

Timeline of democratic devolution in Wales, 1997 to 2019

- 1997: Referendum result in favour of creating a Welsh Assembly.
- 1998: **First phase of devolution:** The Government of Wales Act 1998 establishes the National Assembly for Wales.
- 1999: First elections to the Assembly.
- 2004: Richard Commission recommends significant changes to the Welsh devolution scheme.
- 2005: UK Government publishes a White Paper, Better Governance for Wales.
- 2006: **Second phase of devolution:** Government of Wales Act 2006 gives the Assembly restricted powers to establish primary legislation in specified areas (Assembly Measures). The Act formally separates the Assembly and the Welsh Assembly Government.
- 2009: All Wales Convention recommends referendum on full law making powers.
- 2011: **Third phase of devolution:** following a referendum the Assembly is given full law-making powers in the twenty areas that have been devolved to Wales.
- 2012: The Assembly's first Act, the National Assembly for Wales (Official Languages) Act 2012 receives Royal Assent.
- 2012: First part of the Silk Commission report published and recommends that some taxation and borrowing powers be transferred to the Assembly.
- 2014: Second part of the Silk Commission report published and recommends the devolution of policing and youth justice.
- 2014: The Wales Act 2014 gives the Assembly some tax raising powers.
- 2015: White paper published by the Secretary of State for Wales – Powers for a Purpose: Towards a Lasting Devolution Settlement for Wales.
- 2017: **Fourth phase of devolution:** following the Wales Act 2017, the Assembly moves to the reserved powers model of devolution.
- 2018: The Assembly's tax raising powers come into operation.
- 2019: Senedd and Elections (Wales) Bill is introduced to lower the voting age, and change the name of the Assembly to Senedd.

Part 2: The complexity of the current scheme of devolution

2.30 The complexity of the current devolution scheme is much discussed elsewhere¹⁴⁶. It is generally accepted that it is unnecessarily complex¹⁴⁷. It is very difficult to understand. That makes for poor accountability. Furthermore it does not effectively support the delivery of justice policy in its widest sense, in Wales. We highlight two areas which illustrate the complexity as it relates to justice.

1. Devolved responsibilities relevant to justice

2.31 The Assembly and the Welsh Government have under each of the various schemes of devolution exercised powers in areas integral to justice even though there has been no devolution of powers in respect of police, probation, prisons, the courts and most areas of substantive law. This has happened as a matter of practical necessity as justice is fundamental to the proper working of government. This split in responsibility is, however, an obstacle to the development of overall policy, to the alignment of health, education, social welfare and other devolved areas with justice, to making comprehensive plans for public spending that integrate justice with other functions, to effective delivery and the monitoring and accountability for that delivery. We discuss these areas in greater detail in the course of the report but provide some examples in this paragraph¹⁴⁸:

2.31.1 Welsh Government funding for voluntary third sector organisations has been vital in providing help for people in need of advice and support in circumstances where the UK Government has significantly reduced the scope of legal aid; as described in Chapter 3, the work of the Welsh Government has played a significant role in facilitating access to justice.

¹⁴⁶ Rawlings *op cit.* n. 141. Kellam, J (2018) *'The Wales Act: a new dawn for Welsh devolution?'*. Moon and Evans *op cit.* n. 137. George, M and Pritchard, H (2016) *'Take 2: The Wales Bill'*. Jowell, J and O'Connell, C (eds), (2019) *The Changing Constitution*.

¹⁴⁷ *The long list of reserved matters complicates the distinction between devolved and non devolved powers.*

¹⁴⁸ *op cit.* n. 94 11.

- 2.31.2 The responsibilities of the Welsh Government for health include mental health and substance misuse services, both in the community and in prisons. The policies and services in these areas are crucial importance to enhancing community safety, reducing crime and promoting rehabilitation. The current Assembly inquiries into health and social care provision in Welsh prisons and mental health in policing and police custody¹⁴⁹ are further examples of concurrent responsibilities. We discuss this further at paragraphs [4.85](#) and following (in the context of the police) and in Part 5 of Chapter 4 (in the context of prisons).
- 2.31.3 Responsibilities for education extend to education for prisoners in Wales. Skills training is also a devolved function. Both are essential for effective rehabilitation of offenders. The Reforming Outcomes review¹⁵⁰ led by David Hanson MP for the Welsh Government (see paragraph [1.25](#)) made a number of recommendations for improving joint working between the Welsh Government and the prison service to achieve better employment outcomes for ex-offenders¹⁵¹.
- 2.31.4 The Welsh Government and the Police and Crime Commissioners, who set the level of local tax for policing, are responsible for the greater part of police funding, as we explain in paragraphs [4.94](#) and [4.95](#).
- 2.31.5 Housing and the prevention of homelessness is another area which is vital to reducing crime and to the resettlement of ex-offenders. Welsh legislation and guidance on priority housing needs is directly relevant to their needs¹⁵².
- 2.31.6 The Welsh Government also has a general power to promote well-being¹⁵³ which it has used to take action in areas relevant to justice, as well as promoting legislation aimed at preventing harm or violence. We describe this further action in Chapter 4, paragraphs [4.179](#), [4.196](#), [4.202](#), [4.271](#), [4.277](#) and following.

149 *Assembly Health, Social Care and Sport Committee (2019) [Mental health in policing and police custody and Provision of health and social care in the adult prison estate](#).*

150 *op cit n. 104.*

151 *Ibid.*

152 *WS070 Dr Iolo Madoc-Jones, Dr Wulf Livingston and Dr Caroline Hughes: 3.*

153 *Government of Wales Act 2006, S60.*

- 2.31.7 Welsh legislation established the Public Services Ombudsman for Wales, whose remit covers devolved public services in Wales. The Ombudsman plays an important role in administrative justice – see paragraph 6.51 and following. Although there is a Children’s Commissioner for Wales, the view has been expressed that the Children’s Commissioner for Wales cannot oversee the position of children in the criminal justice system in Wales as justice is not devolved and the Children’s Commissioner for England has no jurisdiction in Wales.¹⁵⁴
- 2.31.8 Welsh policy and legislation have emphasised prevention, collaboration and the promotion of rights. The Social Services and Well-being (Wales) Act 2014 (the Social Services Act), for example, extended to bodies exercising functions under that Act (in practice, local authority social services) a duty to have regard to the UN Convention on the Rights of the Child as well as the UN Principles for Older Persons. The Assembly and subsequently the Welsh Government have distinct duties in respect of promoting equality and sustainable development¹⁵⁵ which have influenced their approach to policy and legislation.
- 2.31.9 As well as having responsibility for social care policy and support for children and families, the Welsh Government assumed responsibility for the work of Cafcass in Wales as a result of the UK Children Act 2004¹⁵⁶. These are integral to the justice system, specifically in relation to the very significant issue of taking children into local authority care. We consider this in the context of family justice in Chapter 7.
- 2.31.10 Economic development is an important responsibility of the Welsh Government. The economic action plan, *Prosperity for All*¹⁵⁷, highlights the need for a high-quality skills base, digitalisation, innovation in procurement and promoting Wales globally, while tackling regional inequalities. A vibrant legal sector integrated into the economy is key to economic prosperity. These issues are discussed in various parts of Chapter 9.

154 Plotnikoff, J and Woolfson, R (2019) *Falling short? A snapshot of young witness policy and practice*.

155 *Government of Wales Act 2006*, s.77 and 79.

156 *Para 7.6.5.*

157 *Welsh Government (2017) Prosperity for All: economic action plan.*

- 2.31.11 Welsh policy and legislation on the Welsh language has continued to develop, with current strategy setting the aim of a million Welsh speakers by 2050¹⁵⁸. This is particularly relevant to the ability to uphold rights in court through the use of the Welsh language and to legal education, given that one of the strategy's main objectives is to ensure that fewer young people lose their Welsh language skills when moving to further or higher education.
- 2.32 An attempt has been made by the UK and Welsh Governments to mitigate the effects of the complexity by agreeing in March 2018 a concordat on arrangements for consultation and cooperation, based on the Memorandum of Understanding referred to at paragraph [2.20](#) above.
- 2.33 However, as it evident from the following chapters of our report the concordat does not really address the problems or provide a sustainable or long-term solution to the effect of separating justice from other devolved fields. In practice, the actions of the Assembly and the Welsh Government which are directly relevant to justice go wider than this¹⁵⁹.

2. The law applicable in Wales

- 2.34 The complexity is also evident in the law which is applicable in Wales. It consists of:
1. primary and secondary legislation made by the Assembly and the Welsh Ministers¹⁶⁰;
 2. primary and secondary legislation made by the UK Parliament and UK Ministers consisting of legislation made before devolution (which the Assembly and the Welsh Ministers are now able to amend) and legislation on matters reserved to the UK Parliament¹⁶¹;
 3. the common law of England and Wales; and
 4. decisions of the courts and tribunals which interpret this legislation and which apply the common law.

158 Welsh Government (2017) *Cymraeg 2050: Welsh language strategy*.

159 Pritchard, H (2016) *Justice in Wales: Principles, Progress and Next Steps*.

160 EU law is also applicable, either directly or by virtue of implementation of further Welsh legislation.

161 The UK Parliament will "not normally" legislate in devolved areas without the relevant devolved institution having passed a legislative consent motion.

- 2.35 The term Welsh law is frequently used to refer to legislation made in Wales by the Assembly and the Welsh Ministers and decisions of the courts and tribunals which interpret that legislation. This extends to any future legislation made by the Assembly and the Welsh Ministers within devolved competence. We adopt this usage of Welsh law in the report¹⁶².
- 2.36 The Wales Act 2017 recognises Welsh law and specifies that the law which applies in Wales includes “*a body of Welsh law made by the Assembly and the Welsh Ministers*”. However, it also provides that the body of law made by the Assembly and the Welsh Ministers forms part of “*the law of England and Wales*”¹⁶³. This is despite the fact that Assembly Acts apply only in relation to Wales and some Acts of the UK Parliament apply only to England¹⁶⁴.
- 2.37 From the first phase of devolution in 1998, the Assembly and, since 2007, the Welsh Ministers have exercised legislative competence in relation to a broad range of policy areas, making over 6,000 pieces of subordinate legislation since 1999.
- 2.38 Between 2012 and September 2019 the Assembly passed 41 Assembly Acts on a wide range of topics, including seven Acts relating to housing, six relating to education and 10 relating to health and social services, as well as substantial Acts on planning, the environment and taxation. This is in addition to 22 Assembly Measures passed between 2008 and 2011. In 2016, the Law Commission reported “*it has become meaningful to speak of Welsh law as a living system for the first time since the Act of Union in the mid sixteenth century*”¹⁶⁵.
- 2.39 As set out in paragraph 1.13, the Future Generations Act requires public bodies in Wales to think about the long-term impact of their decisions, to work better with people, communities and each other, and to work to prevent persistent problems such as poverty, health inequalities and climate change. Further to this, in November 2018, Welsh Ministers commissioned research on options to strengthen and advance equality and human rights in Wales, including considering how UN conventions might be incorporated into Welsh law, enacting the

162 [The Legislation \(Wales\) Act 2019](#) provides a definition of Welsh Law at s.1(3).

163 [Wales Act 2017](#) s.1 A2.

164 [Watkin, T, with Greenberg, D \(2018\) Legislating for Wales.](#)

165 [Law Commission of England and Wales \(2016\) Form and accessibility of the Law Applicable in Wales.](#)

socio-economic duty and strengthening existing regulations and guidance. Subsequently, the First Minister announced in January 2019 that the Welsh Government would bring the socio-economic duty into effect (section one of the Equality Act 2010) before the end of 2019.

- 2.40 Following Brexit, it is expected that powers in devolved areas which are currently bound by EU law will return to Cardiff unless the UK Government passes regulations under the European Union (Withdrawal) Act 2018 to place restrictions relating to retained EU Law on the Assembly's legislative competence.
- 2.41 There is an increasing amount of primary legislation passed by the UK Parliament that applies only to England. In policy areas devolved to Wales, Scotland and Northern Ireland, the UK Parliament has essentially become a Parliament for England only in these areas¹⁶⁶. In October 2015, the House of Commons approved changes to its Standing Orders to give effect to English Votes for English Laws. The English Votes for English Laws process ensures that legislation that affects England only is approved by a majority of MPs representing English constituencies.

3. Reserved powers and general restrictions under the current devolution scheme

- 2.42 The move to a reserved powers model of devolution in 2017 did nothing to address issues of complexity, lack of understanding and poor accountability. It simply dealt with the complexity from a different starting point. Consequently, it resulted in a very long list of reserved matters and detailed restrictions on the Assembly's legislative competence in place of the detailed provisions of the earlier legislation conferring the Assembly's legislative competence¹⁶⁷.
- 2.43 The complexity of the devolution scheme in Wales has led to references to the UK Supreme Court in relation to three Bills in as many years¹⁶⁸. This has occurred because the scheme of devolution enables the UK Government through the Attorney General, or the Welsh

¹⁶⁶ *WS178 Huw Williams: 1.*

¹⁶⁷ *op cit n. 155 (as amended by the Wales Act 2017) Part 4 (law making powers) and Schedules 7A (part 1-general reservations, part 2-specific reservations) and 7B (general restrictions). Assembly Acts must also be compatible with EU law and the Convention Rights incorporated into UK law by the Human Rights Act 1998.*

¹⁶⁸ *Local Government Byelaws (Wales) Bill 2012 - Attorney General Reference [2012] UKSC 53; Agricultural Sector (Wales) Bill - Attorney General Reference [2014] UKSC 43; Recovery of Medical Costs for Asbestos Diseases (Wales) Bill - Reference by the Counsel General for Wales [2015] UKSC 3.*

Government through the Counsel General, to refer an Assembly Bill to the Supreme Court for a period of four weeks after the Bill is passed. The Supreme Court then determines whether the Bill is within the competence of the Assembly. If it is not, the Bill will not receive Royal Assent.

- 2.44 The complexity in the overall operation of the UK constitution is reflected in the fact that despite Wales moving to a similar reserved powers system of devolution to that in Scotland and Northern Ireland, there are major differences in the list of matters reserved to Westminster regarding Wales as compared to the other two legislatures. The Government of Wales Act 2006 as amended contains 44 pages of reservations and restrictions, compared with 17 pages in the Scotland Act 1998. There are general reservations (or, in the case of Northern Ireland, excepted matters¹⁶⁹) common to all three devolution schemes, such as the constitution, international relations and defence.
- 2.45 However, only in the Government of Wales Act 2006 do the following general reservations now appear, under the heading “Single legal jurisdiction of England and Wales”: *courts; judges; civil and criminal proceedings; pardons for criminal offences; private international law; and judicial review of administrative matters.*
- 2.46 The exceptions to these reservations are the functions of Cafcass Cymru¹⁷⁰ and provision for the prosecution of offences created by devolved legislation. Legislation on tribunals is reserved to the UK Parliament, apart from tribunals relating to devolved subjects.
- 2.47 Although some specific reservations, such as immigration, national security, money laundering, firearms and misuse of drugs, apply to all the devolved legislatures, there are additional reservations on justice which apply only to the Welsh legislature and add yet further to the complexity. The additional reservations listed in the Government of Wales Act 2006 include: *court surveillance by persons exercising public functions; the prevention, detection and investigation of crime; maintenance of public order; policing and police and crime commissioners; dangerous dogs, anti-social behaviour; modern slavery and prostitution; rehabilitation of offenders; criminal records; poisons*

169 WS129 Professor T.H. Jones: 6.

170 [Para 7.6 et seq.](#)

and knives; private security; late night refreshment; the sale and supply of alcohol¹⁷¹; charities; courts, judges, civil and criminal proceedings; legal profession, legal services and claims management; legal aid; coroners; arbitration; mental capacity; public records; compensation of those affected by crime and miscarriage of justice; prisons and offender management; family relationships and children; gender recognition and; the registration of births, deaths and places of worship¹⁷².

- 2.48 The disparity in the Welsh schemes of devolution is further exemplified by Schedule 7B to the Government of Wales Act 2006 which lists a number of general restrictions on the Assembly's legislative competence with regard to private and criminal law which are not replicated for either Scotland or Northern Ireland. An Act of the Assembly cannot:
- 2.48.1 Modify private law unless it is for a devolved purpose. "The private law" for the purposes of the Act means the law of contract, agency, bailment, tort, unjust enrichment and restitution, property, trusts and succession. As housing law is devolved, the Assembly passed legislation in 2016 that will establish a new regime between landlords and tenants in the private rented sector. When in force, probably in 2021, it will change private law¹⁷³.
 - 2.48.2 Create or modify certain many categories of criminal offences (listed in the Act) including homicide offences and all the major offences against the person, sexual offences, and offences dealt with by the Perjury Act 1911. The Assembly has, however, considered a Bill to change the criminal law by removing the criminal defence of reasonable chastisement on children.
 - 2.48.3 Modify the law about criminal responsibility and capacity, the meaning of intention, recklessness and dishonesty and other mental elements of offences, inchoate and secondary criminal liability, or sentences and other orders and disposals in respect of defendants in criminal proceedings, or otherwise in respect of criminal conduct, and their effect and operation. As we

171

Public Health (Minimum Price for Alcohol) (Wales) Act 2018.

172

House of Commons (2019) Briefing Paper. Reserved matters in the United Kingdom.

173

Para 5.9.

explain in Part 5 of Chapter 4, one of the consequences is that Wales cannot adapt penal policy to reflect an approach aligned with its social welfare and health policies.

- 2.49 The long list of reserved areas and restrictions has created what is called the “jagged edge” – the complex and sometimes interwoven issues at the interface between devolved and non devolved matters¹⁷⁴. As we have set out in paragraph 2.47 and is shown in subsequent chapters, despite the fact that most of the powers in respect of policing and justice are not devolved, the Welsh Government does play a crucial role in these areas but has no real say in overall policy or expenditure.

Part 3: Court and tribunal system in Wales

- 2.50 There has been no devolution of powers in respect of the courts and most of the tribunals that sit in Wales. It is necessary for us therefore to describe the court and tribunal system as it operates in Wales in the wider context of the United Kingdom and England and Wales.

1. The Courts

- 2.51 As we set out at paragraph 2.13, the courts of Wales became part of a fully integrated system with the courts of England in 1830. Since then, the courts of the United Kingdom and England and Wales have undergone a number of reorganisations. The present structure is as follows:

a) The Supreme Court

- 2.52 At the apex of the legal system is the Supreme Court. This was established in 2009 by transferring the supreme appellate jurisdiction for the UK as a whole from the appellate committee of the House of Lords to the Supreme Court as a separate and distinct body. It primarily sits in London, but has sat in Edinburgh, Belfast, and in July 2019 in Cardiff.

- 2.53 The Supreme Court consists of 12 justices. Two of the justices are appointed from the Scottish judiciary or from eminent Scottish lawyers.

174 *op cit n.94: 11.*

One is appointed from the judiciary of Northern Ireland or from eminent lawyers from Northern Ireland. The other justices are drawn from the judiciary of England and Wales or from eminent lawyers.

2.54 In contradistinction to Scotland and Northern Ireland, there does not have to be a Welsh Judge as of right. From the Supreme Court's establishment in 2009 until 2017, there was no Welsh member of the Supreme Court. In 2017, a justice who is Welsh was appointed to the Supreme Court.

b) The courts and tribunals of the United Kingdom and its nations

2.55 The UK has a complicated judicial structure. It has developed incrementally:

2.55.1 Scotland has always had its own court system. This continued after Scotland joined the Union with England in 1707. Northern Ireland has had its own court system since 1921. Each has a Court of Appeal, High Court and lower courts with their own judiciary headed respectively by the Lord President and the Lord Chief Justice of Northern Ireland.

2.55.2 England and Wales share a Court of Appeal, High Court and lower courts; the judiciary of those courts is headed by the Lord Chief Justice of England and Wales.

2.55.3 Until 1998, the Lord Chief Justice had been known as the Lord Chief Justice of England. In 1998, Lord Bingham of Cornhill changed the title to that of the Lord Chief Justice of England and Wales.

2.55.4 There is in addition a system of tribunals. Some have UK wide jurisdiction; some have jurisdiction over Great Britain; some have jurisdiction jointly over England and Wales; some have jurisdiction just in respect of England or Wales or Scotland or Northern Ireland. The Senior President of Tribunals is the head of the judiciary of the UK wide tribunals, the Great Britain tribunals, the England and Wales tribunals and the English tribunals. The judiciary of the tribunals which have jurisdiction over certain matters in Wales (the Welsh tribunals) is headed by the President of Welsh Tribunals.

c) The courts of England and Wales

2.56 Judges of the Court of Appeal and the High Court of England and Wales are based in London. These judges are usually referred to collectively as “the Senior Judiciary”. Judges of the Court of Appeal are appointed from the ranks of serving High Court Judges. High Court Judges are usually appointed from the ranks of senior barristers and solicitors although some Senior Circuit Judges and Circuit Judges are promoted from time to time.

d) The Court of Appeal

2.57 The Court of Appeal of England and Wales consists of a maximum of 39 judges who are known as Lord/Lady Justices of Appeal and the Lord Chief Justice, the Master of the Rolls, and the Heads of the three Divisions of the High Court. The Court of Appeal has two divisions; one division is concerned exclusively with appeals in criminal cases and is known as the Court of Appeal (Criminal Division) of which the President is the Lord Chief Justice. The other division, the Civil Division, hears appeals from decisions in all other areas of law and is headed by the Master of the Rolls. Most of the judges of the Court of Appeal hear appeals over a wide range of cases in different fields of law. A small number of the judges are more specialist and sit mainly upon appeals within their field of specific expertise.

2.58 There is currently one Lady Justice of Appeal who is Welsh by birth and one Lord Justice who is not Welsh by birth but who has a strong connection to Wales having been a Circuit and Senior Circuit Judge based in Wales. In July 2019 it was announced that a High Court Judge with close links to Wales had been appointed.

2.59 Most Court of Appeal cases are heard in London. From about 1998, both Divisions of the Court of Appeal have sat in Wales at periodic intervals (usually in Cardiff or Swansea) to hear some appeals from cases which have been heard in Wales. We set out the sittings in Wales at paragraphs [4.163](#) and [5.36](#) respectively.

e) The High Court

- 2.60 The High Court of England and Wales consists of a maximum of 109 judges. The High Court is composed of three divisions known as the Queen’s Bench Division, the Family Division and the Chancery Division. The Family Division, as its name indicates, hears cases about family issues, children and a range of related issues. It is headed by the President of the Family Division. The Chancery Division deals with cases relating to property and some business law. It is headed by the Chancellor of the High Court. Part of the Queen’s Bench Division (the Commercial Court, the Technology and Construction Court and the Admiralty Court) also deals with business law; these courts of the Queen’s Bench Division have been brought together with the Chancery Division to form the Property and Business Courts headed by the Chancellor of the High Court. The Queen’s Bench Division also includes a wide range of courts that try other cases including the Administrative Court. It is headed by the President of the Queen’s Bench Division.
- 2.61 All High Court Judges sit for periods of time in London, but most also sit on the six circuits into which England and Wales is divided. Five of the circuits are based upon geographical regions of England. The sixth is the Wales circuit. As we explained at paragraph 2.13, Wales was within the Wales and Chester Circuit, but Chester was removed in 2006 to another circuit. Since then there has been a Circuit just for Wales¹⁷⁵. Within the six circuits, High Court judges sit in the different court centres to hear the most serious and significant cases which arise outside London. The Administrative Court in Wales is based in the Cardiff Civil and Family Justice Centre.
- 2.62 High Court Judges sat in courts in Wales for a total of 418 days in 2016-17 and 346 days in 2018-19 a reduction of 17%. It is not clear why this is so but amongst possible factors is the decline in very serious criminal cases in Wales and the demands in London for High Court Judges.
- 2.63 Currently there are five High Court Judges who are Welsh by birth and two others who have strong connections with the Wales Circuit.

f) Circuit Judges and District Judges

- 2.64 Senior Circuit Judges, Circuit Judges and District Judges sit in the courts located around England and Wales. They are also appointed as judges of England and Wales. However, all Senior Circuit Judges, Circuit Judges and District Judges are deployed upon appointment to a circuit. Currently the Wales Circuit has four Senior Circuit Judges, 28 Circuit Judges, 26 District Judges who hear civil and family cases and six who hear criminal cases in the Magistrates Court.
- 2.65 Most of these Circuit and District Judges undertake all of their judicial duties in Wales. Occasionally, experienced Circuit and District Judges are asked to sit on other circuits. Senior Circuit Judges and a small number of Circuit Judges are authorised to sit either as Deputy High Court Judges or as additional Judges of the Court of Appeal (Criminal Division). Three of the Senior Circuit Judges assigned to Wales are authorised to sit as Deputy High Court Judges. The fourth, who is known as the Recorder of Cardiff, is authorised to sit as an additional Judge of the Court of Appeal (Criminal Division). Six Circuit Judges assigned to Wales are authorised to sit as Deputy High Court Judges. Two are authorised to sit as additional Judges of the Court of Appeal (Criminal Division).
- 2.66 The Senior Circuit Judges, Circuit Judges and District Judges who are assigned to the Wales Circuit are usually, although not always, persons who have expressed an interest in being a judge in Wales and they are usually drawn from members of the professions who have practised in Wales.

g) Fee paid judges

- 2.67 Each of the levels of the judiciary to which we have referred is supplemented by practitioners who are appointed to sit for a number of days each year on a fee paid basis. When not sitting they carry on their practices as lawyers¹⁷⁶.

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Most are known as Deputy Judges – those that sit as Deputy High Court Judges and those who sit as Deputy District Judges. However those who sit as Deputies for Circuit Judges are known as Recorders – a term not to be confused with the very senior judges such as the Recorder of Cardiff who are in charge of major criminal court centres.

h) The magistracy

- 2.68 There are about 15,000 justices of the peace or magistrates in England and Wales who are lay persons and not lawyers but receive training to develop the necessary skills. They are unpaid volunteers who are recruited from the area served by the local Magistrates' Court; the numbers have declined from 30,000 in 2009¹⁷⁷. They sit normally in a panel of three in the magistrates Court and in the Family Court; they share the work with District Judges (Magistrates' Court), who generally deal with the longer and more complex cases. Magistrates are advised in court by a clerk who is a qualified lawyer.
- 2.69 Magistrates are appointed from communities across England and Wales. They have a minimum sitting commitment and undergo training. 55% of magistrates are aged 60 or above, 55% are female and 12% are BAME people¹⁷⁸.
- 2.70 There are 1,130 magistrates in Wales. The numbers have declined from 1,929 in 2009. Part of the reason has been a decline in the number of cases heard in magistrates' courts (as we set out at paragraph 4.159) and in part by the very extensive closures of magistrates' courts in Wales which we set out at paragraphs 8.5 and following.

i) The organisation of the judiciary

- 2.71 The governance of the judiciary of England and Wales is carried out by the Lord Chief Justice through the Judicial Executive Board and the Judges' Council. There is a sub-committee of the Judges' Council which has a responsibility for Wales.
- 2.72 Some High Court Judges are appointed by the Lord Chief Justice to exercise responsibility for the judiciary and administration of justice on each circuit. The circuits generally have two Presiding Judges who have overall responsibility, a Supervising Judge for the Property and Business Courts, a Family Division Liaison Judge for the Family Court and a Queen's Bench Liaison Judge for the Administrative Court. Since the post of the Presiding Judge was created in 1971, the majority of Presiding Judges for Wales and indeed all since 1998 have been Welsh by birth or with a close connection to Wales.

177 *Courts and Tribunals Judiciary (2018) [Judicial Diversity Statistics](#).*
178 *Para 4.60 et seq.*

2.73 On each circuit, the day to day responsibilities for the overall management of cases is exercised by specific judges who are responsible for particular geographic areas within each circuit. For criminal work, they are generally known as Resident Judges. For civil work, they are known as Designated Civil Judges. For family work they are known as Designated Family Judges. For administrative work, they are known as Administrative Court Liaison Judges.

2. Tribunals

a) The UK, GB and England and Wales tribunals

2.74 The UK tribunals, the GB tribunals and the England and Wales tribunals were established over the course of the 20th century to hear disputes between private individuals (or companies) and government departments, though there were some, such as the Employment Tribunals, that heard disputes between private individuals (or companies) and other individuals (or companies). The tribunals were generally sponsored and administered by the department of the UK Government with which they were most closely connected.

2.75 After a review by Lord Justice Leggatt¹⁷⁹, the tribunals were separated from their sponsoring department in 2003 and given a separate judicial structure. A separate administration was created initially under the responsibility of the Ministry of Justice. The tribunals that heard different cases were grouped into Chambers and the Chambers divided into a Lower Tribunal that heard cases and an Upper Tribunal that heard appeals. The post of Senior President of Tribunals was created to head the tribunals judiciary.

179 *Leggatt, A (2001) Tribunals for Users One System, One Service.*

2.76 Three of these tribunals sit in Wales to hear cases – the Employment Tribunal (see paragraph 5.24), the First-tier Tribunal (Immigration and Asylum) Chamber (see paragraph 6.32.1) and the First-tier Tribunal (Social Security and Child Support) Chamber (see paragraph 6.32.2). The judges of these tribunals are judges of the England and Wales tribunals judiciary headed by the Senior President of Tribunals. Each of these tribunals has full time salaried judges and a significant number of these judges are drawn from barristers, solicitors and academic lawyers based in Wales. However, it is not uncommon for practitioners and academics from England to hold some of the judicial posts. There are a number of fee paid judges who sit as Deputy Judges in the same way as in the courts. In 2011 a Senior Tribunals Liaison Judge (Wales) was appointed.

b) The Welsh tribunals

2.77 Under the system of administrative devolution prior to 1997 which we have described at paragraph 2.15, as and when departmental responsibilities were transferred to the Secretary of State for Wales, the responsibility that any department had for sponsoring tribunals was similarly transferred. When the powers of the Secretary of State were transferred to the Assembly, Wales had five tribunals, currently known as the Agricultural Land Tribunal for Wales (see paragraph 5.30) which has 19 members, the Mental Health Review Tribunal for Wales (see paragraph 6.35) which has 114 members, the Residential Property Tribunal for Wales (see paragraph 5.31) which has 35 members, the Special Educational Needs Tribunal for Wales (see paragraph 6.36) which has 19 members and the Registered Inspectors of Schools Appeal Tribunal (see paragraph 6.37), which has the same membership as the Special Educational Needs Tribunal for Wales. The Adjudication Panel for Wales (see paragraph 6.38) was established a year after devolution¹⁸⁰ and has 10 members.

180 *The Local Government Act 2000.*

- 2.78 As these tribunals were separate from the UK, GB and England and Wales tribunals, they were not the subject of the Leggatt Review. Consequently they were not grouped into Chambers, divided into an Upper and a Lower Tribunal, or provided with a distinct administration. No post of head of the Welsh tribunals judiciary was created.
- 2.79 In 2015, the Welsh Language Tribunal was established and was the first tribunal to be established by the Assembly; we describe this at paragraphs [6.39](#) and [11.9](#). It has five members. Although the Assembly has passed laws that have changed the rights and obligations of those who live in Wales, no other tribunal has been established to deal with disputes in relation to them, as such disputes have been left for decision to the courts of England and Wales or to the Great Britain or England and Wales tribunals – see paragraphs [5.27](#) and [6.59.2](#).
- 2.80 The Wales Act 2017, as we have mentioned at paragraph [2.27](#), created the office of President of Welsh Tribunals as head of the seven tribunals to which we have referred. The Wales Act 2017 also lays down a mechanism for creating more Welsh tribunals if it is thought appropriate.
- 2.81 The President of Welsh Tribunals and the judges of the Welsh tribunals are judges of Wales alone. The President of Welsh Tribunals must be either a serving or retired member of the Senior Judiciary. The legally qualified judges of the Welsh tribunals are drawn from members of the legal professions of England and Wales and from employed and academic lawyers. With the exception of the President of the Mental Health Review Tribunal for Wales (who is a salaried judge) all the legally qualified judges are fee paid. Although the majority of legally qualified judges are drawn from practitioners and academics based in Wales there are a number of judges who practise in England.

c) The administration of the courts and tribunals in England and Wales.

2.82 The administration of the courts of England and Wales, the England and Wales tribunals and the UK and GB tribunals is carried out by Her Majesty's Courts and Tribunals Service (HMCTS). It is an agency¹⁸¹ with a special constitutional status under the Framework Agreement which reflects the fact that the judiciary is the third branch of the state, independent of the legislature and the executive. HMCTS is headed by a Board with an independent chairman and a chief executive. They are jointly accountable to the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals.

d) The administration of the Welsh tribunals

2.83 The Welsh tribunals are administered by a small team, the Welsh Tribunals Unit. This has its own leadership structure. Unlike HMCTS Wales, it is not an agency and has no separate constitutional status. It has no formal accountability to the President of Welsh Tribunals but in practice however, the President and the Head of the Welsh Tribunals Unit work closely together on all matters relating to the tribunals¹⁸².

3. The constitutional position of the judiciary and its relation to government and the legislature

2.84 It is next necessary for us to explain the relationship that exists between the judiciary and the UK Parliament and UK Government and the need for further development between the judiciary and the Welsh Government and Assembly.

181 *It is not an Executive Agency.*

182 *Para 6.59.1.*

a) Relationship of the judiciary to the UK Parliament and the UK Government

2.85 Until the Constitutional Reform Act 2005, the judiciary of England and Wales was headed by the Lord Chancellor who besides being a Cabinet Minister and Speaker of the House of Lords also sat as a judge. He was responsible for the relationship between the judiciary and the UK Government and UK Parliament.

2.86 Since 2005, the Lord Chief Justice of England and Wales as Head of the Judiciary of England and Wales has been responsible for that relationship with the UK Parliament and the UK Government. Over the ensuing years, as well as continuing its traditional role of advising the UK Parliament and UK Government on technical aspects of legislation, the judiciary of England and Wales has had to develop a method of working with both the Government and Parliament¹⁸³. The judiciary has also played an increasingly significant role in reform of the court and tribunal system as it relates to criminal justice, civil justice, administrative justice and family justice as we mention in the succeeding Chapters. Judges also sit on boards sometimes participating as members, sometimes as observers. When they participate as observers, they do so for constitutional reasons (as it is not appropriate for them to be members) but their participation to all intent and purposes is the same¹⁸⁴.

b) Relationship of the judiciary to the Welsh Government

2.87 The Lord Chief Justice is responsible for the relationship of the judiciary with the Welsh Government and the Assembly. The Lord Chief Justice has an annual meeting with the First Minister as does the President of Welsh Tribunals. The President of Welsh Tribunals produces an annual report to the Presiding Officer of the Assembly and has frequent meetings with the Head of the Welsh Tribunals Unit and with the Deputy Director within the Welsh Government civil service who is responsible for the administration of the Welsh tribunals¹⁸⁵.

183 *Lord Thomas of Cwmgiedd (2017) The Politics of Judicial Independence in the UK's changing Constitution, The judiciary within the State – the relationship between the branches of the state.*

184 *Para 4.18, 4.31, 7.11, 12.140.3.*

185 *WS204 First Minister: 2.*

- 2.88 Meetings take place between the Counsel General and one of the Justices of the Supreme Court of the UK. When the Supreme Court sat in Cardiff in July 2019 the First Minister and the Counsel General met with the President of the Supreme Court and two other Justices of the Supreme Court.
- 2.89 Meetings between other senior members of the judiciary and Welsh Government ministers and officials take place from time to time; there are no regular or scheduled meetings. These include the Presiding Judges in Wales, other High Court Judges and the Senior Tribunals Liaison Judge (Wales)¹⁸⁶.

c) Appointment and removal

- 2.90 Appointments to the judiciary of England and Wales (both for courts and tribunals at the level of the High Court and below) are made on the recommendation of the Judicial Appointments Commission, an independent body. The appointments are formally made by the Queen. Appointments to the Court of Appeal and to the Supreme Court are made on the recommendation of Commissions on which Commissioners from the Judicial Appointments Commission form the majority. The appointments are formally made by the Queen. The Judicial Appointments Commission¹⁸⁷ when selecting Commissioners must select at least one lay member who has a special knowledge of Wales¹⁸⁸.
- 2.91 Complex arrangements are in place for the discipline and removal of judges. An Office for Judicial Complaints jointly accountable to the Lord Chief Justice and the Lord Chancellor was established in 2005. If any complaint needs to be considered further it is investigated either by a judge or under judicial control. If as a result of the investigation it is thought appropriate to take the matter further, a disciplinary tribunal is established with lay representation. The report of the tribunal is then considered by the Lord Chief Justice and the Lord Chancellor who make a joint decision on any disciplinary penalty. High Court Judges can only be removed from office through the decision of the UK Parliament.

186

Ibid. 3.

187

The Judicial Appointments Commission Regulations 2013, SI.2013/2191, Reg 15(4).

188

The functions of this Commissioner are to advise the Commission on the particular requirements of Wales, on developments in devolution and the administration of justice in Wales; the commissioner acts as a link to the relevant bodies in Wales and oversees the selection exercises involved in judicial positions in Wales. Two Commissioners have fulfilled this role – Sir Geoffrey Inkin (2006-12) and Professor Noel Lloyd CBE (2012-19). The position is vacant as at October 2019.

2.92 All new appointments to Welsh tribunals are made through the Judicial Appointments Commission. The President of Welsh Tribunals is appointed by the Lord Chief Justice, if the Lord Chief Justice, Lord Chancellor and the First Minister agree on the candidate following an expression of interest. If that process fails then a Judicial Appointments Commission competition takes place.

d) Conclusion

2.93 On analysis, there are two distinctions that must be drawn in respect of the judiciary as the third branch of the state.

2.94 The first is between (a) the judiciary who sit in Wales in the courts and tribunals of England and Wales and (b) the judiciary of the Welsh tribunals. We set out in paragraph [5.56](#) how these should be brought more closely together.

2.95 The second distinction is between (a) the judiciary who sit for all or the greater part of their time in courts and tribunals in Wales and who are based in Wales and (b) the senior judges who may be Welsh or have strong Welsh connections but who are now all based in London, though they sit in Wales from time to time. This is a structural weakness in the judiciary of Wales – an issue we consider at paragraphs [12.138](#) and following.

Part 4: Finance and resources for the justice system in Wales

2.96 The funding of the justice system in Wales is in outline divided as follows:

- 2.96.1 The Ministry of Justice is the primary source of funding for most bodies and agencies responsible for the delivery of justice functions in Wales as we explain at paragraph [4.6](#).
- 2.96.2 The Home Office budget provides part of the funding for the Welsh police forces.
- 2.96.3 The Attorney General's Department provides the funding for the CPS.
- 2.96.4 The Welsh Government provides a significant part of the funding for some functions, particularly the police.
- 2.96.5 Welsh local authorities provide funding for services including police, youth justice and coroners.

2.97 The devolved administrations are funded according to the Barnett formula¹⁸⁹, which includes a comparability factor to ensure changes to English departmental budgets result in equivalent changes in the budgets of the devolved administrations, proportionate to their population shares. None of the functions of the Ministry of Justice, Home Office and Attorney General's Department have been devolved to Wales. Therefore, changes in the funding for those UK Government departments do not currently result in changes to the level of the Welsh Government budget. The comparability factor for the Ministry of Justice, Home Office and Attorney General's Department is 0%. However, the reductions in the budgets of those departments have had a significant impact on the Welsh Government as it has decided in the interests of the people of Wales to allocate funding made for devolved purposes to mitigate the effect in Wales of the cuts to non devolved budgets.

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The Barnett formula is a mechanism used by the Treasury in the United Kingdom to automatically adjust the amounts of public expenditure allocated to Northern Ireland, Scotland and Wales to reflect changes in spending levels allocated to public services in England, England and Wales or Great Britain, as appropriate.

2.98 In addition, the Welsh Government and local authorities provide many of the services in education, health, and welfare which are integral to the delivery of justice. This part of this Chapter provides a brief explanation of the complex financial position. We deal with the detailed provision in subsequent parts of the report¹⁹⁰.

1. Ministry of Justice

2.99 The Ministry of Justice budget experienced one of the largest real terms reductions in funding of all UK Government departments between 2010-11 to 2017-18; around 27%. These reductions have had significant consequences in Wales, since the Ministry of Justice funds courts and tribunals, legal aid, prisons and probation as we describe in detail in paragraph 3.11 (legal aid), paragraph 2.106 (prisons and probation) and paragraph 2.100 (courts).

Figure 2

Expenditure on courts and tribunals, legal aid, criminal injuries compensation and prisons and probation in Wales

| (£MILLION) | COURTS AND TRIBUNALS 2017-18 | LEGAL AID 2018-19 | CRIMINAL INJURIES COMPENSATION AUTHORITY 2017-18 | PRISONS AND PROBATION 2018-19 |
|------------|------------------------------|-------------------|--------------------------------------------------|-------------------------------|
| | £67.6 | £80.1 | £7 | £201.6 |

Source: Ministry of Justice and HM Courts and Tribunals Service

190 *Para 3.3 et seq (legal advice) and para 4.89 (policing).*

a) Courts and tribunals

- 2.100 Overall operational expenditure by HMCTS for the courts and tribunals it administers in England and Wales¹⁹¹ was £2,406 million in 2010-11, adjusted to 2018-19 prices. £648 million (27%) of this expenditure was met by operating income, mainly from fees. By 2018-19, its operational expenditure had fallen by 17% in real terms to £1,993 million, of which £781 million was income from fees and transfers¹⁹². By 2018-19, HMCTS's operating income from fees alone met nearly 35% of its total expenditure. Therefore, part of the impact of the reductions in UK Government expenditure has been met by significant fees which must be paid by users of the courts and tribunals in the fields of civil, family and administrative law¹⁹³.
- 2.101 It is not possible to provide an equivalent analysis of the fall in HMCTS expenditure on courts and tribunals in Wales since 2010-11. This is because, for administrative convenience, HMCTS combines expenditure for Wales and some expenditure for the South West of England in a 'Wales region'. The figure of £67.6 million, which the Ministry of Justice provided to us as an estimate of the total costs of running courts and tribunals in Wales in 2017-18, includes an allocation of costs managed centrally. HMCTS estimate that £22.9 million of this expenditure is paid out of court fees received in Wales. In comparison, the Scottish Courts and Tribunals Service has a budget of £150 million of which about £35 million is paid from court fees.
- 2.102 Excluding depreciation and other non-cash expenditure, estimated net expenditure for Wales equated to just under 4% of HMCTS spending in 2017-18. This is materially lower than both Wales' share of the population of England and Wales (5.3%) and of Great Britain (4.9%). This lower spending per person may reflect actual lower levels of spending in Wales, or that some allocation of costs was not possible.

¹⁹¹ [Para 2.83.](#)

¹⁹² *The Department of Work and Pensions and HM Revenue and Customs transferred £73.4 million in respect of the Social Security and Child Support First Tier Tribunal. (Data provided by HMCTS to the Commission).*

¹⁹³ *In 2013, the UK Government introduced a criminal court charge in an attempt to make those convicted of crimes (including motorists) to pay for the costs of the criminal courts. It was abandoned within a year.*

b) Legal aid

2.103 Legal aid spend in England and Wales was £2,138 million in 2011-12 (£2,409 million at 2018-19 prices). Total legal aid spending in England and Wales fell by 29% in real terms between 2011-12 and 2018-19. Expenditure on legal aid in 2018-19 was £1,717 million¹⁹⁴. The detail and impact of this reduction is discussed further in paragraph [3.11](#).

2.104 Legal aid expenditure in Wales, according to Legal Aid Agency figures, was £80 million in 2018-19, as set out in [Figure 4](#) in paragraph [3.11](#). Civil and family legal aid, again according to Legal Aid Agency figures, was £44 million or 55% of total spending¹⁹⁵. Over £33 million of this related to public law and private law matters concerning children¹⁹⁶.

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

¹⁹⁴ Legal Aid Agency (2019) [Legal Aid Statistics quarterly, England and Wales](#).

¹⁹⁵ This is qualified in para 3.17.

¹⁹⁶ [Para 7.3](#).

c) Prisons and probation

- 2.106 The responsibility for the operation of probation and prisons in England and Wales is entrusted to HM Prison and Probation Service (HMPPS), an executive agency of the Ministry of Justice. It was established in April 2017 to take on the operational responsibilities of the National Offender Management Service, whose policy and commissioning functions transferred to the Ministry of Justice. HMPPS also acquired in 2017-18 responsibility for the Youth Custody Service. The net operating cost of the National Offender Management Service in 2010-11¹⁹⁷ was £4,192 million which represented 44% of the Ministry of Justice expenditure of £9,463 million¹⁹⁸. By 2015-16, net expenditure on prisons and probation had fallen to a low point of £3,886 million (£4,129 million in 2018-19 prices)¹⁹⁹. Additional funding for prisons was announced in autumn 2016, following concerns about prison safety.
- 2.107 HMPPS net expenditure in 2018-19 was £4,875 million²⁰⁰. Direct real terms comparison is not straightforward given the organisational changes in 2017-18, but even setting aside £146 million expenditure on the Youth Custody Service in 2018-19, between 2010-11 and 2018-19 the proportion of the Ministry of Justice budget spent on prisons and probation has risen from 44% to over 56%.
- 2.108 The National Offender Management Service / HMPPS Wales directorate was established in 2014-15. In 2018-19, the directorate reported operating expenditure of £212.6 million and income of just over £10.9 million, resulting in net expenditure of £201.6 million. Net expenditure has increased from £130 million in 2014-15²⁰¹ (£139 million in 2018-19 prices), reflecting the associated costs of HMP Berwyn (a new, very large prison opened near Wrexham in 2017) becoming operational. [Figure 3](#) highlights the change in overall resource spending on prisons, in real terms, alongside the prison population. 2010 is used as the constant (100%). The Figure shows that just under 40% more was spent in Wales on prisons in 2017-18 than in 2010-11. The prison population in Wales also increased by around 40% during the same period, largely reflecting the opening of HMP Berwyn.

197 *National Offender Management Service (2010-11) Annual Report and Accounts.*

198 *Ministry of Justice (2010-11) Annual Report and Accounts.*

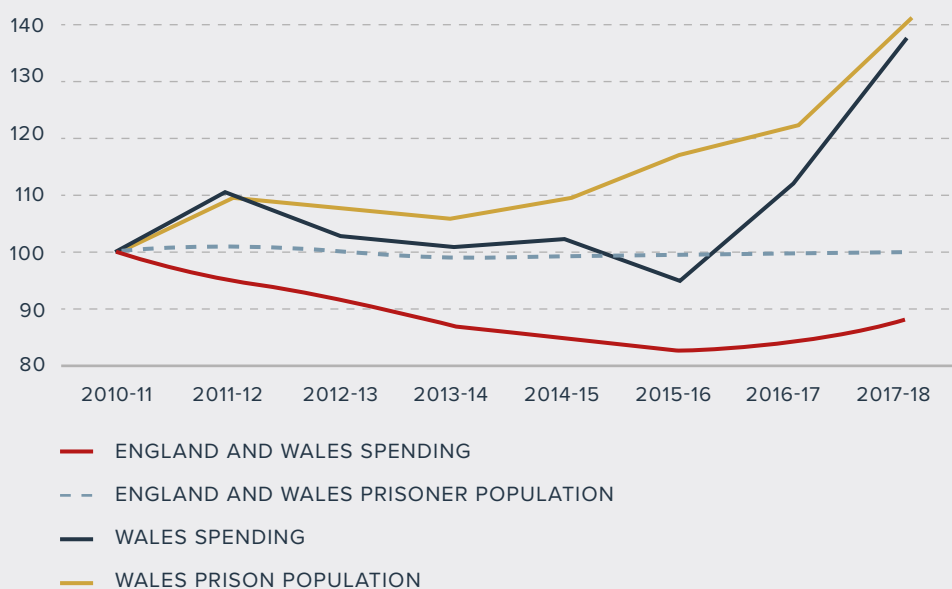
199 *National Offender Management Service (2015-16) Annual Report and Accounts.*

200 *HMPPS (2018-19) Annual Report and Accounts.*

201 *National Offender Management Service (2014-15) Annual Report and Accounts.*

Figure 3

Real terms change in overall resource spending on prisons and change in prisoner population across England and Wales and in Wales (2010-11 = 100%)²⁰²



Source: Ministry of Justice

2.109 The Figure above relates to prisoners *in* Wales rather than prisoners *from* Wales. Currently, there are more prisoners from Wales located in English prisons than there are prisoners from outside Wales located in Welsh prisons. Direct expenditure on the 4,781 prisoners *from* Wales²⁰³ (average population across the financial year), as distinct from prisoners held in prison *in* Wales, amounted to £138 million in 2017-18, while overall expenditure was £189 million. Nearly 40% of this estimated expenditure on prisoners *from* Wales was spent on prisons outside Wales. These estimated figures for expenditure on prisoners *from* Wales exceeded expenditure on prisoners located *in* Wales by around £21 million in 2017-18. However, this position is liable to change as numbers at HMP Berwyn increase, meaning that the number of prisoners in Wales in future is likely to exceed the numbers *from* Wales²⁰⁴.

202 Ministry of Justice (2018) *Costs per place and prisoner per prison establishment*.

203 The Ministry of Justice state that around 97% of prisoners have an origin location; i.e. addresses that are recorded on its central IT system. If no address is given, an offender's committal court address is used as a proxy for the area in which they are resident. (Information provided by the MOJ to the Commission.)

204 Guto Ifan, *Fiscal implications of devolving justice*: 14.

- 2.110 Responsibility for the oversight of the youth justice system lies with the Youth Justice Board for England and Wales, a non-departmental public body sponsored by the Ministry of Justice²⁰⁵. It incurred actual net expenditure during 2010-11 of £454.5 million. By 2016-17 this had fallen to £210.2 million, reflecting significant reductions in the number of young people in the secure estate, combined with “efficiencies” and reductions in grants. In 2017-18, responsibility for the placement of children into custody and the delivery of secure services transferred to HMPPS, with commissioning undertaken by the Ministry of Justice. Given these significant organisational changes, a direct comparison of the Youth Justice Board’s funding between 2010-11 and 2018-19 is not possible²⁰⁶. The Youth Justice Board’s net expenditure in 2018-19 fell to £86 million²⁰⁷.
- 2.111 The Youth Justice Board has retained responsibility for providing grants to local Youth Offending Teams. In 2011-12, the Youth Justice Board provided £115 million grant funding for Youth Offending Teams in England and Wales, equivalent to £129 million in 2018-19 prices. This represented 35% of the Youth Offending Teams’ total grant funding²⁰⁸. In 2017-18, the Youth Justice Board provided £71.5 million grant funding to Youth Offending Teams in England and Wales. This represented nearly 29% of the £250 million²⁰⁹ grant funding from all sources for Youth Offending Teams, with local authorities on average providing 50% of the total and other contributions coming from police, PCCs, probation and health. The level of grant funding available from the Youth Justice Board in 2018-19 remained broadly unchanged from 2017-18. In Wales in 2011-12, the Youth Justice Board made grants of £7.5 million (worth £8.4 million in 2018-19 prices) to Youth Offending Teams, or 30% of their total grant funding of £25 million. Although the overall amount has reduced, the share of Youth Justice Board grants going to Wales has remained constant over time. By 2017-18, Youth Justice Board grants of £4.6 million represented just over 22% of the total grant funding of £20.7 million. Over the same period, the proportion of funding received directly from the Welsh Government increased from 11% to 17% (£3.4 million in 2017-18). We set out further details of overall expenditure on youth justice by local authorities in paragraph [2.127](#).

205 [Para 4.184 et seq.](#)

206 [Para 2.107](#). The drop in net expenditure is because the Youth Justice Board is no longer responsible for funding secure accommodation.

207 [Para 2.107](#). The drop in net expenditure is because the Youth Custody Service is now responsible for placement of young offenders as opposed to the Youth Justice Board.

208 Ministry of Justice (2011-12) [Youth Justice Statistics](#), table B3.

209 Ministry of Justice (2017-18) [Youth Justice Statistics](#), table F3.

d) Other Ministry of Justice expenditure

- 2.112 The Criminal Injuries Compensation Authority, another Ministry of Justice agency, spent around £7 million in Wales in 2017-18, or 5% of its total expenditure. This is a fall from a peak of over £28 million in 2011-12.
- 2.113 Ministry of Justice central operations expenditure relating to Wales amounted to £62 million in 2017-18. This spending is allocated to Wales based on a population share since a geographical breakdown is not possible.
- 2.114 Also apportioned to Wales is £3 million of spending by the Office of the Public Guardian, together with spending by some smaller bodies, commissions and offices, including the Office for Legal Complaints (£0.64 million), the Criminal Cases Review Commission (£0.27 million), and the Judicial Appointments Commission (£0.25 million).

2. Home Office

- 2.115 The Home Office budget has also fallen, by less than is the case of the Ministry of Justice but nonetheless by a significant amount; almost a fifth in real terms between 2010-11 and 2019-20. The principal impact of this in Wales has been on the police.
- 2.116 The funding of the police is considered in detail in paragraphs [4.89](#) and following. It is derived from three sources (1) the Home Office, (2) the Welsh Government and (3) a precept levied by Welsh local authorities. In 2018-19 the Home Office provided revenue funding for the four Welsh police forces totalling £209 million and specific grants of £51 million²¹⁰. The whole police funding in Wales is set out in paragraph [4.98](#).

210 [Para 4.95](#).

2.117 In addition, the Home Office funds agencies including counter-terrorism which cover England and Wales. Based on the Police Grant determination, around £19 million of the Home Office's Crime and Policing Group spending in 2017-18 was allocated to Wales. The Welsh share of spending by HM Inspectorate of Constabulary was around £630,000 in 2017-18. British Transport Police spending relating to Wales, based on a regional analysis of passenger numbers by train and light rail, amounted to £5.2 million in 2017-18. Civil Nuclear Police Authority spending was allocated by population across Wales, England and Scotland; the Welsh share for 2017-18 was £5.4 million.

3. Crown Prosecution Service

2.118 Crown Prosecution Service net expenditure in England and Wales was £591 million in 2010-11 (£675 million in 2018-19 prices). Its expenditure in 2018-19 was £504 million, a cash reduction of around 15% and a real terms reduction of 25%. Staff in post (full time equivalent) fell by 36% over this period. The operational expenditure for CPS Cymru-Wales in 2010-11 was £34 million. Net expenditure (including central and non-geographical costs) for CPS Cymru-Wales in 2010-11 was £24.8 million (£28.3 million in 2018-19 prices). In 2018-19 operational expenditure for CPS Cymru-Wales was £20 million. When central and non-geographical costs are apportioned, this figure rises to £23.9 million, representing a real terms reduction of 16%. We consider this in more detail in paragraph [4.153](#).

4. Welsh Government

a) Overall funding

2.119 The Welsh Government’s overall budget has fallen by 5% in real terms since 2010-11, with day-to-day departmental spending 7% lower per person than in 2010²¹¹.

2.120 Following on from the work of the Holtham Commission²¹², the UK Government agreed²¹³ to establish a funding “floor” for the devolved Welsh budget in the 2015 Spending Review, in recognition of the fact that the Barnett formula took no account of the higher relative need for public services in Wales. From 2018-19, a new needs-based factor was added to the Barnett formula for Wales. This was designed to ensure that future budget changes would not lead to the Welsh budget falling below 115% of the equivalent expenditure for England, reflecting differences in demographics, deprivation and the cost of delivering services.

b) Funding of justice

2.121 Although Wales receives no consequential funding for justice under the Barnett formula, the Welsh Government’s own budget, of some £18.4 billion in 2019-20, reflects significant funding for justice including:

2.121.1 £143.4 million for the four Welsh police forces (see paragraph [4.94](#)).

2.121.2 £16.8 million for community support officers (see paragraph [4.95.1](#)).

2.121.3 £11.3 million for Cafcass Cymru (see paragraph [7.78](#)).

2.121.4 £4.1 million for the Welsh tribunals.

211 *op cit n. 96: 9.*

212 *Assembly (2009) [The Independent Commission on Funding and Finance for Wales](#).*

213 *HM Government and Welsh Government (2016) [The agreement between the Welsh Government and the United Kingdom Government on the Welsh Government’s Fiscal Framework](#).*

2.122 Fire and Rescue Services work closely with the police but are a devolved service, as is the ambulance service. The Welsh Government budget for Fire and Rescue Services and Resilience is £9.2 million in 2019-20²¹⁴.

2.123 The Welsh Government’s funding for other public services, given the close interaction between services such as health and social services, education and housing, and the justice system is significant. Most directly, the Welsh Government has responsibility for health and education services in public sector prisons²¹⁵.

2.124 Indirectly, in addition to core funding for the NHS and local government, allocations by the Welsh Government such as the following all contribute to a wider agenda of social justice:

- £262.3 million Early Intervention, Prevention and Support;
- £31.5 million Substance Misuse Strategy Implementation;
- £52.2 million Supporting Children;
- £19.4 million Wellbeing of Children and Young People;
- £10.7 million Youth Work Board;
- £13.5 million Financial and Digital Inclusion;
- £35 million Integrated Care Fund; and
- £17.9 million Homelessness Prevention²¹⁶.

2.125 In 2019-20 the Welsh Government has:

2.125.1 Created a Single Advice Fund worth £8 million²¹⁷.

2.125.2 Provided a £2.3 million uplift to the Welsh local government finance settlement for children’s social services to “prevent more children being taken into care”²¹⁸.

214 WS172 *Chief Fire and Rescue Advisor and Inspector Wales: 1.*
 215 WS140 *Welsh Government (education and employment): 1.*
 216 *Information provided by Welsh Government to the Commission.*
 217 [Para 3.42, 3.43.](#)
 218 *op cit n. 216.*

5. Local government

- 2.126 Local government in Wales, in addition to considerable expenditure in relation to children to which we refer at paragraphs [7.68](#) to [7.77](#) and following, also spent around £5.4 million in 2017-18 on coroners (resources available to coroners is discussed in paragraphs [6.69](#) and following) Local authorities also have responsibility to provide social services to prisoners; however we have been unable to ascertain how much of social services' funding is spent on supporting prisoners both in custody and in preparation for their release.
- 2.127 Another responsibility of local authorities is Youth Offending Teams²¹⁹ for which the Welsh Government also provides funding as part of the local government settlement. In 2017-18 the gross revenue expenditure by local authorities on youth crime prevention was £25.2 million²²⁰, of which £20.7 million went to Youth Offending Teams²²¹.
- 2.128 In addition, the police precept, collected through council tax, amounted to just over £290 million in 2018-19; we examine this in more detail in paragraph [4.95](#). This is now the largest element of the total police funding in Wales.

6. Summary

- 2.129 In providing a summary we can only do so on the basis of 2017-18 figures as there is no complete Ministry of Justice breakdown of their figures for Wales for 2018-19. In 2017-18, almost £1,165 million was spent on the justice system for Wales taking into account expenditure by UK, devolved and local government as described in paragraph [2.96](#) and including an apportionment of centrally managed UK Government costs²²². This equates to around £370 per person. It accounts for around 3.6% of total identifiable spending for Wales. Spending on the justice system peaked at around £1,537 million in 2009-10 (in 2018-19 prices) and has since fallen by more than one fifth in real terms.

219 [Para 4.176.1.](#)

220 [Para 2.111.](#)

221 [Para 2.111.](#)

222 *op cit n. 98: 5.*

- 2.130 UK Government spending on the justice system for Wales has fallen by a third in real terms since 2009-10, to £723 million in 2017-18. The explanation for the fact that the total spending on justice in Wales has not fallen by as much as UK Government funding for justice is the funding provided by the Welsh Government and Welsh local authorities. In 2017-18, this made up some 38% of the total justice expenditure in Wales. This percentage does not include spending on Cafcass Cymru, Youth Offending Teams and education and social care for prisoners in Wales.
- 2.131 Three key considerations emerge: (1) Welsh Government is a substantial contributor to the justice system in Wales. For example, direct UK Government funding accounts for about one third of police funding²²³. (2) The impact of cuts in UK Government funding has been partially offset by Welsh Government and Welsh local authority funding. (3) However, under the current devolution scheme the Welsh Government has only a very limited role in formulating policy, setting priorities, re-allocating funds to more constructive uses in relation to justice and ensuring such funds as are spent on justice are spent in a way that delivers effective justice and benefits the people of Wales.



CHAPTER 3

*Information, advice
and assistance*

3. Introduction

3.1 Information, advice and assistance are essential to obtaining access to justice. Access to justice is itself one of the key principles underpinning the Rule of Law, as we have explained at paragraph 1.10. Without access to justice the Rule of Law is undermined and put at risk²²⁴. The citizen is denied rights to an effective remedy, a fair trial and equality before the law. Without advice and support the overwhelming majority will be unable to obtain justice, as the justice system is very complex and difficult to understand. In short, the justice system will fail if people do not have confidence that it will enable them to obtain remedies for wrongs and treat them fairly²²⁵. As we point out at paragraph 3.51, a 2017 survey by Citizens Advice in Wales showed that only 48% thought that the outcome would be fair if they went to court.

3.2 We examine in this Chapter whether the provision of legal advice services enables the people of Wales to have access to justice and whether, within the wider context of information and advice services, such access allows the early resolution of issues that can otherwise give rise to much more serious problems. In Part 1, we consider the present system of legal advice services funded through legal aid and third sector advice services. In Part 2, we consider civil and family legal aid, litigants in person, advice by the third sector and public awareness. In Part 3, we consider criminal legal aid and litigants in person before the criminal courts.

Part 1: The present system

1. Legal aid and advice before 2012

3.3 Individual citizens have a continuum of need from basic information through to expert and often specialist legal advice and support. This need was largely met for many years by legal aid²²⁶.

224 *Observations* of Lord Neuberger, former President of the Supreme Court.

225 WS148 Julie James AM: 5.

226 *A system of government-funded support enabling people to access legal advice and representation.*

3.4 In the late 1940s, legal aid emerged as a small but significant part of the welfare state. The Legal Aid and Advice Act 1949 introduced a consistent approach to providing legal assistance in England and Wales based on a means test. Its overall aim was to make legal aid and advice more readily available for “persons of small or moderate means”²²⁷. This covered almost 80% of the population and was a small but significant part of the welfare state. The civil scheme under the Act began in 1950 and the criminal scheme in 1952. It was by and large managed by the Law Society. The Legal Aid Act 1988 led to the setting up of the Legal Aid Board, which developed strategy and started a system of franchises which allowed some funding to go to the voluntary sector. Its successor body, the Legal Services Commission was established by the Access to Justice Act 1999²²⁸ as a non-departmental public body with the objective of trying to bring the legal aid budget under control. Its work was overseen by an independent board of six non-executive Commissioners²²⁹. This Act introduced a more mixed delivery model with criminal legal aid²³⁰ being provided largely by lawyers in private practice but also by some salaried lawyers employed by the Commission known initially as the Salaried Defence Service and later as the Public Defender Service. Civil legal aid was provided largely by private practitioners and at law centres under a scheme variously called the Community Legal Service or Civil Legal Advice. The Legal Aid Board and the Legal Services Commission both had control over the legal aid fund which provided public funding to pay lawyers for legal advice and representation. Neither body had control over other funds which supported voluntary sector providers.

2. Third sector advice services

3.5 The concept of a UK-wide national information and advice service provided largely by volunteers emerged in the years between the two world wars, in large part due to the impact of the First World War on families. The origins of today’s provision of voluntary advice services by the third sector can be traced back to the first Citizens Advice Bureaux which were set up in 1939, largely to assist with the problems arising from evacuation. Swansea was among the first towns in the UK to have a Citizens Advice Bureau. In the 1970s, the development of

227 *Joint Committee on Human Rights (2013) The Implications for Access to Justice of the Government’s Proposals to Reform Legal Aid: 7.*

228 *Access to Justice Act 1999.*

229 *Legal Services Commission (2012-13) Annual Report and Accounts.*

230 *O’Brien, D and Epp, J A. (1999) Salaried Defenders and the Access to Justice Act. 63 MLT 394.*

individual bureaux was supported by a government funded National Association of Citizens Advice Bureaux through the Department of Trade and Consumer Affairs. Other advice services began to develop, including law centres, independent advice centres, local authority advice services, Consumer Advice Centres, Housing Advice Centres and Welfare Rights Units. In 1983, Port Talbot Citizens Advice Bureau appointed the first full-time debt adviser in Wales, funded by a Welsh Office grant.

- 3.6 Charitable trusts, local and national businesses, utility companies and others have also funded advice services. A pattern developed of local authorities tending to fund advice providers' core costs, with other funders paying for specific projects. With legal aid funding reaching voluntary sector agencies in the 1990s, research at the time showed that these agencies were often in a better position to provide social welfare law advice than solicitors in private practice with little experience of such work²³¹.
- 3.7 Over the last 40 years, while demand has risen rapidly, third sector services have become more professionalised, although many have continued to rely on trained volunteers. Some services have been better funded than others. This has led to inconsistent levels of quality²³² as well as geographical gaps in provision – 'advice deserts'.
- 3.8 Over the same period it became recognised that legal and other advice services are an essential part of any system that addresses wider issues of justice. They contribute to the financial circumstances and general wellbeing of citizens, as well as relieving pressures on other parts of the system such as primary health care. There is emerging evidence that many who have legal problems with matters such as housing and debt also have health issues. The evidence includes:

231
232

Steele, J and Bull, G. (1996) *Fast, Friendly and Expert – legal aid franchising in Advice Agencies without Solicitors*.
Welsh Government (2013) *Advice Services Review: Final research report*.

- 3.8.1 An assessment of *Better Advice, Better Lives*²³³ found in 2015 that services provided by Citizens Advice Bureaux, with outreach in GP surgeries and even home visits, had provided access to services that many would not or could not otherwise access (due to lack of knowledge or physical location). A high proportion of those reached had mental health problems, some compounded by worries about debt. The nature of the advice ranged from helping clients to complete benefits application forms and carrying out a full benefits review through to support in appealing against decisions and representation at appeals tribunals.
- 3.8.2 The Centre for Access to Justice at University College London, funded by The Legal Education Foundation, has been researching the correlation between social welfare law problems and mental and physical health problems. Patterns emerging from that research indicate that improvements in health are greater for those individuals whose legal problems have been resolved²³⁴.
- 3.8.3 Partnership working between Swansea Law Clinic, Maggie's²³⁵ registered charity and health professionals at Swansea's Singleton Hospital aims to address legal needs that would otherwise exacerbate mental and physical health problems²³⁶. This is an example of a model of collaboration between legal and health professionals to provide free legal advice in a health setting.

233 Welsh Government (2015) *An assessment of the implementation of the 'Better Advice, Better Lives' scheme: Final Report*.
234 The Legal Education Foundation (2018) *Annual Review*: 10-16.
235 *Maggie's Centre* Swansea.
236 WS090 Swansea Law Clinic: 1.

3. Legal aid after 2012

- 3.9 LASPO effected two major changes in the provision of legal aid we have described.
- 3.10 First, it established the Legal Aid Agency in place of the Legal Services Commission as an executive agency of the Ministry of Justice. The Legal Aid Agency has no policy role in relation to legal aid. Policy sits with the Ministry of Justice²³⁷. It is no longer independent of the Ministry. The Agency procures criminal legal aid services from barristers and solicitors and through the Public Defender Service which we describe at paragraph 3.77. The Agency also funds Civil Legal Advice, a service which provides advice on a range of issues including family, housing and debt to those who qualify for legal aid.
- 3.11 The second and much more significant change made by LASPO was a substantial reduction in the scope of and eligibility for legal aid. The result has been that total expenditure in England and Wales has been dramatically reduced since 2012. [Figure 4](#) shows the annual expenditure on (1) civil and family legal aid, and (2) criminal legal aid for England and for Wales in the years between 2011-12 and 2018-19²³⁸. Comparing 2011-12 and 2018-19, total actual legal aid expenditure in England fell from £2,024 million (£2,280 million in 2018-19 prices) to £1,637 million, a real terms reduction of 28%. In Wales, for the same years, expenditure fell from £114 million (£128 million in 2018-19 prices) to £80 million, a real terms reduction of 37%. The combined legal aid budget in England and Wales still remains the largest in the world and its expenditure per capita remains one of the highest globally, although less than 40% of the population is now thought to be eligible for some form of legal aid²³⁹. This compares to Scotland where the expenditure per capita is slightly smaller but where 70% of the population is eligible for some form of legal aid, some of whom may have to pay a contribution to their costs.²⁴⁰

237 OE020 Shaun McNally CBE: 4.

238 The reported expenditure is of legal aid payments to providers for work on cases that have been completed. It excludes fees paid for work on cases that have not yet finished.

239 WS125 Professor Alan Paterson: 1, WS166 Roger Smith OBE: 1, WS167 Dr Anna Barlow: 2. Also Paterson, A (2012) *Lawyers and the Public Good, Democracy in Action* (Hamlyn Lectures 2010).

240 In 2017-18, the Scottish Legal Aid Board spent £74.09 million on criminal legal aid and £49.91 million on civil and children's legal aid. Assisted persons and opponents contributed a further £8.09 million (Scottish Legal Aid Board (2018) *Annual Report and Accounts 2017-18*).

Figure 4
Expenditure on legal aid in England and in Wales²⁴¹

Civil and family legal aid (£millions)

| | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
|---------|----------|----------|----------|---------|---------|---------|---------|---------|
| England | 1,027.03 | 1,044.14 | 1,006.14 | 880.61 | 775.08 | 768.01 | 783.84 | 799.89 |
| Wales | 65.16 | 67.66 | 66.65 | 55.89 | 39.47 | 40.89 | 43.26 | 44.04 |
| Total | 1,092.19 | 1,111.80 | 1,072.79 | 936.50 | 814.55 | 808.90 | 827.10 | 843.93 |

Criminal legal aid (£millions)

| | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
|---------|----------|---------|---------|---------|---------|---------|---------|---------|
| England | 996.91 | 954.92 | 914.15 | 866.18 | 843.60 | 836.18 | 837.18 | 837.17 |
| Wales | 48.44 | 41.79 | 38.46 | 38.10 | 38.68 | 34.86 | 34.58 | 36.10 |
| Total | 1,045.35 | 996.71 | 952.61 | 904.28 | 882.28 | 871.04 | 871.76 | 873.27 |

Combined total legal aid (£millions)

| | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
|---------|----------|----------|----------|----------|----------|----------|----------|----------|
| England | 2,023.94 | 1,999.06 | 1,920.29 | 1,746.79 | 1,618.68 | 1,604.19 | 1,621.02 | 1,637.06 |
| Wales | 113.60 | 109.45 | 105.11 | 93.99 | 78.15 | 75.75 | 77.84 | 80.14 |
| Total | 2,137.54 | 2,108.51 | 2,025.40 | 1,840.78 | 1,696.83 | 1,679.94 | 1,698.86 | 1,717.20 |

3.12 In 2018-19 in Wales, 55% of legal aid expenditure was on civil and family matters and 45% was on criminal matters. The breakdown of this across civil, family legal aid and legal help is set out at Figure 5. We set out more detail of the expenditure on civil legal aid, family legal aid and criminal legal aid later in this Chapter.

241 *op cit n. 194.*

Part 2: Legal aid and advice for civil, family and other problems

1. The limited scope

- 3.13 As we have already observed, the scope of and eligibility for legal aid has been greatly reduced since 2012. This is particularly so in relation to civil and family justice. Under the Access to Justice Act 1999, all aspects of civil legal aid were within scope unless specifically excluded²⁴². LASPO reversed this position and instead listed those matters which were within scope. Areas removed from scope included all private family law except where there is evidence of domestic violence or child abuse²⁴³; housing matters except where the home is at immediate risk; most employment law; debt, except where there is an immediate risk to the home; non-asylum immigration law; and the majority of welfare benefits cases. Even within the subject areas still eligible for civil legal aid, there are significant exceptions²⁴⁴. For example, civil legal aid is only available for welfare benefits in appeals on a point of law. All other areas of welfare benefits law are excluded.
- 3.14 If a case is within the scope of LASPO, there is a further means and merits eligibility test to pass before the applicant is granted civil legal aid. If a case does not fall within scope, it is possible to make a request for Exceptional Case Funding on human rights grounds, though this has proved to be very limited.
- 3.15 Research has shown that the most common forms of dispute worldwide are property matters, issues at work, family problems, neighbour conflicts, consumer rights and conflicts with authorities²⁴⁵. The effect of LASPO is that, for most people in England and Wales, there is no legal aid in areas where disputes most commonly arise and where they need advice, particularly regarding employment, housing and social welfare. Across England and Wales as a whole, in 2017-18 there were 140,000 civil cases started which involved legal aid, compared with 785,000 in 2010-11, a decrease of 82%²⁴⁶.

242 Exceptions included personal injury and damage to property, conveyancing, boundary disputes, defamation or malicious falsehood, the making of wills, trust law and business cases.

243 Para 7.113.

244 LASPO 2012 Part 1.

245 There are an estimated one billion such legal issues in total every year. Hiil (2018) *Understanding Justice Needs, The Elephant in the Courtroom*:14.

246 House of Commons (2018) *Debate Pack, The future of legal aid*: 4.

2. The expenditure and its adequacy

a) Expenditure on legal aid

3.16 As is evident from [Figure 4](#) there has been a significant cut in the expenditure on civil and family legal aid in the years 2011 to 2019. [Figure 5](#) sets out the detail of the expenditure on family and civil legal aid in Wales using the following categorisation employed by the Ministry of Justice:

3.16.1 Advice and assistance from a solicitor, third sector organisation or the Civil Legal Advice service²⁴⁷. This can include representation at tribunals but not at court.

3.16.2 Representation and advocacy at court²⁴⁸. In some cases, legal aid will have been provided for initial advice and assistance before being provided for representation and advocacy.

3.16.3 Representation and advocacy costs met by unsuccessful opponents in court proceedings²⁴⁹.

3.16.4 Advice and advocacy for anyone in danger of eviction or having their property repossessed, regardless of their means²⁵⁰.

3.16.5 Family mediation for divorcing or separating couples to seek to reach agreement without using the courts²⁵¹.

247 *Categorised by the Legal Aid Agency as 'legal help'.*

248 *Categorised by the Legal Aid Agency as 'civil representation'.*

249 *[Para 3.17.](#)*

250 *[Housing Possession Court Duty Scheme.](#)*

251 *An initial 'Mediation Information and Assessment Meeting' assesses whether mediation can resolve an issue and must be undertaken where an individual seeks legal aid for this area of work.*

Figure 5**Civil and family legal aid in Wales 2011-12 to 2018-19**²⁵²**Family legal aid (£millions)**

| | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
|----------------------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Advice and assistance | 3.86 | 3.07 | 1.98 | 1.13 | 0.89 | 0.93 | 0.68 | 0.74 |
| Court representation and advocacy | 45.51 | 48.88 | 54.22 | 42.02 | 29.86 | 30.26 | 33.17 | 32.34 |
| Court representation – costs met by opponent | 0.12 | 0.07 | 0.07 | 0.11 | 0.19 | 0.08 | 0.01 | 0.03 |
| Family mediation | 0.95 | 0.94 | 0.50 | 0.47 | 0.45 | 0.44 | 0.34 | 0.29 |
| Total | 50.44 | 52.96 | 56.77 | 43.73 | 31.39 | 31.71 | 34.20 | 33.40 |

Civil legal aid (£millions)

| | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
|----------------------------------------------|--------------|--------------|-------------|--------------|-------------|-------------|-------------|--------------|
| Advice and assistance | 8.66 | 8.57 | 4.26 | 3.76 | 3.53 | 3.95 | 3.40 | 3.41 |
| Court representation and advocacy | 1.83 | 1.55 | 1.43 | 1.41 | 1.22 | 1.83 | 3.04 | 1.67 |
| Court representation – costs met by opponent | 4.23 | 4.58 | 4.06 | 6.87 | 3.24 | 3.32 | 2.54 | 5.48 |
| Housing advice and advocacy | 0 | 0 | 0.13 | 0.12 | 0.09 | 0.08 | 0.08 | 0.08 |
| Total | 14.72 | 14.70 | 9.88 | 12.16 | 8.08 | 9.18 | 9.06 | 10.64 |

Combined total civil and family legal aid (£millions)

| | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Total | 65.16 | 67.66 | 66.65 | 55.89 | 39.47 | 40.89 | 43.26 | 44.04 |

252 *op cit n. 194.*

- 3.17 Comparing 2011-12 and 2018-19, civil and family legal aid expenditure in Wales fell from £65 million (£73 million in 2018-19 prices) to £44 million, a real terms reduction of 40%. In England, comparing the same years, there was a real terms reduction in civil and family legal aid expenditure of 31%. Over the period, there has been a marked reduction in legal aid for advice and assistance in relation to both family and civil matters reflecting changes to the scope and eligibility for legal aid as a result of LASPO.
- 3.18 However there is a significant issue relating to what the Ministry of Justice describes as expenditure. In its published statistics of expenditure on civil and family legal aid, the Legal Aid Agency includes as expenditure costs met by unsuccessful opponents in court proceedings where the other party has been granted legal aid. This is not expenditure made by the Agency but sums paid by other parties to proceedings where they have been ordered by the court to pay the costs of the legally aided party. The Legal Aid Agency explained the inclusion of this sum in their figures for expenditure even though it is not expenditure by the Agency on the basis that without the grant for legal aid many cases would not have proceeded to court.
- 3.19 In civil legal aid this is a material issue. First because out of what the Legal Aid Agency say is total expenditure on civil legal aided cases in 2018-19 in Wales, 52% is provided by the costs met by unsuccessful opponents in court proceedings. Second it affects the balance between civil legal aid and family legal aid. As shown in Figure 5, in 2018-19, a sum of £33.4 million out of the overall expenditure of £44 million was on family legal aid, over 75% of the total civil and family legal aid spend in the year. If however the costs met by opponents is taken out of the Figure then the proportion of funds actually spent on family legal aid rises to 86.7%.
- 3.20 There are three points of importance in relation to family justice. First, as [Figure 5](#) shows, that court representation and advocacy is by far the largest category of family legal expenditure in Wales. In 2018-19, it accounted for almost 97% of the total expenditure on family legal aid. [Figure 6](#) shows the breakdown of legal aid on court representation and advocacy by subject area. Expenditure is dominated by child care and other public law family proceedings²⁵³. In 2018-19, £29.11 million was

spent on care and other public law proceedings and £3.23 million on proceedings relating to disputes over children between parents and other private law cases.

- 3.21 Second from 2011-12 to 2017-18, per capita spending relating to public law care proceedings in Wales was 32% higher than in England cumulatively over these years²⁵⁴.
- 3.22 Third over the period, there has been a marked fall in the expenditure on disputes between parents over children and other private law matters²⁵⁵. This is because LASPO removed legal aid for most private family law, including children issues such as contact and residence. Legal aid remains available for such cases, but only where there is a risk of domestic violence or child abuse where applicants must provide relevant proof through a range of prescribed forms of evidence²⁵⁶.

Figure 6

Legal aid for court representation and advocacy in family matters²⁵⁷

Family legal aid for court representation by subject area (£millions)

| | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
|--------------------------------------------------------------------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Child care and other public law proceedings | 29.12 | 35.16 | 40.45 | 32.09 | 24.11 | 26.45 | 29.65 | 29.11 |
| Proceedings relating to disputes over children between parents and other private law cases | 16.39 | 13.72 | 13.77 | 9.93 | 5.75 | 3.81 | 3.52 | 3.23 |
| Total | 45.51 | 48.88 | 54.22 | 42.02 | 29.86 | 30.26 | 33.17 | 32.34 |

Source: Legal Aid Agency

²⁵⁴ *op cit n. 96: 28.*

²⁵⁵ *Described as 'private law Children Act proceedings'.*

²⁵⁶ *We discuss the consequences of removing large parts of legal aid for private family law cases at para 7.113 et seq.*

²⁵⁷ *op cit n. 194.*

3.23 Some other comparatively small amounts have been made available by the Ministry of Justice to try and address the significant reductions in legal aid:

3.23.1 £5 million has been allocated to an investment fund for the use of innovative technologies to underpin the provision of legal aid and to move away from necessarily relying on face-to-face advice in every instance²⁵⁸.

3.23.2 £3 million has been provided over two years to assist litigants in person.

These are very small amounts considering the huge cuts following LASPO and the impact that those cuts have had on access to justice, particularly in Wales.

b) Adequacy

3.24 The cuts in the scope of legal aid have impacted on those people most in need of help as well as on advice and legal support bodies which provide that help. For people dealing with debt, housing and homelessness, these concerns can be both a cause and a consequence of mental health problems²⁵⁹. Poverty affects about 700,000 people in Wales, almost one in four of the population²⁶⁰. The levels of income poverty in Wales are higher than in England and the potential for harm to people in need of help resulting from the LASPO reforms is higher in Wales than it is in England²⁶¹. Although a direct link cannot be drawn, it is notable that mental health cases form a higher proportion of Welsh law firms' work than the English average²⁶².

3.25 In the post implementation review of Part 1 of LASPO, published by the Ministry of Justice on 7 February 2019, the UK Government recorded the substantial feedback that the scope had been narrowed too far²⁶³. The accompanying Action Plan, "*Legal Support: the Way Ahead*"²⁶⁴, promised a comprehensive review of the legal aid eligibility regime by 2020, with earlier action focused particularly around access to legal

258 OE020 Shaun McNally CBE: 5.

259 *Ibid.*: 9.

260 WS021 Bevan Foundation: 1.

261 WS161 Dr Daniel Newman: 8.

262 Figure 59 areas of law practised in England, England without London and Wales, para 9.52.

263 OE045 Rt Hon Mark Drakeford AM and Jeremy Miles AM: 3.

264 Ministry of Justice (2019) *Legal Support: The Way Ahead*.

aid for disputes relating to children and families. It also undertook to consider whether the process for Exceptional Case Funding could be simplified, or a process for urgent cases introduced; and to remove the requirement for requests for debt, discrimination and special educational needs advice and support to be routed through a telephone gateway. There was a greater emphasis on collaboration in the plan in developing technology and to share resources.

- 3.26 This review and plan does not properly assess or effectively address the scale of the problem, particularly that in Wales. The evidence we received largely mirrored the conclusions of the UN Rapporteur on extreme poverty and human rights in the UK. In May 2019, Philip Alston released his final report. It is highly critical of the impact of reduced legal aid and states “...many poor people are unable to effectively claim and enforce their rights, have lost access to critical support, and some have even reportedly lost custody of their children. Lack of access to legal aid also exacerbates extreme poverty, since justiciable problems that could have been resolved with legal representation go unaddressed”²⁶⁵. As we will explain, a more far reaching and radical plan is needed.
- 3.27 The National Audit Office (UK)²⁶⁶, the Justice Committee²⁶⁷ and the Commons Public Accounts Committee²⁶⁸ have questioned whether the reduced spending on civil legal aid has increased costs elsewhere in the legal system. It is clear from evidence received by us, including at engagement sessions, that since LASPO there has been increased pressure on health services and policing with individuals not knowing where to go for legal advice.
- 3.28 The annual expenditure in Scotland for civil and family legal aid is £30 million. Despite this level of expenditure which is less than in Wales, the scope for civil legal aid in Scotland is wider than that in England and Wales. It is largely delivered by law firms. The Scottish Government is also strongly supportive of the legal sector and protected legal aid. Public service lawyers are important in rural areas in providing legal advice. In 2018 a panel chaired by Martin Evans carried out a

265 *United Nations General Assembly Human Rights Council (2019) [Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development.](#)*

266 *Ministry of Justice and Legal Aid Agency (2014) [Implementing reforms to civil legal aid.](#)*

267 *House of Commons (2015) [Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.](#)*

268 *House of Commons (2015) [Implementing reforms to civil legal aid.](#)*

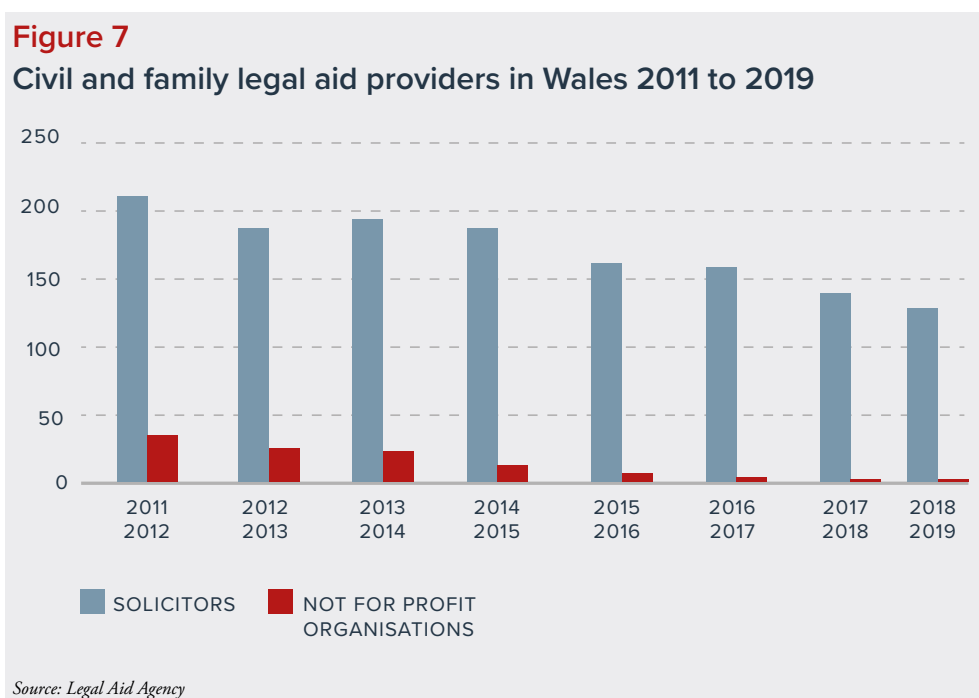
strategic review of legal aid which recommended that legal aid should be focused on the needs of the user rather than designed around the needs of administrators and lawyers. It recommended that advice agencies played an important role and better outcomes could be achieved if providers worked together. It recommended linking advice provision to the existing community framework²⁶⁹.

- 3.29 The evidence of the First Minister was that the cuts to legal aid had placed additional demands on other public services. The Welsh Government had therefore responded to the impacts of the cuts and was providing additional resources for advice services. This necessitated diverting money to address functions that were not devolved instead of using the resources for functions that had been devolved and for which the funds were allocated under the current devolution scheme. The Welsh Government only followed this course where it was convinced it was necessary. As we will explain at paragraphs [3.42](#) and [3.43](#), the Welsh Government plans to provide advice services with £8.045 million in 2020 despite not having any responsibility under the current scheme of devolution for legal aid administration or policy. The Welsh Government has done this believing it was the right thing to do²⁷⁰.
- 3.30 We agree that it was the right thing to do. It is clear, in our view, that the provision of these funds (which are essential to provide for the basic right of access to justice), should have been the responsibility of the UK Government. The UK Government did not devolve that function under the provisions of the Wales Act 2017 but it failed to discharge its responsibility for that function so that it met the needs of the people of Wales.

269 Evans, M (2018) *Rethinking Legal Aid: An Independent Strategic Review*.
270 OE045 First Minister: 2.

3. The number of lawyers providing legal aid

3.31 Wales has seen a drop of 35% in the number of civil and family legal aid providers who are solicitors between 2011 and 2019. The number of not for profit organisations who are civil and family legal aid providers has reduced by 89% in the same period.



3.32 Many law firms and other providers in Wales stopped doing civil and family legal aid work or reduced the areas of legal aid work they were undertaking. The decline in the number has been uneven across parts of Wales²⁷¹. The following are examples of what has happened:

3.32.1 Four of the eight legal aid procurement areas in Wales have only one housing law legal aid provider²⁷².

3.32.2 In 2012, there were 31 providers holding a welfare benefits legal aid contract in Wales. In August 2018 only three remained, in Cardiff, Newport and Swansea²⁷³.

271 WS161 Daniel Newman: 3.

272 Harper, S (2018) *The effects of LASPO on civil legal aid in Wales*.

273 WS095 Law Works: 2. WS097 TA Law: 1.

- 3.32.3 In Montgomeryshire and Radnorshire only three practices have legal aid franchises and are based only in Newtown and Llandrindod Wells. Out of the four practitioners in family law, two are aged in their sixties²⁷⁴.
- 3.32.4 The only solicitor employed by Citizens Advice in North and Mid Wales was made redundant in March 2018. The demand on his services was so high that he worked an additional 24 hours a week unpaid²⁷⁵.
- 3.32.5 Until March 2013, Citizens Advice Swansea Neath Port Talbot delivered legal aid services amounting to over £250,000 per year. After LASPO, a third of funding was cut resulting in a reduction of 12 staff members, 30% of the total number. The Welsh Government provided some funding but not to the same level as before²⁷⁶.
- 3.32.6 Welsh Government funding has enabled Citizens Advice Cymru and Shelter Cymru to continue the provision of advice services that otherwise would have come to an end due to LASPO²⁷⁷.
- 3.32.7 The Cardiff Law Centre closed in 2014 after having been in operation since 1978. The Deaf Law Centre (Newport) closed in 2014, as did Cardiff Age Concern Welfare Rights Unit²⁷⁸. As an exception to this trend the Speakeasy Advice Centre in Cardiff has joined the Law Centres Network and become the Speakeasy Law Centre²⁷⁹.
- 3.32.8 In Caerphilly closures and amalgamations have seen the number of law firms fall from 12-15 to five²⁸⁰.

274

WS020 Robert Hannratty: 1.

275

WS004 Ian Winrow: 1.

276

WS13 Neath Port Talbot CA: 1.

277

OE008 Fran Targett and John Puzey: 1.

278

WS130 Public Law Project: 3.

279

OE038 Warren Palmer: 4.

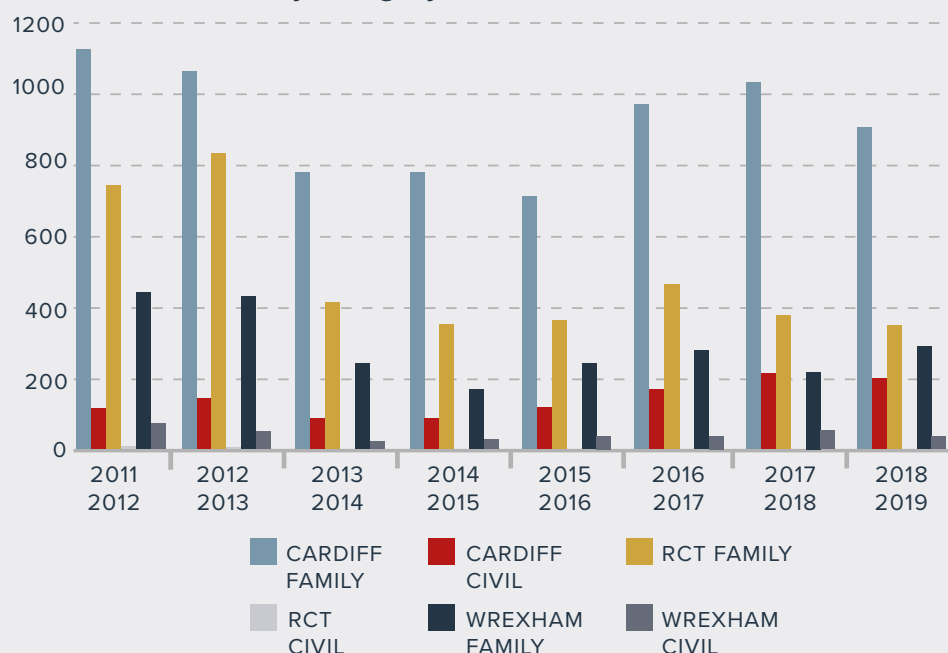
280

WS112 Caswell Jones: 3. However, we note that Cardiff is easily accessible from Caerphilly by private and public transport and that the reduction in the number of providers in Caerphilly does not mean that there is necessarily a reduction in choice for people living in the town.

3.33 This decline in the number of legal aid providers is mirrored in the overall decline in the number of applications for civil and family legal aid. This has been uneven across Wales. Figure 8 shows the number of civil and family representation applications granted to legal aid providers based in Cardiff, Rhondda Cynon Taff and Wrexham from 2011-12 to 2018-19. The overall trend is a fall in the number of legally aided applications granted from 2011-12 and a subsequent rise in 2016-17. The rise in the number of family representation legal aid applications granted mirrors the rise in the number of care proceedings as we explain at paragraph 7.25 and consequent expenditure on public law care proceedings described in paragraph 3.17. More than one legal aid certificate can be issued in care proceedings and it is not unusual for parents, the child or children and other interested parties to have separate legal aid certificates in a matter. In terms of overall civil legal aid there is proportionally less civil legal aid being granted to providers outside Cardiff. At the same time, Citizens Advice and others²⁸¹ have recorded increasing numbers of people getting into debt, needing to challenge benefits decisions, struggling to keep their housing and claiming unfair treatment at work.

Figure 8

Volume of civil and family representation applications granted to legal aid providers in Cardiff, Rhondda Cynon Taff and Wrexham by category



4. The third sector

a) The providers

- 3.34 The largest third sector providers of advocacy and advice in Wales are Citizens Advice and Shelter Cymru which are partly funded by the Welsh Government.
- 3.35 There are 19 local Citizens' Advice Centres in Wales with nearly 800 volunteers and paid staff working from 375 community locations, over the telephone and online. In 2018-19, 62% of clients contacted them through the local offices and in that year over 92,000 people came for advice in relation to 459,00 issues. The proportions of its work have been estimated²⁸² as: benefits and tax credits 46%; debt 27%; with financial services, employment and housing as the other main areas.
- 3.36 In 2018, Shelter Cymru advised 9,864 households amounting to 19,474 people. Of these cases, the most common presenting problems were homelessness 42%, rent arrears 23%, issues in seeking accommodation 22%, possession action 22%, housing and other benefits 20% and debt and money advice 19%.

b) Funding of the third sector

3.37 It has been exceptionally difficult to establish how much public funding currently goes into the third sector in Wales in this respect. The best estimate is that funding from the Welsh Government, the UK Government, local authorities, health boards, utilities, grant giving charities, trusts and foundations probably exceeds £20 million per year, but it has not been feasible to derive an exact figure because most advice agencies receive funding from a range of sources. Figure 9 shows that local Citizens Advice centres in Wales recorded income totalling £16 million in 2017-18. Whilst not an exhaustive list, eight other third sector organisations providing advice services recorded income totalling over £5 million. It is equally difficult to obtain reliable data on how the income of third sector advice providers has changed over time. As an indication, local Citizens Advice received income totalling £9.6 million in 2009-10, equivalent to £11.2 million at 2018-19 prices. However, during that period they lost Legal Aid Agency funding of £2.1 million and received funding to deliver new advice services relating to pensions. Overall, funding from local authorities represented between £3 million and £4 million per year. Funding via Citizens Advice Wales from the Welsh Government increased from £0.8 million (£0.9 million in 2018-19 prices) to £5 million in 2018-19. Figure 10 sets out the funding streams for the Citizens Advice in Wales. As can be seen the mainstay of the funding by 2018-19 were the local authorities and the Welsh Government.

Figure 9**Income of third sector advice providers in Wales, 2017-18**

| 2017-18 | ANNUAL INCOME £ |
|---------------------------------------|-------------------|
| Citizens Advice | 16,177,606 |
| Shelter Cymru (not all advice) | 3,086,281 |
| SNAP Cymru (most, but not all advice) | 984,610 |
| Speakeasy Law Centre, Cardiff | 356,195 |
| Age Cymru | 301,427 |
| Tenovus | 277,985 |
| Rhyl Benefits Shop | 145,898 |
| Bro Dyfi Advice Centre, Machynlleth | 71,578 |
| Brecon Advice Centre | 16,827 |
| TOTAL | 21,418,407 |

Source: Welsh Government

Figure 10**Funding streams for the Citizens Advice in Wales 2009-10 to 2018-19**

| FUNDING (£MILLIONS) | Local Citizens Advice Funding Streams: Wales | | |
|---------------------------------------------------|-------------------------------------------------|--------------|--------------|
| | 2009-10 | 2010-11 | 2011-12 |
| Local authority | £3.3 | £3.1 | £3.5 |
| Legal - Legal Service Commission/Legal Aid Agency | £1.7 | £1.8 | £2.1 |
| Money Advice Service / MAS - Cymru | £1.6 | £1.6 | £1.3 |
| Health / Primary Care Trust | £0.0 | £0.0 | £0.0 |
| Big Lottery | £0.2 | £0.5 | £0.5 |
| Advice Services Transformation Fund | £0.0 | 0.0 | £0.0 |
| Additional Hours of Advice | £0.5 | £0.4 | £0.0 |
| Welsh Government | £0.8 | £0.8 | £0.8 |
| Pension Wise | £0.0 | £0.0 | £0.0 |
| Universal Support | £0.0 | £0.0 | £0.0 |
| All Other | £1.3 | £1.9 | £2.1 |
| Total | £9.4 | £10.1 | £10.3 |

Source: Welsh Government

| 2012/13 | 2013/14 | 2014/15 | 2015/16 | 2016/17 | 2017/18 | 2018/19 (PROVISIONAL) |
|---------|---------|---------|---------|---------|---------|--------------------------|
| £3.9 | £4.1 | £3.8 | £4.0 | £3.9 | £3.9 | £3.8 |
| £1.9 | £0.3 | £0.0 | £0.0 | £0.0 | £0.0 | £0.0 |
| £1.5 | £1.6 | £2.0 | £1.9 | £1.7 | £1.7 | £1.5 |
| £0.0 | £0.1 | £0.1 | £0.1 | £0.1 | £0.1 | £0.1 |
| £0.3 | £0.2 | £0.1 | £0.1 | £0.2 | £0.1 | £0.1 |
| £0.0 | £0.0 | £0.0 | £0.0 | £0.0 | £0.0 | £0.0 |
| £0.0 | £0.0 | £0.0 | £0.0 | £0.0 | £0.0 | £0.0 |
| £1.8 | £3.4 | £4.5 | £4.9 | £5.1 | £4.9 | £5.0 |
| £0.0 | £0.0 | £0.0 | £1.1 | £0.6 | £0.6 | £0.5 |
| £0.0 | £0.0 | £0.0 | £0.0 | £0.0 | £0.0 | £0.1 |
| £2.1 | £1.5 | £2.0 | £2.2 | £3.0 | £4.5 | £4.1 |
| £11.5 | £11.2 | £12.5 | £14.3 | £14.6 | £15.8 | £15.2 |

- 3.38 The Wales Audit Office found in January 2017 that local authorities mostly “do not have an effective strategic approach to working with the third sector, and inconsistencies in funding arrangements make it difficult to demonstrate value for money”²⁸³.
- 3.39 It is clear from the evidence we have received that the current provision does not look at what is working well on a local level, is not focused on the beneficiaries and lacks a systematic and strategic approach²⁸⁴. Furthermore, as advice agencies are funded through numerous channels and such funding is generally for a specific period, often short term, the third sector has to spend an excessive amount of time and money in sourcing funding. Funding is often project outcome focused rather than for organisations’ core running costs; this can affect the sustainable funding of staff and impact on service delivery²⁸⁵. In some cases, organisations have to adapt to follow the funding. Small and niche providers tend to lose out on the funding, which causes an excess of signposting services, and a lack of specialist advice²⁸⁶. There is a lack of collaboration between the providers; often there is competition between advice services for funding.

c) The Wales National Advice Network

- 3.40 Following an advice services review in 2013²⁸⁷, the Welsh Government established the National Advice Network in March 2015. The Network brings together funders, advice providers, umbrella organisations and other partners.
- 3.41 The Network has been tasked with providing expert advice, guidance and support to the Welsh Ministers on how to develop strategically the provision of social welfare information and advice services throughout Wales. In partnership with the Network and other stakeholders, the Welsh Government prepared and published the Information and Advice Action Plan in December 2016²⁸⁸. The Plan set out a series of actions designed to establish by 2026 a comprehensive network of quality assured information and advice providers from across the

283 Wales Audit Office (2017) *Local Authority Funding of Third Sector*.
 284 WS011 Advice UK: 4, WS023 Speakeasy: 4, WS131 Riverside Advice: 1, WS139 Bro Ddyfi Advice Centre: 2, ES Third Sector.
 285 OE038 Denise Inger: 3.
 286 WS187 Riverside Advice: 5.
 287 Para 1.25.
 288 Welsh Government (2016) *Information and Advice Action Plan*.

public, private and third sectors. The proposed actions included the development of the Independent Advice Quality Framework (designed to interface with existing quality standards), efforts to combine funding streams and jointly commission provision, the integration of advice service planning with other strategic planning at local and regional level and a shift in focus of provision towards prevention.

d) **The Single Advice Fund**

- 3.42 Under the Information and Advice Network Plan, the Welsh Government has merged three of its separate grant funding programmes for advice services, collectively worth nearly £6 million, into a Single Advice Fund intended to introduce better coordination of its own advice service funding. From January 2019, a share of the UK Financial Levy (an annual payment collected by the Financial Conduct Authority, on behalf of HM Treasury, from financial institutions carrying out their business in the UK) for debt advice funding has been devolved to the Welsh Government. This funding of over £2 million will be integrated with the commissioning of debt advice services alongside other areas of social welfare advice services that the Welsh Government funds through the Single Advice Fund. The commissioning process was launched on 24 April 2019²⁸⁹.
- 3.43 The Single Advice Fund will make £8.045 million grant funding available to advice service providers for a year from 1 January 2020, with the aim of encouraging better collaboration amongst advice providers. It is intended that this will better meet the ever increasing demand for generalist advice services and improve both the availability and the quality of the specialist advice services that more people need to access to resolve complex and often entrenched social welfare problems.

289

Written Statement of Jane Hutt AM, Deputy Minister and Chief Whip, 24 April 2019.

e) The Social Welfare Law Advice Network

3.44 The Welsh Government has approved proposals to establish and maintain six regional social welfare law advice networks across Wales supported by a bilingual website with a searchable advice provider directory²⁹⁰. The intention is the networks will bring together local and regional knowledge of advice providers, planners and funders, providing more joined up service delivery that best meets need and maximises the impact of resources. This is intended to deliver the Information and Advice Action Plan's commitment to develop local and regional networks²⁹¹.

f) The lack of a coordinating body

3.45 There is no statutory duty on any agency to fund advice services provided by the third sector, with the exception of debt advice, responsibility for which was devolved to the Welsh Government in January 2019 as set out in paragraph 3.42. There is currently no central database about how much funding there is in Wales²⁹². The clear evidence to us was that a coordinated approach to funding is needed²⁹³. In this context, Welsh Government funding is the largest single source of funding to the third sector²⁹⁴.

5. Litigants in person

3.46 There are increasing numbers of people conducting their own cases before the civil courts²⁹⁵. Even though many tribunals work on the basis that one of the parties may be unrepresented, the position is similar in the tribunals. In Scotland, in contradiction to England and Wales, the majority of appellants at the Social Security and Child Support Tribunal are represented²⁹⁶. Evidence indicates that a lack of representation can impact on a person securing the best outcome for them²⁹⁷.

290 *Decision of the Deputy Minister and Chief Whip on the allocation of funding for advice networks, 13 June 2019.*

291 *op cit n. 288.*

292 *OE004 Bob Chapman: 2.*

293 *OE002 Jeremy Miles AM: 3.*

294 *OE038 Warren Palmer: 4.*

295 *WS081 Support Through Court: 1.*

296 *WS017 Anne Curran Regional Tribunal Judge for Wales and South West England for the Social Security and Child Support (SSCS): 2.*

297 *OE014 Lewis J: 4.*

- 3.47 In addition to the increase in the number of litigants in person as a result of the reforms introduced by LASPO, there has been a growth in the number of McKenzie Friends. These are unqualified persons who provide unregulated advocacy and advice services, often on a fee-paid basis. The proliferation of the number of McKenzie Friends and the lack of regulation is a matter of real concern²⁹⁸.
- 3.48 The factors that are both barriers to and support people's participation in the court and tribunal system across England and Wales are subject of on-going research by the Institute for Criminal Policy Research at Birkbeck. Preliminary findings indicate that barriers include lack of access to legal representation, the impact of court closures and the vulnerable nature of many court users. Factors supporting participation include assistance from the judiciary, services provided by third sector organisations and pro bono schemes²⁹⁹. We have evidence that the closure of many law clinics is a barrier and has a significant impact on litigants in person. Many do not know where to receive advice. Others do not have ready access as clinics are usually based in urban areas³⁰⁰. Online and telephone information services are available, but some telephone calls to, for example, the Ministry of Justice advice lines for child support and probate services have a charge rate of 55p per minute³⁰¹.
- 3.49 An increase in unrepresented defendants also places additional pressure on court staff and can lead to longer trials and witnesses being called to court unnecessarily³⁰². The increased use of technology in courts does not suit all court users as users of civil, family and criminal courts are not a cross-section of the population. There is a disproportionately high percentage of individuals who are mentally ill or have an acquired brain injury, people with substance misuse problems, people in poverty, people who are homeless, those whose first language is not English or Welsh, and those who experience multiple disadvantages and who were born into a cycle of deprivation. Nine out of ten clients receiving assistance in court in Cardiff need help with technology³⁰³, underlining the point that technology cannot provide the entire solution.

298 *Judicial Executive Board (2019) [Reforming the courts' approach to McKenzie Friends](#).*
 299 *Preliminary findings of 'Achieving Accessible Justice' by the Institute for Criminal Policy Research at Birkbeck, University of London and funded by the Nuffield Foundation. It is anticipated that the final research will be completed late 2019 or early 2020.*
 300 *WS173 Dr Ruth Costigan: 1, WS174 Dr Jennifer Sigafos and Dr James Organ: 3.*
 301 *Smith, B and Blackman, D (2019) [Moj defends 55p-per-minute call charge for court helplines](#).*
 302 *WS038 Swansea Council: 2, WS054 Ynys Mon Council: 1, WS055 ADSS Cymru: 2, WS156 Melanie Hamer: 2, WS159 CJCH Solicitors: 3, WS169 Cathedral Chambers: 1.*
 303 *WS081 Support Through Court: 5.*

3.50 It is, however, important to point to a number of steps that have been taken by lawyers and others to provide pro bono assistance to try and mitigate the serious problems we have described:

3.50.1 There has been an expansion of pro bono work to support litigants in person. Every third Friday in Cardiff, the Employment Tribunal hosts a pro bono clinic for litigants in person through collaboration between the Employment Lawyers Association, Advocate (formerly the Bar Pro Bono Unit) and LawWorks. It is used by 20-30 people a day and supports unrepresented parties – mostly unrepresented claimants, but occasionally unrepresented respondents – in complex case management hearings. A further initiative is ‘Streetlaw’ where law students, acting under supervision, speak to members of the public about the process of bringing an employment law claim (although not about individual cases). BPP Law School, Cardiff University, Swansea University and the University of South Wales participate in Streetlaw. A working group which meets several times a year ensures that these arrangements work well³⁰⁴.

3.50.2 Technology³⁰⁵ has been successfully used to increase the number of lawyers conducting pro bono work. The Legal Advice Centre at University House, London has created a platform that gives lawyers an opportunity to volunteer at a date, time and location of their choosing. Volunteer lawyers can sign onto the webcam platform and accept calls whenever they want; the centre is able to use the availability of volunteers in London to provide advice to locations in Cornwall. Avon and Bristol Law Centre uses technology to provide a virtual Law Centre meeting access to justice needs across the South West of England³⁰⁶. Swansea University has developed a chat bot that utilises machine learning to provide advice and support to children and young people as part of the service it offers through its Law Clinic. Although technology can be used to increase access to justice³⁰⁷, provision must be made for the most vulnerable in society and the greater use of technology must not further marginalise them³⁰⁸. 93% of Welsh

³⁰⁴ OE037 Barry Clarke: 3.

³⁰⁵ WS158 Legal Advice Centre at University House London: 1.

³⁰⁶ WS160 Avon and Bristol Law Centre: 2.

³⁰⁷ WS118 Stephen Whale: 10, OE029 Professor Richard Susskind: 1.

³⁰⁸ WS063 Civil Justice Council: 2, WS074 Prof Penny Derbyshire: 5, WS105 Justice: 5, WS149 Dr Joe Tomlinson: 3,

WS168 Dr Marie Burton: 3.

households have access to the internet but Wales has around 10% lower network capability than England³⁰⁹.

3.50.3 The Support Through Court³¹⁰ has since 2013 operated a law clinic from Cardiff Civil Justice Centre with the assistance of Law Works and local practitioners³¹¹. The use of the Support Through Court unit in Cardiff has increased from 1,800 matters in 2013-14 to 4,100 in 2017-18, with the majority of assistance in private family law³¹². Increased demand has led the Support Through Court to open an additional one day-per-week service at Newport Civil and Family Court, but it lacks resources to extend further into Wales. The running costs of a full-time Support Through Court unit are £50,000 per annum, which are mostly salary and insurance costs. At our request, the Support Through Court has modelled the estimated costs of expansion of its service. The estimated costs of expanding the Support Through Court to cover full time services in Cardiff, Caernarfon, Swansea and Wrexham and part time services in Newport, Port Talbot and Mold would be £390,000 per annum.

6. Public awareness

3.51 In March 2018, the Welsh Barometer surveyed 1,015 Welsh adults. Poll results revealed 60% of those asked were not confident that everyone in the UK was able to access the legal system e.g. lawyers, courts and advice services. This increased to 65% in South East Wales (not including Cardiff) and 63% in South West Wales. The 2017 user survey by Citizens Advice in Wales found that only 48% of those surveyed believed the outcome would be fair if they went to court³¹³.

3.52 There is also a lack of public awareness of what support is available to people about their rights. Those who are most likely to need help with understanding the system are those who are least likely to know where to look for the information and advice that they need³¹⁴. This includes

³⁰⁹ WS063 Civil Justice Council: 2, WS105 Justice: 6.

³¹⁰ A third sector charity providing assistance in some courts in England and Wales. The Personal Support Unit changed its name to Support Through Court on 10 October 2019.

³¹¹ Which is made up of six law firms, 22 barristers, a pro bono mediation service, two local universities, HMCTS and the Support Through Court.

³¹² WS081 Support Through Court: 1. para 7.114.4.

³¹³ WS058 Citizens Advice Wales: 8.

³¹⁴ WS085 Professor Luke Clements: 1.

disabled people, people with mental health issues, people with learning difficulties, people in crisis and people whose first language is not English or Welsh. It also includes people who are digitally excluded, for reasons including relevant skills, access to equipment and inadequate broadband or other digital infrastructure, as access to information is increasingly digitised³¹⁵. The Ministry of Justice has recognised in its response to the post implementation review of LASPO the need for raising public awareness of how people can access support to help them resolve their issues, ideally before they become legal problems³¹⁶. The National Advice Network also recognises this. There is a clear need for greater public education as we set out at paragraphs [10.2](#) and 10.49 and following.

7. Conclusions and recommendations

a) The impact of LASPO: the need to provide early advice

3.53 The overwhelming evidence is that the impact of LASPO on civil and family justice has been very severe in Wales. Many who need legal advice are not now able to obtain it and the effect has been worst on the most vulnerable groups in society³¹⁷. The reality is that people are unable to access the advice needed and are forced to continue alone or simply give up. As we have made clear, this poses a risk to the Rule of Law. Of additional concern, disabled people's access to legal advice and assistance with benefits cases has been diminished³¹⁸.

3.54 The focus of civil legal aid, including the provision of advice by the third sector, should be, as the Bach Commission identified³¹⁹, to encourage early dispute resolution across a broad range of legal issues and to prevent further distress and cost³²⁰. It should be available to people before they reach crisis point³²¹. In 2012-13 the number of people advised under the early legal advice scheme in England and Wales was

³¹⁵ WS138 Good Things Foundation: 1.

³¹⁶ Ministry of Justice (2019) *Post-Implementation Review of Part 1 of LASPO*.

³¹⁷ WS028 Disability Wales: 2, WS013 CAB Port Talbot: 12, WS063 Civil Justice Council: 2, WS097 TA Law: 3, WS105 Justice: 1, WS130 Public Law Project: 2, WS146 Norfolk Community Law Service: 4, WS160 Avon and Bristol Law Centre: 1. We asked the Secure Anonymised Information Linkage Databank at Swansea University to assess to what extent legal needs are being met by the current provision and how it compares regionally in Wales. This work was funded by the Legal Education Foundation but various issues including issues in relation in use of CAB data made it impossible to provide a meaningful report.

³¹⁸ WS028 Disability Wales: 1.

³¹⁹ *op cit* n. 111.

³²⁰ WS040 Plaid Cymru: 7, WS050 Stephen Carr: 2, WS087 Arfon Jones: 2, WS093 Tom Jones: 1, WS126 Janine Roderick: 3, WS132 Prof Alan Paterson: 2, WS174 Dr Jennifer Sigafoos and Dr James Organ: 10.

³²¹ WS046 Shelter Cymru: 2.

573,737. In 2017-18 the figure was 140,091. Professor Paterson accurately summarised the position: “*The decision of the [UK] Government during the LASPO cuts to sweep away much of the funding for early intervention advice and assistance flew in the face of needs assessment research around the world which England and Wales had pioneered*”³²².

- 3.55 Equally serious is the fact that the cuts effected by LASPO were made without any provision for alternative sources of advice that are necessary for access to justice. It was, in short, a policy of cutting without regard to the consequences and without regard to the necessity for alternative provision. The policy as enacted by LASPO represented a failure to provide a fair and just policy on an issue fundamental to justice and the Rule of Law.

b) Better provision in Wales

- 3.56 If responsibility for legal aid and advice in relation to civil and family matters had been a matter decided in Wales for the benefit of Wales, the position would, we have little doubt, have been different. The Welsh Government would not only have had to take into account the requirements of the Equality Act 2010 in framing the scope of legal aid but also (among other things) legislation requiring it to have regard to the UN Convention on the Rights of the Child³²³. There is also the requirement under the Future Generations Act to act in accordance with the principles of prevention, collaboration, involvement, integration and balancing short and long-term needs. Furthermore, the provision of support for people affected by gender-based violence, domestic abuse and sexual violence is already part of Welsh law³²⁴.
- 3.57 Some of the changes under LASPO which the UK Government is now considering concern better access to justice on matters relating to children and families, as well as a greater emphasis on prevention and collaboration, which as we set out at paragraph 3.25, are ones on which existing Welsh legislation would have had a direct bearing. While it is not possible to say definitively that the legislative context in Wales would have resulted in different decisions about the scope or funding

322

WS132 Professor Alan Paterson: 2.

323

[The Rights of Children and Young Persons \(Wales\) Measure 2011.](#)

324

[Violence against Women, Domestic Abuse and Sexual Violence \(Wales\) Act 2015.](#)

of legal aid from the outset, we have little doubt it would have been, because the relevant legislative context is different from that in England. This strengthens the case for change in order to enable decisions about access to justice to be taken in a manner consistent with that legislative framework.

c) The importance of the third sector

- 3.58 When the Ministry of Justice withdrew from 2010 a significant part of the scope of legal aid and the funding for it, it failed to take any meaningful steps or devise any meaningful plan to enable the third sector to be properly funded to assist in meeting the obvious need for advice and therefore helping to maintain access to justice as an essential prerequisite to the Rule of Law³²⁵.
- 3.59 The result has been that despite the enormous efforts of the third sector such provision is now inadequate. Although there are currently 34 independent clinics providing free – ‘pro bono’ – legal advice in Wales, demand outstrips supply. For example, a Citizens Advice pro bono rota of solicitors in Pontypridd is fully booked for a month in advance. Further, in one of the most deprived areas in Wales, namely the Cynon Valley, it has been impossible to provide a pro bono rota of solicitors due to limited provision of solicitors³²⁶.
- 3.60 There is evidence that work is under way to stimulate increased provision of pro bono advice in Wales through funding from the Big Lottery Fund with collaboration between 40 different organisations³²⁷. Many of those involved have welcomed the increased focus on advice services from the Welsh Government and the setting up of the National Advice Network. However, some independent advice providers are frustrated that Welsh Government funding is only to all Wales organisations. The Independent Advice Quality Framework is too onerous for small providers³²⁸. These issues need to be addressed.

325 Sommerland, H and Sanderson, P (2013) *Social justice on the margins: the future of the not for profit sector as providers of legal aid in England and Wales*. 35(3) *Journal of Social Welfare and Family Law*: 306.

326 WS058 *Citizens Advice Wales*: 6.

327 WS095 *Law Works*: 1.

328 WS131 *Riverside Advice*: 1, WS025 *Advice UK*: 3 WS023, *Speakeasy*: 2.

d) Coordination of all advice and assistance services

- 3.61 The Bach Commission concluded that people’s ability to understand a legal problem or to know where to turn to for information and support is poor³²⁹. Increasing public knowledge about the availability of advice and support requires sustained action now and in the long-term. Coordination of promotion and awareness-raising between all the agencies involved would increase its impact, in addition to better public legal education, which we consider in paragraphs [10.49](#) to [10.53](#).
- 3.62 It is clear that what is needed is an overall coordinated approach to the issues of advice and assistance – legal aid, third sector provision, litigants in person and public awareness. This is needed in part to ensure a proper and balanced approach to funding lawyers in private practice and third sector bodies that provide legal aid and advice. It is no longer possible to treat differently these two different groups that provide legal help and assistance.
- 3.63 Coordination, particularly of funding, based on assessed need, is also necessary in order to avoid ‘advice deserts’, whether in terms of subject or geography. A mixed economy of legal aid, third sector, pro bono work and independent provision of information and advice is necessary to meet the need. Services should be geared to prevention and early intervention as far as possible. They should be capable of responding to people who have multiple problems. This clearly suggests that strategic, independent and secure arrangements for supporting this mixed economy are required.

329 *op cit n. 111: 6.*

e) Sustainability of funding

3.64 Sustainable funding arrangements for the advice sector, combined with legal aid funding, should be established through this approach. We envisage it should be administered by a body independent from government, as independent legal advice is an essential step to obtaining justice and central to access to justice. The objective would be to base funding on identified need, ensuring gaps in provision were covered and that services were coordinated and quality assured³³⁰.

f) Provision of streamlined administration

3.65 At the same time, administration should be streamlined to avoid funds being absorbed by overheads. In engagement meetings across Wales, we received evidence of complaints about the bureaucracy of the Legal Aid Agency. The Public Law Project in their submission noted that, despite the significant legal aid cuts, the administrative budget for the Legal Aid Agency increased every year from 2012 until 2017³³¹. The Legal Aid Agency's administrative running costs in 2018-19 were £86.7 million. This was nearly as much as the agency's expenditure of £97.9 million on legal advice and assistance³³². Any system for Wales would need to channel as high a proportion as possible of its resources to front line services.

330 *WS059 Bob Chapman: 4.*

331 *WS130 Public Law Project: 4.*

332 *Legal Aid Agency (2019) [Annual Reports and accounts 2018-19](#): 22.*

g) The way forward

3.66 There is a need in Wales for a clear strategy to bring together the funding streams for legal aid and the third sector advice and assistance provision. The strategy should be driven by an independent body that would ensure that there is no gap in provision and that the funding is sustainable. It should be designed to meet the needs of the people of Wales and deliver fairly and equitably across Wales. It should take into account future developments such as those we refer to in relation to ombudsmen at paragraph [5.57](#). As part of that strategy we would expect:

- 3.66.1** A quality framework to be delivered which would combine standards of quality with a proportionate approach to allow small providers to be included.
- 3.66.2** The independent body to assist in raising charitable funds in addition to administering public funds to provide core long-term funding and monitoring progress.
- 3.66.3** The promotion and awareness raising of available advice and support, prioritising outreach to connect particularly with disabled people, people with mental health issues, people with learning difficulties, people in crisis, people whose first language is not English or Welsh and people who are digitally excluded.
- 3.66.4** The Support Through Court should be expanded so it is available at all courts and tribunals in Wales.

We recommend:

The funding for legal aid and for the third sector providing advice and assistance should be brought together in Wales to form a single fund under the strategic direction of an independent body.

Support Through Court should be expanded so that there is availability at courts and tribunals across Wales.

Part 3: Criminal legal aid

1. The scope

3.67 The criteria for who is eligible for criminal legal aid in England and Wales are set out in LASPO. Whether an individual is eligible depends first on a means test³³³ and second, an interests of justice test which concerns the merits and seriousness of the case. Crown Court trials are deemed to automatically satisfy this test. Transform Justice conclude that in practice this means that defendants in the Magistrates' Court will not usually receive legal aid for non-imprisonable offences³³⁴.

2. The expenditure and adequacy

3.68 The total expenditure on criminal legal aid in England and Wales fell from £1,045 million in 2011-12 (£1,177 million in 2018-19 prices) to £873 million in 2018-19³³⁵, a real terms reduction of nearly 26%. In Wales, for the period 2011-12 to 2018-19, it reduced from £48.44 million (£54.65 million in 2018-19 prices) to £36.10 million, a real terms reduction of nearly 34%. Criminal legal aid expenditure in Wales by category for the period 2011-12 to 2018-19 is set out in Figure 11.

333 For the Magistrates and Crown Court, an annual household disposable income of over £12,475 will be means tested. For the Magistrates' Court, a person is not eligible for legal aid if they have an annual household disposable income of more than £22,325. For a Crown Court trial, an annual household disposable income of £37,500 or more will not be eligible for legal aid.

334 Transform Justice (2016) *Justice denied? The experience of unrepresented defendants in the criminal courts*.

335 See Figure 4 at [paragraph 3.11](#).

Figure 11**Criminal legal aid in Wales 2011-12 to 2018-19³³⁶****Criminal legal aid by category (£millions)**

| | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
|-------------------------------------------------------------------------------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Work undertaken at the police station and Magistrates' Court | 21.70 | 20.54 | 20.05 | 17.61 | 15.42 | 15.46 | 14.78 | 14.79 |
| Work undertaken in the Crown Court by solicitors as litigators in preparation and assistance in court | 12.24 | 12.37 | 10.78 | 12.98 | 16.21 | 12.90 | 13.62 | 15.56 |
| Work undertaken in the Crown Court by advocates | 6.91 | 7.74 | 6.43 | 6.78 | 7.04 | 6.50 | 6.18 | 5.55 |
| Long-running cases in the Crown Court and cases in the higher courts | 7.59 | 1.14 | 1.20 | 0.73 | 0.01 | 0.00 | 0.00 | 0.20 |
| Total | 48.44 | 41.79 | 38.46 | 38.10 | 38.68 | 34.86 | 34.58 | 36.10 |

3.69 The decline in expenditure in Wales has had a severe impact on the availability of publicly funded criminal legal aid in Wales which has a much smaller part of the available funding than it had in 2011-12. This cannot be justified by the argument that criminal legal aid is demand led and that there are more large scale cases in England. The differential reduction is too severe for that.

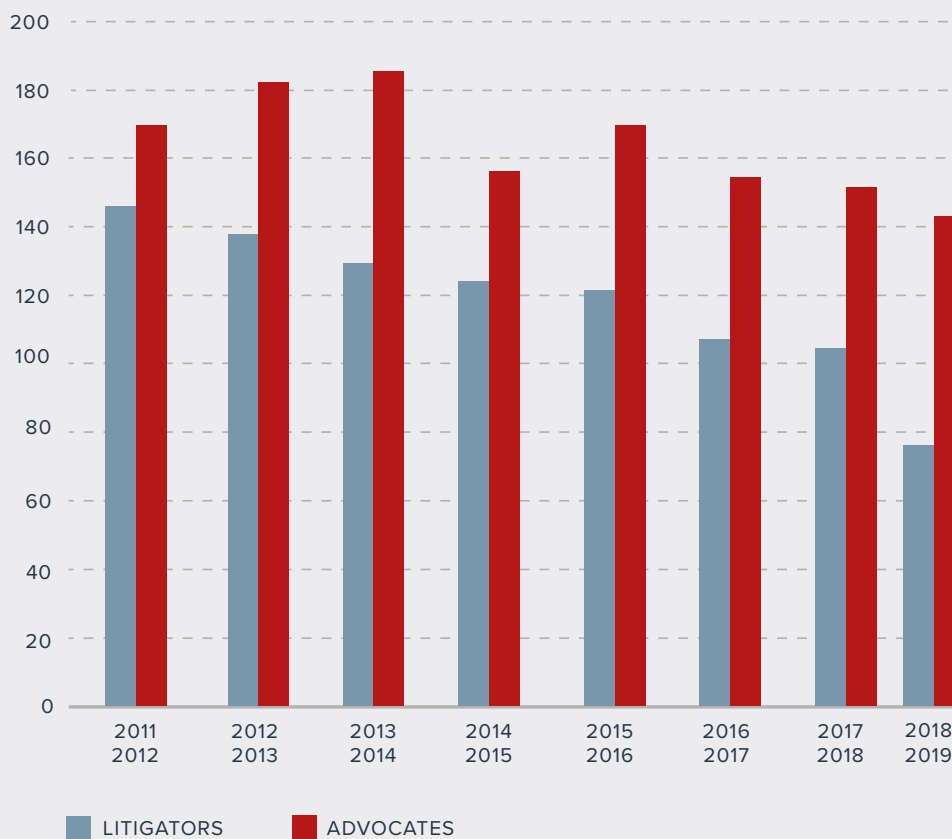
336 *op cit n. 194.*

3. The number of lawyers providing criminal legal aid

3.70 Wales has seen a drop in the number of criminal legal aid providers between 2011 and 2019. Figure 12 shows those who have a contract to provide advocacy and those who have a contract as litigators to prepare cases for the Crown Court and assist in that Court. The decline in the number of litigators has been more marked than the decline in the number of advocates, no doubt reflecting the decline in the number of solicitors doing criminal legal aid work.

Figure 12

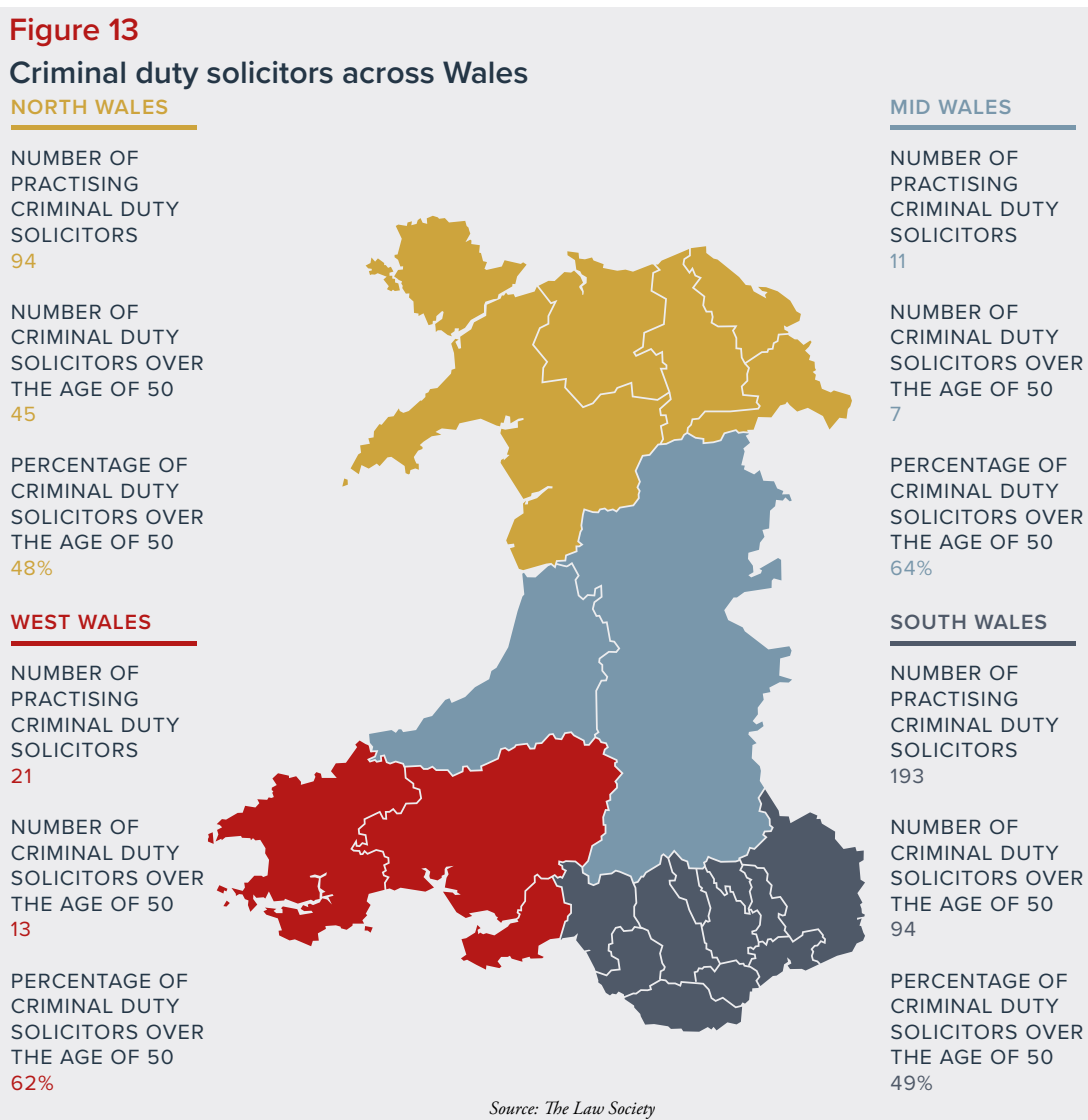
Criminal legal aid providers in Wales 2011 to 2019



Source: Legal Aid Agency

4. Criminal law duty solicitors

- 3.71 Any individual detained by the police has the right to a solicitor and advice free of charge. This is the case at any time of day, and regardless of wealth, age or nationality. This is provided mainly by criminal duty solicitors.
- 3.72 In 2019 over 60% of the criminal duty solicitors in Mid and West Wales are aged over 50, and only one is aged under 35. The Law Society points to the fall in fees as a potential reason: fees have seen no increase since 1998 and were cut by 8.75% in 2014³³⁷. Figure 13 details the number of criminal duty solicitors across Wales and the number and percentage of them aged over 50.



337

The Law Society (2018) *Criminal duty solicitors: a looming crisis*.

- 3.73 In 2017-18 there were only 11 practising criminal duty solicitors in Mid Wales. Evidence from some of them referred to significant practical problems given the distances and travel times involved in attending arrests and court hearings³³⁸. We consider at paragraphs 8.33 to 8.39 the issues of travel and geography; and at paragraphs 9.34 to 9.51 the routes to qualification into the legal professions.
- 3.74 The decline in the number of criminal legal aid solicitors has, on the evidence we received, been due to two principal factors: (1) the lower remuneration level of that work compared to other areas in law; and (2) the dearth of new practitioners wishing to do criminal legal aid work³³⁹. Newly qualified solicitors are choosing not to practise in crime and instead are doing other, more remunerative work that is readily available such as family law³⁴⁰.

5. The number of lawyers providing criminal legal aid

- 3.75 Although the main effects of LASPO were to reduce the scope of and eligibility for civil and family legal aid, both the Bar Council and the Criminal Bar Association have highlighted that the unsustainably low fees for criminal legal aid work is a serious problem³⁴¹. The Bar Council reiterated its concerns about the significant under-funding of criminal justice in written evidence to us³⁴². Professor Martin Chalkley³⁴³ has estimated that in England and Wales, Crown Court legal aid defence fees under the Advocates Graduated Fee Scheme reduced by 21% in actual terms in the period 2007 to 2018, implying a total reduction of 45% in real terms. In April 2018, the Ministry of Justice implemented a reformed Advocates Graduated Fee Scheme and made amendments to it following a consultation that closed in October 2018. It is too soon to say what the effect will be on fees since the new scheme pays for cases in a different way.

338 WS020 Robert Hanratty: 1, WS034 Magistrates Association: 2, WS049 Mair Williams: 1. ES Duty Solicitors.

339 ES Carmarthen.

340 *op cit* n.337.

341 Bar Council (2018) *Submission to the Ministry of Justice LASPO Post-Implementation Review*: 35.

342 WS036 Bar Council: 1.

343 Professor Martin Chalkley, Centre for Health Economics, University of York.

3.76 Evidence from the Wales & Chester Circuit Bar is that the change to criminal legal aid has had a detrimental impact on those requiring access to justice and on the sustainability of practice at the Criminal Bar³⁴⁴.

6. Public Defender Service

3.77 The Public Defender Service, to which we referred briefly at paragraph 3.10, was established in 2001 to provide criminal defence representation by salaried lawyers in the police station, Crown and higher courts in addition to similar services provided by private practitioners. It has offices in Cheltenham, Darlington, Pontypridd and Swansea. A specialist advocacy team was set up in 2014; the team has around 25 solicitors and barristers, some of whom are Queen's Counsel. The Public Defender Service in England and Wales provides free assistance to those arrested or voluntarily attending at police stations but not further on in the proceedings if they do not satisfy the legal aid requirements. The Service employs 16 people in the Wales offices, and has two advocates who are based in Wales. The expenditure for the Pontypridd and Swansea offices in 2018-19 was £995,540, a rise from £871,022 in 2017-18³⁴⁵.

7. Litigants in person

3.78 In criminal proceedings before the courts, the reduction in legal aid has brought about an increase in the number of people conducting their own cases in court without legal representation as litigants in person³⁴⁶. In the magistrates' courts, for example, 20-30% of defendants are unrepresented and at the Crown Court 7% are unrepresented at the first hearing³⁴⁷. The number of unrepresented defendants in these courts appears to have risen in the last five years despite the eligibility for criminal legal aid remaining the same³⁴⁸. Research suggests that most of those in the magistrates' courts and many of those in the Crown Court do not choose to appear unrepresented but were unable to receive legal aid³⁴⁹.

³⁴⁴ WS010 Wales & Chester Circuit: 16.
³⁴⁵ 2018-19 spend was higher due to changes in staffing, and the move of the Pontypridd office to new premises. (Information provided by the Public Defender Service to the Commission).

³⁴⁶ WS010 Wales & Chester Circuit: 1.

³⁴⁷ WS007 Transform Justice: 1.

³⁴⁸ *Ibid*: 1.

³⁴⁹ *op cit n. 334*.

8. Conclusions and recommendation

- 3.79 We have examined the provision of criminal legal aid in both Scotland and Northern Ireland.
- 3.80 In Scotland, eligibility criteria for criminal legal aid includes a means test for initial advice and assistance and also for representation in more serious cases. Representation in less serious cases entails both a means and merits test. The means test includes an assessment of whether meeting the expense of a case would mean ‘undue’ hardship for the accused or their dependants. The merits test is an assessment of whether it is in the interests of justice for the accused to be legally represented. The Scottish Legal Aid Board administers and grants criminal legal aid in the great majority of cases (97% in 2017-18).
- 3.81 Scotland has a slightly smaller per capita expenditure on legal aid than England and Wales yet a greater percentage of the population is eligible to receive legal aid³⁵⁰. In Scotland in 2017-18, 93% of applications for legal aid for advice and assistance and for proceedings in less serious cases were granted, and for more serious offences 92% of applications were granted³⁵¹. We consider that the current criminal legal aid budget in Wales can be used more effectively to resource a reformed criminal legal system in Wales.
- 3.82 In Northern Ireland, the criminal legal aid expenditure³⁵² per capita is higher than in England and Wales, probably for historical reasons³⁵³. The position is that the court grants criminal legal aid. The eligibility criteria are: does the defendant have enough income to pay for their defence; and is it in the interests of justice for the defendant to receive legal aid.
- 3.83 Many jurisdictions, including the Nordic nations, have a public defender service which provides legal representation in criminal cases. Most of the Nordic public defence attorney schemes are administered by the court and provided almost entirely by private practitioners, not state-employed lawyers. The exception is Finland where there are public legal aid attorneys as well as private practitioners able to act as public

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Para 3.11.

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op cit n. 240.

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*In 2018-19, the Legal Services Agency Northern Ireland spent £46.46 million on criminal legal aid (Legal Services Agency Northern Ireland (2019) *Annual Report 2018-19*).*

353

OE015 Professor Alan Paterson: 1.

defenders. Where the accused is facing a criminal charge which may attract a potential sanction of some severity, public defender schemes tend not to be means tested (in part because in some of them, accused persons may not represent themselves). Providing criminal legal representation in such cases on a non-means tested basis appears more consistent with the view that the right to a defence (innocent until proven guilty) is a fundamental right rather than a means dependent benefit and must be treated as a key tenet of access to justice. Defendants found guilty may however be liable to repay defence costs, usually subject to their means³⁵⁴.

3.84 We consider that the typical approaches of the Nordic nations accords better with creating a fair and just society in Wales and that a system based on those approaches with legal aid administered by the courts is one that is better suited to assisting those accused of crime. We consider:

3.84.1 the method of providing criminal legal aid should be reformed so that legal aid solicitors, both salaried and private practitioners, are readily available at the point of arrest in the rural and post-industrial areas of Wales; and

3.84.2 a public defence scheme for legal representation in court in non-trivial cases akin to the typical approaches adopted in Nordic nations (with practitioners more widely distributed across Wales and services free at the point of access) would provide a model for better and fairer access to justice for those facing criminal prosecution compared with the current model of criminal legal aid.

We recommend:

Criminal legal aid policy and delivery should be designed in Wales to meet needs across Wales and based on the approaches to public defender schemes adopted by the Nordic nations.

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WS167 Dr Anna Barlow: 17-19. Hammerslev, O and Ronning, O (2018) *Outsourcing Legal Aid in the Nordic Welfare States*: 311-328.



CHAPTER 4

Criminal justice: reducing crime and promoting rehabilitation

4. Introduction

- 4.1 The criminal justice system is a term commonly used to describe the main bodies that are involved in the administration of the criminal law – the police forces, Crown Prosecution Service, courts, prisons and probation services. It is not a system in the ordinary sense of the word as each body has its specific responsibilities and the courts are completely independent of the other bodies. Although lawyers who represent those accused of crime are an essential part of the delivery of criminal justice, they are not commonly thought of as part of the criminal justice system. The focus of this Chapter is the way in which the system should align with devolved areas which we have outlined at paragraph [2.31](#) and operate to reduce crime and promote rehabilitation. We have already considered criminal legal aid at paragraphs [3.67](#) to [3.84](#).
- 4.2 Part 1 of this Chapter discusses the complex division of government responsibility and funding. Part 2 explores the position of victims of crime and what can be done to improve their position. Part 3 discusses Black, Asian and Minority Ethnic people in the criminal justice system. Part 4 explores the role of the police. Part 5 sets out the role of the CPS and courts. Part 6 sets out the position on youth justice, probation and imprisonment, the need for a whole system approach and a review of sentencing policy.
- 4.3 Six important factors shape the context in which the organisations involved in criminal justice operate and influence how they perform their respective roles in reducing crime and promoting rehabilitation.
- 4.3.1 If criminal justice is to be effective, most particularly its treatment of victims, in policing and in the administration of the sentences of the courts (the principal role of the prison and probation services), it must be closely integrated with services which are the responsibility of other parts of local, devolved and central government – for example, health, drug and alcohol misuse, housing, education, employment, accessing benefits and managing debt and other welfare services. This integration needs to overcome the difficulties which organisational structures and cultures inevitably create³⁵⁵.

- 4.3.2 The nature of the current devolution scheme for Wales affects most aspects of the system. The retention of policy responsibility by the UK Government for the police, CPS, the courts and the prison and probation services means there are more interfaces between bodies accountable to different governments than is the case elsewhere in the UK. These are most pronounced in areas where there is a natural overlap between matters over which the Welsh Government has competence and those over which the UK Government has retained responsibility.
- 4.3.3 The Welsh Government makes a substantial contribution to the criminal justice system without having a say on criminal justice policy (save in limited areas³⁵⁶) or on expenditure or how resources could be used more effectively to create a better overall system.
- 4.3.4 The different focus and ambition of UK and Welsh legislation and government policies has exacerbated the problem. In Wales, the emphasis has been on devising policies and directing funds to tackle social injustice and exclusion and to foster an environment which should reduce the causes of crime. One example of this is the drive to address the consequences of Adverse Childhood Experiences to which we refer in more detail at paragraphs [4.15](#), [4.203](#) and following. Another example is the specific programmes in Wales designed to tackle domestic abuse³⁵⁷.
- 4.3.5 The UK Government has failed to achieve any sustained reform of prisons and probation as we set out at paragraphs [4.199](#) and following.
- 4.3.6 The UK Government has made significant cuts to the funds provided for criminal justice and the effect on Wales has been severe.

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For example youth justice [para 4.179](#).

357

[Para 4.9](#).

Part 1: The complex division of government responsibility and funding

1. The overall complexity of criminal justice policy and organisation

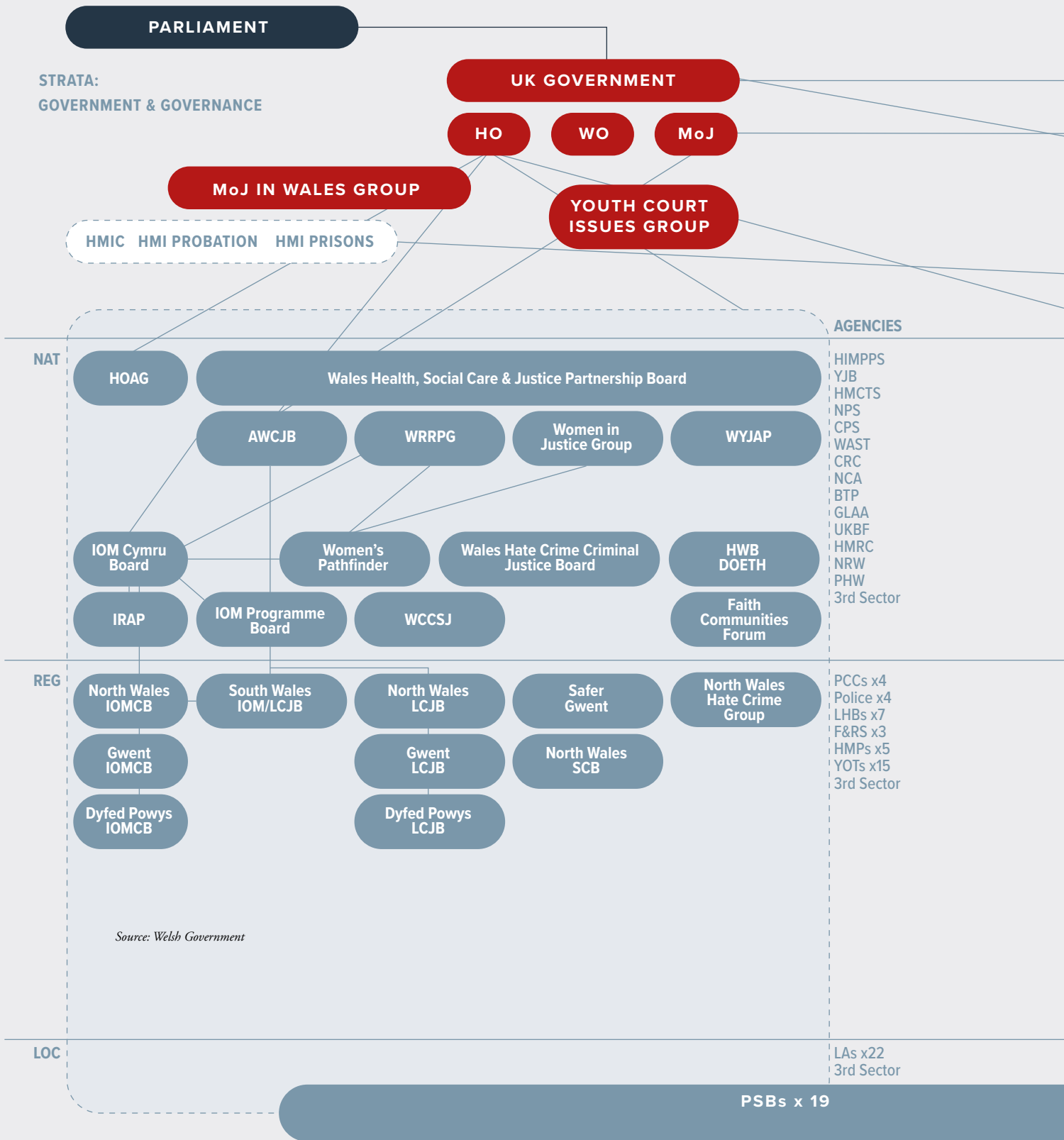
4.4 Any criminal justice system is complex because of various different interests that have to be accommodated within the system. The complexity in Wales is significantly increased because of the joint responsibilities of the UK Government, the Welsh Government and local authorities for criminal justice. Figure 14 illustrates the complexity by showing the number of committees, boards and other groups that exist in Wales on a wide range of matters relating to justice policy, operations and delivery. Primarily, these committees and bodies are concerned with criminal and social justice and social policy matters. Figure 14 differentiates between those that are led by UK Government officials (left hand side) and Welsh Government officials (right hand side). It illustrates how complicated the current devolution scheme makes the arrangements.

Figure 14

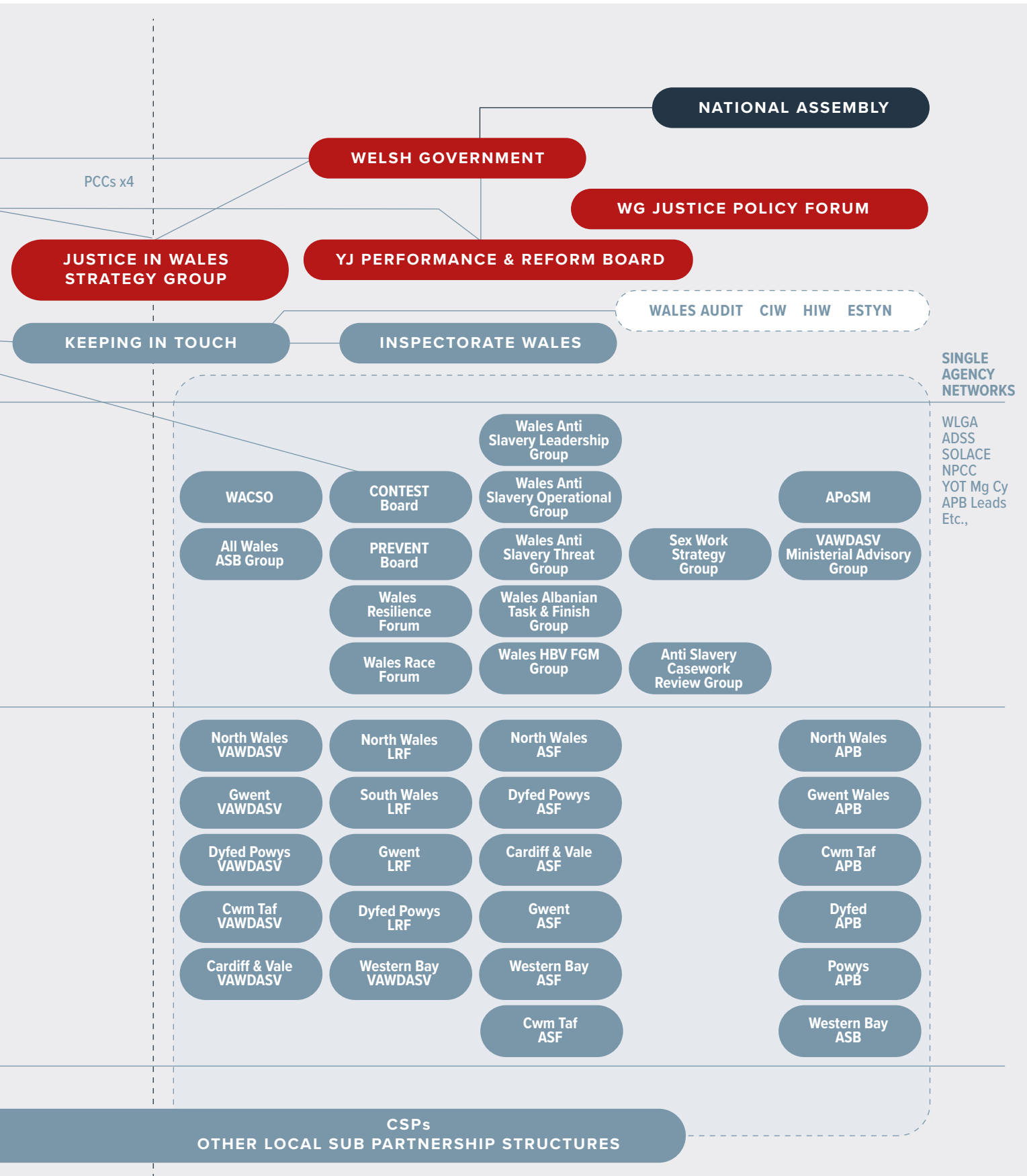
Key: The complexity of the justice system in Wales

| | | | |
|------------------|--------------------------------------------------|-----------------|------------------------------------------------------------|
| ADDS: | ASSOCIATION OF DIRECTORS OF SOCIAL SERVICES | LCJB: | LOCAL CRIMINAL JUSTICE BOARD |
| APB: | AREA PLANNING BOARD (SUBSTANCE MISUSE) | LHB: | LOCAL HEALTH BOARD |
| APOSM: | ADVISORY PANEL ON SUBSTANCE MISUSE | LOC: | LOCAL |
| ASB: | ANTISOCIAL BEHAVIOUR | LRF: | LOCAL RESILIENCE FORUM |
| ASF: | ANTI-SLAVERY FORUM | MOJ: | MINISTRY OF JUSTICE |
| AWCJB: | ALL WALES CRIMINAL JUSTICE BOARD | NAT: | NATIONAL |
| BTP: | BRITISH TRANSPORT POLICE | NCA: | NATIONAL CRIME AGENCY |
| CIW: | CARE INSPECTORATE WALES | NPCC: | NATIONAL POLICE CHIEFS COUNCIL |
| CPS: | CROWN PROSECUTOR SERVICE | NPS: | NATIONAL PROBATION SERVICE |
| CRC: | COMMUNITY REHABILITATION COMPANY | NRW: | NATURAL RESOURCES WALES |
| CSP: | COMMUNITY SAFETY PARTNERSHIP | PBH: | PUBLIC HEALTH WALES |
| F&RS: | FIRE AND RESCUE SERVICE | PCC: | POLICE AND CRIME COMMISSIONER |
| GLAA: | GANGMASTERS AND LABOUR ABUSE AUTHORITY | PSB: | PUBLIC SERVICE BOARD |
| HBVFGM: | HONOUR BASED VIOLENCE, FEMALE GENITAL MUTILATION | REG: | REGIONAL |
| HIW: | HEALTH INSPECTORATE WALES | SCB: | SAFER COMMUNITIES BOARD |
| HMCTS: | HER MAJESTY'S COURTS AND TRIBUNALS SERVICE | SOLACE: | SOCIETY OF LOCAL AUTHORITY CHIEF EXECUTIVES |
| HMIC: | HER MAJESTY'S INSPECTORATE OF CONSTABULARY | UKBF: | UK BORDER FORCE |
| HMPPS: | HER MAJESTY'S PRISON AND PROBATION SERVICE | VAWDASV: | VIOLENCE AGAINST WOMEN, DOMESTIC ABUSE AND SEXUAL VIOLENCE |
| HMRC: | HER MAJESTY'S REVENUE AND CUSTOMS | WACSO: | WALES ASSOCIATION OF COMMUNITY SAFETY OFFICERS |
| HO: | HOME OFFICE | WAST: | WELSH AMBULANCE SERVICE NHS TRUST |
| HOAG: | HOME OFFICE ADVISORY GROUP | WCCSJ: | WELSH CENTRE FOR CRIME AND SOCIAL JUSTICE |
| IOM(CB): | INTEGRATED OFFENDER MANAGEMENT (CYMRU BOARD) | WLGA: | WELSH LOCAL GOVERNMENT ASSOCIATION |
| IRAP: | INTEGRATED RESEARCH ANALYTICS AND PERFORMANCE | WO: | WALES OFFICE |
| LA: | LOCAL AUTHORITY | WRRPG: | WALES REDUCING REOFFENDING PATHWAYS GROUP |
| | | WYJAP: | WALES YOUTH JUSTICE ADVISORY PANEL |
| | | YJB: | YOUTH JUSTICE BOARD |
| | | YOT: | YOUTH OFFENDING TEAM |

Figure 14
The complexity of the justice system in Wales



Source: Welsh Government



2. UK Government's role³⁵⁸

- 4.5 The Home Office has policy responsibility across both England and Wales for reducing crime and action on all forms of crime (serious and organised crime, cybercrime, hate crime, economic crime, knife and gun crime and modern slavery). It leads on civil emergencies and counter terrorism. The Home Office leads on overall policy for the 43 police forces in England and Wales, as we explain in more detail in paragraph [4.81](#), and for the Fire and Rescue Service in England. Policy on the legality of drugs and alcohol is a Home Office responsibility but issues as to enforcement and treatment are dealt with differently in Wales³⁵⁹.
- 4.6 The Ministry of Justice is responsible for prison and probation policy, including reducing reoffending; funding the court system; providing support for victims and witnesses; and for relations with the judiciary. Its main executive agencies are HMPPS and the Legal Aid Agency. It is jointly responsible with the Lord Chief Justice for HMCTS, as we have explained in paragraph [2.82](#). Both the Home Office and the Ministry of Justice sponsor a large number of arm's length bodies with roles in the criminal justice system, some of which are considered elsewhere in this report³⁶⁰.
- 4.7 The Attorney General has overall ministerial responsibility for the CPS and the Serious Fraud Office. However, decisions to prosecute are made independently by them. The Attorney General has power to refer unduly lenient sentences to the Court of Appeal and to bring proceedings for contempt of court.

358 *op cit n. 94: 23.*

359 *WS113 Enhanced Harm Reduction Group for Wales: 7.*

360 *Para 4.225.*

3. Welsh Government's role

- 4.8 Although the criminal justice system remains the primary responsibility of the UK Government, there are significant overlaps with the policy responsibilities of the Welsh Government in areas such as health and education where, if a modern approach was to be adopted, there needs to be alignment to tackle crime, deal with crime reduction and promote rehabilitation, as we have mentioned at paragraph [2.31](#)³⁶¹.
- 4.9 The Welsh Government has developed and implemented policies on community safety, female offending and youth justice, working with both devolved and UK bodies. It was the first government in the UK to appoint an anti-slavery tsar and has supported a framework for action against hate crime since 2014. As the Welsh Government has responsibility for health and social care, it has worked to set criminal justice policies with an emphasis on prevention. Substance misuse policy³⁶² is one example of this approach. The Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 placed duties on public bodies regarding prevention, protection and support, although it was unable to place duties on the police, CPS or courts³⁶³. The Children (Abolition of Defence of Reasonable Chastisement) (Wales) Bill, introduced in March 2019, is based on an approach of protecting children's rights.
- 4.10 Since 2014, the Welsh Government has developed strategies to address offending behaviours such as those in relation to youth justice as described at paragraph [4.183](#).

361 *op cit n. 94: 26.*

362 *ibid: 32.*

363 *ibid: 28.*

4. Local authorities' role

4.11 Responsibility for local government is devolved. Local authorities have a number of responsibilities in relation to justice, including some powers to bring prosecutions. They are responsible for Youth Offending Teams.

4.12 In addition, local authorities are the focus of two sets of bodies:

4.12.1 Community Safety Partnerships which were established by Home Office legislation (the Crime and Disorder Act 1998³⁶⁴). They are the responsibility of local authorities and the police. Half of the required partners are now devolved. This is reflected in amendments to the Act giving the Welsh Ministers powers to set certain requirements, either alone or jointly with the Secretary of State.

4.12.2 Public Service Boards were established by the Future Generations Act. They replaced the voluntary Local Service Boards in each of the 22 local authority areas in Wales. The Public Service Boards have responsibilities which in practice significantly overlap with the Community Safety Partnerships as they are responsible for conducting local well-being assessments, creating well-being plans to address key issues and working together to deliver results in the short, medium and long-term. There are currently 19 such bodies³⁶⁵ in Wales, made up of the following statutory members:

- The local authority
- The Local Health Board
- The Fire and Rescue Authority
- Natural Resources Wales

In addition, the following are statutory invitees:

- The Welsh Ministers
- The Chief Constable
- The Police and Crime Commissioner
- Probation
- At least one body representing relevant voluntary organisations

³⁶⁴ *Crime and Disorder Act 1998.*

³⁶⁵ *Merthyr Tydfil and Rhondda Cymon Taf share a board as do Conwy and Denbighshire and Gwynedd and Anglesey.*

- 4.13 Under the current arrangements, the bodies or persons responsible to the Ministry of Justice cannot be required to participate in the statutory Public Service Boards. Conversely, there are few legislative levers which enable devolved bodies to be held to account for reducing reoffending and improving rehabilitation outcomes.
- 4.14 The local priorities identified in each Public Service Board plan vary from area to area. However, making communities feel safe and reducing anti-social behaviour, substance misuse, domestic abuse and reoffending particularly feature in cities and post-industrial areas.
- 4.15 There is also a clear emphasis on early years in all Public Service Boards, including reducing Adverse Childhood Experiences³⁶⁶. Research³⁶⁷ has shown that, in addition to long-term impacts on their health, adults who have had more than four Adverse Childhood Experiences are far more likely to be a victim of crime or to enter the criminal justice system. The significance of this research is discussed further in paragraph [4.203](#) and following and at paragraph [7.82](#).

5. Need for a strategy

a) The present position

- 4.16 The All Wales Criminal Justice Board was formally established in 2011, after earlier attempts had been made to try and coordinate criminal justice policy and strategy across Wales. These attempts arose from the need to replicate in Wales' devolved structure some aspects of the National Criminal Justice Board for England and Wales that was created as a result of the recommendations in the Report of Lord Justice Auld published in 2001³⁶⁸. The creation of an All Wales Criminal Justice Board was also a recommendation of the Silk Commission.
- 4.17 The current membership of the All Wales Criminal Justice Board consists of the following: (1) each of the four police forces of Wales (usually at Chief Constable or at Deputy Chief Constable level); (2) each of the Police and Crime Commissioners of each force; (3) the Crown Prosecution Service (usually the Chief Prosecutor); (4) HMPPS and the

³⁶⁶ Adverse Childhood Experiences are defined as 1) verbal, physical or sexual abuse; and 2) being a child in a household where parental separation, domestic abuse, mental illness, drug or alcohol misuse or imprisonment occurred.

³⁶⁷ Public Health Wales (2016) *Adverse Childhood Experiences and their impact on health-harming behaviours in the Welsh adult population*.

³⁶⁸ Lord Justice Auld (2001) *A review of the Criminal Courts of England and Wales*.

Wales Community Rehabilitation Company (usually at Executive Director and Probation Director level); (5) HMCTS (usually by the Delivery Manager); (6) the Welsh Government at Director or Deputy Director level; (7) Legal Aid Agency at Area Contract Manager level; (8) Victim Support (usually by the Director); (9) Youth Justice Board (by the Director and a Board Member); (10) Public Health Wales (usually by Programme Director of Adverse Childhood Experiences); (11) the third sector (Head of Planning Advice Cymru and Chief Executive Officer of Clinks); and (12) the Future Generations Commissioner. This is a total of 21. The Home Office and the judiciary are not represented. In addition, as we explain at paragraph [4.88](#), there is a Policing Board for Wales where many of the same persons are present.

- 4.18 Before 2017, the All Wales Criminal Justice Board was usually chaired by one of the senior representatives in turn; since then it has usually been chaired by one of the Police and Crime Commissioners. There are no representatives of defence practitioners. The Presiding Judges for Wales have attended occasionally as observers (a role we have explained at paragraph [2.86](#)).
- 4.19 There are four Criminal Justice Boards in Wales that coincide with the four police force areas. These were established for each of the police force areas in England and Wales as a result of the recommendations of the Auld Report in 2001. Each has since 2013 been chaired by the Police and Crime Commissioner for the area. The core members mirror the All Wales Board but representatives of the local authorities within the police force areas attend. Members can also be co-opted from the health boards, drug and alcohol services, fire and rescue services and third sector. There are no representatives from defence practitioners. On occasions the Resident Judge³⁶⁹ of the court within the area attends as an observer.

4.20 The priorities of the All Wales Criminal Justice Board are to:

- Reduce crime – deter first time offenders and reduce the number of victims of crime.
- Reduce reoffending – to stop offending in the first place and stop offenders committing further offences.
- Protect the public – to reduce the risk of serious further offending.
- Strengthen joint working with devolved and non-devolved services in order to reduce reoffending.

4.21 The All Wales Criminal Justice Board has no executive authority; it relies on the members of the Board to exercise such authority as each individually has as a leader within the body that person represents. The Board cannot hold anyone to account. It is not responsible for setting an overall strategy for Wales.

b) The need for a strategic body

4.22 The criminal justice system is necessarily fragmented to safeguard its fairness and the operational independence of the police and the independence of the prosecution. It is also complex. In Wales that complexity and fragmentation is compounded by the present scheme of devolution as we have already outlined. The fragmentation, complexity and the effect of the current scheme of devolution is illustrated in the succeeding parts of this Chapter when we consider in more detail the organisations and bodies that work within the system.

4.23 Experience over the past 15 years has shown that it is necessary for there to be a body that can set an overall strategy for the criminal justice system with the objectives of (1) reducing crime, (2) meeting the needs of victims, (3) attempting to reduce criminalisation of first time minor offenders, particularly youths, (4) ensuring that probation and other services can work together to support effective community orders made by the courts, (5) providing for proper arrangements for those released from prison, and (6) securing their rehabilitation into the community and reducing reoffending. We set out in detail in the following parts of this Chapter what we recommend be done by the various bodies involved in the criminal justice system in Wales.

- 4.24 Each body which has responsibilities within the criminal justice system will, we have no doubt, do all it can to carry out its responsibilities and achieve the objectives we have described.
- 4.25 However, we consider it essential, whether or not there is any change to the current scheme of devolution (as discussed in Chapter 12), that Wales should have a new board, known as the Wales Criminal Justice Board, that can set an overall criminal justice strategy for Wales and provide for a means of accountability within Wales for delivery of that overall strategic approach. This would build on the work done by the All Wales Criminal Justice Board but have much clearer, more transparent, more effective and more accountable responsibilities. Our reasons are as follows:
- 4.26 First, there are very good constitutional reasons why the police and the Crown Prosecution Service must have their own operational independence and cannot be directed as to what to do by any others. However, in most matters they can and do work closely together. When problems do arise, there is sometimes the risk that the problems are attributed to others instead of working towards a joined-up solution that requires the give and take of all involved. The new board would therefore provide a means of ensuring effective and accountable joint working and delivery.
- 4.27 Second, there is also a need to ensure that the entire system is using resources in the most efficient manner and performing effectively as a whole in meeting the objectives of the criminal justice system. We consider in the other parts of this Chapter the effectiveness of what is being done for victims of crime and the effectiveness of the performance of the police, CPS, courts and prison and probation in achieving the objectives. However, there must be an ongoing overall assessment on a regular basis of the operation of the entire system with each of the bodies within the system accounting for its performance in delivering the strategy and strategic objectives.
- 4.28 Third, under current arrangements, the All Wales Criminal Justice Board does not report publicly on progress and does not provide any account of performance to an elected body. The new Board, the Wales Criminal Justice Board, should report publicly on an annual basis, with relevant data, and its members be prepared to appear before an Assembly committee to explain progress. The overlap with the Policing Board for

Wales is significant. On the establishment of the new Wales Criminal Justice Board, we recommend it should incorporate the Policing Board for Wales as it would be more effective and efficient for the functions to be performed by a single body³⁷⁰.

- 4.29 Fourth, the Board should be small if it is to be effective and comprise only (1) one Police and Crime Commissioner, (2) one Chief Constable, (3) the Chief Crown Prosecutor for Wales, (4) the Director of Prison and Probation for Wales, (5) the Chairman of the Youth Justice Board Cymru (6) the Director of HMCTS Wales, and (7) a representative of the Welsh Government at director level. Senior representatives of the Home Office, Ministry of Justice and Victim Support would also have a right to attend, with other organisations being invited to attend as necessary.
- 4.30 Fifth, it is essential that a representative of those who act for the defence are also invited as necessary, for the delivery of justice requires regular consideration of whether the needs of defence practitioners are properly considered.
- 4.31 Sixth, furthermore, as experience in England and Wales has shown in the period since 2005, the judiciary play an essential role. A judge should attend on a regular basis for part of the meetings, participating in the meetings as an observer rather than as a member of the Board.

We recommend:

A new Wales Criminal Justice Board should be created. It should set an overall criminal justice strategy for Wales and provide the means for accountability within Wales for the delivery of that overall strategic approach.

370 [Para 12.36, 12.88.](#)

Part 2: Victims of crime

4.32 We began our consideration of criminal justice by listening to the concerns of those who felt that as victims³⁷¹ of crime they had not been well treated by the criminal justice system. We started gathering evidence by meeting the family of a victim of a serious crime and closed with oral evidence from the Victims' Commissioner. On the basis of the evidence we took during the course of our inquiry there are four ways to respond properly to victims that we wish to highlight:

1. Provision of advice and support to a person who becomes the victim of crime.
2. Information in respect of the right to challenge police and/or CPS decisions.
3. Keeping the victim at the centre of the proceedings by providing regular updates and making the victim aware of opportunities to give evidence from remote centres.
4. Providing information about sentencing prior to the sentencing hearing and explaining the sentence afterwards.

1. The need for advice and support

a) Extent of the need

4.33 The Crime Survey of England and Wales estimated that overall, 14% of the population were victims of crime in 2017-18. The Home Office publication, *The economic and social costs of crime* published in 2018,³⁷² estimates that in 2015-16 the total cost of crime was £50 billion for crimes against individuals and £9 billion for crimes against businesses. However, the impact of crime is not felt equally across the population. A higher proportion of mixed race and Asian people said they were victims of crime, compared with white people. On average, over the last three years, young people were more likely to say they were victims of crime than older people³⁷³. Research by Victim Support indicates that people with a limiting disability or long-term illness are more likely to be victims of crime, as are lone parent households³⁷⁴. Generally, 32% of disabled people have experienced hate crime.

³⁷¹ We refer to victims as this is the term commonly used. It must, however, be clear that a person may not in fact be "the victim" until the facts are determined at trial.

³⁷² Home Office (2018) *The economic and social costs of crime: Second edition*.

³⁷³ Gov.uk (2018) *Victims of Crime*.

³⁷⁴ Victim Support (2016) *An Easy Target: Risk factors affecting victimisation rates for violent crime and theft*.

People with social or behavioural disability are four times more likely to be a victim of hate crime than those with a disability that affects stamina, mobility/vision or mental health³⁷⁵.

- 4.34 Some crimes are under-reported. This can be because victims do not have confidence in the criminal justice system, fear the perpetrator or do not want their experience to become public knowledge. Three quarters of cases of reported rape are not taken forward because the victims are concerned about privacy issues³⁷⁶. In cases of modern slavery, victims may be unaware of their rights and fearful that they may be criminalised or deported if they do report their treatment to the police. The Crime Survey of England and Wales indicates that there may have been about two million cases of domestic abuse in 2017-18. The way victims report crime to the police is discussed further at paragraphs [4.118](#) and [4.119](#).
- 4.35 For some victims and bereaved relatives, their experience of criminal justice has left them feeling let down by the system, with failings in communication and support. As one family put it, there is a danger that the criminal justice system does not consider sufficiently the needs of victims and leaves them feeling like bystanders in a system which is solely about the Crown Prosecution Service and offenders³⁷⁷.
- 4.36 In our consultation meeting at Disability Wales in Caerphilly³⁷⁸ the importance of advice and support for disabled victims was stressed. We were informed by a victim of hate crime that the support she was now receiving had renewed her confidence in the fairness of the justice system. It is clear however that provision of such support is not always available with insufficient numbers of appropriate adults³⁷⁹ and, according to the Victims' Commissioner, dire shortages of registered intermediaries³⁸⁰.

375 WS200 David Fox: 2.

376 OE046 Victim Support: 1.

377 WS016 Nadine Marshall: 2, WS121 Why Me?: 1.

378 ES Disability Wales, Caerphilly.

379 *The role of the appropriate adult is to safeguard the interests, rights, entitlements and welfare of children and vulnerable people who are suspected of a criminal offence, by ensuring that they are treated in a fair and just manner and are able to participate effectively.*

380 ES Disability Wales, Caerphilly.

b) The policy and strategy of the UK Government

- 4.37 The first Victims' Commissioner for England and Wales was appointed in 2010 to promote the interests of victims and witnesses. The Victims' Code³⁸¹ was published by the UK Government in 2006 and last updated in 2015. It introduced a number of entitlements for victims, including being able to read victim impact statements in court, ensuring that victims are referred to support agencies and allowing businesses to make impact statements detailing how a crime has affected them. The Code sets out additional entitlements, known as 'special measures', for victims of serious crime, victims who are repeatedly targeted and vulnerable or intimidated victims.
- 4.38 The UK Government published a Victims' Strategy in September 2018. This proposed a consultation on a new Victims' Law to underpin the Victims' Code and strengthen the powers of the Victims' Commissioner³⁸².

c) The work of the Welsh Government

- 4.39 In Wales, the aims of the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015, to which we have referred at paragraph 4.9 include increasing levels of reporting of abuse; ensuring the availability of effective, evidence-based early interventions for victims and survivors; and increasing victim confidence and access to justice³⁸³. The Welsh Government's framework for action against hate crime³⁸⁴ aims to prevent and tackle all forms of hate crime against diverse communities. Specific commitments include action to increase confidence among Gypsy and Traveller communities to report hate crime, improving information for refugees and asylum seekers and working to tackle hate crime and 'mate crime' experienced by people with disabilities. The Welsh Government has also supported *Live Fear Free* campaigns³⁸⁵ aiming to challenge attitudes towards domestic abuse and improve awareness of the support available to help victims of domestic abuse and modern slavery.

381 Established under the *Domestic Violence, Crime and Victims Act 2004*.

382 HM Government (2018) *Victims Strategy*.

383 National indicators to measure progress in achieving these aims were published in June 2019.

384 Welsh Government (2017) *Tackling Hate Crimes and Incidents: Framework for Action*.

385 Welsh Government, *Live Fear Free*.

d) The provision of advice and support

4.40 Although much has been done, the evidence leads us to conclude that much more needs to be done in ensuring that support is provided immediately to all victims of crime. The principal body that does this is Victim Support, an independent charity that works in and outside court to support victims of crime and traumatic incidents in England and Wales. In 2018, it offered help to 814,000 people across England and Wales. The main funding is from the Police and Crime Commissioners (see paragraph 4.79.6) but funding is also provided from the Ministry of Justice and the Welsh Government. Amongst specific activities, the Welsh Government funds Victim Support to run a helpline and reporting service on hate crime. The funding for 2018-19 was £220,000 and the funding will continue to at least 2020³⁸⁶.

4.41 The Victims' Code entitles victims to receive advice from Witness Care Units, jointly run by the police and the Crown Prosecution Service. Other professional support workers may also be involved. Independent Domestic Violence Advisers and Independent Sexual Violence Advocates provide support for victims and survivors of abuse and violence. They are usually located within Sexual Assault Referral Centres run by third sector organisations across Wales. Other organisations such as Bawso, New Pathways and Barnardo's offer practical support for adults and children who have been victims of modern slavery.

2. The right to challenge

a) The falling rate of prosecutions

4.42 The rate of prosecutions has been falling, despite an increase in reported crime. Overall, the number of offenders prosecuted across England and Wales fell by 4% to just under 1.38 million in the year to March 2019, down from 2.4 million in 1980; we provide more detail at paragraphs 4.116 and following and 4.155. The total number of individuals formally dealt with by the criminal justice system, including those receiving cautions and penalty notices, fell by 5% to 1.59 million³⁸⁷. Prosecutions of sex offences fell from 11,311 in 2017 to 7,594 in

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WS148 Julie James AM: 2. Welsh Government Press Release (2019) [£840,000 of funding to tackle hate crime](#).
Ministry of Justice (2019) [Criminal Justice Statistics quarterly, England and Wales, year ending December 2018](#).

2018. The prosecution rate was 6.3% in 2018 compared with 16.6% in 2008, despite an increase in recorded sex offences from 50,000 in 2008 to more than 120,000 in 2018³⁸⁸. The cause of this fall is not easy to discover but we set out at paragraphs [4.116](#) to [4.124](#) some of the explanations.

b) The right to review

- 4.43** In England and Wales decisions on prosecution are made by the police and for more serious offences by the CPS where the prosecutor makes a decision to prosecute based on the Code for Crown Prosecutors³⁸⁹. In cases where the police or CPS decide not to prosecute, victims have since 2013 (CPS) and since 2015 (police) been entitled to seek a review of that decision under Victim Right of Review scheme. The right to review extends only to cases where no charges at all are brought. There are time limits for requesting a review. Victims may lack information about how to make an effective request, including the fact that they could submit further information. Local reviews of a decision will be conducted within the same office that took the original decision not to prosecute. If the case is referred on for further review, the Crown Prosecution Appeal and Review Unit, based in London, will only consider the evidence that was reviewed locally.
- 4.44** In evidence to us, the Victims' Commissioner expressed concerns about the quality and effectiveness of the review process, particularly around rape cases³⁹⁰. Where the police have been advised by the CPS not to bring charges, on the grounds of insufficient evidence or public interest, there may not be enough challenge to that advice. Pressure on resources may be a factor in reaching decisions. It may also be an obstacle to conducting effective reviews.
- 4.45** If a victim is not satisfied with the outcome of a review, the remaining option is to seek a judicial review within three months of the original decision, but the court will not generally interfere with the CPS's decision to prosecute.

³⁸⁸ Swinford, S (2019) *Boris Johnson to boost jails in law and order election pledge*.

³⁸⁹ CPS (2018) *Code for Crown Prosecutors*.

³⁹⁰ OE046 Victims' Commissioner: 2.

3. Communication and treatment with respect

a) Keeping victims informed

4.46 As the Victims Strategy sets out, victims need timely and accurate information, fair treatment at all times during the investigative and court process, effective multi-agency working and professional, targeted services. However, the victim's experience of the criminal justice system is often that of a long wait before a case is brought to trial with little explanation as to progress and followed by being required to attend court at short notice. Cases may be adjourned unexpectedly. Victims and witnesses may not be kept informed of developments as promptly as the Victims' Code says they should. There may be poor liaison between the bodies involved in maintaining communications with victims and witnesses. This contributes to a feeling of being marginalised and not being treated with respect. This problem has been long identified. It should have been addressed. It must now be addressed.

b) The experience of the judicial process

4.47 For victims and witnesses, court proceedings can be daunting experiences. 46% of people who have given evidence say they would not do it again³⁹¹. Although practitioners in Wales who are present in court recognise that participation of victims and others in court hearings is a core component of justice, many practitioners believe that effective participation is limited by a number of factors including vulnerability, the complexity and formality of proceedings and other factors such as court closures and the lack of legal advice³⁹².

4.48 Special measures such as separate entrances and screens have to be considered carefully in every court and the needs of the victim taken into account. Otherwise, the measures may fail to provide the reassurance needed. For example, it will not be enough to use screens to shield the victim from the defendant if the victim still has to go past the defendant's family.

³⁹¹ OE046 Victims' Commissioner: 3.

³⁹² *op cit n.299.*

- 4.49 A significant problem that emerged in 2012 and which has not been properly addressed is the treatment of information held on mobile telephones. Both before and during court proceedings, victims and witnesses are often reluctant to disclose information which they feel is private and not relevant to the case. As we were told by Victim Support, *taking somebody's mobile and laptop gives a lot more information than they expected to provide. This is a huge step up from giving a statement.* The adversarial nature of proceedings also means that victims and witnesses may find themselves subject to what they feel is aggressive questioning. Material on mobile telephones can be relevant and therefore needs to be disclosed, but a clear way of dealing with these issues, which takes into account the victim's position as well as being fair to the defence, needs to be found.
- 4.50 Another concern which has also been identified for some time is the exclusion of specialist support workers from court, even though they have been the main source of professional advice and support to victims up to that point. One example is a victim being unable to have her Independent Sexual Violence Advocate sit with her whilst giving video evidence³⁹³. This is not a straightforward issue as it is essential that when witnesses give evidence that they give their own account, uninfluenced by anyone accompanying them.
- 4.51 Further, opportunities to record video evidence pre-trial or give evidence by video from a more convenient location may also be missed. The short notice of hearings and the distance to court, especially in rural areas in Wales, may even lead to people failing to give evidence. We comment further on this in paragraph [8.20](#).

4. Information on sentencing

- 4.52 Support for victims in relation to the sentence that may be imposed on the offender should begin at the earliest possible stage and continue after the sentence has been delivered. Victims do not necessarily want a severe sentence. They need to understand the procedures involved and the reasoning behind the verdict and sentence given so they can understand what has been done. The short explanation given as a standard part of the judge's decision is too brief, especially if it was not the outcome the victim was expecting. The victim must have the decision fully explained. The evidence of the Victims' Commissioner was that there should be an automatic entitlement to a free, written copy of what the judge has said so victims can fully understand the reasoning. We agree.
- 4.53 The need for timely communications continues beyond the court, to information on potential compensation, on the possibility that the offender will seek a review of the case and on the work of the Parole Board.

5. Conclusion

- 4.54 The interests of victims must be at the forefront of a criminal justice policy. Victims should be heard, informed and able to challenge decisions made. Compliance with the Victims' Code needs to be more rigorously monitored and enforced. There needs to be better liaison between all the organisations involved in court services and victim support, to improve communication with victims and ensure they do not have to tell their story over and over again.
- 4.55 Given their role and authority, greater engagement by judges would certainly help in ensuring that victims do receive the information and consideration they deserve.
- 4.56 We consider that the Wales Criminal Justice Board which we have recommended at paragraphs [4.22](#) to [4.31](#) be given clear responsibilities for leading this work and ensuring delivery.

We recommend:

The Wales Criminal Justice Board should have responsibility for ensuring the rights of victims are respected and there is proper delivery of services to victims.

Part 3: Black, Asian and Minority Ethnic people

- 4.57 In light of the evidence that those who are charged, tried and punished are disproportionately likely to come from Black, Asian and Minority Ethnic (BAME) communities, the Lammy Review (to which we referred at paragraph 1.16.7) developed some major themes. In particular, (1) there must be robust systems in place to ensure fair treatment in every part of the criminal justice system, (2) trust in the criminal justice system is essential, and (3) one of the biggest symbols of an ‘us and them’ culture is the lack of diversity among those making important decisions in the criminal justice system.
- 4.58 The Lammy Review typically proceeded on an England and Wales basis. Given the importance of the matter, we have inquired further into both the under-representation of BAME people among those working in the criminal justice system, and the over-representation of BAME people among those in custody, in relation to Wales.
- 4.59 According to official figures, BAME people currently make up 5% of the population in Wales³⁹⁴.
- 4.60 The representation of BAME people among those working in the criminal justice system in Wales is summarised in the following figure³⁹⁵.

Figure 15

BAME representation in police, CPS, prison, probation staff and the judiciary across Wales in 2019

| | POLICE | JUDGES | MAGISTRATES | WELSH TRIBUNALS | HMPPS ³⁹⁶ | CPS |
|-------|------------|--------|-------------|-----------------|----------------------|-----------|
| Wales | 1.8% (143) | 3% (3) | 5% (51) | 9% (8) | 3.6% (59) | 3.9% (11) |

Source: Data provided to us by the organisations

³⁹⁴ Welsh Government (2019) *Ethnicity by area and ethnic group*.

³⁹⁵ We have also considered gender balance. There is a concern across the criminal justice system about women representation but generally new intake reflects a better balance.

³⁹⁶ HMPPS has only supplied 2018 figures.

4.61 We think it important to stress at the outset that in addressing the underrepresentation, peer support and development opportunities for BAME people in management and leadership roles play a material role in increasing diversity in the criminal justice system. Apprenticeship schemes had the potential to lay the foundations for a more diverse and representative workforce³⁹⁷.

1. Police

4.62 At the consultation we held in Butetown and at the discussion of the Lammy Review we attended at the Equality and Human Rights Commission in Cardiff, representation, consistency and trust in policing were closely allied themes.

4.63 As Figure 16 shows, the percentage of BAME police officers across Wales is very low³⁹⁸:

Figure 16

BAME police officers by force in Wales in 2019

| POLICE FORCE | BAME POLICE OFFICERS (%) | BAME POPULATION (%) |
|--------------|--------------------------|---------------------|
| All Wales | 1.9 | 5 |
| Dyfed Powys | 0.9 | 2 |
| Gwent | 2.2 | 3.9 |
| North Wales | 0.9 | 2.5 |
| South Wales | 2.5 | 6.6 |

Source: Home Office, *Police workforce, England and Wales: 31 March 2018*

4.64 The Representative Workforce Programme operating in South Wales Police has worked closely with the BAME communities and since 2015 BAME representation for police officers has risen from 2% to 2.6%. For community support officers BAME representation has risen from 1.9% to 3% and for police staff from 1.7% to 2.1%.

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ES Butetown.
Home Office (2018) *Police Workforce, England and Wales, 31 March 2018*.

2. CPS

4.65 Figures for the CPS show 17.7% of their staff coming from a BAME background.

3. Judiciary

4.66 At 3%, Wales has the lowest representation of BAME court judges in England and Wales. In contrast, London and the Midlands have the highest representation at 10% and 9% respectively.

4.67 In Wales, 5% of magistrates have declared themselves as BAME. Across England and Wales the figure is 12%.

4. HMPPS

4.68 Figures for HMPPS show 8% of their staff coming from a BAME background.

5. Prisoners

4.69 The ethnicity of the prison population in Wales in 2018 (based on readings in March, June, September and December) was as follows: White: 4,238, Black: 139, Asian: 146, Mixed race: 126. The total percentage of BAME prisoners in Wales in 2018 was 9%.

4.70 Since 2010, the average percentage of black offenders receiving a custodial sentence in the Crown Court in Wales is 74%. The average percentage in England is 63.8%.

4.71 In the magistrates' courts the average percentage of black offenders being sentenced to custody in Wales since 2010 is 17.2%. The average percentage in England is 12.9%³⁹⁹. The recording of data on ethnicity at the Magistrates' Court is very poor. For example, a total of 336,289 immediate custodial sentences were handed out at magistrates' courts in England between 2010 and 2017. In 41.1% of these cases the ethnic identity of the offender was recorded as either 'Not stated' or 'Not available'⁴⁰⁰.

399 Jones, R (2019) *Sentencing and Immediate Custody in Wales: A Factfile*: 58.
400 Information provided by the Ministry of Justice to the Commission.

- 4.72 Figure 17 shows the numbers of those residing in Wales who entered into the criminal justice system for the first time⁴⁰¹ who were identified by ethnicity⁴⁰².

Figure 17
People residing in Wales who entered the criminal justice system for the first time who were identified by ethnicity

| | WHITE | ASIAN | BLACK | OTHER ⁴⁰³ | UNKNOWN/ NOT STATED | TOTAL |
|------|------------------|------------|------------|----------------------|------------------------|--------------|
| 2013 | 8,530 (87.6%) | 203 (2.1%) | 173 (1.8%) | 129 (1.3%) | 704 (7.2%) | 9,739 |
| 2014 | 7,302 (86%) | 180 (2.1%) | 154 (1.8%) | 114 (1.3%) | 738 (8.7%) | 8,488 |
| 2015 | 6,957 (84.7%) | 190 (2.3%) | 136 (1.7%) | 115 (1.4%) | 817 (9.9%) | 8,215 |
| 2016 | 6,054 (85.6%) | 164 (2.3%) | 141 (2%) | 94 (1.3%) | 619 (8.8%) | 7,072 |
| 2017 | 5,442 (80.8%) | 144 (2.1%) | 143 (2.1%) | 80 (1.2%) | 925 (13.7%) | 6,734 |

Source: Wales Governance Centre

- 4.73 Despite a decrease in the number of black first-time entrants into the criminal justice system in Wales, the proportion of black people entering the system actually increased between 2013 and 2017.
- 4.74 While 2.1% of all first-time entrants into the criminal justice system in Wales in 2017 were black, just 0.6% of the Welsh population was identified as black in the 2011 census⁴⁰⁴. It did not prove possible on the evidence to ascertain the reasons for this. One explanation put forward was that some convictions might be related to ‘County Lines’.

⁴⁰¹ This number includes those who have received their first conviction, caution or youth caution, but does not include those who received penalty notice.

⁴⁰² The identification was made by a police officer who recorded the officer’s perception of ethnicity on the Police National Computer. This is not a self-reporting identification.

⁴⁰³ Category includes Chinese, Japanese or South East Asian and Middle Eastern.

⁴⁰⁴ WS150 Bawso: 1.

- 4.75 The causes of the disproportionate number of BAME offenders in the criminal justice system in Wales needs to be understood. Whatever the causes, the importance of carrying forward the recommendations of the Lammy Review is clear.
- 4.76 The Lammy Review pointed out that many of the causes of over-representation of BAME people lie outside the criminal justice system. It is important that continued monitoring and reform within the justice system is extended into areas such as school exclusions and other Adverse Childhood Experiences, as well as opportunities for employment.

We recommend:

Each of the police, Crown Prosecution Service, the judiciary and HM Prison and Probation Service should publish a strategy in respect of Black, Asian and Minority Ethnic people in Wales and report annually on the strategy to the Assembly.

Part 4: The role of the police

1. Current position on governance and accountability

4.77 The organisation of the police in Wales, is complex under the current scheme of devolution.

a) Chief Constables and Police and Crime Commissioners

4.78 The four police forces in Wales are Dyfed Powys, Gwent, North Wales and South Wales Police. They emerged out of a series of amalgamations some 50 years ago. Each force is headed by a Chief Constable, who is responsible for operational policing decisions and the direction and control of police officers and police staff.

4.79 The Police Reform and Social Responsibility Act 2011 introduced Police and Crime Commissioners (PCC) to replace Police Authorities which had been bodies broadly representative of local communities. PCCs were modelled for England. They took into account Welsh devolution to the extent that a Welsh Group was formed. Chief Constables are operationally independent but otherwise are accountable to the PCCs. Each police force has a single PCC who is elected every four years; the PCC appoints his or her own office staff. The PCCs are responsible for:

4.79.1 Appointing a Chief Constable, holding them to account for running the force, and if necessary dismissing them.

4.79.2 Setting the police and crime objectives for their area through a police and crime plan.

4.79.3 Setting the force budget and determining the precept (the amount collected locally via council tax).

4.79.4 Contributing to the national and international policing capabilities set out by the Home Secretary.

4.79.5 Bringing together community safety and criminal justice organisations, to make sure the local priorities are joined up.

4.79.6 Funding Victim Support as is mentioned in paragraph [4.40](#).

4.80 Apart from some light oversight from the Home Office, the accountability of PCCs is to the electorate every four years. Since the introduction of PCCs a variety of systems for the governance provided by the role have developed. In London and Manchester, the PCC is a role fulfilled by the Mayor. As more mayoral structures are developed in England this model may become increasingly familiar. The span of control for Mayors is far greater than that of other PCCs in that they set the vision for and have oversight of other key public services in an area⁴⁰⁵. A further difference in England is that some PCCs have become the governing body for the Fire and Rescue Service. Neither change applies to Welsh PCCs⁴⁰⁶.

b) The responsibilities of the Home Office

4.81 The Home Office's main responsibilities with regard to policing are to:

- 4.81.1 Maintain a system of local accountability that assures Parliament that forces spend their resources with regularity and propriety and achieve value for money.
- 4.81.2 Assess how much funding forces need, decide how much the policing system receives as a whole, and allocate grants to PCCs (who decide how much goes to forces and how much to other initiatives to reduce crime).
- 4.81.3 Intervene if Chief Constables or PCCs fail to carry out their functions effectively.
- 4.81.4 Identify opportunities for forces to work efficiently, support them to do so, and provide statutory guidance in respect of financial matters.

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[Para 12.52.](#)

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[WS147 Theo Huckle QC: 2.](#)

- 4.82 The governance from the Home Office has been described as ‘light touch’ since operational policy has been devolved to the PCCs⁴⁰⁷. The Home Affairs Committee, which received written evidence from the Home Office explaining that “*it does not run policing, but is supporting the sector to become self reforming*”⁴⁰⁸, reported in October 2018 that policing was suffering from a “*complete failure of leadership from the Home Office*”.
- 4.83 The forces are assessed on efficiency and effectiveness by HM Inspectorate of Constabulary and Fire and Rescue Services⁴⁰⁹. The College of Policing sets standards across the police forces, and shares learning and good practice⁴¹⁰.

2. Other bodies involved in policing functions

4.84 In addition to these bodies, there are a number of intersecting and external organisations which affect policing in Wales. These include:

- The National Crime Agency⁴¹¹
- MI5
- MI6
- GCHQ
- The National Police Chiefs Council
- The Association of Police and Crime Commissioners
- The Police Federation for England and Wales
- The Superintendents’ Association
- The Office of Surveillance Commissioner
- The Information Commissioner
- The Biometrics Commissioner
- The Independent Office for Police Conduct (Director for Wales)
- The Wales Audit Office⁴¹²
- British Transport Police⁴¹³
- National Police Air Service

407 National Audit Office (2018) *Financial sustainability of police forces in England and Wales*.

408 *op cit n. 119*.

409 OE020 Sir Thomas Winsor & Peter Clarke: 1.

410 OE024 Mike Cunningham: 1.

411 UK’s lead agency against organised crime; human, weapon and drug trafficking; cyber crime; and economic crime that goes across regional and international borders.

412 Wales Audit Office produces annual audit reports for both PCCs and Chief Constables.

413 WS162 British Transport Police: 2.

3. Attempts to establish better governance and accountability of the police in Wales

- 4.85 Although the establishment of PCCs did not take much account of Welsh devolution, steps have been taken to try and improve governance and accountability within the current scheme of devolution.
- 4.86 The first step was taken on 1 April 2017 when, following ratification from the Chief Constables and the Police and Crime Commissioners of Wales, the first All Wales Deputy Chief Constable was appointed. The main priorities for that office were to develop relationships between the four forces, to improve the Welsh Policing perspective, to focus on the opportunities for collaboration, and to oversee collaborative units (such as the all Wales organised crime unit TARIAN). There is also a police Liaison Unit funded by the four Welsh forces within the Welsh Government, which works closely with the Welsh Government's Community Safety Division and engages on police and community safety related matters with officials from across the Welsh Government and the Assembly. In May 2018 the position of All Wales Deputy Chief Constable came to an end with the various functions being given to other senior police officers and staff.
- 4.87 The second step was the establishment of a Cross-party Group on Policing in the Assembly in July 2018. The Cross-party Group aims to consider the questions of how policing operates within the devolved and non devolved aspects of public services in Wales, what are the current issues facing the service in Wales and how best to engage with the Assembly on policing challenges and on policy and practical issues of common interest. The Group has discussed homelessness, rough sleeping, substance misuse and mental health⁴¹⁴.
- 4.88 The third step was the establishment of a Policing Board for Wales in November 2018 by Alun Davies AM the then Cabinet Secretary for Local Government and Public Services. The Board brings together the Chief Constables and the Police and Crime Commissioners of each of the police forces in Wales, Welsh Government Cabinet Ministers and officials. The membership is similar in many respects to the All Wales Criminal Justice Board⁴¹⁵. The Secretary of State for Wales, the Home

414 Assembly (2018) *Cross-party Group on Policing*.

415 As we have stated in [paragraph 4.28](#) we suggest that for the future this is merged with the new Wales Criminal Justice Board that we recommend.

Office, the Ministry of Justice and HMPPS are also invited but to date have not attended. The intention of the Board is to assist with the difficulties often faced by police forces in working in a nation where the majority of public services are devolved. It has met on 19 November 2018 when 22 were present, on 18 February 2019 were 24 present and again on 16 May 2019 when 20 were present⁴¹⁶. The matters discussed well illustrate the need for alignment between policing and other services.

4. The complexity of the funding

4.89 As we have summarised in paragraphs 2.116 and following, the funding for the police forces in Wales is complex; it differs from that in England. The funding is from a number of sources:

- 4.89.1 UK Government funding through a police grant which is determined by a Home Office funding formula.
- 4.89.2 Welsh Government funding as part of the local government finance settlement.
- 4.89.3 A local police precept set by Police and Crime Commissioners and collected via council tax.
- 4.89.4 Welsh Government funding for community support officers and Schools Liaison Officers.

a) Home Office grant

- 4.90 The current funding formula which determines levels of funding for police forces from the Home Office “*does not take into account the full range of demands on police time*”⁴¹⁷. Since 2010 Home Office funding has been reduced by an equal percentage for all forces regardless of the outcome of the formula.
- 4.91 There is a mismatch between police funding and public expectations; funding does not take enough account of the unique circumstances of each force and is provided on a basis which is too short term. A clear

⁴¹⁶ Policing Board for Wales *Minutes*. Other minutes not published.
⁴¹⁷ WS076 Welsh Chief Officers Group: 2.

example is South Wales Police where additional policing requirements for the capital city of Wales are not recognised within the funding formula. The force have assessed this as an unfunded cost of £4 million resulting from the additional policing requirements arising from the economic growth associated with the capital city, the proliferation of large national and international events and the heightened national threat assessment on terrorism. Similarly the funding formula does not take into account the full impacts of policing the rural areas of Wales.

- 4.92 Police forces also receive specific and special grants from the Home Office to deliver UK Government priorities. These specific grants to Welsh police forces totalled £51 million in 2018-19. The largest element of this funding across England and Wales is the Counter Terrorism Grant. Welsh police forces also make bids for some Home Office grants, for example from the Police Transformation Fund⁴¹⁸.
- 4.93 There has been an overall 19% real terms reduction in total Police budgets in England and Wales since 2010, and a real terms reduction of 30% in funding from the Home Office⁴¹⁹. Police funding for 2018-19 amounted to £12.3 billion, which provided for a workforce of approximately 122,000 police officers and 68,000 police staff. In 2018-19 police grant funding per person in England was on average £17.11 higher than Wales which is the equivalent of £54 million.

b) Welsh Government funding

- 4.94 The Welsh Government provided £141 million for Welsh police forces in 2018-19, via redistributed non-domestic rates revenue and the revenue support grant. Thus, in Wales police forces still receive one revenue grant from the Home Office and another revenue grant from the Welsh Government. In England, the revenue funding provided via the Department for Communities and Local Government was incorporated into a single Home Office grant in 2013-14.
- 4.95 As indicated at paragraph [2.121](#), the Welsh Government provides additional funding every year for policing in Wales. This comprises:

418 Westminster Government funding for police projects. An example of a successful bid by Welsh police forces was a joint bid alongside Public Health Wales and others for the *Adverse Childhood Experiences programme*.

419 *op cit* n. 406.

- 4.95.1 £16.8 million to fund 500 community support officers in Wales. This funding was introduced in 2012 to counteract a shrinking police workforce, and this funding has been maintained in subsequent years.
- 4.95.2 £1.9 million for school liaison programmes⁴²⁰.
- 4.95.3 TARIAN, the Dyfed Powys, Gwent and South Wales Police Organised Crime Unit received £500,000 a year in funding from Welsh Government. This amount was however gradually reduced, and at short notice funding was stopped in 2018⁴²¹.
- 4.95.4 £265,000 to the British Transport Police for additional operational personnel in the Welsh Sub Division, plus funding for a pilot to extend neighbourhood policing at Rhyl, Tenby and Machynlleth.

c) Precept

- 4.96 The Welsh forces were insulated to a material extent from the reduction in Home Office funding because during this time the PCCs were able to raise more funds from the precept than English forces. As council tax is a devolved matter in Wales⁴²², the Welsh Government decided not to set a limit on the police precept. In England an increase is limited to a fixed amount (£12 in 2018) without a referendum. For example, in North Wales over 50% of funding comes from the precept whilst in Merseyside this figure is 20%.⁴²³ A key divergence in police funding between Wales and England is that precept levels have risen faster in Welsh police force areas (averaging 4% a year) than in England (2.4% a year) since 2010-11. The precept for the four Welsh forces as a proportion of the overall funding increased from 32% in 2008-09 to 47% in 2019-20. This faster increase in police precepts meant that Welsh police funding was £34 million greater in 2017-18 than would have been the case had precepts risen in line with England.
- 4.97 The proportion of funding from police precept varies across England and Wales from less than 16% to over 54% of the total police budget.

⁴²⁰ This programme is aimed at reducing substance misuse and improving community safety, *op cit n. 94: 29.*

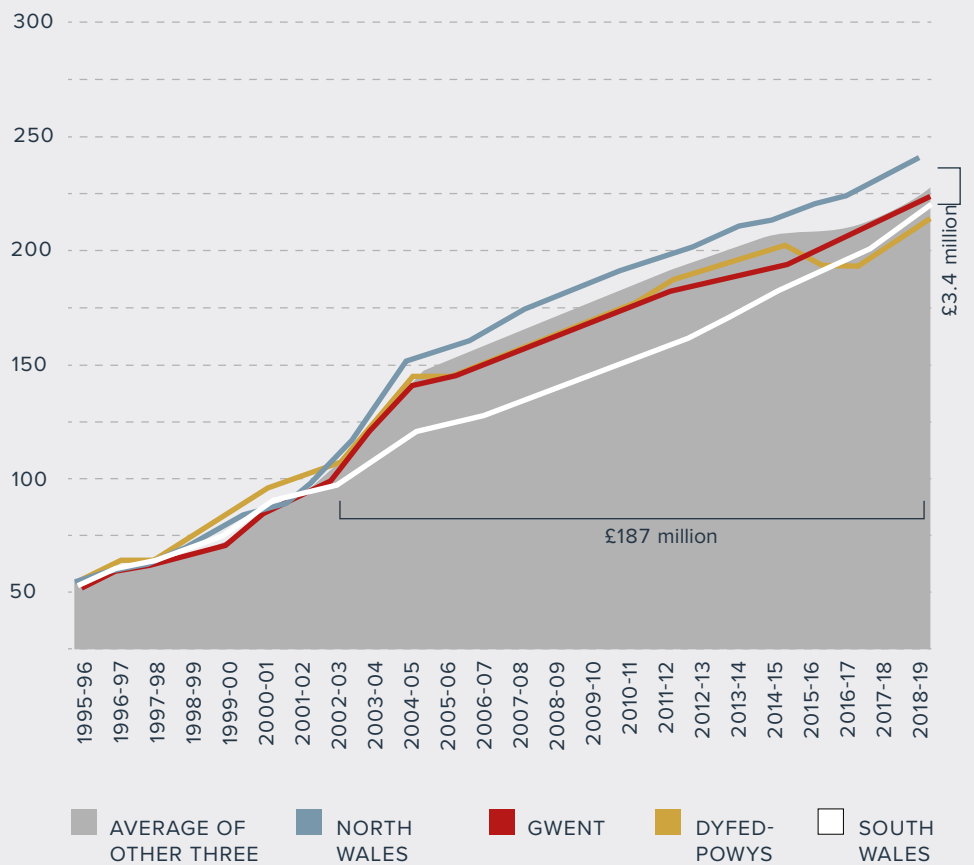
⁴²¹ WS076 *The Welsh Chief Officers Group: 2*, WS091 *Universities' Police Science Institute at Cardiff University: 9. TARIAN is the Southern Welsh forces (South Wales Police, Gwent and DPP) response to serious and organised crime.*

⁴²² [Para 4.11.](#)

⁴²³ OE017 PCC Arfon Jones: 1.

Figure 18

Trajectory of police precepts for Welsh police forces from 1995-96 to 2018-19



Source: South Wales Police.

Figure 19

The level of precept in 2018-19 for each Welsh force

| | 2018-19 |
|--------------------|---------|
| North Wales Police | 258.12 |
| Gwent Police | 238.84 |
| South Wales Police | 233.52 |
| Dyfed Powys Police | 224.56 |

Source: South Wales Police.

d) The overall funding in Wales and its consequences

4.98 In 2018-2019 the funding of the four police forces in Wales was as follows⁴²⁴:

Figure 20
Police funding in Wales (£million)

| | HOME OFFICE GRANT | WELSH GOVERNMENT FUNDING | PRECEPT | TOTAL | % WELSH FUNDING (GRANT & PRECEPT) |
|-------------------------------------------------|-------------------|--------------------------|------------|------------|-----------------------------------|
| Police Revenue budget | 209 | 141 | 290 | 640 | 67% |
| Other grant funding | 51 | 17 ⁴²⁵ | | 68 | |
| Total of revenue and other grant funding | 260 | 158 | 290 | 708 | 63% |

Source: Wales Governance Centre

4.99 Largely as a result of the funding changes in Wales and decisions by chief constables and PCCs to protect front line resources when taking into account the consequences of comprehensive spending reviews of the UK Government there has been a very small reduction in the number of police officers and associated staff in Wales and a small increase in the number of community support officers. Figure 21 shows the change in staff numbers in the four Welsh police forces.

⁴²⁴ Home Office, (2018) *Police Funding for England and Wales 2015-2019*, Para 2.114.

⁴²⁵ Community support officers.

Figure 21**Change in staff numbers in the four Welsh police forces**

| FORCE | YEAR ENDING MARCH 2010 | | | | SEPTEMBER 2018 | | | |
|--------------|------------------------|----------------------------|--------------|---------------|----------------|----------------------------|--------------|---------------|
| | OFFICERS | COMMUNITY SUPPORT OFFICERS | STAFF | ALL | OFFICERS | COMMUNITY SUPPORT OFFICERS | STAFF | ALL |
| Dyfed Powys | 1,195 | 83 | 692 | 1,970 | 1,171 | 144 | 608 | 1,923 |
| Gwent | 1,437 | 143 | 810 | 2,390 | 1,329 | 124 | 657 | 2,110 |
| North Wales | 1,488 | 223 | 876 | 2,587 | 1,490 | 232 | 887 | 2,609 |
| South Wales | 3,059 | 325 | 1,997 | 5,381 | 2,896 | 406 | 1,662 | 4,964 |
| Total | 7,179 | 774 | 4,375 | 12,328 | 6,886 | 906 | 3,814 | 11,606 |

Source: National Statistics (Police workforce 2017-2018).

4.100 The changes to funding must be seen against the background of a change in demand which is being experienced by police forces in Wales. The demands upon policing have changed significantly since the Silk Commission was published in 2014. Although some crime types have reduced (such as car crime, and burglary), there has been a sharp rise in reports of serious sexual offences and rape, it is accepted that there is still a great deal of under-reporting of these crimes. The multi-agency rape monitoring group report for 2017-18 notes that the overall number of reported rapes continues to increase from 41,186 in 2016-17 to 54,045 in 2017-18. The report also notes that the overall charge rate has decreased from 6.8% to 4.3%, the number of cases referred to the CPS for a charging decision has fallen and the number of suspects found guilty of rape has also decreased⁴²⁶.

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WS076 The Welsh Chief Officers Group: 1. The Rape Monitoring Group is co-ordinated by HM Inspectorate of Constabulary and comprises of representatives from that Inspectorate National Police Chief's Council, College of Policing, Crown Prosecution Service, HM Inspectorate of the CPS, Home Office, Local Policing Bodies, the Mayor of London's Office for Policing and Crime, Ministry of Justice and voluntary sector partners <https://www.justiceinspectorates.gov.uk/hmicfrs/our-work/article/rape-monitoring-group-digests/#publications>.

- 4.101 During 2018-19, forces have experienced increases in violent crime, particularly knife crime which has continued to rise both across the UK and in Wales over the past few years. In 2019, South Wales Police has secured £1.2 million funding from the Serious Violence Home Office Grant to fund proactive operational and events identified as having a high risk of threat and harm.
- 4.102 Cyber enabled and digital crime has also risen sharply as technology changes. As well as presenting challenges in terms of new crimes being generated, these changes add a level of complexity to crimes which have any digital footprint. Such crimes include online child sexual exploitation, stalking and harassment and sexual offences. This shift in complexity has been highlighted by failings in regard to disclosure issues across England and Wales. Such crimes are becoming more complex to investigate and as such require additional investment, both in terms of suitable skilled staff but also the necessary equipment to analyse/investigate digital devices.
- 4.103 Cross-border criminality (County Lines) has been highlighted in a number of submissions as an emerging demand on police forces, especially along the M4 corridor, and North Wales⁴²⁷. This increase in County Lines criminality comes from organised crime gangs from major urban areas in England and can lead to an escalation of violent crime and exploitation of vulnerable children and adults. The threat of County Lines criminality remains a serious and growing threat to communities across Wales. Tackling this level of criminality effectively requires joint working across the four Welsh forces in collaboration with other agencies in enforcement and preventative programmes (as is seen in paragraph [4.134](#)).

5. Policing performance

4.104 The four police forces in Wales vary in terms of population density, and the number of crimes reported. Figure 22 summarises the demographics and recorded crime rates of each force.

Figure 22

Demographics and recorded crime rates by each Welsh police force in 2019

| FORCE | POPULATION (MILLION) | FORCE AREA (SQUARE MILE) | RECORDED CRIMES (FINANCIAL YEAR 18 – 19) | CRIMES PER 1000 POPULATION | WORKFORCE PER 1000 POPULATION |
|-------------|----------------------|--------------------------|------------------------------------------|----------------------------|-------------------------------|
| Dyfed Powys | 0.5 | 4230 | 27,915 | 54.02 | 3.68 |
| Gwent | 0.6 | 600 | 58,536 | 99.60 | 3.40 |
| North Wales | 0.7 | 2375 | 59,802 | 85.89 | 3.71 |
| South Wales | 1.3 | 803 | 111,604 | 84.27 | 3.98 |

Source: National Statistics (police workforce 2018-2019)

a) HM Inspectors' reports

4.105 Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services assesses police forces against criteria of efficiency, effectiveness and legitimacy (the PEEL assessment)⁴²⁸. For each criterion, a force may be judged as outstanding, good, requires improvement or inadequate. The majority of police forces in England and Wales are assessed as good overall. We deal with each force in alphabetical order.

4.106 Dyfed-Powys Police provides policing services to the areas of Carmarthenshire, Ceredigion, Pembrokeshire and Powys. The police force area covers 4,230 square miles with approximately 350 miles of coastline in the South West of Wales. Although there are some more affluent areas, Dyfed-Powys has a high level of poverty. Around 0.5 million people live in a predominantly rural setting. The area has

distinct, small urban areas including the towns of Carmarthen, Llanelli, Milford Haven, and Aberystwyth. The resident population is increased by university students and the very large numbers who visit or travel through the area each year. The transport infrastructure includes a major sea port.

4.107 In its 2018 annual assessment report for Dyfed Powys Police, the inspectorate⁴²⁹ noted that:

- The extent to which the force is effective at reducing crime and keeping people safe is good.
- The extent to which the force operates efficiently and sustainably requires improvement.
- The extent to which the force treats the public and its workforce legitimately requires improvement.

4.108 Gwent Police provides policing services to the county of Gwent. The police force area covers 600 square miles with approximately 50 miles of coastline in the south of Wales. Although there are some more affluent areas, Gwent has a high level of poverty. Around 0.6 million people mainly live in the urban centres which include the city of Newport, and the towns of Ebbw Vale, Monmouth and Cwmbran. The resident population is increased by university students and the large numbers who visit or travel through the county each year. The transport infrastructure includes a sea port.

4.109 In its 2017 annual assessment for Gwent Police, the inspectorate noted that:

- The extent to which the force is effective at reducing crime and keeping people safe requires improvement.
- The extent to which the force operates efficiently and sustainably is good.
- The extent to which the force treats the public and its workforce legitimately is good.

4.110 North Wales Police provides policing services to the areas of Anglesey, Conwy, Denbighshire, Flintshire, Gwynedd and Wrexham. The police force area covers 2,375 square miles with approximately 450 miles

429 HMICFRS (2017) *State of Policing Annual Assessment*.

of coastline in the north of Wales. Although there are some more affluent areas, North Wales has a high level of poverty. Around 0.7 million people live in the predominantly rural setting. Its several distinct and small urban areas include the town of Wrexham. The resident population is increased by university students and the very large numbers who visit or travel through the area each year. The transport infrastructure also includes a major sea port.

4.111 In its 2017 annual assessment for North Wales Police, the inspectorate noted that:

- The extent to which the force is effective at reducing crime and keeping people safe is good.
- The extent to which the force operates efficiently and sustainably requires improvement.
- The extent to which the force treats the public and its workforce legitimately is good.

4.112 South Wales Police provides policing services to the areas of West, South and Mid-Glamorgan. The police force area covers 803 square miles with approximately 150 miles of coastline in the south of Wales. Although there are some more affluent areas, South Wales has a high level of poverty. Around 1.3 million people mainly live in the urban centres which include the cities of Cardiff and Swansea as well as smaller towns. The resident population is increased by university students and the large numbers who visit, socialise in, commute into, or travel through the area each year. The transport infrastructure includes major rail stations, air and sea ports.

4.113 In its 2017 annual assessment report for South Wales Police the inspectorate noted that:

- The extent to which the force is effective at reducing crime and keeping people safe is good.
- The extent to which the force operates efficiently and sustainably is good.
- The extent to which the force treats the public and its workforce legitimately is good.

b) Impact of community support officers

- 4.114 An evaluation of the impact of Welsh Government funding for community support officers was conducted in 2015, two years after the full complement of 500 had been recruited⁴³⁰. It showed a positive impact overall in terms of actual and perceived visibility of the police. There was also some improvement in public perceptions of safety in deprived neighbourhoods. This was in line with the declared objective of the funding. However, there was no statistically significant evidence that the additional numbers of community support officers had helped reduce crime compared to police force areas in England. In addition, as the Institute for Government has pointed out, many police forces in England have been drawing on reserves to offset the impact of budget cuts⁴³¹.
- 4.115 The provision of the additional community support officers by the Welsh Government has, to a certain extent, helped Welsh police maintain a physical presence in their communities which contrasts to the experience of a number of English police forces.

c) Decline in percentage of cases prosecuted

- 4.116 There has been extensive concern as reflected in press comment over the past year on the falling percentage of police investigations resulting in a charge or summons, when the volume of crime recorded by the police has actually increased⁴³². We have already considered this topic in relation to victims at paragraph 4.42 and at paragraph 4.155 we set out the statistics for the fall in prosecutions. In England and Wales, in 2018-19 only 7.8% of recorded offences resulted in charges or a summons⁴³³. In 2013-14, the equivalent figure was 17%. According to data provided by the Office of National Statistics, police recorded crime in Wales in 2017-18 increased by 12% on the previous year to a figure of 230,929 offences excluding fraud. The overall recorded crime in England and Wales rose by 8% to 5.9 million in 2018-19, including increases in knife crime, robbery, firearms and public order offences.

430 Welsh Government (2015) *The work of Welsh Government funded Community Support Officers*.
431 Institute for Government (2018) *Performance Tracker 2018: Police*.
432 E.g. <https://www.bbc.co.uk/news/uk-44884113>, <https://www.bbc.co.uk/news/uk-wales-44122867>.
433 Home Office (2019) *Crime Outcomes in England and Wales: year ending March 2019*.

- 4.117 There is no single reason for the divergence between the volume of recorded crime and the percentage of prosecutions. There is no clear research, but as far as we have been able to assess, the following six factors have contributed to the position in Wales where the reduction in police officer numbers has been small.
- 4.118 First, the police are now recording many offences for which the victim wants no police action or any further interaction with policing. This is particularly true in ‘violence without injury’ and in many ‘stalking and harassment’ cases. This was not the case in the past and has therefore resulted in an increase in recorded offences. Often from an initial call it will be clear that the victim does not wish to participate and as such the investigation fails at the first stage⁴³⁴.
- 4.119 Second, the period has also seen increases in more complex offences. The relative success of policing in encouraging victims of serious sexual offences and rape to be confident in coming forward has led to large increases in recorded cases⁴³⁵ and investigations of these types of crime⁴³⁶, even though many are not taken forward as we have explained at paragraph 4.34. Nonetheless this has resulted in many more complex and often difficult investigations which require skilled and experienced investigators. The complex evidence means that CPS charging decisions can be difficult to achieve with significant evidential requests often involving digital evidence. The lack of skilled investigators and investigations being rushed or carried out by less experienced colleagues has led in part to the outcome rates diminishing⁴³⁷.
- 4.120 Third, in the digital age almost all crimes and investigations have an aspect of a digital footprint. The number of digital forensic examinations required is increasing substantially year on year. It has been difficult for forces to increase resources sufficiently to match the demand. The following is an indication of the increase in the number of digital mobile devices examined in South Wales Police: for the year 2017 local examinations of mobile devices amounted to 2,919, by 2018 this figure had risen to 6,190. The estimated total for 2019 is likely to exceed 7,000. Further, the dramatic increase in size of mobile devices storage over the years has meant that the volume of data being examined is

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[Para 4.34.](#)

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[Para 4.34.](#)

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The figures of those not willing to take cases forward is still very high: para 4.34.

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<https://www.bbc.co.uk/news/uk-wales-44122867>. Information provided by Deputy Chief Constable Richard Lewis, South Wales Police, to the Commission.

also significantly larger. At any given time there are about 100 devices in the queue for examination. The subsequent backlog of forensic examinations is one of the key drivers to extended bail or individuals being released under investigation⁴³⁸.

- 4.121 Fourth, the change in the Policing and Crime Act 2017 brought about new requirements for policing, not least a presumption of bail for all suspects in custody unless there were specific circumstances warranting its refusal. It was recognised that this was an area of risk and South Wales Police appointed a superintendent, four inspectors and a number of other resources to simply manage the new arrangements. Whilst it is the experience of the Force that this has mitigated the risk around authorisation, it has not prevented problems with bail timescales, particularly in cases such as described in paragraphs [4.119](#) and [4.120](#). Further, in those cases where the risk does not meet the requirements of the Act, suspects are released under investigation. This is an area where there is conflict between complex high risk cases with bail and lower risk cases “released under investigation”. As a result usually high risk cases take precedence and consequently timescales associated with lower risk cases often end up being extended. This has the further consequence that evidence may be lost and victims and witnesses may withdraw their support from the investigation⁴³⁹. The impact of the emerging consequences of bail reform, including longer investigations, the growing rate of crimes not prosecuted and the potential risk to public safety arising from detained persons being released under investigations has been described as a very real threat⁴⁴⁰.
- 4.122 Fifth, there has been a substantial reduction in funding across the criminal justice system. For example there has been a significant reduction in the number of prosecutors employed in the CPS as we set out at paragraphs [4.154](#) and following.

438 *Ibid.*
439 *Ibid.*
440 *Ibid.*

4.123 Sixth, there has been a development in the use of police resources to try and prevent crime.

4.123.1 The police work closely with others, particularly local authorities, including the NHS and third sector organisations, to divert first time offenders from entering the criminal justice system. Successful diversion schemes include the 18-25 Diversion Scheme in South Wales, where young adults take the opportunity to have an Adult Community Resolution instead of being criminalised through prosecution in the criminal justice system⁴⁴¹.

4.123.2 There is collaboration between the four Welsh forces and Public Health Wales on early intervention and prevention work with children who have suffered Adverse Childhood Experiences (paragraph [4.134](#)).

4.123.3 Forces are also seeing a high level of demand from those suffering from mental health issues (see paragraph [4.135](#)). In the South Wales Police Force area 12.3% of all incidents are mental health incidents. The four Welsh forces are working in partnership with their local health boards to provide support to those who are suffering from mental health issues, whether that is through a triage process in the control room or through mental health staff working alongside response officers. As we explain at paragraph [4.125](#) this comes at an additional cost. We recommend in paragraph [4.146](#) that these issues need to be dealt with through a whole system approach.

4.123.4 As a result, the Welsh forces have seen a shift in focus from reducing volume crime to managing the risk from vulnerability, which requires a different approach from the traditional approach to policing, requiring officers to develop new skills to deal with those suffering from mental health issues, vulnerable victims of rape, domestic abuse, modern slavery or exploitation by criminal gangs.

441 *Towler, K (2017) Prompt Positive Action. Interventions with offenders aged 18-25 in South Wales.*

4.124 Gwent Police launched an Alcohol Diversion Scheme in 2018, working with the TTC Group (the providers that deliver speed awareness courses across South Wales). This is in addition to action to divert young people and women from crime, as discussed at paragraph [4.215](#).

d) Other action taken

4.125 All four Welsh forces have a form of mental health triage; this commitment has cost approximately £1.5 million for the Welsh forces to implement. In South Wales a mental health triage pilot is in operation in the force control room. This pilot employs community psychiatric nurses to triage mental health related incidents. Opportunities to direct callers to appropriate help outside of policing are taken, as well as giving advice to callers around issues such as medication. If a police response is required, guidance can also be provided to the attending officer. A full evaluation is being undertaken by Swansea University of this pilot. Early findings are extremely positive with around 30% of calls not requiring police attendance.

4.126 A challenge with the South Wales Police mental health pilot is that this is funded by policing itself. There is therefore a significant question around sustainability and a desire to seek a financial contribution from other public sector partners who similarly are benefitting from this innovative approach.

6. Police education

- 4.127 Police education in Wales and England has undergone significant change to meet the increasingly complex demands that it faces. It is not necessary to explain this change, except in relation to Police Degree Apprenticeships as the forces in Wales have developed their own arrangements to meet the needs of Wales and because of a difference in the funding of apprenticeships.
- 4.128 The Police Education Qualifications Framework was introduced by the College of Policing⁴⁴². The Framework provides three entry routes to join as a constable:
- 4.128.1 Police constable degree apprenticeship which is available to applicants holding NVQ level 3 or equivalent, and consists of on the job learning alongside academic theory and learning whilst earning a wage.
 - 4.128.2 Degree holder entry programme: this is for non-policing degree graduates or NVQ level 6 holders who then complete a Diploma in Policing.
 - 4.128.3 Pre-join degree: this is for applicants with a policing degree which is provided by organisations licensed by the College of Policing.
- 4.129 The four Welsh police forces are working in partnership with Welsh higher education establishments to deliver the police constable degree apprenticeship and degree holder entry programme. A number of higher education establishments are also developing or have accredited the pre-join degree. These include the University of South Wales, University of Wales Trinity Saint David and Wrexham Glyndŵr.
- 4.130 The University of South Wales delivers the Police Constable Degree Apprenticeships and degree holder entry for Dyfed Powys Police and for the Devon and Cornwall, Dorset, Wiltshire and Gloucestershire police forces. For Dyfed Powys, it is the police force that has to fund both the Police Constable Degree Apprenticeships and degree entry holder programmes. For English forces the Police Constable Degree

442 *College of Policing (2017) [Policing Education Qualifications Framework](#).*

Apprenticeships are fully funded through the English apprenticeship scheme (the degree holder entry similarly is the responsibility of the individual force). The different approaches for funding initial policing learning in Wales and England are an example of the impact of the “jagged edge”⁴⁴³.

- 4.131 In England, funding for the Police Constable Degree Apprenticeship is provided through the National Apprenticeship Levy. Welsh police forces contribute around £2 million per year to the Levy. As policing is a UK Government responsibility under the current scheme of devolution, the Welsh Government is clear that it is not responsible for the long-term funding of the Police Education Qualifications Framework apprenticeships. The Home Office however maintains that apprenticeship funding is devolved to the Welsh Government. A one-off funding package for 2018-2019 to support the Welsh Police forces was agreed between the Home Office and the Welsh Government. Future funding has not yet been agreed. In the result, it seems that police forces in Wales are not receiving the funding they should for apprenticeships⁴⁴⁴, but this has to be balanced against the other funds that the Welsh Government provides for policing as we have set out in paragraphs [4.94](#) and following.

We recommend:

The Welsh Government and the Home Office should agree long-term arrangements for police apprenticeship funding which do not disadvantage Welsh police forces compared to their English counterparts.

7. A policing policy for Wales

a) Need for an aligned approach

- 4.132 In considering how best to align policing so there is a coherent and joined up approach to justice, two matters need to be considered. (1) As policing is a fundamental part of the justice system, there needs to be clear alignment of policy and delivery with other bodies involved in delivering criminal justice. If they worked to different policy drivers this would cause problems within the system⁴⁴⁵. (2) On the other hand, the police must be able to work with the other public services in education, health and social welfare as well as criminal justice. There must be an

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WS181 Elin Jones AM: 4.

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op cit n. 94: 103-105.

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OE023 CC Jukes and Foulkes: 2, OE021 Police Associations: 2.

overarching policy framework that is coherent and also consistent with the social policy for health, education and social welfare. While the police forces of Wales are not legally subject to the provisions of the Future Generations Act, they nevertheless seek to follow its principles.

- 4.133 However, the complexities of the current scheme of devolution (with bodies being accountable to different governments or under different arrangements) stand in the way of a single coherent approach that operates in every other nation. The position is made more difficult by the funding arrangements, and the sometimes conflicting performance measures and priorities. A coherent approach cannot happen in Wales because there is no single coherent policy given the different responsibilities of the UK Government and the Welsh Government. Furthermore the current arrangements waste time and public monies⁴⁴⁶. Policing needs to be closely aligned with policy making and be able to build on existing partnerships⁴⁴⁷. There also needs to be much greater transparency and accountability.
- 4.134 This ‘joined-up’ approach between services would be the key benefit of all decisions in respect of policing being made in Wales in terms of effectiveness, efficiency, good use of resources and the delivery of a long term plan. The Future Generations Commissioner for Wales stresses that public bodies must take account of the long term, prevent problems rather than deal only with the effects, and take an integrated and collaborative approach to solving problems⁴⁴⁸. This represents the better and more modern public health approach to tackling crime, dealing with the causes of crime rather than merely treating the symptoms, which by the time they manifest can be overwhelming for the services who respond to them. The work on Adverse Childhood Experiences (to which we have referred at paragraphs [4.3.4](#) and [4.15](#)) which has been funded through South Wales Police (a £6.9 million Police Transformation Fund grant from the Home Office to all Welsh forces) is an example of the joint working necessary to treat the causes of criminality⁴⁴⁹. The signed partnership agreement between Public Health Wales and policing and criminal justice bodies across Wales demonstrates the drive for closer working, and a shared vision of a shift in public expenditure from crisis services to early intervention. In Wales,

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WS037 Police Federation: 1.

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WS076 Welsh Chief Police Officer Group: 2, WS029 WGLA: 1.

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WS075 Future Generations Commissioner for Wales: 1.

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WS126 Early Action Programme: 2, WS151 David Llewellyn: 4.

the All-Wales Serious Violence Working Group chaired by Public Health Wales already provides a multi-agency context through which a public health approach is being applied to serious violence. Such a coherent approach would be easier to achieve and develop if decisions relating to policing were made in Wales alongside those areas that are currently devolved.

- 4.135 Another illustration of the link between policing and devolved services is mental health services⁴⁵⁰. Every 13 minutes South Wales Police receives a report relating to a mental health issue and of those incidents only 4% require the exercise of police powers⁴⁵¹. Police cars should not be used as a replacement for ambulances and police cells are inappropriate for people with serious mental illness⁴⁵². It is of great concern that the demand for mental health services outstripped the commissioned services at Parc, Swansea and Cardiff prisons⁴⁵³. There is a Mental Health Concordat⁴⁵⁴ between the Welsh Government and partners including the police and other justice bodies. They have agreed to work together to ensure that front-line services most likely to come in to contact with people in mental health crisis are supported. However, developing an integrated approach across devolved and UK bodies is difficult⁴⁵⁵.
- 4.136 Policing at every operational level involves an interaction with devolved services, such as education, social care, health or housing. We have seen an example of good practice in this area in the Multi Agency Support Hub (MASH) based in Rhondda Cynon Taf. The MASH co-locates practitioners from the police, health, and social services and facilitates joint working with a common IT platform, and a joint decision-making process. This level of joint working is not consistent across Wales, and is due to a local desire to improve collaboration, rather than a coherent national strategy for joint working⁴⁵⁶.

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Para 4.125.

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OE016 Chief Constable Matt Jukes: 1.

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WS051 Chayne Hodgets: 2, WS098 Hafal: 2, WS104 Independent Office of Police Conduct: 4.

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WS191 Hafal, CAIS and the Morgan Academy: 26.

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Welsh Government and partners (2015) [Mental Health Crisis Care Concordat](#).

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WS184 Minister for Health and Social Services, Welsh Government: 3.

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OE040 Debbie Wilcox: 1.

b) Position of the Home Office and the Welsh Government

4.137 There is concern that the Home Office does not fully take into account the devolved setting in Wales and that policing is not high on the agenda of the Welsh Government, with neither the Home Office nor the Welsh Government fully understanding policing in Wales⁴⁵⁷. The Wales Governance Centre’s report on Justice at the Jagged Edge highlighted significant issues in this regard: “*Beyond the geography, size and scale of Wales, a major theme to emerge from the research was that officials in Whitehall simply do not understand the impact of devolution on the landscape of policing and criminal justice in Wales*⁴⁵⁸”, and “*despite the Welsh Government’s active role in this space, concerns remain about the Welsh Government unwillingness to get involved with policing and justice ... although things have improved in recent years, Welsh Government officials have long demonstrated an unwillingness to engage with policing and justice issues that are perceived to be “non-devolved” despite the overlap with many aspects of devolved government*⁴⁵⁹”.

4.138 Although this evidence is important in respect to development of overall policy and funding, the Welsh Government has a significant degree of engagement with the four police forces in Wales, in terms of dialogue, joint working and additional funding. In fact, the majority of the funding, as is seen in paragraphs [4.94](#) and comes from the Welsh Government and through the Welsh local authorities.

c) Funding

4.139 In addition to joining up and aligning approaches to overall policy between criminal justice policy and other social policies and delivery, the particular funding requirements for Wales need to be addressed.

4.140 The Home Office has not recognised Cardiff for additional capital city funding in the same way as London and Edinburgh. The extra costs of policing Cardiff as a capital city are around £4 million. Likewise, it is clear that future funding should consider the “*unique and often more difficult circumstances that our rural forces face*”. This is especially pertinent due to the increasing cost of rural crime in Wales, which rose by 41% between 2017 and 2018, to £1.9 million.

457 *op cit n. 94: 43, 46-47, 64, 66.*

458 *Ibid: 45.*

459 *Ibid: 62.*

- 4.141 At a time where budgets are stretched, matters such as disagreements over apprenticeship funding create friction and risk putting a strain on working relations. To some extent this has been compounded by the withdrawal of Welsh Government funding for the Wales organised crime unit TARIAN. Whilst the funding from the Welsh Government for schools liaison officers and community support officers provides a capability that is the envy of English police forces, the future of such funding is uncertain since it is discretionary⁴⁶⁰.
- 4.142 It could be argued that without responsibility for policing any Welsh Government decision to remove or reduce funding is a more straightforward one than for matters that are devolved. That is correct in theory but the result is that policing currently finds itself without a coherent strategy for its future from the Welsh Government. Policing remains a non devolved matter. Policing is, however, a Welsh public service that is reliant on relationships with other devolved public services and the Welsh Government. The absence of such a strategy is leading to a divergence between funding arrangements for Welsh police forces and their English colleagues. It would be a matter of real concern if such a difference led, over time, to a lowering of the level of service Welsh policing is able to offer its communities.

d) The need for a single focus for policing policy in Wales

- 4.143 The devolution of policing has been a matter of discussion for some time. In the Second Reading debate on the Wales Act 2017 in the House of Lords, Lord Hunt, the Secretary of State for Wales from 1990 to 1993, stated that he had reached agreement with the then Home Secretary Kenneth Clarke about the transfer of policing from the Home Office to the Welsh Office, but that “*it was stopped by the bureaucracy of Whitehall*”⁴⁶¹. The Silk Commission in 2014 recommended devolving policing to Wales by 2017.
- 4.144 In 2014, the Commission on Public Service Governance and Delivery (The Williams Commission) commented that if policing was devolved there would be scope for greater and better coordinated joint working between the three emergency services⁴⁶².

⁴⁶⁰ WS184 Minister for Health and Social Services, Welsh Government: 6.

⁴⁶¹ WS117 Gorwel: 7.

⁴⁶² *op cit n. 102: 302.*

- 4.145 In August 2016, the four PCCs issued a statement that the devolution of responsibility for policing was inevitable.
- 4.146 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. As is shown in the mental health example set out at paragraph [4.135](#), the need for integration and a whole system approach is obvious. The police service will be better placed to meet the needs of the people of Wales, ensure funds are better spent and provide greater transparency and accountability.

We recommend:

Policing and crime reduction policy, including drug abuse and mental health related issues, should be determined in Wales so that it is aligned and integrated with Welsh health, education and social policy.

8. The consideration of a single police force for Wales

- 4.147 In 2006 Charles Clarke, the then Home Secretary, announced the merger of the four Welsh police forces as part of a plan to reduce the number of police forces across England and Wales. The amalgamation did not take place and has not been reconsidered since 2010. The issue has, however, been raised before us following the merger of the Scottish police forces in April 2013⁴⁶³.
- 4.148 The evidence from Scotland was that a single force is more resilient and has assisted in maintaining police numbers. Despite the significant issues which arose on introduction, progress has been made and many aspects of the service now appear to be working well. However, there appear to be some residual issues such as local communities feeling that resources are stretched and front line officers feeling disconnected from headquarters⁴⁶⁴. This is being addressed through local badging on uniforms and vehicles⁴⁶⁵.

463 *WS123 Professor Nick Fyfe: 2.*

464 *WS003 Kenny MacAskill: 1.*

465 *OE019 CC Livingstone: 2.*

- 4.149 The concerns with regard to the consideration of a single police force can be summarised as⁴⁶⁶:
- 4.149.1 Maintaining the independence of a single police force reporting to a government minister;
 - 4.149.2 A loss of local accountability and connection;
 - 4.149.3 Any benefits of mergers could be achieved more effectively through collaboration.
- 4.150 There already is some very close collaboration between the Welsh forces. For example, 65% of non-pay expenditure across Dyfed Powys, Gwent and South Wales Police is spent through collaborative arrangements⁴⁶⁷.
- 4.151 We have considered carefully whether we should recommend the merger of the Welsh police forces into a single force. We have come to the view that this should be a decision for the future, following on from the recommendation at paragraph [4.146](#) that policy decisions on policing should be made in Wales.

⁴⁶⁶ WS111 Alun Michael: 6, WS043 Unison: 7.

⁴⁶⁷ WS076 Welsh Chief Officers Group: 3.

Part 5: The Crown Prosecution Service and the courts

1. Crown Prosecution Service

- 4.152** The Crown Prosecution Service (CPS) is the main prosecuting authority in England and Wales. Other bodies including slocal authorities, Natural Resources Wales and the RSPCA also have prosecuting powers⁴⁶⁸, as do private individuals.
- 4.153** The funding for the CPS in England and Wales reduced from £615.5 million in 2010-11 to £504 million in 2018-19. On 12 August 2018 it was announced that the CPS would receive an extra £85 million over two years. In 2018-19, the operational costs of CPS Cymru-Wales were £20 million. At paragraph [2.118](#) we have set out the decline in overall CPS expenditure.
- 4.154** CPS Cymru-Wales is one of 14 CPS areas across England and Wales and has offices in Cardiff, Mold and Swansea. The CPS employs 324 staff in Wales, 273 of whom make up the CPS Cymru-Wales area. Digital working allows the other 51 employees to deal with a broad range of cases that arise across England and Wales⁴⁶⁹. There has been a reduction in staff of 23% from 2012-13 to 2018-19.
- 4.155** The evidence is that prosecutions in Wales result in a marginally but consistently higher conviction rate than in England. As we have already explained at paragraphs [4.42](#) and [4.116](#), both the number of prosecutions and convictions in magistrates' courts and the Crown Court have fallen in England and in Wales since 2013-14 as follows.

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WS009 RSPCA: 1.

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WS018 CPS: 1, OE025 Barry Hughes: 1.

Figure 23**Rate of prosecutions and convictions in England and Wales**

| | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 |
|---------|---------|---------|---------|---------|---------|
| England | 594,719 | 521,080 | 501,059 | 467,031 | 423,044 |
| Wales | 46,200 | 42,545 | 37,657 | 32,785 | 30,027 |

Magistrates court convictions have fallen by 0.8% in England and 1.7% in Wales

| | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 |
|---------|---------|---------|---------|---------|---------|
| England | 85.5% | 83.9% | 83.6% | 84.7% | 84.7% |
| Wales | 88.0% | 87.6% | 87.0% | 85.8% | 86.3% |

Crown Court prosecutions have fallen by 16% in England and 24.5% in Wales

| | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 |
|---------|---------|---------|---------|---------|---------|
| England | 90,165 | 94,953 | 93,470 | 83,592 | 75,850 |
| Wales | 5,612 | 5,912 | 5,592 | 4,613 | 4,240 |

Crown Court convictions have fallen by 1% in England and 2.5% in Wales

| | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 |
|---------|---------|---------|---------|---------|---------|
| England | 80.9% | 79.4% | 79.1% | 78.8% | 79.9% |
| Wales | 83.3% | 79.9% | 80.9% | 81.5% | 80.8% |

Source: Crown Prosecution Service

4.156 At paragraph 4.123 we have referred to what the police do to divert those who have committed minor offences from the criminal justice system. The CPS has similar powers including powers to give conditional cautions. The Code for Crown Prosecutors includes guidance on the use of restorative justice⁴⁷⁰ which can be used at any stage of the criminal justice process. Well planned and delivered restorative justice interventions enable offenders to make amends to victims for the harm they have caused. Evaluations show that they reduce the risk of reoffending and result in high victim satisfaction⁴⁷¹. The UK Government's Victims Strategy published in 2018⁴⁷² states that the Government will develop measures so victims are offered their

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op cit n. 389: s.7 and 8.

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WS121 Why me?: 1. House of Commons Select Committee (2016) Restorative Justice.

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op cit n. 382.

entitlements under the Victims' Code including access to restorative justice services. PCCs are to be required to make sure that appropriate restorative justice services are available in their areas and to ensure that victims know how they might access them.

- 4.157 Despite the increase in diversion, we share the concern that has been widely expressed by others about the decline in the percentage of cases prosecuted. We have set out the reasons we have been able to identify at paragraphs 4.116 to 4.124, including the significant reduction in CPS staff. Just as digital forensics have increased the burden on police investigations, there has also been an effect on the CPS.

2. Criminal Courts

a) The Magistrates' Court

- 4.158 All criminal court cases start in a Magistrates' Court (which we described at paragraph 2.68) and more than 90% are completed there. Magistrates hear less serious criminal cases, send to the Crown Court serious cases such as rape and murder, consider bail applications, deal with fine enforcement and grant applications for search warrants and rights of entry. They also consider cases where people have not paid council tax, vehicle excise duty or TV licences.

- 4.159 There has been a very significant decline in the work of the magistrates' courts in Wales by about 35%, materially greater than the decline in England, as is clear from Figure 23 in paragraph 4.155.

b) The youth court

- 4.160 The youth court is a special Magistrates' Court for those between the ages of 10 and 17. District judges and magistrates who have received specific training sit in the youth court. Its hearings are not open to the general public. The press is entitled to be present and can report cases without identifying the young person. They deal with all but the most serious cases involving young people.

c) The Crown Court

- 4.161 The Crown Court is the court at which more serious criminal cases are

tried. Cases are usually heard by a Circuit Judge but some are heard by Recorders and also by High Court Judges. The guilt or innocence of the defendant is decided by juries. Offences tried in the Crown Court are divided into three classes of seriousness.

- Class 1 offences are the most serious. They include murder, and are heard by a High Court Judge or Circuit Judge authorised to hear such cases.
- Class 2 offences include rape, and are heard by a Circuit Judge, authorised to do so.
- Class 3 includes all other offences, such as burglary, grievous bodily harm and robbery, which are normally tried by a Circuit Judge or Recorder.

d) Court of Appeal Criminal Division

4.162 The Court of Appeal Criminal Division hears appeals from proceedings in the Crown Court. The Court is based at the Royal Courts of Justice in London but as indicated at paragraph [2.59](#) it sits elsewhere from time to time when that is appropriate for the case. The intention is that it would regularly sit in Wales several times a year. It should do so.

4.163 In the court year 2016-17, the Court of Appeal (Criminal Division) received 248 applications and heard 57 renewed applications and 59 appeals against conviction and sentence from cases decided at criminal courts in Wales (the lowest figures in six years) and sat in Cardiff and Swansea for seven days⁴⁷³. In the court year 2017-18 the Court of Appeal (Criminal Division) received 277 applications and heard 47 renewed applications and 64 appeals against conviction and sentence from cases originating from Welsh Crown Courts, 11 of which were heard in Wales over two days. In the court year 2018-19 the Court of Appeal (Criminal Division) sat in Wales on two days⁴⁷⁴. We are unable to give the other figures for the legal year 2018-9, as we were told that the figures are not available. Although the Court of Appeal (Criminal Division) should regularly sit in Wales, we have not been given any explanation as to the marked decline in sittings in the last two years. The fact that it has not heard more appeals in Wales may be due either to the present shortage of High Court judges (who comprise the majority of

⁴⁷³ WS012 Judges' Council Committee for Wales: 6.
⁴⁷⁴ HMCTS figures.

judges of that court) or to the need to hear cases more quickly than would be possible if the appeal was left to one of the sittings in Wales or other difficulties in hearing cases in Wales. The Court of Appeal (Criminal Division) should publish its annual sitting pattern for Wales at the beginning of each year so that it can be seen that appeals will be regularly heard in Wales. We expect it to sit far more often in Wales.

e) Performance of the criminal courts in Wales and the decline in workload

4.164 Wales is consistently better than any of the English regions in the performance of the courts in the delivery of criminal justice⁴⁷⁵. This has broadly been the position for a number of years⁴⁷⁶. The number of ineffective trials is significantly lower than in the regions of England, and the number of effective trials is comfortably ahead of the England and Wales average⁴⁷⁷. In the Crown Court, the Wales disposal rate per 100 sitting days was significantly better than in any English region⁴⁷⁸. The evidence of Mr Justice Lewis, the senior of the two Presiding Judges for Wales, was that all of the targets were met⁴⁷⁹.

4.165 As shown in paragraph 4.155, there has been a significant decline in the workload of the Crown Court. It has fallen by 24.5% in Wales in contrast to the decline in England of 16%. In relation to what we have said about the police in paragraphs 4.116 and following and the CPS in paragraphs 4.152 and following as to the reasons for the decline in workload, the effect on the courts has been that cases are heard generally more quickly. In 2017-18, the number of outstanding Magistrates' Court cases in Wales stood at a little over 16,000. For 2012-13 the number was a little over 21,000. For the Crown Courts in Wales, the figure for 2017-2018 was around 1,500, while the figure for 2012-2013 was just over 2,000.

475 *In the light of this performance we have not considered it necessary to examine in detail the recommendations made about the courts by Sir Brian Leveson in his review of efficiency in criminal proceedings. op cit n.110.*

476 WSO34 *The Magistrates Association: 1.*

477 *Trials which do not go ahead on the day on which the trial has been fixed or otherwise listed. It does not include cases where the defendant pleads guilty on the day. These are known as cracked trials.*

478 *2019 performance data provided by HMCTS to the Commission.*

479 *OE012 Elizabeth Ashford: 1.*

3. Problem-solving courts

- 4.166 Although courts have often been seen by the general public as imposing a sentence to punish, deter and rehabilitate the offender, it has in more modern times been the role of judges to see if a punishment short of imprisonment would be best for the offender and for the community. This had traditionally been done through probation, probably when there was a much closer relationship between the probation service and the courts than currently is the case.
- 4.167 A more recent attempt has been the use of problem-solving courts⁴⁸⁰ which were devised as a way for those working within the criminal justice system, including the police and other bodies, to work through the courts to reduce criminalisation, with a focus on rehabilitation. Probation services in particular play an important role as they draw other services together.
- 4.168 Problem-solving courts put judges at the centre of rehabilitation as they not only decide what is the best way to deal with the offender but also review each case regularly as the offender carries out the court order. They can operate as specialised courts on a particular issue, group or offence. In essence, they seek to resolve the factors which underlie crime and social harm in a procedurally fair way⁴⁸¹.
- 4.169 The approach is based on encouraging offenders to engage in interventions in order to reduce their risk of reoffending. There is evidence that processes which involve people closely and make them accountable for their actions, requiring them to play an active role in their rehabilitation, are more likely to be successful in the key goal of reducing reoffending and in helping people to take responsibility for and reform their lives⁴⁸². Problem-solving courts involve collaborative intervention and supervision from multiple agencies and accountability through the judicial monitoring we have described.

480 *WS196 Centre for Justice Innovation: 4.*

481 *Ibid: 3.*

482 *Centre for Justice Innovation (2016) [Problem-solving courts: An evidence review.](#)*

- 4.170 Problem-solving courts originated in the USA, particularly at the Red Hook Community Justice Center in New York. The growth across America has been swift since the creation of the drug court in Dade County in Florida. The National Centre for State Courts released a major research report evaluating the Red Hook Community Justice Center, which concluded that the community court model can reduce crime and strengthen communities in a cost-efficient way⁴⁸³ and that 71% of those who complete their interventions do not go on to reoffend in the following two years. Problem-solving courts exist all over the world. In particular, drug courts have been established in Barbados, Bermuda, Brazil, Canada, Cayman Islands, Chile, Ireland, Jamaica, Mexico, New Zealand, Norway and Trinidad and Tobago⁴⁸⁴.
- 4.171 A pilot was implemented by the UK Ministry of Justice in Liverpool in 2005, which in turn inspired 11 small scale pilots of aspects of the community court model. While the Liverpool pilot came to an end in 2013 due to financial and operational reasons, some of the pilots have survived with adapted successor models, in Plymouth, Stockport, Salford and Sefton. There are also currently eight Family Drug and Alcohol Courts in England⁴⁸⁵, which serve 10 family courts and 18 local authority areas which we consider in detail in paragraph 7.55. There are also a small number of criminal problem-solving court projects in England but they are not coordinated or centrally endorsed. They often rely on the enthusiasm of local practitioners and judges⁴⁸⁶. In December 2015, the then Justice Secretary Michael Gove MP announced the creation of a working group on problem-solving courts⁴⁸⁷ to advise on the feasibility of possible pilot models. The results were never published.
- 4.172 At present there is no problem-solving court in Wales.

483 *National Centre for State Courts (2013) A Community Court Grows in Brooklyn: [A Comprehensive Evaluation of the Red Hook Community Justice Center](#).*

484 *FDAC National Unit (2015) [The Principles of Problem-Solving Courts](#).*

485 *[Para 7.55](#).*

486 *WS196 Centre for Justice Innovation: 2.*

487 *Bowcott, O (2016) [US-style problem-solving courts planned for England and Wales](#).*

- 4.173 In Northern Ireland, a ‘problem-solving justice’ approach is being pursued through a substance misuse court and domestic violence court, operational since September 2018, and a new sentencing option: the enhanced combination order⁴⁸⁸. The aim of an enhanced combination order is to divert offenders from short-term custodial sentences by offering sentencers an existing community option in a more intensive package with a focus on rehabilitation, reparation, restorative practice and desistance. The scheme has been evaluated positively by the Northern Ireland Statistics and Research Agency. In the substance misuse court in Belfast, 75% completed the programme, 50 people were kept out of prison and numbers of people taking drugs decreased⁴⁸⁹. Northern Ireland has also proposed a mental health problem-solving court, based on the same model as the drug court.
- 4.174 It is anticipated that the costs in Northern Ireland involved in this more intensive scheme can be met by a reduction in the numbers of those held in custody which would enable significant costs to be saved, such as by the closure of a prison wing. This would result in a genuine saving that could be redistributed to prevention or rehabilitation projects.
- 4.175 Research shows that the benefits of problem-solving approaches are clear and include⁴⁹⁰:
- Treating root causes of offending.
 - Increasing sentencing options.
 - Reducing the number of people being sentenced to custody.
 - Increasing desistance and reducing reoffending.
 - Reducing the number of victims as offending reduces.
 - Increasing cost-effectiveness.
- 4.176 There is strong support for problem-solving justice among practitioners. This was demonstrated when it was announced that the Family Drug and Alcohol Court National Unit was to be scaled back due to a lack of government support, and a campaign spearheaded by a Manchester based family specialist firm raised £280,000 to keep the unit going⁴⁹¹.

488 *ES Northern Ireland, Courts and Tribunal Service of NI.*

489 *ES Northern Ireland, Courts and Tribunal Service of NI.*

490 *op cit n. 483.*

491 *Para 7.58 et seq.*

- 4.177 Service effectiveness is vital. In Northern Ireland, a close eye is kept on caseloads with the load for each probation officer kept at a ratio of 1:20, with an absolute maximum of 1:25. An unmanageable caseload means that engagement becomes a tick box exercise so it is vital to keep this in check⁴⁹². It is essential, as was the case in Northern Ireland, that the approach is effective and that money spent on problem-solving courts results in at least equal savings to the prison service.
- 4.178 In our view a problem-solving court should be established in Wales along the Northern Ireland model as a pilot. Such a court would be entirely consistent with the Welsh Government social policy of addressing the causes of offending, particularly in areas where there are high levels of substance misuse. We would envisage such a court being established at available court locations across Wales as set out in paragraph 8.7. It would need a clear strategy, effective judicial leadership and rigorous financial and performance scrutiny on a regular basis to ensure that the additional resources spent achieve a reduction in reoffending and in the prison population. We would anticipate that if the pilot is successful, further courts would be opened.

We recommend:

Problem-solving courts should be established in Wales along the Northern Ireland model.

⁴⁹² *op cit n. 483.*

Part 6: Youth justice, probation and imprisonment: the need for a whole system approach to offender management and rehabilitation

Introduction

- 4.179 The consistent and growing emphasis in Welsh policy and legislation on a preventative, integrated and long-term approach has important implications in Wales for the management of offenders⁴⁹³ and their rehabilitation. The results of taking such an approach are becoming apparent in the youth justice system in Wales, despite the complexities of dual accountability and policy divergence which hampers progress in some areas⁴⁹⁴.
- 4.180 Within this part we consider: (1) youth justice and the age of criminal responsibility; (2) the need for an integrated policy on offender management and rehabilitation; (3) the organisation of the prison and probation service in Wales; (4) probation; (5) prisons; (6) women's justice; at (7) we set out our overall conclusions.

1. Youth justice: taking a preventative approach and the age of criminal responsibility

a) Youth justice system in Wales

- 4.181 The youth justice system deals with young people between 10 and 17 years old who commit offences or who are at risk of offending. Youth justice for England and Wales is currently overseen by the Youth Justice Board⁴⁹⁵.

⁴⁹³ This term was in use in other nations before it was introduced into the UK during the 2000s by Lord Carter of Coles when reviewing the way in which a better balance could be achieved between the prison population and the available resources.

⁴⁹⁴ *op cit n. 94: 153.*

⁴⁹⁵ [Para 2.110.](#)

4.182 In Wales, the youth justice system has three main parts:

4.182.1 A Youth Offending Team⁴⁹⁶ which all local authorities in England and Wales must establish. The Team comprises members from the police, social services, probation, health and education. There are 22 Welsh local authorities but only 15 Youth Offending Teams as Anglesey and Gwynedd, Conwy and Denbighshire, Blaenau Gwent and Caerphilly, Monmouthshire and Torfaen, Rhondda Cynon Taff and Merthyr have joint teams and there is a Western Bay team covering Swansea, Neath Port Talbot and Bridgend. Youth Offending Teams work on reducing offending and diverting young people from the criminal justice system. They also help young people who are arrested; help young people and their families with court proceedings; supervise young people serving a community sentence; and maintain contact with young people in custody⁴⁹⁷. The task faced by such teams is often formidable. For example, the HM Inspectorate of Probation report of Youth Justice and Early Intervention Services in Western Bay (Swansea, Bridgend and Neath Port Talbot) published on 28 March 2019 found that whilst there were some excellent examples of joint working, the organisational delivery and service impact was inadequate, falling short in its ability to fully to safeguard young people with complex needs and to work effectively and consistently across the three local authority areas⁴⁹⁸.

4.182.2 The youth court as described at paragraph [4.160](#).

4.182.3 A custodial unit. There are two secure establishments in Wales: HMP Parc's unit, designated as a Young Offender Institution in Bridgend and Hillside Secure Children's Home in Neath. These are now the responsibility of HMPPS as explained at paragraph [2.106](#).

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op cit n. 364.

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WS039 Youth Justice Board for England and Wales: 1.

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WS202 Sally Holland, Children's Commissioner for Wales: 2.

b) The objectives of the system

- 4.183 The rationale for youth offending services is to promote ‘joined up solutions’ to ‘joined up problems’⁴⁹⁹. There is a long established level of joint policy development on youth justice in Wales. This reflects the fact that while the UK Government retains responsibility for youth justice, most services for children in Wales, which contribute to the ‘joined up solution’, have been devolved to the Welsh Government. The All Wales Youth Offending Strategy, published in 2004, was developed jointly by the Youth Justice Board and the Welsh Government.
- 4.184 Ten years later, in July 2014, *Children and Young People First*⁵⁰⁰, a Welsh Government and Youth Justice Board joint strategy to improve outcomes for young people from Wales at risk of being involved in, or in, the youth justice system, was published. This works well and has been followed in other countries⁵⁰¹. The shared blueprint for youth justice published in May 2019 sets out policy and plans.
- 4.185 There has been a consistent emphasis on partnership working; on early intervention and prevention; and, as the title of the 2014 strategy suggests, on treating young people as children and young people first, offenders second⁵⁰².
- 4.186 Specific structures have been developed in Wales to reflect the close relationship between youth justice, youth services and other devolved services. The Youth Justice Board for England and Wales, a non-departmental public body, sponsored by the Ministry of Justice, has Board members appointed by the Secretary of State for Justice. It has a Board member for Wales. A Youth Justice Board for Wales facilitates cooperation between devolved and UK services. In parallel, there are two other bodies (1) a Wales Youth Justice Advisory Panel which reports to the All Wales Criminal Justice Board, and (2) a Youth Work Board for Wales, constituted to look at universal youth services, which reports to the Welsh Government.

499 WS006 Dr Howard Williamson: 1, WS042 Dr Jonathan Evans: 1, WS202 Sally Holland, *Children’s Commissioner for Wales: 1.*
500 Welsh Government and Youth Justice Board (2014) *Children and Young People First.*
501 WS002 Professor Stephen Case: 3.
502 WS047 Helen Hodges: 2, WS202 Sally Holland, *Children’s Commissioner for Wales: 1.*

c) The reduction in the numbers of those in the youth justice system

- 4.187 The principal aim of the youth justice system is to prevent offending by children. Over the last 10 years there has been significant progress in preventing children entering the system. As at March 2018, the number of first time entrants into the youth justice system in England and Wales had fallen by 86% since March 2008. In the year between March 2017 and March 2018 the fall was 14%. Up to 50% of the work undertaken by youth offending teams in Wales is directed at preventing children entering the system, or if children and young people do offend, diverting them from entering the youth justice system.
- 4.188 First time entrants into the criminal justice system per 100,000 in Wales are 258 compared to 304 in England. The number of young people in custody in Wales has reduced from 151 in 2008 to 26 in 2019⁵⁰³; in England the number of young people in custody has reduced from 2,435 in April 2009 to 915 in April 2019.
- 4.189 The reduction was driven initially by youth inclusion and support panels and national programmes. Innovative bureau and triage services⁵⁰⁴ drove a further reduction⁵⁰⁵. The Enhanced Case Management approach currently being deployed is based on the extent to which Adverse Childhood Experiences or trauma may affect children and young people. It has been shown to improve relationships between staff and young people and lead to more effective intervention plans better tailored to their needs⁵⁰⁶.

d) Funding

- 4.190 Youth Offending Teams receive funding from a wide variety of sources: Ministry of Justice, Welsh Government, local authorities, police, Police and Crime Commissioners and Home Office funds as we have set out at paragraph [2.111](#). Much of this funding is in the form of grants, which may be awarded on an annual basis with funding confirmed at a later stage.

503 OE018 Keith Towler: 1.

504 Inter-agency work designed to divert young people out of the formal processes of the Youth Justice System.

505 OE018 Stephen Wood: 2.

506 Welsh Government (2017) [Evaluation of the Enhanced Case Management Approach](#).

4.191 Wider action on early intervention and prevention has been taken in Wales. For example, following consultation with the Youth Work Board, the Welsh Government directed £3.5 million to youth homelessness and £2.5 million to adolescent mental health, all through a youth work methodology⁵⁰⁷. Savings made in reducing the number of young people within the youth justice system has not been passed to the Welsh Government. As set out in paragraph 2.111, the proportion of their grant funding which youth justice teams in Wales received from the Youth Justice Board decreased between 2011-12 and 2017-18.

e) The reduction in youths entering the criminal justice system in Wales and the need for reform

4.192 Youth justice services are generally working well in Wales with good partnership working on diversion, enhanced case management and strategy⁵⁰⁸. This provides an opportunity to build on the initiatives taken to date in reducing numbers and strengthen the overall youth justice system in Wales by further improvements.

4.192.1 Partnership working is dependent on the good relationships held by the people in post: this is too fragile a basis on which to sustain a service which is of crucial importance for some of the most vulnerable children and young people in Wales. There is a need to end dual accountability and to simplify the structure.

4.192.2 Policy divergence is leading to policy for “England and Wales” developed by the Ministry of Justice that is not compatible with Welsh policies – another example of the “jagged edge” between what is devolved and what is not⁵⁰⁹.

4.192.3 A specific example is the Taylor Review of the youth justice system for the Ministry of Justice⁵¹⁰. The review made recommendations on secure schools which were taken up in England. However, they were immediately rejected in Wales as they could not have been implemented in Wales given the differences in education and social care legislation. This

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OE018 Keith Towler: 3.

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WS035 Youth Offending Team Managers Wales: 2.

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op cit n. 94: 52-53.

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op cit n. 109.

divergence may well increase following the influence of the principles set out in the Social Services Act and the Future Generations Act⁵¹¹. These Acts are focused on prevention, early intervention and support increased opportunities for diversion from court.

- 4.192.4 There remains a lack of suitable accommodation in Wales for children and young people who need it. This goes wider than young people known to youth justice services. While additional funding from the Welsh Government to prevent homelessness among young people (and the lowering of the age at which young people can hold tenancy agreements) is welcome, there is also a specific need for accommodation combined with trauma informed responses to meet the needs of some children and young people. This will require more child and adolescent mental health and learning disability practitioners as well as more accommodation.
- 4.192.5 The complexity of funding arrangements – which is largely a consequence of the complex accountability – is inefficient and diverts effort from work to improve the services themselves.
- 4.192.6 There is a lack of transparency about Wales specific data and a lack of performance information which records the outcomes of work by youth offending teams to reduce offending and manage out of court disposals.
- 4.193 We have received good evidence from a range of witnesses about the positive impact of the concerted approach in Wales to reduce the numbers of children in custody. The gains made in Wales are acknowledged as good practice by English colleagues who are seeking to emulate them.
- 4.194 Devolution of the development of youth justice policy and operational arrangements in Wales would therefore be the best way forward. Such devolution of youth justice, “*given its close links with local government and other devolved functions*”, was a recommendation made by the Silk Commission in 2014. It would strengthen the current system; make it more straightforward; enable it to consolidate gains as well as aligning it

more closely with distinctive and progressive policies for the wellbeing of the children and young people of Wales. We return to consider the arrangements of this in paragraphs [12.69](#) and following.

We recommend:

Building on the reducing numbers of children and young people in custody and those entering the criminal justice system, youth justice policy should be determined and delivered in Wales.

f) Age of criminal responsibility

4.195 There are better ways to deal with children and young people than criminalising them. In England, Wales and Northern Ireland the age of criminal responsibility is 10 years old. This is second lowest in the European Union. The lowest is Scotland which is currently set at eight years old. However, the Scottish Parliament has taken measures to increase this with the passing of the Age of Criminal Responsibility (Scotland) Bill, which raises the Age of Criminal Responsibility to 12. The current age of criminal responsibility at 10 is too young. It does not comply with United Nations Convention on the rights of the child despite the fact that it is partially incorporated into Welsh Law in the Rights of Children and Young Persons (Wales) Measure 2011. We consider it should be raised to at least 12⁵¹² (which will be the new age of criminal responsibility in Scotland). According to the Children's Commissioner for Wales, adopting an approach that better identifies complex behaviours early on, with strengthened preventative and early intervention services, would be a far more effective way of supporting a child or young person rather than their entering the criminal justice system⁵¹³.

We recommend:

The age of criminal responsibility should be raised to at least 12 years old in Wales.

512 WS099 Professor Kate Williams: 1.
513 WS202 Children's Commissioner for Wales: 4.

2. Offender management and rehabilitation: the need for an integrated policy

- 4.196 In contrast to youth justice, there have been serious problems in prison and probation services across England and Wales, in large part the result of UK Government policies.
- 4.197 The background is that between 1990 and 2019, the total prison population increased to about 83,000. The significant part of the prison population are adult males which increased in England and Wales by 76%, representing a rise from 44,975 prisoners in 1990 to 79,945 in October 2019. This is particularly important given that (1) Wales has one of the highest imprisonment rates in Western Europe, if not the highest, and (2) 56% of the Ministry of Justice's budget was spent on prisons⁵¹⁴. Unless more money is provided, if the level of prison population remains the same then it will be impossible to reform the system successfully.
- 4.198 If the justice budget is to be properly directed at a reduction in crime and reducing the number of people entering the criminal justice system then fundamental reconsideration needs to be given to penal and sentencing policy. The present rate of imprisonment is unsustainable. The money spent on keeping so many in prison should be used on other aspects of the justice system such as effective non-custodial measures as well as preventative work and legal aid, advice and assistance. Such an approach has proved successful in other Western European countries and in some States in the USA⁵¹⁵.

a) The UK Government's attempts to reform prisons and probation

- 4.199 In December 2010 the Ministry of Justice published *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*⁵¹⁶. It made the case that although there had been reductions in the level of reoffending over the period 2000-2009 there was still a need for fundamental reform of the criminal justice system. In July 2011, following on from the policies set out in *Breaking the Cycle*, the Ministry of Justice published its *Competition Strategy for Offender Services*⁵¹⁷.

514 Para 2.107, *op cit* n.95: 10.

515 *op cit* n. 486.

516 Ministry of Justice (2010) *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*.

517 Ministry of Justice (2011) *Competition Strategy for Offender Services*.

This set out a new approach. Greater competitive involvement of the private and voluntary sectors in the rehabilitation of offenders was to be encouraged with the aim of cutting reoffending, improving outcomes and becoming more efficient.

4.200 The aims were not achieved. The scale of competition in the provision of prisons envisaged did not materialise. There was a requirement for significant efficiencies delivered at pace in the face of a much-reduced Ministry of Justice budget. This led to a two to three year programme to introduce new ways of working with a smaller budget. Quite apart from a failure to achieve the aims, at the same time many prisons began to encounter operational difficulties on a scale not before experienced. These included increases in incidents of violence, disruptive behaviour, misuse of drugs, high levels of self-harm, the use of technology in criminal activity both within and outside prison, and the threats of increased radicalisation and terrorism. The nature of offenders was also changing. Many experienced staff left during the restructuring to reduce costs. As a result serious problems arose. These have been well publicised as for example in the Justice Committee's Report *Prison Population 2022: planning for the future* to which we refer at Paragraph [4.259](#).

4.201 The overall difficulty in dealing with offenders was further compounded by three major changes to the organisation of the probation service during the 2000s. The first change was the creation of probation boards. The second change was the creation of probation trusts. The third change, which was by far the most significant, followed on from, *Transforming Rehabilitation: A Strategy for Reform* (May 2013). This abolished the probation trusts, partly privatised and re-organised the service. We describe this and the outcome at paragraphs [4.230](#) and following.

b) The focus of Welsh Government policy

4.202 Again in contrast to the policy of the UK Government since 2001, the primary focus of the Welsh Government's social policy and legislation, as we have explained in paragraph [2.31](#), has been the determination to tackle factors that blight communities and prevent people from reaching their potential and in this way to contribute to a reduction in offending.

4.203 As we have briefly mentioned at paragraphs 4.3.4 and 4.15, there is a much better understanding of Adverse Childhood Experiences on individuals throughout their lives. We heard evidence from both Wales and Scotland about work in hand on this important agenda. In 2015 Public Health Wales published research⁵¹⁸ which demonstrates how having multiple adverse experiences as a child (such as abuse, neglect or having parents who misuse drugs and alcohol) apart from their immediate impact on the child will affect that child's mental health and physical health in the longer term.

4.204 The study which mirrored international evidence found that 23% of all adults in Wales during their childhood had been exposed to verbal abuse, 17% to physical abuse and 10% to sexual abuse. In childhood, their households included parental separation (20%); domestic violence (16%); mental illness (14%); alcohol abuse (14%); drug use (5%); and imprisonment (5%). For every 100 adults in Wales, 47 have suffered at least one Adverse Childhood Experience and 14 have suffered four or more.

4.205 Adverse Childhood Experiences increase the risks of people developing behaviours that harm their health. Compared with people with no Adverse Childhood Experiences, those with four or more Adverse Childhood Experiences are:

- four times more likely to be a high-risk drinker
- six times more likely to have had or caused unintended teenage pregnancy
- six times more likely to smoke e-cigarettes or tobacco
- six times more likely to have had sex under the age of 16 years
- 11 times more likely to have smoked cannabis
- 14 times more likely to have been a victim of violence over the last 12 months
- 15 times more likely to have committed violence against another person in the last 12 months
- 16 times more likely to have used crack cocaine or heroin
- 20 times more likely to have been incarcerated at any point in their lifetime.

4.206 Comparisons between people in prison and those in the general population show that prisoners are significantly more likely to have been taken into care as a child; have been expelled or permanently excluded from school; have no qualifications; have prolonged experience of unemployment and/or homelessness; have symptoms indicative of psychosis; have been identified as suffering from anxiety and depression; and have attempted suicide at some point in their lives⁵¹⁹.

4.207 As outlined above, the characteristics and needs of those who have entered the criminal justice system provide a compelling reason for an integrated and clearly accountable system that tackles the causes of crime, delivers offender management in prison and in probation and achieves rehabilitation.

c) The distribution of responsibilities in Wales and the need for a whole system approach

4.208 In Wales, as we have explained, the responsibility for the services that address the causes of criminality and support rehabilitation is devolved. The methods and approaches to reducing reoffending are described in multiple places⁵²⁰. We also received evidence on Wales' approach to:

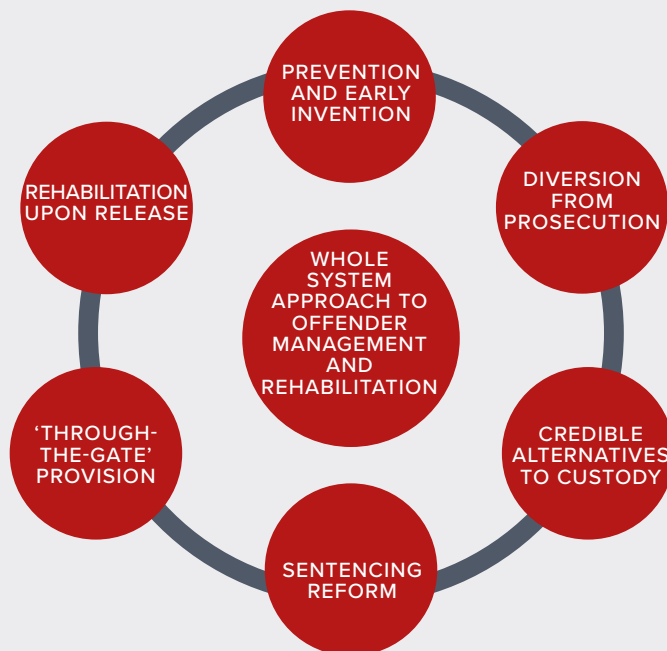
- accommodation
- education, training and employment
- mental and physical health and social care
- drug and alcohol misuse
- financial support, accessing benefits and managing debt
- family and other supportive networks
- changing attitudes, thinking and behaviour
- supporting the specific needs of women who have experienced, or are experiencing, domestic abuse and have been, or are, involved in prostitution, trafficking and slavery⁵²¹.

4.209 The benefits of a whole system approach to offender management and rehabilitation are illustrated in Figure 24 taken from the 2016 report of the Institute for Public Policy Research⁵²² which argued for rehabilitation devolution.

519 Prison Reform Trust (2018) *Bromley Briefings Prison Factfile*.

520 Social Exclusion Unit (2002) *Reducing Reoffending by Ex-prisoners*. WS152 Mee: 1, WS154 Jamie Grundy: 2. *op cit n. 94*: 30.

522 Clifton, J (2016) *Prisons and Prevention: giving local areas the power to reduce offending*.

Figure 24**Benefits of the whole system approach to offender management and rehabilitation**

Source: 2016 Public Policy Research Report

- 4.210 This approach is to some extent being adopted through the agreements the UK Government has made with the Mayors in London and Manchester (to which we referred in paragraph 4.80) through Memoranda of Understanding. The Memorandum between the London Mayor and the Ministry of Justice⁵²³ describes how these changes are intended to facilitate a transformation in criminal justice outcomes for Londoners, including a reduction in reoffending and repeat victimisation. The rationale for devolution in both Greater Manchester and London is for those authorities to be able to provide more integrated services which better meet the specific needs of these cities. There are also some common themes such as improving the experience of victims, shifting resources into preventative and problem-solving approaches, focusing on young and female offenders and reducing reoffending.

523 Ministry of Justice and others (2018) *Working Towards Justice Devolution to London*.

- 4.211 However, the current devolution scheme in Wales (as we pointed out at paragraph 4.4) presents barriers to a straightforward whole system approach for three reasons. First, (because responsibility for the whole system is divided between two governments) a significant amount of resource has to be dedicated to trying to overcome the division and coordinate activity so that policy, strategy and operations are better aligned. Second, funding cannot currently be coordinated, so it gives effect to whole system policies. Third, specific policies to meet the particular needs of the people of Wales cannot be put in place.
- 4.212 As a result there are overly complex accountability structures (as illustrated by Figure 14 at paragraph 4.4). There are also missed opportunities. In 2016 the Wales Audit Office report on Community Safety⁵²⁴ commented that national, regional and local priorities differed greatly, were not aligned and risked confusion and uncoordinated action. It concluded that “...*complex responsibilities make it difficult for public bodies to coordinate a strategic approach to community safety, which weakens collective leadership and accountability and undermines the potential to help people stay safe...*”

d) The poor use of resources and the impact of cuts

- 4.213 The evidence we received described disjointed, often short-term and poorly managed funding streams which are intended to deal with either locality-based problems or a particular social dilemma. The fragmentation, both of purpose (different organisations having different agendas) and of funding (a profusion of small grants or an allocation of a fraction of someone’s time) serve to frustrate the most committed of efforts⁵²⁵. Changes of policy direction in the quest for better or faster results further disrupt effort and waste resources. We have been reminded on numerous occasions of the impact of cuts which makes the failure to use well what is available dispiriting.

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Wales Audit Office (2016) *Community Safety in Wales*. WS171 Dr Sophie Chambers: 2.
WS011 Advice UK: 1, WS023 Speakeasy: 2, WS131 Riverside Advice: 1, WS139 Bro Ddyff Advice Centre: 1, WS186 Winston Roddick CB
QC: 3, ES third sector, OE022 Anne Fox: 3.

e) Attempts at a coherent joined up policy

- 4.214 As we have already made clear, the Welsh Government is very active in issues relating to justice⁵²⁶. The First Minister's evidence was that, whilst it is difficult to make large inroads into adult and women's offending, the Welsh Government tries to be as influential as it can within the current scheme of devolution despite the additional resources used to coordinate with the UK Government⁵²⁷. Significant amounts of work, involving a wide range of people, are therefore devoted to making the best of the current arrangements.
- 4.215 The first *Reducing Reoffending Strategy for Wales* was published in 2014⁵²⁸. It was produced in partnership between criminal justice agencies in Wales and the Welsh Government. It listed a number of outcome indicators which were to be monitored over the three-year period it covered (2014-2016). It identified a specific range of priority offender groups⁵²⁹. It explored Wales' approach to integrated offender management and, for each reducing reoffending policy, set objectives with relevant indicators. For women, there was a pilot project aimed at the development of a whole system approach to reducing female offending across Wales. This included the diversion of women from the criminal justice system and, where appropriate, enhanced community support for women offenders and those at risk of offending. It also aimed at improved resettlement for those released from custody.
- 4.216 We wanted to measure how successful this policy had been. Measuring performance is essential for accountability and judging whether the funds spent have produced results. We were concerned to be told that no specific results in terms of data were produced for the *Reducing Reoffending Strategy*. We have been able to trace the development of successive policy documents and plans aimed at reducing offending and reoffending in Wales. However, with the exception of the evaluation of the pilot project for female offenders, discussed at paragraph [4.270](#) below, we have not been able, despite requests, to obtain any evidence of the progress being made as a result of these policies⁵³⁰.

526 *op cit n. 94: 60.*

527 *OE045 First Minister: 2.*

528 *Welsh Government and others (2014) [Wales Reducing Reoffending Strategy 2014 – 2016](#).*

529 *Those presenting high risk of harm and/or reoffending, women, young offenders transitioning to the adult system and armed services veterans caught up in the criminal justice system.*

530 *In assessing any evidence, it would have been relevant that the reducing reoffending strategy coincided with UK Government's failed reforms to probation, described at para 4.228 and following.*

- 4.217 In 2018 the Welsh Government and the Ministry of Justice published a successor to the 2014 strategy, the *five year Framework to support positive change for those at risk of offending in Wales*⁵³¹. This is aimed at promoting collaboration between the devolved and non-devolved organisations focusing on a number of priority areas⁵³². Again there are a range of outcome indicators. When we asked about the management of the performance of the Framework we were told that it is anticipated that an official described as the ‘Senior Responsible Owner’ for each priority work area will meet before the end of 2019 to assess progress to date, the next steps and review aims and objectives. Again this lack of a rigorous approach is disappointing.
- 4.218 The Framework describes the roles of a number of bodies that are working on this agenda and which feature in Figure 14 at paragraph [4.4](#). It also outlines the ambit of underpinning strategies, legislation and policies. Whilst the good intentions are to be applauded, we are concerned about the number of groups and committees working on the agenda at national, regional and local level. Their individual terms of reference and purposes overlap. We have been told that meetings of different bodies frequently have the same attendees and similar agenda items. This duplication, or in some cases multiplication, is not a proper use of public funds as many witnesses spoke of the need for even more resources to do the work needed. In short, there is, in our judgement, a lack of clear, unified leadership and accountability. This makes it impractical to hold people and organisations clearly to account for rehabilitative outcomes and reducing reoffending.
- 4.219 As part of the Framework work programme, the Welsh Government and the Ministry of Justice have worked together to produce two new blueprints, one for ‘youth justice’, the other for ‘female offending’ which were published in May 2019⁵³³. Both of these documents promote an integrated planning and commissioning of services to support an agreed policy approach. To that extent, they build on existing good practice.

531 Welsh Government and Ministry of Justice (2018) *Seeking positive change for offenders in Wales*.

532 *These are reducing the number of women in the criminal justice system, challenging domestic abuse perpetrators and holding them to account, improving provision for ex-armed services personnel, providing support for young adults/care leavers, supporting offenders’ families following sentencing and working proactively with Black, Asian and Minority Ethnic (BAME) groups.*

533 WS144 Welsh Government (Cabinet Secretary for Local Government and Communities): 1.

4.220 In July 2019, HMPPS and the Welsh Government published a *Learning and Skills Strategy for Prisons in Wales*⁵³⁴, to improve the well-being of prisoners during their sentences and once released and give them the skills they need to unlock their potential, gain and maintain sustainable employment and become assets to their communities. It followed David Hanson MP's review of prison education in Wales and his report *Reforming Outcomes – a Review of Offender Education in Wales* published in March 2019, and supported the HMPPS and Welsh Government framework to help those at risk of offending through skills and employment.

4.221 However, the blueprints do not contribute to simplifying accountability, managing performance or reducing complexity or to prioritising overall funding. As blueprints, they set out recommendations for areas to explore further. These are unlikely to deliver the step change that is needed. Neither document holds anyone clearly to account for the delivery of anything within any tightly agreed timeframe or budget. This is not a sustainable approach to policy making or delivery, particularly in relation to the fundamental reforms required.

f) The better use of resources

4.222 In order to develop a whole system approach to offender management and to rehabilitation, it is necessary to be able to move funding that is used in tackling the symptoms of social injustice and exclusion (imprisoning offenders) to activity that should help prevent through alignment with other social policies the problems arising. This cannot be done under the current devolution scheme.

4.223 Scotland has embarked on a comprehensive programme of work to refocus effort and resources to this end⁵³⁵. We have also examined studies from other jurisdictions. The Wales Governance Centre's report 'International Evidence on Driving Down Imprisonment Rates: What Wales Could Be?' draws on the experiences of different jurisdictions that have introduced measures to reduce high levels of imprisonment and makes recommendations that arise from them. Recommendations include attempting to build a cross-party consensus on a sensible reduction in the size of the prison population in Wales; leading a

534 HMPPS (2019) *HMPPS in Wales Learning and Skills strategy for Prisons in Wales*.

535 Scottish Government (2018) *Justice vision and priorities delivery plan 2018-2019 and overview of progress 2017-2018*.

national conversation about Wales' high imprisonment rate and its disproportionate cost; and developing a 'whole system' approach. An international seminar⁵³⁶ convened for us by the Institute for Criminal Policy Research at Birkbeck enabled us to learn how the Netherlands, Finland, and other nations had succeeded in significantly reducing prisoner numbers, lowering the social and economic costs of imprisonment and at the same time achieving low reoffending rates.

4.224 We are sure that the same approach could and should be adopted in Wales as set out in our conclusions to this part of the Chapter at paragraphs [4.271](#) and following. To understand the scope for reform, this needs to be set in the context of current prison and probation policy and practice in Wales.

3. The organisation of Her Majesty's Prison and Probation Service in Wales

a) HMPPS England and Wales

4.225 The day-to-day operation of prison and probation services is managed by HMPPS as an executive agency established on 1 April 2017 in place of the National Offender Management Services. The services comprise:

- 104 public sector prisons (operational)
- 13 private prisons
- 7 national probation service (NPS) divisions
- 21 community rehabilitation companies
- 5 young offender institutions/sites for young people (part of the 104 prisons) (1 private)
- 1 immigration removal centre
- 3 secure training centres (2 private)

4.226 HMPPS total net resource expenditure in 2018-19 was £4,785 million including Ministry of Justice central overheads and charges. A breakdown of the net operating costs of £4,022 million is given in Figure 25 below.

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[Para 1.20.](#)

Figure 25**HMPPS net resource expenditure 2018-19**

| | GROSS EXPENDITURE | INCOME | NET |
|-------------------------|-------------------|------------------|------------------|
| | £ million | £ million | £ million |
| Public Sector Prisons | £1,853.50 | (£167.76) | £1,685.74 |
| Custodial Contracts | £676.62 | (£4.46) | £672.16 |
| Youth Custody Services | £173.49 | (£27.62) | £145.87 |
| Probation & Women | £489.53 | (£12.42) | £477.11 |
| HMPPS Wales | £212.57 | (£10.94) | £201.63 |
| Electronic Monitoring | £86.34 | (£1.29) | £85.05 |
| Community Interventions | £379.39 | (£0) | £379.39 |
| Prison Estates | £225.50 | (£0.52) | £224.98 |
| Support Services | £156.51 | (£6.59) | £149.92 |
| Total | £4,253.45 | (£231.60) | £4,021.85 |

Source: HMPPS

4.227 In delivery of prison and probation services HMPPS works with the following arm's length bodies, all of which are funded separately by the Ministry of Justice:

- 4.227.1 Her Majesty's Inspectorate of Prisons – ensures independent inspection of places of detention, reports from a human rights perspective on conditions for, and treatment of, people in prison and promotes positive outcomes for those detained and the public.
- 4.227.2 Her Majesty's Inspectorate of Probation – reports on the effectiveness of work with offenders to reduce reoffending and protect the public.
- 4.227.3 Prisons and Probation Ombudsman – investigates deaths in custody and complaints from prisoners, children in secure training centres/homes, immigration detainees and those subject to probation supervision.

- 4.227.4 Independent Monitoring Boards – monitors and reports on the treatment of, and conditions for, people in custody.
- 4.227.5 Parole Board – determines whether prisoners with relevant sentences can be safely released.
- 4.227.6 Prison Service Pay Review Body – makes recommendations to government on pay for operational staff and managers.
- 4.227.7 Lay observers – regularly monitor the treatment of those detained in prison escort vans and those in court custody facilities operated by HMCTS.

b) HMPPS Wales

- 4.228 The HMPPS in Wales Directorate was originally established in 2014-15, as a result of increasing recognition of the distinct differences arising from devolution, and in particular the Welsh Government's responsibility for the design and delivery of a wide range of public services essential to rehabilitation and reducing reoffending. All of Wales' prison and probation services are led and managed by a Wales-based and Wales-focused directorate with clear lines of accountability to one senior manager. These arrangements have achieved greater alignment in Wales between prison services and probation services than anywhere else in the UK. In England, the management of the two functions is the separate responsibility of two Directors General; in Scotland and Northern Ireland the two services are overseen by entirely separate departments (both national and local government).

4.229 As set out in paragraph [2.108](#), the operating expenditure for HMPPS Wales Directorate in the 2018-19 financial year was £212.6 million. However, this figure does not amount to the total costs of running prison and probation services in and for Wales, as it does not include:

- the cost of Welsh (where known) prisoners held in English prisons (for example women or adult men held in high security and other prisons)
- Wales' proportion of the costs of the arm's length bodies referred to at paragraph [4.227](#)
- a range of operational support functions: for example, human resources and training; estate transformation; security, order and counter-terrorism matters and liaison with many of the bodies listed in paragraph [4.84](#) on policing above; rehabilitation and audit/operational assurance
- electronic monitoring
- prisoner escort and transfer services
- research and development, including data analytics
- policy responsibilities – which are shared between the Ministry of Justice and the agency.

It will include the cost of English prisoners (where known) held in Welsh prisons, but the list above is not exhaustive.

4. Probation and what works to reduce reoffending

a) Purpose of probation

4.230 The five purposes of probation⁵³⁷ are:

- the protection of the public;
- the reduction of reoffending;
- the proper punishment of offenders;
- ensuring offenders' awareness of the effects of crime on the victims of crime and the public; and
- the rehabilitation of offenders.

537

Criminal Justice and Court Services Act 2000.

- 4.231 Current theory on how rehabilitation works is founded on a belief in moral redeemability⁵³⁸, and the assumption that people can change and that a person's past is not his or her destiny. Criminality is not on this approach a permanent trait, but rather an adaptation to a person's life circumstances that can be changed by altering those circumstances or self-understanding. There is good evidence that this approach can work. To turn away from crime, an individual must decide to change and then follow it through. For many under probation supervision, change is very difficult to contemplate or to sustain. Skilled probation professionals help individuals to recognise that they need to change; then help them to see the advantages of changing; and support and encourage them when they decide to change; and then help them to work out the best ways of avoiding slipping back into their old ways⁵³⁹. That change is not a simple incremental process as good intentions do not always stick.
- 4.232 The work of the probation service for these purposes has been well summarised by the former Chief Inspector of Probation, Dame Glenys Stacey⁵⁴⁰:
- 4.232.1 Probation supervision itself, and the key relationship between the probation professional and the individual, can be pivotal in turning people away from crime; that relationship needs to be both supportive and challenging.
- 4.232.2 Supportive approaches – matched to individual need – are more likely to work to reduce crime than tougher approaches and sanctions.
- 4.232.3 The timing and sequencing of interventions are important.
- 4.232.4 Work that helps offenders develop pro-social social networks, or increase their sense of agency, self-efficacy and good problem-solving skills, may be effective.

538 Maruna, S and King, A (2009) *Once a Criminal, Always a Criminal? 'Redeemability' and the Psychology of Punitive Public Attitudes*. *European Journal on Criminal Policy and Research* 15(1): 7-24.

539 Miller, W and Rollnick, S (2002) *Motivational Interviewing: Preparing People for Change*.

540 HM Inspectorate of Probation (2019) *Report of the Chief Inspector of Probation describes the 2013 reforms as "irredeemably flawed"*.

- 4.232.5 There is a strong evidence base for cognitive behavioural programmes which address the underlying reasons why each individual offends.
- 4.232.6 Holistic interventions that address the multiple reasons for an individual's offending are likely to be more successful.
- 4.232.7 Intensive supervision programmes which emphasise control over support may not work, while those which combine support with sanctions are more successful.
- 4.233 To carry out this work all fully qualified probation officers are required to have a second degree – the Professional Qualification in Probation. This training provides them with the skills and knowledge to recognise, gauge and manage the risks an individual offender represents to the public – of reoffending and of serious harm – regardless of context.

b) The UK Government's unsuccessful reforms to probation

- 4.234 As we have mentioned in paragraph [4.201](#), in May 2013 the White Paper, *Transforming Rehabilitation: A Strategy for Reform*⁵⁴¹ set out the Government's intention to implement major structural reform and introduce a number of changes to the organisations that delivered probation services and what was delivered as part of probation. The key changes are summarised in the June 2018 Justice Select Committee report on the Transforming Rehabilitation programme⁵⁴². The delivery of probation services was divided into two parts: the National Probation Service (NPS) and Community Rehabilitation Companies. The NPS became a public body. Its staff transferred from the 35 pre-existing probation trusts and became civil servants. The NPS became responsible for handling offenders presenting a “*higher risk of serious harm or with prior history of domestic violence and sexual offences*” and for advising the courts on sentencing of all offenders. The Community Rehabilitation Companies are private and/or third sector organisations (mainly in the private sector) who are contracted to work with offenders presenting a low or medium risk of harm. The contract between the UK Government and the Community Rehabilitation Companies contains an element of payment by results which links

⁵⁴¹ *op cit n. 117.*

⁵⁴²

Ibid.

payment to reoffending outcomes achieved. Two reoffending measures are used to assess the performance of the NPS and the Community Rehabilitation Companies:

- The proportion of offenders who reoffend.
- The average number of further offences per offender.

4.235 In Wales there is a single NPS (part of HMPPS) and a single Community Rehabilitation Company. The NPS in Wales advises the Magistrates' and Crown Courts on sentencing for all offenders, liaises with victims, and manages in the community those offenders presenting a high risk of serious harm. The NPS is also responsible for managing the four approved premises in Wales where high-risk men on release from prison reside under close supervision for specified periods. The Community Rehabilitation Company in Wales supervises offenders presenting low and medium risk of harm. After the original owner of this company, Working Links, went into administration, it was taken over by new owners (Seetec) and is known (somewhat disconcertingly) as the 'Wales division of Kent, Surrey and Sussex Community Rehabilitation Company'.

4.236 The second key reform was to introduce, from February 2015, 12 months of compulsory post-sentence supervision of offenders serving short custodial sentences (i.e. prison sentences of under 12 months). This added around 40,000 offenders⁵⁴³ to be supervised by probation services. Little account appears to have been taken in the planning for *Transforming Rehabilitation* of the burden imposed by this additional caseload and the considerable impact of managing a large group of offenders, many of whom had not been used to supervision and some of whom are exceptionally challenging. In addition, the 12 month period of compulsory supervision increased the risk that if an offender failed to meet restrictions imposed and reporting requirements or reoffended, the offender might be recalled to prison.

4.237 The third key change was to introduce in May 2015 *Through the Gate* support for offenders serving custodial sentences. The Community Rehabilitation Companies were given responsibility for providing resettlement services for prisoners 12 weeks before their release from custody to prepare them for their release and for probation support in the community. Certain prisons across England and Wales were designated as 'resettlement prisons' to facilitate this.

543 *op cit n. 117.*

4.238 There has been widespread criticism of the *Transforming Rehabilitation* reforms, including judicial criticism and a loss of confidence by the judiciary in the effectiveness of probation as a result of the reforms. Much of this criticism has been well documented⁵⁴⁴. In summary, it is sufficient to state that the reforms failed.

4.239 Steps have been taken to try and rectify this:

4.239.1 It was announced in July 2018 that when the current Wales Community Rehabilitation Company contract comes to an end in 2020, the NPS in Wales will assume responsibility for the management of all offenders – high, medium and low risk – so that advice to court, risk and need assessments, sentence planning and managing enforcement and recall will all sit within a single organisation. Probation staff currently delivering offender management services for low and medium-risk offenders for the Wales Community Rehabilitation Company will transfer to the NPS. The consequence of this is that probation services will be delivered predominantly by civil servants⁵⁴⁵.

4.239.2 On 16 May 2019 the Ministry of Justice announced that the National Probation Service in England will also be assuming responsibility for the management of all offenders when the other 20 contracts come to an end with the Community Rehabilitation Companies. This was welcomed by many including the chair of the Justice Committee.

4.239.3 A further document *The Proposed Model for Probation: A Draft Operating Blueprint* was published by the Ministry of Justice on 19 June 2019⁵⁴⁶. The thrust of the proposals is to be welcomed. It reintegrates offender management in the community under the responsibility of one organisation. It emphasises the central importance of the offender management function to the effectiveness of the criminal justice system in rehabilitating offenders. However, some of the proposed new arrangements remain convoluted: for example, the regional coordination function and continued competitive tendering/outsourcing of rehabilitative interventions.

544 *op cit n. 117 and n. 543.*

545 *WS024 Professor Peter Raynor: 2.*

546 HMPPS (2019) *The Proposed Future Model for Probation: A Draft Operating Blueprint Probation Reform Programme.*

c) Types of community order

4.240 When a court sentences an offender to probation, it can impose community requirements as part of the order; the probation service then has the responsibility to see that the requirements are carried out. There are 11 available community punishment requirements that can be included in a community order, including hours of unpaid work, abstinence from alcohol and alcohol testing, adherence to a curfew, mental health treatment and cognitive behavioural programmes. There is evidence that these are underused⁵⁴⁷. Figure 26 below shows the low use of three of these requirements in England and Wales for women and men.

Figure 26

Use of treatment requirements in Community Orders and Suspended Sentence Orders in England and Wales

| | COMMUNITY ORDERS 2018 TOTAL: 75,750 | SUSPENDED SENTENCE ORDERS 2018 TOTAL: 34,257 |
|-------------------------------------|----------------------------------------|-------------------------------------------------|
| Mental health treatment requirement | 0.6% (454) | 0.6% (205) |
| Drug rehabilitation requirement | 5.7% (4,317) | 7.7% (2,637) |
| Alcohol treatment requirement | 4.1% (3,105) | 4.7% (1,610) |

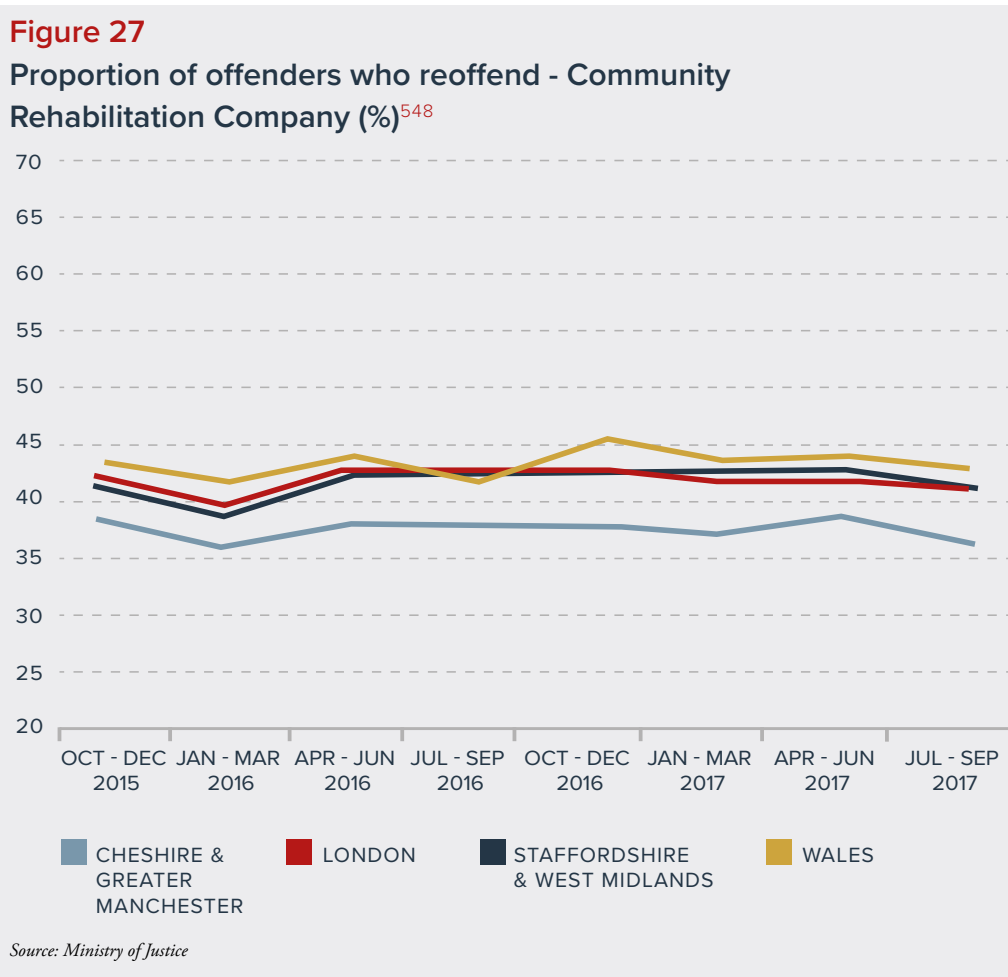
Source: Prison Reform Trust

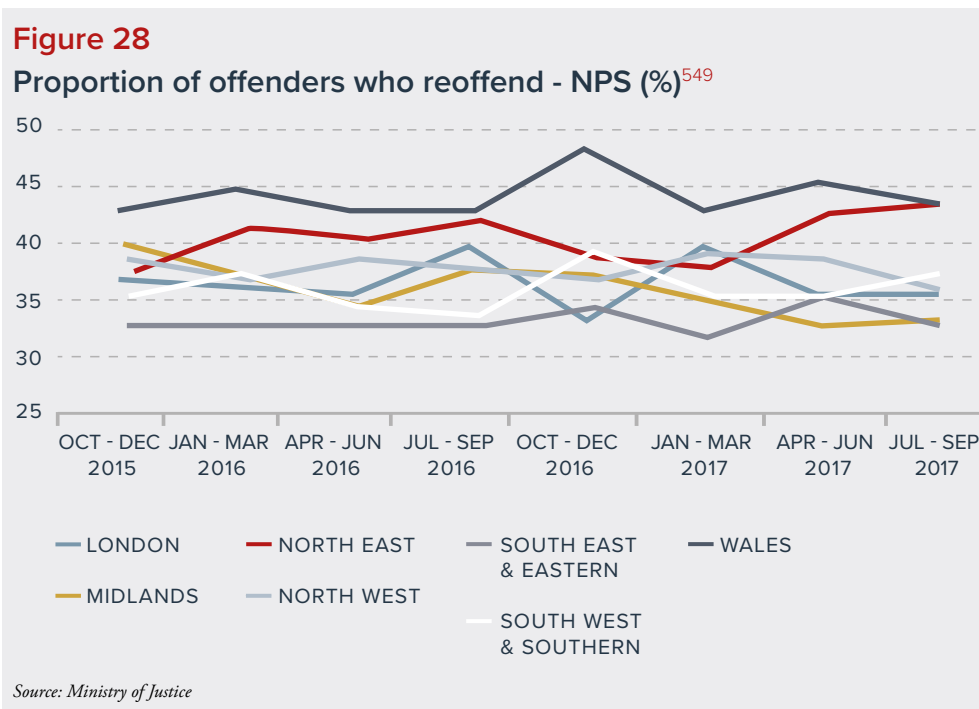
d) Assessment of outcomes

4.241 It is important to assess the outcomes achieved by the NPS and the Community Rehabilitation Company in Wales with regard to other areas with similar workloads. In April 2018, the caseloads in Wales for the NPS and Community Rehabilitation Companies were around 7,885 and 10,137 respectively. Women represent around 12% of the total probation caseload in Wales (approximately 1,800 cases).

547 *op cit n. 485.*

4.242 Using the official statistics for proven reoffending from October 2015 to June 2018 and comparing the outcomes for the NPS in Wales with its English counterparts, and the Community Rehabilitation Company in Wales with three other English companies with similar sized caseloads, the results are disappointing. The proportion of higher risk offenders reoffending in Wales rose from under 3.7% in the last quarter of 2015 to 4.2% in April to June 2018, although all areas bar the North West of England also saw reoffending rates increase over that period. The proportion of low and medium risk offenders reoffending in Wales increased from 4.3% to 4.6%. The level of analysis does not allow us to explain the reason for this latter increase, which does not appear to have happened in the English areas. While all four areas initially had lower reoffending rates, they then rose again. The results for Wales appear to be worse than for both London and Cheshire/Greater Manchester as shown in Figure 27 and Figure 28 below.





4.243 The overall assessment of the inspection of the National Probation Service in Wales in November 2018 was ‘Good’⁵⁵⁰. Most notably, the service provided to victims who had opted into the victim contact scheme was ‘excellent’. The Community Rehabilitation Company inspection report, published in July 2019, assessed the service overall as ‘Requires Improvement’. Many of the shortcomings identified – too lean staffing, poor IT that does not adequately support practitioners, poor recording, insufficient planning to address the risk of harm that individuals present and inadequate coordination of resettlement activity – were highlighted in the Chief Inspector of Probation’s annual report⁵⁵¹. However, there was recognition of the strong and committed leadership, the considerable engagement with devolved partners and the specific challenges presented by Wales’ complex mixture of urban and rural environments.

549

Ibid.

550

op cit n.548.

551

OE020 Dame Glensy Stacey, *Chief Inspector of Probation: 1.*

e) Changes needed

4.244 In the 2018 annual report the then Chief Inspector of Probation, Dame Glenys Stacey suggested four basic design principles for probation:

- The importance of a strong evidence base
- The service needs to meet the needs of individuals – offenders and victims
- It should be staffed by qualified and engaged professionals who provide a service that is properly integrated with the wider criminal justice system
- It instils confidence that the public are protected, rehabilitation is seen to work, the operating model supports effective delivery and it delivers value for money.

We agree and emphasise that there is a clear need for strict performance management and accountability for the results.

We recommend:

The basic design principles for probation set out in the 2018 annual report of the then Chief Inspector of Probation should be applied to the design of the new integrated National Probation Service of Wales and the outcomes should be strictly measured on a regular basis and be made public.

5. Prisons

4.245 HM Prison Services' statement of purpose is "*Her Majesty's Prison Service serves the public by keeping in custody those committed by the courts. Our duty is to look after them with humanity and help them lead law-abiding and useful lives in custody and after release.*"

4.246 There are no entry qualifications to become a prison officer. Basic training lasts for 12 weeks and is delivered either in local training centres or the main HMPPS College near Rugby. The route to governing a prison involves either rising through the ranks, joining a management trainee scheme once employed, or applying for the Senior Leadership Scheme. A degree is desirable for the latter but not a mandatory requirement.

a) Prisons in Wales

4.247 There are six prisons in Wales managed by HMPPS. In all but Parc (a private sector prison), the funding for education and health services was transferred in 2003 to the Welsh Government which oversees this provision.

4.248 Prisons in England and Wales are categorised according to the severity of the offences committed by those held in them and the degree of security risk presented by the prisoners held according to the likelihood of their escaping and the risk of harm to the public should they escape⁵⁵².

Figure 29

Categorisation of prisoners and prisons

| | |
|-------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| CATEGORY A | Prisoners who would pose the most threat to the public, the police or national security should they escape. |
| CATEGORY B | Prisoners who do not need to be held in the highest security conditions but the potential for escape should be made very difficult. |
| CATEGORY C | Prisoners who cannot be trusted in open conditions but are considered to be prisoners who are unlikely to make a determined escape attempt. |
| CATEGORY D | Prisoners who can be trusted in open conditions. |

Source: HMPPS

Figure 30

The cost of each prison in Wales as at 2017-18

| | COST PER PLACE | COST PER PRISONER |
|---------------------|-----------------------|--------------------------|
| Berwyn | £13,814 | £17,400 |
| Cardiff | £26,476 | £18,432 |
| Parc | £39,146 | £36,263 |
| Swansea | £37,760 | £23,201 |
| Usk/Prescoed | £22,017 | £15,810 |
| England (Cat C Avg) | £20,030 | £19,148 |
| Wales (Avg) | £27,843 | £22,221 |

Source: HMPPS

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Most prisons have a commitment under 'Tornado' arrangements to provide mutual aid in the event of serious operational incidents such as riots or hostage taking. *op cit n. 94: 35-6. A prison's physical and procedural security standards must be sufficient to hold the highest risk of the prisoners held there.*

Figure 31**Prison capacity, population and staffing in 2019⁵⁵³**

| PRISON | CATEGORY/ROLE | OPERATIONAL CAPACITY | POPULATION (JUNE 2019) | STAFF (OPERATIONAL AND NON-OPERATIONAL) |
|-----------------------------|------------------------------------------------------------------------------------------------|---------------------------------------------------------------|------------------------|-----------------------------------------|
| HMP Berwyn | Category C training prison with small remand (not yet in use) function | 2,106 | 1,361 | 609 |
| HMP Cardiff | Category B local prison ⁵⁵⁴ | 820 | 722 | 400 |
| HMP/YOI ⁵⁵⁵ Parc | Category B local and training prison ⁵⁵⁶ with small 60 bed unit for young offenders | 1,723 (of which the average young offender population was 37) | 1,631 | 630 |
| HMP Swansea | Category B local prison | 503 | 419 | 276 |
| HMPs Usk and Prescoed | Usk is a Category C training prison Prescoed is a Category D open prison | 536 | 519 | 220 |
| Total | | 5,688 | 4,652 | 2,135 |

Source: HMPPS

4.249 All but Usk were designated as Resettlement Prisons as part of the new *Through the Gate* arrangements. Parc has a specialist lifer unit and most of the prisoners held in Usk have committed sex offences. Usk and Prescoed are managed as a single entity although they occupy two different sites and their performance is judged separately. There is no Category A prison in Wales.

⁵⁵³ WS045 Dr Robert Jones: 1. HMPPS (2018) *Annual Digest: 2017 to 2018*.

⁵⁵⁴ The designation 'local prison' means that the establishment has a principal function to service the courts by holding offenders remanded into custody and, initially, those who have just been sentenced.

⁵⁵⁵ *Young Offender Institution* para 4.176.3.

⁵⁵⁶ *The regimes of training prisons are designed to be more sharply focused on delivering services to help reduce the risk of prisoners reoffending.*

- 4.250 Three of the six prisons in Wales – Cardiff, Swansea and Usk – are Victorian. Cardiff and Swansea occupy city centre sites and suffer many of the attendant problems created by a small site and limited regime and activities. Prescoed was constructed by prison labour and opened in 1939. Each has significant identified backlogs of maintenance and needs substantial refurbishments. This cost will be attended to according to the central prioritisation system which determines how the limited capital budget for all the public sector prisons in England and Wales can be spent. In its December 2018 report, the Justice Committee has called for capital investment⁵⁵⁷. There have also been well-publicised difficulties with the outsourced facilities management contracts.
- 4.251 HMPs Parc and Berwyn are in much better condition but, as shown in Figure 31, have very large operational capacities. Berwyn is viewed by many as problematic because, when full, around two thirds of its prisoners will come from the North of England and the North Midlands. When announcing the decision to build it in Wrexham, the then Secretary of State for Justice, described it as a ‘development opportunity for North Wales’. Its construction was welcomed by local politicians and decision makers who were keen to emphasise the delivery of the promised economic benefits. It was opened in February 2017. In April 2019 it remained under two thirds full. As regards Parc, the 25-year Private Finance Initiative contract will end in 2022. There will either be a competition for a new commercial contract to run it or it will be brought back into the public sector.

b) Prison population and location of Welsh prisoners

- 4.252 Despite an increase in prison capacity in Wales due to the opening of HMP Berwyn, 37% of all Welsh⁵⁵⁸ adult male prisoners were being held in English prisons in 2018. In a large number of cases, Welsh prisoners are placed in establishments far away from home; Welsh adult male prisoners were held in 105 English prisons in 2018. For example, in December 2018 41 Welsh adult male prisoners were being held on the Isle of Wight⁵⁵⁹.

557 *House of Commons (2019) [Prison population 2022: planning for the future](#).*
558 *Para 2.109.*
559 *Category B prison for Sex offenders or vulnerable prisoners.*

- 4.253 The decision on where to locate prisoners across England and Wales is informed by a number of factors such as the length of sentence, categorisation of prisoner and overcrowding in prisons.

Figure 32

The location of all Welsh prisoners including women in 2018

| | MARCH | JUNE | SEPTEMBER | DECEMBER | AVERAGE |
|---------|-------|-------|-----------|----------|---------|
| Wales | 2,914 | 2,973 | 3,209 | 2,970 | 2,972 |
| England | 1,739 | 1,731 | 1,742 | 1,718 | 1,732 |
| Total | 4,653 | 4,704 | 4,951 | 4,688 | 4,704 |

Source: Ministry of Justice

ii Performance and safety

- 4.254 HMPPS published its annual prison performance ratings for 2018-19 in July 2019⁵⁶⁰. Prisons' absolute performance scores are calculated against a number of measures and aggregated. Guidance on the measures and calculations is available⁵⁶¹. A four band system is used:

Rating 4 = Exceptional performance

Rating 3 = Performance is acceptable

Rating 2 = Overall performance is of concern

Rating 1 = Overall performance is of serious concern

- 4.255 The Welsh prisons' performance was reported as follows; there are no data for Berwyn as it was becoming operational during this period. It shows that only Cardiff's performance is 'of concern'.

⁵⁶⁰ Ministry of Justice (2019) *Official Statistics Bulletin: Annual Prison Performance Ratings*.

⁵⁶¹ Ministry of Justice (2019) *Annual prison performance ratings guide 2018-19*.

Figure 33**Welsh prisons' performance ratings 2018-19**

| | |
|----------|---|
| CARDIFF | 2 |
| PARC | 3 |
| PRESCOED | 4 |
| SWANSEA | 3 |
| USK | 4 |

Source: HM Chief Inspector of Prisons

4.256 The Inspectorate of Prisons has inspected all Welsh prisons since January 2016 and published reports on variable outcomes drawing attention to a troubling reduction in prison safety. The inspection report of HMP Berwyn was published on 11 July 2019. It acknowledges the difficulty of opening a new prison, particularly one of this size, and the considerable efforts of the staff, many of whom were inexperienced, to find the right balance between rehabilitation and security. The prison is assessed as having ‘made a good start’ but requiring better oversight, better coordination and more sustained delivery. Just a quarter of the prisoners were from Wales. While levels of self harm were low for this type of prison, many of the problems of violence and drugs seen elsewhere across the prison estate were in evidence. The Inspectorate has drawn attention to the problems of the “jagged edge” where health services are devolved and prison services under the UK Government. We also had evidence from the Chief Inspector⁵⁶². On our visit to HMP Cardiff, we heard from prisoners about lengthy delays in receiving medication and, in the case of anti-psychotic drugs, the danger this can cause to the individual and other prisoners. Concerns were also expressed to us about Friday releases from prison which reduce the possibility of health and housing support and increase the risk of further offending⁵⁶³. We received evidence on numerous occasions⁵⁶⁴ that releasing people from prison on a Friday causes significant additional difficulty. Statutory services operate to office hours and therefore someone being released from prison mid-morning on a Friday and then having to travel will find it impossible to get the support or resources they need before services close for the weekend.

562 WS022 Mr. Peter Clarke, Her Majesty's Chief Inspector of Prisons: 1.

563 ES Cardiff prison, Cymorth Cymru.

564 ES Butetown, Rhyl, Sbelter Cymru conference.

4.257 HMPPS data on safety in the Welsh prisons, in particular the reported statistics⁵⁶⁵ on serious assaults (of staff and prisoners), self-harm and self-inflicted deaths reveals upward trends indicative of the problems being experienced by many of the prisons in England and Wales.

Figure 34

Number of self-harm incidents 2008 to 2018

| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
|------------------|------------|------------|------------|------------|------------|------------|------------|--------------|--------------|--------------|--------------|
| Berwyn | - | - | - | - | - | - | - | - | - | 231 | 542 |
| Cardiff | 14 | 22 | 24 | 30 | 34 | 43 | 41 | 116 | 201 | 243 | 459 |
| Parc | 283 | 433 | 387 | 546 | 550 | 440 | 534 | 890 | 1,452 | 1,576 | 1,517 |
| Swansea | 84 | 42 | 53 | 42 | 15 | 34 | 42 | 92 | 149 | 300 | 467 |
| Usk/ Prescoed | - | - | - | 0 | 0 | 0 | 0 | - | 29 | 13 | 39 |
| Total | 381 | 497 | 464 | 618 | 599 | 517 | 617 | 1,098 | 1,831 | 2,363 | 3,024 |

Source: Ministry of Justice

4.258 The number of self-harm incidents has risen sharply and the present position is completely unacceptable. The people of Wales deserve a prison system that is safe and fit for purpose. It should make a positive difference to the men it looks after. Both the performance data and inspection findings show that significant improvement is needed. This is not to diminish the efforts of a large number of staff working in extremely difficult and sometimes dangerous circumstances. A number of new approaches introduced by the Ministry of Justice (although individually well-intentioned) and the year on year significant reductions in prison budgets have resulted in major under-resourcing, the lowering of standards and an uncoordinated and unambitious approach to the scale of the reform that is needed.

4.259 The Commons Justice Committee's report *Prison population 2022: planning for the future*⁵⁶⁶ describes the wide range of difficulties facing the prisons in England and Wales and highlights in its conclusions that "the frequent changes in Ministers at the Ministry of Justice and the inevitable changes in priorities that follow have hindered the sustained implementation of an overarching strategic approach to prisons policy". In just over nine years there have been eight Secretaries of State and seven Prison and Probation Ministers, each of whom has adopted

⁵⁶⁵ Ministry of Justice (2018) *Annual prison performance ratings 2017-18 supplementary tables*.
⁵⁶⁶ *op cit n. 560.*

a different approach. The Justice Committee observed that “...*the prison population has become increasingly challenging in nature, with prisoners often having complex health and social needs. Many have learning disabilities or mental health conditions, such as psychosis, that make it difficult to cope with the criminal justice system and places an addition burden on the prison service to manage their needs. The Ministry needs to acknowledge the challenge it faces and demonstrate that it has a long-term strategy to deal with these.*”

- 4.260 Existing arrangements across the England and Wales prison estate do cater for some specific needs relating to the security, offending behaviour and custodial management requirements of individual prisoners. For example, there are five high secure ‘dispersal’ prisons in England (three others take such men on remand) and there are units that specialise in dangerous and severe personality disorder. In Wales, Usk accommodates sex offenders and there is a unit for prisoners serving life sentences in Parc⁵⁶⁷.
- 4.261 We make our recommendations on prisons at paragraphs [4.271](#) and following.

6. Women’s justice

a) Numbers in prison

- 4.262 Although the number of women sentenced to prison is a fraction of the overall prison population, since 2011 the number of women from Wales sentenced to immediate custody has increased by almost a fifth⁵⁶⁸. The average number of Welsh women in prison reached 261 in 2018. 78.6% of all women sentenced to custody between 2010 and 2017 in Wales were given sentences of under 12 months, with a quarter (24.8%) given sentences of one month or less⁵⁶⁹. The majority of women from Wales sentenced to immediate custody have been convicted of non-violent offences. In 2016, there were 623 women sentenced to immediate custody. 86%⁵⁷⁰ of them were convicted of non-violent offences⁵⁷¹.

567 WS008 Graham Morgan: 1.
 568 WS045 Dr Robert Jones: 28.
 569 Ibid: 1.
 570 Ibid: 2.
 571 Ibid: 1, WS056 Prison Reform Trust: 3.

- 4.263 Policy changes have had a disproportionately negative impact on this vulnerable group of women. According to the Commons Justice Committee⁵⁷², women have been particularly affected by the implementation of the Offender Rehabilitation Act 2014: the recall rate of women offenders rose 20% between 2016 and 2017. The December 2018 Prison Reform report *Broken Trust: The Rising Numbers of Women Recalled to Prison*⁵⁷³ expressed concern about the increases in the number of women being recalled and found that the increases could be explained by both the Offender Rehabilitation Act and the ‘collapse of social networks of support’ that could assist with problems relating to housing, debt, abusive relationships and mental illness.
- 4.264 Because there are no prisons for women in Wales, all Welsh women sentenced to custody are held in one of the 12 women’s prisons in England, with most being in HMP Eastwood Park in Gloucestershire and HMP Styal in Cheshire. The mother and baby unit in Eastwood Park was closed due to flood damage from 2016 to the beginning of 2019. This meant that Styal or HMP Bronzefield in Middlesex were the closest mother and baby facilities for women from South Wales. The distances from home facing these women are often considerably longer than those facing adult men from Wales and their counterparts from England⁵⁷⁴.

b) Cost

- 4.265 The 2017-18 published costs of keeping women in custody are set out in the following table⁵⁷⁵. By way of comparison to illustrate the high cost of keeping a woman in custody, a category C training place for a man costs £15,000 less per place and per prisoner.

572 House of Commons (2019) *Transforming Rehabilitation: Follow-up*.
 573 Prison Reform Trust (2018) *Broken Trust: The rising numbers of women recalled to prison*.
 574 WS114 Kaleidoscope: 1 WS203 Dr Alyson Rees: 2.
 575 We have chosen the local prisons where most women for Wales are held and the average of all women’s prisons.

Figure 35**Costs of keeping women in custody 2017-18**

| | COST PER PLACE | COST PER PRISONER |
|--------------------------------------------|----------------|-------------------|
| Eastwood Park | £41,974 | £42,098 |
| Styal | £39,266 | £40,635 |
| Average costs of all women's prison places | £45,619 | £49,547 |

Source: Ministry of Justice

c) Proposals for reform

4.266 There have been a number of initiatives, following Baroness Corston's review in 2007⁵⁷⁶ which point to the effectiveness of a range of measures that support the needs of women⁵⁷⁷. These include greater provision of domestic abuse services, early intervention, diversion schemes, improving the use of out of court disposals, making greater use of robust alternatives to custody and a network of women's centres. In 2013 and 2015, the House of Commons Justice Committee examined the treatment of women offenders and the implementation of the Corston report, particularly in the light of concerns about the increase in the rate of recall to prison, the impact of the reforms to probation and the funding available for women's centres.

4.267 The Ministry of Justice Female Offender Strategy⁵⁷⁸, published in June 2018, describes the negative impact of criminalising women:

"...Coming into contact with the criminal justice system, and in particular custody, can undermine the ability of women to address the issues that have caused their offending. In particular, many have difficulty maintaining employment and accommodation whilst in the criminal justice system. This can contribute to these women entering crisis, or failing to come out of it, ultimately requiring greater support from services and leading to reoffending. Furthermore, the criminalisation or incarceration of parents has a significant impact on families and children. The incarceration of women may also have a disproportionate impact on intergenerational offending as they are more likely to be living with their children prior to custody."

576

op cit n. 105.

577

WS183 Lloyds Bank Foundation: 2.

578

Ministry of Justice (2018) *Female Offender Strategy*, WS185 PACT Group: 1.

- 4.268 After the publication of the Female Offender Strategy, the Ministry of Justice asked Lord Farmer to consider women in the criminal justice system through the lens of family and other relational ties. His report *The Importance of Strengthening Female Offenders and other Relationships to Prevent Reoffending and Reduce Intergenerational Crime* was published on June 2019⁵⁷⁹. It recommended a number of changes so that family ties could be maintained, including the greater use of women's centres with sustainable funding and the way provision was made for contact with families whilst in prison. It aimed to break the cycle of reoffending by providing tailored support.
- 4.269 The Prison Reform Trust 2017 report *There's a reason we're in trouble* examined domestic abuse as a driver to women's offending⁵⁸⁰. It found that the response of criminal justice agencies to female offenders affected by domestic abuse can be key to breaking the cycle of victimisation, coercion and offending, and that identification of domestic abuse at the earliest opportunity is critical.
- 4.270 Following a pilot scheme between 2014 and 2017 in Cardiff, Newport, Cwm Taf, Pembrokeshire and Conwy/Denbighshire that diverted over 1,400 women from the criminal justice system, a project known as *Women's Pathfinder* will work with the police and PCCs, HMPPS in Wales and the Welsh Government to roll out the Whole System Approach Service Delivery Model across the South Wales and Gwent police force areas⁵⁸¹. The pilot was evaluated by the University of South Wales and evidenced a 26% reduction in reoffending and found that the overall re-arrest rate in the pilot sites was around half that in the comparison sites (17.8% compared with 35%)⁵⁸².

579 *op cit* n.113.

580 Prison Reform Trust (2017) *"There's a reason we're in trouble" Domestic abuse as a driver to women's offending.*

581 North Wales and Dyfed Powys PCCs are exploring other options and are considering a broader diversion approach (not just for women).

582 IOM Cymru, *Women's Pathfinder.*

d) Our proposals

- 4.271 We have received a wide range of compelling evidence which supports the development of a singular, distinct approach to women’s justice in Wales which should, if planned and executed well by a strategic body, lead to a significant reduction in the number of Welsh women sentenced to custody⁵⁸³. This would also be consistent with the approach in Wales of adopting international standards and specifically those contained in the Bangkok Rules⁵⁸⁴. The radical reduction in the number of children entering the criminal justice system in Wales and the collaborative work between local authorities, police, justice and health services offers an effective example of what can be achieved.
- 4.272 There is significant evidence about the prevalence of a wide range of mental health problems afflicting many vulnerable women caught up in the criminal justice system⁵⁸⁵. Most of these are as a direct result of difficult childhoods, trauma and abusive relationships. Over half the women in prison have suffered domestic violence with 53% reporting having experienced emotional, physical or sexual abuse as a child⁵⁸⁶. It is important that health services are readily available to support these women so that they receive the treatment and care they need.
- 4.273 Far from the absence of a women’s prison in Wales being seen as a problem, we believe it should be seen as a benefit and support the new approach to be taken. A commitment should be made, in our view, to establish a number of women’s centres and the supporting interventions. This would overcome the well-documented problems of women’s imprisonment and would enable women to serve their sentences in their home areas⁵⁸⁷. These centres take a holistic approach to reducing offending by women, offering court-ordered support and supervision, access to mental healthcare and treatment for addictions, skills for employment, financial management and debt advice, parenting support and the opportunity to gain and maintain safe housing.

583 WS069 NAPO Cymru: 2, OE022 Dr Kay Richmond:1, OE039 Alan Thomas: 5.

584 *The United Nations Rules (2010) Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (or the Bangkok Rules). These are the first set of rules focused and tailored on the treatment of female offenders and prisoners, which supplements existing international standards on the treatment of prisoners, particularly the Nelson Mandela Rules which apply to all prisoners regardless of gender. are a set of 70 rules focused on the treatment of female offenders and prisoners. It was adopted by the UN General Assembly on 22 December 2010 and is the first set of rules tailored to the treatment of women prisoners. It supplements existing international standards on the treatment of prisoners, particularly the Nelson Mandela Rules which apply to all prisoners regardless of gender.*

585 WS027 Prof Maurice Vanstone: 1, WS056 Prison Reform Trust: 2.

586 WS056 Prison Reform Trust: 1, WS137 Clinks: 2.

587 WS031 Howard League for Penal Reform: 1.

- 4.274 There could be a few Welsh women whose offending is so serious that it leaves no alternative but a custodial sentence; these women would serve their sentences in England, either in Styal or Eastwood Park as is currently the case. Arrangements could be made to improve access for their families and friends. Over time the effectiveness of these new arrangements should result in a reduction in the amount of money that is currently spent on custodial places. Based on the average costs per female prisoner and per custodial place it should be possible over time to close prison accommodation, track the reduction in cost and either reinvest that money in alternative provision or use it to offset the investment in setting up the women's centres described earlier.
- 4.275 We have also considered the issue of Approved Premises for women. None currently exists in Wales. The four Approved Premises in Wales for men undertake and deliver some of the most impressive and successful work in managing those presenting very high risk at relatively low cost⁵⁸⁸. The absence of any such provision for women necessitates an even greater dislocation than sending women prisoners to HMPs Styal and Eastwood Park.
- 4.276 Although the outcomes from the *Women's Pathfinder* project are encouraging⁵⁸⁹, the Implementation Plan⁵⁹⁰ for the *Female Offending Blueprint for Wales*⁵⁹¹ does not persuade us that the way in which this work is currently organised and resourced will deliver the desired, measurable results at a reasonable pace. There are commitments to explore and consider options for the long term, including the use of intensive alternatives to custody and development of residential services. These need to be taken forward with greater urgency and the more radical approach we have suggested should be adopted as soon as practicable.

We recommend:

The comprehensive network of services and centres as alternatives to custody for women in Wales must be established rapidly and sustained over time.

588 *WS127 The Parole Board: 1.*

589 [Para 4.270.](#)

590 *Ministry of Justice and Welsh Government (2019) Female Offending Implementation Plan.*

591 [Para 4.215.](#)

7. Conclusion: a whole system approach: reducing reoffending and promoting rehabilitation

4.277 It is clear that the present policy of making piecemeal reforms needs to be re-evaluated in the light of:

- a) The proportion of justice resources spent on prisons
- b) The need to improve rehabilitative outcomes
- c) The role of prisons
- d) The experience of other nations
- e) The use of intensive community sentences
- f) The use of facilities in England
- g) The role of probation in integrated offender management
- h) Alignment with other policy and the delivery in areas such as health, particularly mental health, and education.

4.278 Our conclusion is that Wales should move forward speedily to set in place a new policy based on a whole system approach with a re-evaluation of sentencing policy based on the experience of other nations. The current situation which we have set out requires action as resources are not being used effectively. The time is right to do so. Wales' size makes it more agile. There is a willingness to innovate. There is a readiness to look at the long-term and to address the underlying causes of much crime by taking a whole system approach in line with the policies for future generations and social justice embodied in Welsh legislation.

4.279 The end of the privatised probation arrangements in Wales, and the investment in more qualified probation officers and 'key workers' in the prisons (to which we refer in paragraph [4.286](#) below) should be used to establish a resilient and outcome focused offender management system. This should be led and driven both in the community and in custody by professional expertise, in particular that of probation officers. This would ensure that the considerable evidence base regarding effective offender management, and referred to at paragraphs [4.232](#) and [4.244](#), is applied to offender supervision across Wales' probation and prison service.

a) Resources

4.280 It would be unrealistic to think that a whole system approach, including integrated offender management, could deliver success without further resources. There is in reality no alternative to considering the reallocation of resources through an overall sentencing framework that delivers better outcomes for society as a whole. This requires a proper reconsideration of penal policy taking into account the experience of other nations in successfully reducing the prison population.

b) The experience of other jurisdictions: a re-evaluation of sentencing policy

4.281 The Justice Committee *Prison Population 2022* report also refers to analyses of cross-departmental work in other jurisdictions, most notably the USA, which have enabled a shift of resources from prisons to community measures. This followed the Committee's detailed report published in 2010 drawing on international evidence *Cutting Crime: the case for justice reinvestment.*'

4.282 As we have mentioned at paragraph 4.223, we have examined the approaches in other nations to rehabilitation and the use of custody. It is evident that in those nations with the lowest rates of imprisonment, social policy – especially that relating to health, education, housing and social care – is rigorously aligned with sentencing decisions and rehabilitation. In the Nordic countries they are increasingly using community alternatives and electronic monitoring. In Catalonia, the probation service has a key role in the criminal justice system for preventing reoffending by reducing social and economic costs and making education the priority⁵⁹². In the Netherlands, between 2006 and 2018 the prison population halved (49 per cent) and the imprisonment rate fell from 125 per 100,000 to 61 per 100,000. Non-custodial sanctions play an important role in the Dutch system: the Public Prosecutor is able to impose non-custodial penalties (transactions) such as fines and community sentence orders⁵⁹³. Portugal has implemented a model that no longer criminalises those caught in possession of, and has a more health aligned approach to, drugs. This has led the number of drug related deaths in Portugal to fall to three deaths per

⁵⁹² *op cit n. 100.*

⁵⁹³ *op cit n. 95.*

million of population (Wales is 66 per million) and a similar fall in HIV infection rates. The number of drug related deaths in Portugal in 2015 (out of a population of 10 million) was 40 whilst, in contrast, in Cardiff, Swansea and Newport the total of drug related deaths was 54, out of a population of only 750,000⁵⁹⁴.

4.283 The experience of other nations points very strongly to the need to radically re-set sentencing policy and align it with approaches of the type used elsewhere. In particular, a much greater use of a more health aligned approach in prison and the greater use of effective community sentences.

c) Improving rehabilitative outcomes: the role of prisons

4.284 When examining better rehabilitation in prison, we have considered initiatives designed to support work with people who have a background of trauma and mental health problems. Two such initiatives are Trauma Informed Care and Psychologically Informed Planned Environments. There have been several academic studies on the positive impact of both in the treatment of individuals who are suffering from serious mental illness and/or personality disorder which affects a high proportion of offenders. Another is Enabling Environments – a standards-based quality improvement process for residential and work environments promoted by the Royal College of Psychiatrists. There is also a great deal of research that informs the therapeutic regime in HMP Grendon. There needs to be more evidence of a systematic approach to the use of such approaches in the prisons in Wales. We have also referred consistently⁵⁹⁵ to the need to improve mental health services in the community. We therefore recommend an integrated approach in Wales both inside prison and in the community.

4.285 The Nelson Mandela Rules, the revised standard minimum rules for prison custody adopted by the United Nations in 2015, should be used in line with the Welsh policy of incorporating international standards, as applicable standards for the delivery of all custodial services in Wales. They cover: the principle of treatment with respect; medical and health services; disciplinary measures and sanctions; protection of vulnerable groups; independent investigations of deaths in custody; access to

594 WS113 Enhanced harm reduction group for Wales: 4.
595 Para 4.125, 4.135, 4.266, 4.272.

legal representation; complaints and independent inspection; and the training of staff.

- 4.286 We have considered the original Offender Management Model for England and Wales⁵⁹⁶ (published in 2006) and practice in other jurisdictions⁵⁹⁷. A new model is being trialled in Wales ahead of a planned full rollout later in England. More fully qualified probation officers are to work in the prisons' offender management units. They will be supported by prison officers who will undergo training to become 'key workers'. Every prisoner is to be allocated a 'key worker'. This can be made part of the wider reform we have recommended.
- 4.287 Although HMPPS has explored the creation of a more rehabilitative approach in prison, the crisis in the prisons has forced efforts to be refocused on the basic requirements of safety, decency and security. The Justice Committee's *Prison 2022* report acknowledges the importance of rehabilitative regimes in custody and emphasises the need for a serious debate about the use of imprisonment (citing this Commission as a positive example of such). Influenced by the Committee's evaluation of the scale of current problems and what needs to be done to rise above them, we have concluded that the more radical approach we have recommended should be adopted.

d) Use of intensive community sentences

- 4.288 There is clear evidence, including from experience in Northern Ireland (see paragraph 4.173) that the number of those sent to custody can be reduced by the use of intensive community sentences. These include a broad range of rigorous supervision requirements and interventions⁵⁹⁸. Such sentences offer effective alternatives to prison and were piloted with some success in Wales and a few other probation trusts in 2011-13. Not only do they provide meaningful punishment in that they are very demanding for offenders to complete, but they also enable reparation and facilitate rehabilitation. The use of electronic monitoring and other technologies to monitor whereabouts or enforce curfews can provide additional safeguards and restrictions by way of punishment. Such arrangements should be trialed again and evaluated as soon as possible, with judicial oversight arrangements to provide confidence in such sentences not only to judges and magistrates but to the public.

⁵⁹⁶ National Offender Management Service (2006) *The NOMS Offender Management Model*.

⁵⁹⁷ *op cit* n. 100.

⁵⁹⁸ WSO15 John Deering and Martina Feilzer, p3.

e) Purchase of facilities in England

4.289 It is not practicable given the size of Wales to provide for all types of prison requirements. However, a model can be developed for purchasing services provided in England for Welsh offenders (and vice versa) based on the learning from arrangements which already exist under which the Welsh Government pays for some health services to be delivered in England, for example high secure hospital places.

f) The role of probation in integrated offender management

4.290 Probation in Wales has a pivotal role in a range of arrangements, some of which are statutory, whose focus is public protection and community safety⁵⁹⁹. Probation officers are also trained to recognise, gauge and manage the wide range of factors which constitute that risk, working with and challenging the individual in ways to contain or reduce it, regardless of context. We therefore consider that the approach we have set out should, where appropriate, be led by the Probation Service.

We recommend:

Sentencing policy and the delivery of integrated offender management and rehabilitation should be determined in Wales so that it is an integral part of and aligned with Welsh health, education and social policy.

We recommend:

An integrated and whole system approach to offender management should be established with a single rehabilitative strategy in Wales that is underpinned by a strong evidence base, accurate data, clear governance and accountability arrangements, coherent action plans, a realistic timetable and resources realigned accordingly.

We recommend:

Intensive alternatives to custody should be developed as soon as possible in Wales. They should have judicial oversight and be formally evaluated.

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Examples of these include: the Multi Agency Public Protection Arrangements for managing very high risk offenders; Integrated Offender Management (Cymru) arrangements in partnership with the police, prisons, health, social services and others; the domestic violence Multi Agency Risk Assessment Conferences; the Wales Integrated and the Wales Reducing Reoffending Pathways Group.

We recommend:

Needs assessments of Welsh offenders should be conducted and collated to identify by volume and character the range of interventions required in both prisons and the community and to ensure that they are sequenced properly for optimal effect.

We recommend:

Administering the sentences of the court should be the responsibility of a single public sector body in Wales and the core function of that body should be managing offenders and promoting rehabilitation to reduce reoffending.

We recommend:

There should be an integrated approach in Wales to improve leadership and provision of mental health services including support for front line services to enable them to respond better to individuals with mental health needs.



CHAPTER 5

Civil justice

5. Introduction

- 5.1 Civil law permeates all aspects of society. In this Chapter the term is used to describe the laws which regulate all aspects of everyday life other than the laws which relate to crime, family relations and administrative decision making. For most people the most important aspects of civil law are the law of tort (which encompasses civil wrongs such as negligence), the law of contract and the law relating to property.
- 5.2 We consider in Part 1 the ambit of civil law and the potential for differences in the law between Wales and England. In Part 2, we explain and analyse the present methods of dispute resolution before the courts and tribunals and other methods of dispute resolution. In Part 3, we set out our analysis of the present position and our recommendations for coordination and rationalisation.

Part 1: Substantive civil law

- 5.3 The civil law which is applicable in Wales to disputes between private parties or in relation to private law rights consists of:
- 5.3.1 common law and equitable principles which are common to both England and Wales which have been formulated over time by the decisions of the courts in England and Wales; and
 - 5.3.2 primary legislation passed by the UK Parliament and secondary legislation made by UK Ministers; and
 - 5.3.3 primary legislation passed by the Assembly and secondary legislation made by the Welsh Ministers⁶⁰⁰.
- 5.4 The principles of the common law and equity which currently apply in Wales relate to many areas of substantive civil law. For example, much of the law relating to compensation for negligent conduct and much of the law relating to contracts is still derived from common law principles. Much of the law relating to claims for remedies other than compensation rests upon equitable principles which have evolved incrementally over time. There has been no suggestion in the evidence

⁶⁰⁰ Much European Union law is brought into force through primary and secondary legislation.

we have received that existing common law and equitable principles should cease to apply in Wales or that the evolution of common law and equitable principles should not continue in Wales as in England and other nations whose civil law is underpinned by such principles.

- 5.5 During the 20th Century, the UK Parliament passed a substantial volume of statutes which had a direct impact on civil law; some modified common law and equitable rules and others created new rights and obligations. After the Government of Wales Act 2006 and the referendum in March 2011, the Assembly has been empowered to legislate and pass Acts within its areas of competence which has resulted in legislation being enacted which affects the substantive civil law in Wales. At paragraph 2.38, we have referred to the primary legislation passed by the Assembly and explained how the law applicable in Wales has begun to diverge from that applicable in England.
- 5.6 We have received a substantial amount of evidence about the divergence which has occurred, the potential for further divergence and the significance of that divergence. It has been suggested to us that there is “*divergent legislative momentum*”⁶⁰¹ which means differences will become more prevalent between the law that applies in Wales and the law that applies in England. It has been emphasised that there is a marked divergence in planning, housing and social care law⁶⁰². In relation to family law, the court has emphasised the need for practitioners to appreciate the divergence between English and Welsh law⁶⁰³.
- 5.7 During the course of oral evidence further examples of the diverging laws were provided and some of the practical difficulties which this causes were highlighted. In some cases, where a land holding straddles the border between Wales and England, both Land Transaction Tax and Stamp Duty can be payable in respect of the sale and purchase of that land, adding complication and cost to transactions. Cross-border development proposals are problematic given the diverging planning regimes in England and Wales and different mechanisms for setting agricultural wages cross-border impacts on agricultural businesses that operate on a cross-border basis⁶⁰⁴.

601 WS133 Emyr Lewis: 4.

602 WS170 HHJ Jarman QC, HHJ Harrison, HHJ Edwards and DJ James: 2.

603 Para 7.8.

604 OE012 Brian Evans: 6, OE032 Angharad Woodland: 1.

- 5.8 It is clear that some divergence between Welsh law and the law applicable in England has begun and it is likely that, over time, this divergence will grow. Currently, however, there is no substantial divergence between Welsh civil law and the civil law applicable in England.
- 5.9 In the field of landlord and tenant law, as it relates to residential property, the Assembly passed the Renting Homes (Wales) Act 2016 which will, when brought into force, change the law in Wales to a marked degree from that applicable in England. The Welsh Government has told us that it was always going to take some time to commence the Act because of the volume of secondary legislation that would be needed. Some of the secondary legislation is complex and required further public engagement and consultation. In November 2018 the First Minister made clear in his leadership manifesto that he would legislate to provide greater security for tenants in the private rented sector. On the 11 July 2019, the Minister for Housing and Local Government announced that the commitment to provide greater security required an amendment to the 2016 Act and an intention to bring forward amending legislation has been announced, subject to consultation. When the amending Act has been passed it is intended to bring the 2016 Act into force. It is anticipated this would be before the end of the current Assembly term in May 2021⁶⁰⁵.
- 5.10 Until the Renting Homes (Wales) Act is brought into force, there is no Act of the Assembly that would affect the substantive civil law. Accordingly, it is likely to be some time before any marked divergence occurs between the civil law of Wales and that which is applicable in England.

605 *There has also been protracted discussion with HMCTS about IT systems. There will also need to be consultation on model contracts which it is anticipated will be published during Autumn 2020. There are similar emerging issues with the commencement and implementation of more recent legislation including the [Childcare Funding \(Wales\) Act 2019](#).*

Part 2: Dispute resolution

1. Options for dispute resolution

5.11 Most civil law disputes which arise between private parties in Wales are settled by the parties without recourse to formal dispute resolution of any kind. If, however, a dispute cannot be settled, the course parties need to follow may not always be straightforward. The court system of England and Wales is empowered to determine most of the civil disputes which may arise. However, some civil disputes must be determined in specialist tribunals. If the parties wish to avoid litigation through the courts or recourse to a specialist tribunal, they may seek to pursue alternative dispute resolution (ADR) in the form of arbitration or mediation. If the parties are legally represented no doubt they will be advised on the appropriate course of action to take. Many insurance policies for motorists and homeowners provide insurance cover for legal representation. Trade union membership often provides members with legal cover. However, people who are uninsured and who are not members of trade unions may not be able to afford the costs of legal advice. As we have explained at paragraphs 3.13 to 3.15, the scope of legal aid available for civil disputes is very narrow and the availability of contingent fee arrangements⁶⁰⁶ is generally limited to specific classes of dispute. Therefore for most people without legal advice and for litigants in person, it is difficult to determine which of the options available may be most appropriate in any given case. As we have said in paragraph 3.1, there is no effective access to justice without legal advice and the Rule of Law is imperilled. It is important that information on these options is available for those that need to utilise them.

2. Dispute resolution before the courts

5.12 Most civil law cases are determined in the County Court and the most complicated or high value cases are usually heard in the High Court. The Civil Procedure Rules are used to determine which is the appropriate forum. Civil money claims account for more than 80% of the 1.6 million claims issued in the County Court and High Court in England and Wales each year⁶⁰⁷.

606 *Contingent Fee Arrangements under which lawyers take a significant proportion of damages when client is successful but bear the cost if the client is unsuccessful.*

607 *Lord Chancellor, Lord Chief Justice and the Senior President of Tribunals, Transforming Our Justice System, September 2016.*

- 5.13 In the County Court, a significant proportion of money claims are small claims in general, those with a value limit of up to £10,000 and which are not complex in nature. Typically, they may involve claims relating to matters such as the provision of goods and services. They are dealt with by District Judges or Deputy District Judges.
- 5.14 Civil cases which proceed to a trial in the County Court are heard at court centres situated at specific locations in Wales as described at paragraph 8.7. As with small claims, the majority of cases are dealt with by District Judges or Deputy District Judges. More significant cases may be heard by Recorders. The more difficult cases in the County Court are heard by Circuit Judges. The most difficult County Court cases (such as those involving compensation for clinical negligence, injuries at the workplace and other compensation claims arising from the law of tort) are usually heard by the Designated Civil Judge for Wales.
- 5.15 The most complicated High Court cases are heard by Judges of the High Court of England and Wales, or sometimes by Deputy High Court Judges.
- 5.16 Most of the cases arising out of commercial disputes, property disputes, insolvency and other business-related disputes, unless of particular difficulty, are heard in the Business and Property Court by Specialist Senior Circuit Judges who have particular expertise in those areas of law and who have been appointed specifically to determine these types of cases. However, if a particular case requires a specialist in a particular field of law or raises particular points of difficulty, a High Court Judge with the required expertise is deployed to hear the case in Wales. These cases are generally heard in Cardiff, though the judges will travel to other parts of Wales when it is more convenient for the hearing of a case.
- 5.17 It is usually very expensive to pursue a case through the courts, unless it can be brought as a small claim. The evidence indicates that many claimants, including small businesses, are deterred by the high level of court fees and the cost of pursuing litigation in the courts⁶⁰⁸. The question of costs has been the subject of review, as the general rule for cases brought before a court (other than as small claims) is that the losing party pays the costs of the winning party as well as the costs

the losing party has itself incurred, together with the court fees. Lord Woolf's reforms that resulted in the current Civil Procedure Rules, which came into force in April 1999, sought to make litigation less costly, but have largely been unsuccessful in reducing the cost of litigation, as costs have progressively increased. Lord Justice Jackson led in 2009 an independent review of the costs of civil litigation commissioned by the judiciary⁶⁰⁹ with a view to promoting access to justice at a proportionate cost; so far these reforms have made little difference. The present position is that for cases where the sum in dispute is more than £10,000, lawyers will generally advise their clients of the real risks they may face on costs if they pursue court proceedings in cases where the prospects of success are not very strong.

5.18 Court fees have been progressively increased over many years, particularly since the 1990s and, as we have explained at paragraph [2.100](#) make up a significant part of HMCTS' budget. They have always been the source of controversy, as the State has progressively withdrawn the amount of funding it is prepared to provide for civil justice. The most recent controversy related to the planned significant increase in fees on probate, which is yet to come into force. The current level of general court fees has rightly been the subject of substantial criticism, as they impede access to justice. Court fees, to issue a claim, are based on the amount claimed, including interest⁶¹⁰. Fees are capped for claims valued at up to £10,000 and thereafter the fee is calculated at 5% of the value of the claim up to £200,000, with a maximum court fee of £10,000. Fees are discounted if claims are filed online via Secure Data Transfer money claim online. Fees have to be paid in full on issue and this can discourage claimants from issuing claims.

5.19 In his reviews of the civil court structure, again established by the judiciary and published in July 2016, Lord Justice Briggs concluded that the combination of the excessive costs of civil litigation, the costs risks of cases of moderate value and the "*lawyerish culture and procedure of the civil courts, which make litigation without lawyers impractical*" were factors adversely impacting on adequate access to justice for individuals and small businesses⁶¹¹. His view is plainly supported by the evidence we have received.

609 As distinct from the Ministry of Justice.

610 Gov.uk, [Make a court claim for money](#).

611 Lord Justice Briggs (2016) *Civil Courts Structure Review: Final Report*. Para 12.4.

3. Online courts and tribunals

- 5.20 The HMCTS reform programme, which involves close working between the judiciary and HMCTS, aims to automate and digitise the entire process for civil money claims by 2020. As we have mentioned⁶¹², an online service for claims up to £10,000 has been operational for some time. The Court and Tribunals (Online Procedure) Bill was introduced into Parliament in May 2019 with the objective of supporting the court reform programme and ensuring digital services are accessible and meet users' needs⁶¹³.
- 5.21 An online court service has the potential to enable litigants to access justice before a judge in a cost effective and efficient way that the present court system does not provide, particularly where the value of claims and the associated legal costs of pursuing them make litigation before the courts impractical⁶¹⁴. However, it is too early to say whether the plan to provide an online court and procedure will be successful and what the fee for use of it will be. There is also scope for other dispute resolution processes to be similarly available online or delivered remotely⁶¹⁵. If such a process is to be effective in delivering access to justice, it will be essential not only to provide advice to the ordinary citizen as to how to bring a claim using online procedures, but more particularly to make proper provision for those who are unable easily, or at all, to access online procedures using computers.
- 5.22 It would be a denial of access to justice if people who were digitally disenfranchised for reasons including their skills, the inaccessibility of IT equipment to them and the inadequacy of broadband infrastructure (particularly in areas of rural Wales) were not provided with free advice and assistance. We also would expect online services to be universally available bilingually as set out at paragraphs [11.25](#) and following. Until this is done, free bilingual advice must be provided by the courts so that those wishing to use the Welsh language to settle their disputes are not prejudiced.

We recommend:

Digital court services and other dispute resolution services that are being developed and introduced must be fully accessible to people throughout Wales and free assistance must be available to help individuals use them.

612 [Para 5.18.](#)

613 [Court and Tribunals \(Online Procedure\) Bill](#). The Bill received its second reading in the House of Commons on 16.7.19 and commenced committee stage on 23.7.19.

614 [Para 5.17-5.19.](#)

615 [Para 5.42.](#)

4. Dispute resolution before the Employment Tribunal and the Welsh private law tribunals

5.23 As we have explained, some forms of civil dispute between private parties must go to tribunals.

a) Employment Tribunal

5.24 Most disputes between employers and employees are determined by the Employment Tribunal. This tribunal operates throughout England and Wales and Scotland. In the Employment Tribunal, the majority of disputes are claims for unfair dismissal and breach of statutory rights, such as equality rights or protection from discrimination. The Employment Tribunal is divided into 10 regions in England and Wales, of which Wales is one under the leadership of the Regional Employment Judge for Wales. The Employment Tribunal's judicial team in Wales consists of 19 salaried and fee paid employment judges and over 40 non-legal members.

5.25 Fees for making an application to the Employment Tribunal are no longer charged; costs are not generally payable by the unsuccessful party.

5.26 Although employment law is not devolved, the Assembly and the Welsh Ministers have passed legislation which has an impact on employees in Wales and to a degree has afforded them additional rights. This legislation includes:

5.26.1 the Agricultural Wages (Wales) Order 2016, which retains a minimum wage which no longer exists in England;

5.26.2 the Trade Union (Wales) Act 2017, which means that those working in 'important public services' in Wales do not have to achieve the 40% of eligible voters in favour of striking that is required in England;

5.26.3 the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017, which enhance the rights of those who work in domiciliary care; and

- 5.26.4 the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 together with section 77 of the Government of Wales Act 2006 provide for different equality duties in Wales which may have a bearing on employment cases⁶¹⁶.
- 5.27 The Assembly and the Welsh Government decided that such disputes should be heard in the Employment Tribunal and not by the establishment of a separate Welsh tribunal, no doubt because the numbers of such cases were anticipated to be small. The Employment Tribunal therefore applies Welsh legislation in addition to UK legislation when considering employment disputes in Wales⁶¹⁷. It also applies the legal regimes applicable to other matters in Wales such as the separate Welsh regime for the Protection of Vulnerable Adults, the differing organisational structure of the NHS in Wales, different rules on public sector exit payments and the relationship between schools and governing bodies⁶¹⁸.
- 5.28 The Regional Employment Judge for Wales informed us that legislation that impacts upon the work of the Employment Tribunal had been passed without there being appropriate communication between the Welsh Government and the Employment Tribunal about changes in law in Wales and the role of the Employment Tribunal in enforcing that new law. He cited as an example the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 which confer rights on domiciliary care workers to request contracts of employment in certain instances; it appears this occurred because of the lack of a proper system⁶¹⁹. We discuss engagement between the Welsh Government and the judiciary in respect of new Welsh legislation at paragraph [12.140.2](#).
- b) Agricultural Land Tribunal for Wales and Residential Property Tribunal for Wales**
- 5.29 In addition to civil law disputes that are heard by the Employment Tribunal, other civil law disputes in Wales are also determined by specialist tribunals. Disputes relating to agricultural land and some disputes relating to residential property are determined by the

616 For example, the Regulations require Welsh public bodies to publish an objective and an action plan in relation to addressing any gender equality pay gap. There is no similar requirement placed on English and non-devolved public bodies.

617 OE037 Regional Employment Judge Barry Clarke: 6.

618 WS182 Regional Employment Judge Barry Clarke: 6.

619 OE037 Barry Clarke: 6.

Agricultural Land Tribunal for Wales and the Residential Property Tribunal for Wales. All who sit on these tribunals are fee paid and specialists in the area of law with which each tribunal is concerned. Currently, the volume of work in these tribunals does not require the appointment of full-time judges.

- 5.30 The Agricultural Land Tribunal for Wales is an independent tribunal⁶²⁰ for disputes relating to agricultural tenancy agreements and drainage disputes. There have been discussions as to whether the jurisdiction of the Tribunal should be extended to other types of agricultural law disputes. There are no fees for making an application to the Agricultural Land Tribunal for Wales. An order for costs is not usually made against an unsuccessful party, although such an order can be made in limited circumstances.
- 5.31 The Residential Property Tribunal for Wales is an independent tribunal⁶²¹ to resolve disputes relating to private rented and leasehold property. It is made up of Rent Assessment Committees, Leasehold Valuation Tribunals and Residential Property Tribunals. Despite the existence of this Tribunal, a significant volume of cases relating to some types of landlord and tenant disputes are heard by the courts, as we explain at paragraph [5.33](#).
- 5.32 Fees⁶²² have to be paid in some, but not all⁶²³, applications to the Residential Property Tribunal for Wales. On occasions where an application is transferred to the Tribunal from the County Court, any fees payable will be adjusted to take account of any fees that have already been paid to the County Court. Full details are available on the Tribunal's website⁶²⁴. An order for costs is not usually made against an unsuccessful party except in limited circumstances.
- 5.33 The jurisdictional division between the courts and the Residential Property Tribunal for Wales is complex. The most important jurisdiction of the County Court relates to applications for possession. The Tribunal deals with a broad range of cases relating to fair rents, leasehold disputes, licensing of houses in multiple occupation and selective

620 *Agriculture Act 1947* s73 with a jurisdiction which also covers the *Agricultural Holdings Act 1986* and the *Land Drainage Act 1991* s28 and 30.

621 Established by the *Housing Act 2004* but its predecessor pre-dated devolution.

622 Application fees, where payable, range from £50 to £150. Hearing fees, where payable, are £150.

623 Applicants in receipt of certain income related benefits may be eligible for a waiver of fees.

624 Residential Property Tribunal (2014) *Application and hearing fees for LVT and RPT Disputes*.

licensing of other residential property. However, in the Housing (Wales) Act 2014 the Assembly designated the County Court as being the appropriate forum for resolving most disputes which arise under that Act. Similarly, the Renting Homes (Wales) Act 2016 designated the County Court as the forum for determining disputes, although as we have explained this Act is not yet fully in force⁶²⁵. There is a potential for the Residential Property Tribunal to deal with these cases but it has been decided by the Welsh Government that these cases should continue to be dealt with by the County Court because the significant increased caseload would have a substantial impact on the Tribunal.

- 5.34 In November 2018, the UK Government consulted on whether a specialist housing court would be better for resolving housing disputes⁶²⁶. Demand in respect of housing disputes in the County Court is high. Although not all District Judges or Deputy District Judges are specialist in housing cases (which may have an impact on the efficient handling of such cases), there are many District Judges sitting in Wales who have specialist housing law knowledge. This consultation closed in January 2019 and responses are being analysed.
- 5.35 Although housing law is fully devolved to Wales, neither the Welsh Government nor the Assembly has, to date, considered trying to consolidate the jurisdiction for housing disputes in one court or tribunal.

4. Rights of appeal

- 5.36 The system for appeals is complex. In the case of court decisions in the County Courts, appeals from District Judges generally go to Circuit Judges and appeals from Circuit Judges to a High Court Judge. Appeals in the High Court go to the Court of Appeal of England and Wales. Although it aims to sit twice a year in Cardiff, most appeals are heard in London⁶²⁷. The Court of Appeal Civil Division heard 41 applications and 12 appeals in Wales in 2016-17⁶²⁸. The Civil Division did not sit in Wales during the court year of 2017-2018 or in 2018-2019. Again we have not been given any explanation and it is not clear why this is so. HMCTS could not tell us the number of applications or appeals originating from courts in Wales during the last year that could have been heard had the Civil Division sat in Wales.

⁶²⁵ WS180 District Judge Hywel James: 3.

⁶²⁶ Ministry of Housing, Communities and Local Government, *Considering the case for a Housing Court*.

⁶²⁷ Gov.uk [Court of Appeal Civil Division](#).

⁶²⁸ The figures for the Court of Appeal Criminal Division are in para 4.163.

- 5.37 In the England and Wales tribunal system, most appeals go to the Upper Tribunal and then can go to the Court of Appeal of England and Wales. Appeals from the Employment Tribunal go to the Employment Appeal Tribunal before the Court of Appeal. Appeals from the Court of Appeal of England and Wales go to the Supreme Court of the United Kingdom.
- 5.38 Appeals from the Agricultural Land Tribunal for Wales and the Residential Property Tribunal for Wales lie to the Upper Tribunal which is part of the tribunal system for England and Wales. The Law Commission in its forthcoming project on Welsh tribunals should consider and recommend a coherent system of appeals from these tribunals and all other Welsh tribunals.

5. Alternative dispute resolution

- 5.39 Some parties choose to resolve their civil disputes through Alternative Dispute Resolution (ADR) processes – a general term that covers arbitration, mediation, expert determination, conciliation and negotiation – that are used sometimes as alternatives to court proceedings, but also used during court proceedings to settle the proceedings. ADR can also be used to improve access to dispute resolution particularly for individuals and small businesses⁶²⁹. The parties to the dispute generally have to pay for this method of dispute resolution⁶³⁰.
- 5.40 Arbitration involves either a single arbitrator or a panel of three hearing both sides of an argument and reaching a decision on the matter. Mediation is a process through which a mediator helps two parties to agree a settlement. A growing number of practising lawyers act as arbitrators and mediators. Recourse to arbitration or mediation is reasonably common when the parties involved in a dispute are legally represented. However, it appears to be much less common when one or more of the parties is not legally represented, though data on this is not recorded.

⁶²⁹ OE012 Alyson Houghton: 2.

⁶³⁰ A typical fee for a full day's mediation in Wales would be £700-£1000 a day per party with an hourly continuation rate of about £100; for mediation where the issues involved sums of £5000 or less, an hourly rate of £50 was charged: OE012 Elizabeth Ashford: 4.

- 5.41 There can be advantages for parties if they use ADR. It can be a quick and cost effective option, particularly for higher value disputes, reducing legal costs and avoiding court fees.
- 5.42 ADR can also allow parties to explore other issues between them in a way that might not be explored in formal litigation. Some ADR (such as mediation) can take place anywhere where there is a meeting room. Justice can therefore be available more locally than through the court system. This is of increasing significance following court closures in Wales (as set out in paragraphs 8.5 and following) and the consequent difficulties in attending court. This is explored in paragraphs 8.34 and following. However, the position is more problematic for low value disputes where, for example, it may not be cost effective for arbitrators and mediators to travel. Telephone and video conferencing can be used to deal with lower value disputes but this needs an adequate infrastructure in place to support the provision of ADR services remotely⁶³¹. On the evidence provided to us, it appears the court service small claims mediation service, which is provided without charge, is effective for low value disputes but that demand for the service exceeds the capacity available to meet it⁶³².
- 5.43 There is the capacity and expertise across Wales to provide ADR services, though appropriate Welsh language skills for arbitrators and mediators can be an issue in areas where parties are more likely to prefer using the Welsh language to settle their disputes⁶³³. There are some arbitration and mediation bodies in Wales including the Chartered Institute of Arbitrators and the Association of Wales and Border Counties Mediators and other organisations that provide information about mediators and the role of mediation. Information is also available from the National Mediation Providers Association.
- 5.44 Although attempts have been made to make more people aware of arbitration and mediation, the evidence of Wales and the Borders Mediators was that when they had visited courts to explain the availability of local mediation in Wales, they were generally met with the question “what is mediation?”. Unsurprisingly, these attempts failed, in large part also due to the lack of a proper linkage between court processes and the availability of local mediation services. There are

631 See recommendation 20.

632 OE012 Brian Evans: 3.

633 OE012 Edward Perkins: 3.

silos of good knowledge relating to ADR services, but providers are not well joined up⁶³⁴ across Wales.

- 5.45 The viability of establishing a mediation centre of excellence in Wales was investigated in 2013 and 2014 by Skills for Justice⁶³⁵ through grant funding from the Welsh Government as part of the Sector Priorities Fund Pilot programme funded by the Welsh Government and the European Social Fund to pilot strategic project activity with Sector Skills Councils⁶³⁶. Skills for Justice led and ran the project. Stage one of the project considered whether a hub should be established at Cardiff or Swansea (with spokes of the hub at Citizens Advice offices across Wales) with the objective of mainstreaming mediation and other alternative dispute resolution in Wales. In stage two of the project, Skills for Justice considered various business models for a wider dispute resolution centre and proposed a hub in Cardiff with spokes in Swansea and Wrexham. Skills for Justice recommended that investment in the centre should be found between a consortium of members with UK wide representation and supported by the Ministry of Justice and the Welsh Government. Consideration was given to taking forward the proposals developed by Skills for Justice, but there was insufficient funding from the Welsh Government and the EU and insufficient time remaining within the programme to do so. Unfortunately this was never publicly explained. We return to this at paragraph [12.71](#).

6. Dispute resolution by ombudsmen

- 5.46 Ombudsmen services have been developed and provide another ADR method for individuals and small businesses seeking to resolve disputes with businesses and utilities. They are generally funded by the business or utility in question and are a free service for the consumer.
- 5.47 The Financial Ombudsman Service, for example, deals with complaints against all regulated financial businesses and others that choose to opt in to its jurisdiction. The Financial Ombudsman Service receives across the UK approximately half a million complaints a year that relate to payment protection and financial product mis-selling, including insurance, pensions and current accounts⁶³⁷. The service is free to

634 OE012 Elizabeth Ashford: 3.

635 Skills for Justice (2014) *The Viability of a Mediation Centre of Excellence in Wales – Phase 1 Report*.

636 The grant was paid by the Welsh Government to Skills for Justice under Part II of the Learning and Skills Act 2000.

637 OE042 Debbie Enever: 1.

consumers. The evidence of Professor Christopher Hodges⁶³⁸ was that the UK has some of the most advanced and effective consumer ombudsmen in the world, covering a wide range of sectors from financial services to rail services (see paragraph 5.50 below).

- 5.48 In addition to consumer ombudsmen, there are ombudsmen dealing with administrative complaints. The Public Services Ombudsman for Wales deals with complaints in respect of public services in Wales which we consider at paragraph 6.52.
- 5.49 Ombudsmen services have advantages compared to courts, tribunals and other forms of ADR, all of which perform what can be described as a strict dispute resolution function. A well designed ombudsman mechanism is not only quick, efficient and speedy at dispute resolution but can also perform several other functions. These include providing consumer and trader information, a helpline, collection and aggregation of data, feedback of issues to traders, the market and regulators, and quasi-regulatory intervention and support of traders in changing their behaviour and culture. In addition to the provision of these services without a fee, there are also cost advantages for complainants as matters are dealt with by an ombudsman service which replaces those advisors and professionals involved in, for example, formal litigation before a court.
- 5.50 Although ombudsmen services complement other means of dispute resolution, the evidence given to us was that the overall system is too disjointed and complicated⁶³⁹. It is not always clear to people what they should do to resolve their disputes. Problems could escalate if there were not clear routes available for them to seek information and advice about how to tackle these problems. This was recognised by the Low Commission on the future of advice and legal support⁶⁴⁰. It has been suggested to us⁶⁴¹ that there should be a single portal and a single procedure for those seeking advice, assistance and dispute resolution, starting with easily accessible face-to-face advice and online systems to deal with issues at an early stage, ombudsmen services dealing with unresolved issues leaving tribunals and courts as a last resort for unresolved matters⁶⁴².

638 Professor Christopher Hodges is a Professor of Justice Systems and head of the Swiss Re Research Programme on Civil Justice Systems, Centre for Socio-Legal Studies, University of Oxford.

639 OE042 Professor Christopher Hodges: 2.

640 Low Commission, (2014) *Tackling the Advice Deficit: A strategy for access to advice and legal support on social welfare law in England and Wales*.

641 OE042 Professor Christopher Hodges: 2.

642 WS179 Resolver: 2, OE041 Steve Bartley: 4.

- 5.51 Some ombudsmen services perform other functions including the provision of information and advice, signposting and quasi-regulatory intervention that helps to support ethical behaviour; they are often mandated to decide cases on the basis of what is fair. Ombudsmen can play a major role in supporting ethical market behaviour. The basis of their decision making is what seems fair to the ombudsman in the context of society and of the legal and regulatory rules.

Part 3: Coordination and rationalisation

- 5.52 The evidence we received highlights a number of ways in which the current system of civil justice should be reformed so that it can provide effective justice for the people of Wales.

1. Coordination

- 5.53 ADR, including in its widest sense ombudsmen services, provides a range of alternative options which may be more appropriate for people and businesses to use to resolve civil law disputes. It provides more accessible dispute resolution in terms of cost, flexibility of process and location compared to a court or tribunal. There is therefore significant potential to contribute to providing effective access to justice in Wales by promoting the use of ADR in its widest sense. As we have explained, there is a lack of information and understanding about the role that ADR can play. Little is being done to promote ADR. The lack of proper coordination between the courts, tribunals and providers of ADR is an issue that needs to be resolved.
- 5.54 Previous initiatives to promote ADR services have been short term and have stopped when funding has ended. For ADR to become a more widely used alternative to litigation before the courts and tribunals, recognised and universal standards for ADR professionals should be established to provide confidence in ADR services. It should be better promoted and a consistent method of facilitating access to it should be established.

- 5.55 A properly developed structure is required to ensure that there is a cohesive and coordinated system for all forms of dispute resolution – courts, tribunals, ADR and ombudsmen – and that they are publicised, and promoted so the public have a clear understanding of where to go to have their disputes resolved.

We recommend:

Dispute resolution before courts, tribunals, alternative dispute resolution and ombudsmen, as well as dispute resolution in respect of administrative law, should be promoted and coordinated in Wales through a body chaired by a senior judge.

2. Rationalisation

- 5.56 The processes of the court and tribunal system are not easy to understand without advice. Many courts and tribunals have come about in part as a matter of history and in part out of a desire to provide simpler and cheaper means of dispute resolution. The changes to legal aid introduced in 2012 have progressively reduced the provision of legal advice made available by the state to the most disadvantaged in our society. The system has never been rationalised, it is unduly complex and it should be better aligned with legal aid. In relation to housing disputes, for example, a single court or tribunal is needed to more efficiently deal with such matters. Even though the UK Government has not yet reached a decision on a single housing court, the reasons for providing all decisions to be made by a single judicial body are compelling. A single judicial body would be able to develop expertise and an overview of all the different issues that will arise on housing. The creation of the single court would also facilitate access to justice to those with housing disputes. Our analysis is that the current structure for resolving disputes demonstrates that there is a need to unify courts and tribunals, both for civil justice and administrative justice.

We recommend:

Courts and tribunals which determine disputes in both civil and administrative law should be under one unified system in Wales.

3. A long-term solution

- 5.57 We have referred at paragraphs [5.47](#) to [5.50](#) to the evidence of Professor Hodges about proposals for a more comprehensive approach to ombudsmen services as a means of providing an effective low cost method of dispute resolution for smaller value cases. It is clear that the costs of court, tribunal and ADR methods of resolution are disproportionately expensive to the sums in issue in many disputes. Consequently, there is presently often no effective remedy for the citizen.
- 5.58 This is not consistent with access to justice, the Rule of Law and a fair society. It may well be the case that the online procedure being developed by the courts will remedy this deficiency if the fee for use is no more than nominal and assistance is provided to enable people to use it without recourse to lawyers. However, it is not possible at the present time to evaluate whether this will be the case; nor is the work on an ombudsmen service at a sufficiently advanced stage for us to consider what might be done to test its viability or to take it forward or to see how it could relate to the online procedure.

We recommend:

The feasibility of a low cost and effective resolution method for civil disputes through the use of a comprehensive ombudsmen scheme, taking into account the online court, should be examined in Wales.



CHAPTER 6

*Administrative justice
and coroners*

6. Introduction

- 6.1 Administrative justice is the part of the justice system most likely to impact upon the lives of people in Wales⁶⁴³ as it concerns decision making by public bodies and the rights of individuals to challenge those decisions. Public bodies do not make decisions in a vacuum. They are governed by and must apply laws which are derived from statutory provisions and the common law of England and Wales. It is fundamental to the Rule of Law that those affected by decisions made by public bodies have appropriate means for challenging those decisions if they believe them to be unlawful or unfair.
- 6.2 In Part 1 of this Chapter we describe briefly the ambit of administrative law and in more detail the differences in that law between Wales and England. In Part 2 of this Chapter we describe the various courts, tribunals and other bodies that deal with administrative law disputes and make our recommendations for change.
- 6.3 In Part 3 of this Chapter we consider the role of coroners who are judicial office holders who investigate the causes of death. In so doing they are carrying out a public function. Any person or organisation aggrieved by a decision of a coroner may seek to challenge it by way of judicial review in the Administrative Court. If a coroner holds an inquest, the conclusion as to cause of death consequent upon the inquest may be challenged in the Administrative Court under a specific statutory process. There is, therefore a link between the work undertaken by coroners and the work of the Administrative Court.

643 *WS067 Bangor Public Law Research Group: 1.*

Part 1: Substantive administrative law

1. General principles

- 6.4 Decision making by public bodies in Wales is governed by statutes and secondary legislation passed by the UK Parliament and Ministers, enactments and secondary legislation passed by the Assembly and Welsh Ministers and by common law principles which have evolved as part of the law of England and Wales. In a report of this nature, it is not possible and, in any event, unnecessary to identify the various legal provisions which may be applicable when Welsh public bodies make decisions affecting the public, either at large or as individuals.
- 6.5 It is worth stressing two overarching principles. First, where the power to make a decision is conferred by a statutory provision, the decision maker must not exceed his or her statutory powers. The decision must be made in accordance with its statutory context or framework. Second, it is recognised that a decision maker must act fairly when making a decision. What constitutes fairness in a given case will depend upon the context in which a decision is being made. However, the duty itself will invariably arise. These two overarching principles will apply with equal force whether the decision maker is based in England or Wales.
- 6.6 In addition, the Welsh Ministers must not act in ways which are incompatible with the European Convention on Human Rights, as largely incorporated into UK law by the Human Rights Act 1998⁶⁴⁴. This is also the case in respect of other public bodies in Wales⁶⁴⁵. Similarly, provisions in Assembly Acts would be outside legislative competence in so far as they are incompatible with Convention Rights. An Assembly Act may not amend the Human Rights Act⁶⁴⁶. To reinforce this, so far as it is possible to do so, courts and tribunals must interpret legislation in a way which is compatible with Convention Rights.

⁶⁴⁴ *op cit n.158: s81.*

⁶⁴⁵ *Human Rights Act 1998 s6.*

⁶⁴⁶ *op cit n.158: Schedule 7B.*

2. Welsh legislation

- 6.7 The Assembly has passed legislative provisions specific to Wales which are directly relevant to the decision making processes of Welsh public bodies. It is, for example, within the competence of the Assembly to legislate in respect of health, housing, education, town and country planning and the environment. Since 2014 the Assembly has passed a number of important Acts in these fields, namely, the Regulation and Inspection of Social Care (Wales) Act 2016, the Public Health (Wales) Act 2017, the Housing (Wales) Act 2014, the Additional Learning Needs and Education Tribunal (Wales) Act 2018, the Planning (Wales) Act 2015, the Environment (Wales) Act 2016 and the Historic Environment (Wales) Act 2016. These Acts will provide the statutory framework or context for much decision making in these fields.
- 6.8 The Assembly has also passed the Future Generations Act, to which we have already briefly referred at paragraph 1.13. This Act provides an overarching framework⁶⁴⁷ for decision making by all Welsh public authorities, and as its title implies, it imposes upon public bodies specific duties for setting their objectives and planning how to achieve those objectives to consider the well-being of future generations. The Act requires public bodies to take account of seven shared goals⁶⁴⁸ and five common ways of working⁶⁴⁹. It has attracted a great deal of interest outside Wales⁶⁵⁰.

⁶⁴⁷ OE039 Sophie Howe, Future Generations Commissioner for Wales: 1.

⁶⁴⁸ *A prosperous Wales, a resilient Wales, a healthier Wales, a more equal Wales, a Wales of cohesive communities, a Wales of vibrant culture and a thriving Welsh language, a globally responsible Wales.*

⁶⁴⁹ *Long term vision, integrated approach, diversity, collaboration and preventative work.*

⁶⁵⁰ Lord John Bird has [called for legislation](#) akin to the Future Generations Act 2015 to be enacted for the UK.

Figure 36**Overarching framework of the Future Generations Act**

The seven shared goals are:

1. A prosperous Wales
2. A resilient Wales
3. A healthier Wales
4. A more equal Wales
5. A Wales of cohesive communities
6. A Wales of vibrant culture and a thriving Welsh language
7. A globally responsible Wales

The five common ways of working are:

1. Looking to the long-term so that we do not compromise the ability of future generations to meet their own needs.
2. Taking an integrated approach so that public bodies look at all the well-being goals in deciding on their well-being objectives.
3. Involving a diversity of the population in the decisions that affect them.
4. Working with others in a collaborative way to find shared sustainable solutions.
5. Understanding the root causes of issues to prevent them from occurring.

Source: Future Generations Commissioner for Wales

6.9 We have received evidence that the Future Generations Commissioner⁶⁵¹ for Wales lacks proper powers to enforce the legal duties imposed by the Act⁶⁵². The Future Generations Commissioner has powers to conduct reviews into the extent to which a public body is safeguarding future generations. The body so reviewed is under a duty to follow any recommendations made by the Commissioner, unless the body is satisfied that there is good reason not to comply⁶⁵³. However, the Future Generations Commissioner's annual budget is currently £1.4 million. The Commissioner monitors 345 well-being objectives set by 44 public bodies. Therefore the Commissioner, because of limited resources, needs to be quite specific in terms of what can be done⁶⁵⁴. There can be little doubt that the Future Generations Commissioner should be adequately resourced to be able to properly exercise the powers under the Act.

⁶⁵¹ *The roles of the Commissioner and the Auditor General are summarised in the House of Lords briefing [Policymaking and Future Generations](#): 5.*

⁶⁵² *OE039 Alun Thomas: 2.*

⁶⁵³ *Future Generations Act 2015 s21-22.*

⁶⁵⁴ *OE039 Sophie Howe, Future Generations Commissioner for Wales: 1.*

- 6.10 The Auditor General for Wales is also required to examine public bodies to assess the extent to which they have acted in accordance with the Future Generations Act⁶⁵⁵. The Auditor General has carried out an initial review of how public bodies have responded to the Future Generations Act. The Auditor General is required to provide a report on his examinations to the Assembly by 2020.
- 6.11 The Future Generations Act has raised questions whether (1) the principles are purely aspirational and therefore without a mechanism for enforcement, or whether (2) the principles give rise to duties enforceable by administrative measures through the Future Generations Commissioner or Auditor General for Wales, or whether (3) the principles give rise to duties which are justiciable and directly enforceable by the courts.
- 6.12 In two claims brought against Welsh public authorities the Administrative Court in Cardiff considered in 2019 the second and third questions⁶⁵⁶. In each case, the public authority under challenge argued that the well-being duty placed on public bodies by the Act was too general and aspirational in nature to be directly enforceable through judicial review. In each case, the court accepted this argument and refused permission to apply for judicial review. Further, in *R(B) v Neath Port Talbot Council* the judge also relied upon the existence of the alternative enforcement regimes under the Act through the Future Generations Commissioner for Wales and the Auditor General for Wales as supporting the reasoning that judicial review is not the appropriate means for individuals or groups of individuals to enforce the duties conferred on public bodies by the Act.
- 6.13 It is just over four years since the Future Generations Act received Royal Assent. The Act is very much in its infancy in terms of implementation and in its impact on administrative justice in Wales. The Act's interpretation is a matter for the courts. If any decisions by the courts on interpretation are not ones the Assembly considers correctly interpreted its intention, it is always open to the Assembly to pass new legislation making its intention clear.

655 *Wales Audit Office (2018) Accountability for Future Generations: Sharing the learning so far.*

656 *R(B) v Neath Port Talbot Council and R (the British Association for Shooting and Conservation and Others) v Natural Resources Wales.* CO/4740/2018; and CO/4881/2018.

6.14 Whether the failure by a public body to take account of relevant material considerations in its decision making, such as the five ways of working⁶⁵⁷ set out in section 5(2) of the Act, will give rise to grounds for judicial review improper process is a question that has not yet been authoritatively determined. However, at the very least there must be a prospect that Dr Sarah Nason’s analysis of the current position is correct when she asserts that the Future Generations Act 2015 “... *is an example of administrative procedure law seeking to control and influence administrative decision making, but which does not endow individuals with legally enforceable rights against public bodies.*”⁶⁵⁸

3) Divergence

6.15 It is difficult for us to assess the full extent to which there is a divergence in the substantive administrative law between the law applied in Wales and that applied in England. We have little doubt that in some areas of law (planning law being a good example) there are differences in both the primary and secondary legislation applicable in Wales and in England and also in what is sometimes referred to as ‘soft law’, namely guidance issued by government departments. Whatever the current state of divergence, it seems safe to conclude that it is in the field of substantive administrative law that the scope for divergence has the most potential in the short term⁶⁵⁹.

⁶⁵⁷ *Future Generations Wales Act 2015* s5 provides that in acting in accordance with the sustainable development principle, public bodies must take account of the ‘five ways of working’: long-term; integration; involvement; collaboration; and prevention.

⁶⁵⁸ Dr Sarah Nason, *The “New Administrative Law” of Wales*, forthcoming Public Law article: 8.

⁶⁵⁹ Referring to the law of England and the law of Wales, Pill LJ has said “There are also significant divergences in areas of public law and some divergences in other areas of law” *Re X and Y (Children)* [2012] EWCA Civ 1500 at para 70.

Part 2: Dispute resolution

- 6.16 The current system of challenging public bodies in Wales is complex. Some decisions can be challenged only in the courts of England and Wales; others must be challenged in tribunals specifically constituted to deal with challenges from specific public bodies. Some of the tribunals are UK or England and Wales; and some are Welsh tribunals. Outside the court or tribunal system persons aggrieved by an administrative decision may be able to seek redress by requesting that the decision in question is reconsidered by the public authority which made the original decision or considered again by an appeal panel constituted by the public body. A person aggrieved by an administrative decision may also complain to an ombudsman.
- 6.17 In the paragraphs which follow in this Part we outline in a little more detail these different means of challenging decisions made by public authorities.

1. The Administrative Court

- 6.18 Challenges to the decisions of public bodies which do not fall within the jurisdiction of individual tribunals can be brought in the Administrative Court, a specialist court of the High Court of England and Wales, constituted to deal with challenges to the decisions of public bodies. Every year this court determines thousands of disputes over a very wide spectrum of legal topics including immigration and extradition, the exercise of police powers, alleged unlawful detention, taxation, education and housing. In 2014, a specialist Planning Court was set up by the judiciary to deal with all challenges relating to planning and other disputes relating to environmental issues. The Planning Court, part of the Administrative Court, is overseen by the Planning Liaison Judge. It deals with all judicial reviews and statutory challenges involving planning matters. The Planning Court can sit in Cardiff and in any of the other regional Administrative Courts. This is particularly important given the often local nature of cases involving planning matters.
- 6.19 Until 1999, challenges to the decisions of public bodies of England and Wales could be issued only at the Administrative Court in London (at the Royal Courts of Justice) and those challenges were heard almost exclusively in London.

- 6.20 Following the enactment of the Government of Wales Act 1998, a process was set in train through which challenges brought in the Administrative Court to the decisions of Welsh public bodies could be heard in Wales. Over the next decade cases concerning the decisions of Welsh public bodies were often heard in Wales although that was not invariably the case.
- 6.21 In 2009, the Administrative Court in Wales was established as part of a wider reform by the judiciary designed to facilitate access to justice. Since that time, it has been possible to issue all cases against Welsh public bodies in the Administrative Court Office based at the Cardiff Civil Justice Centre and for such cases to be managed and heard in Wales. Between 1 May 2009 and 30 April 2016 the court received 1,029 applications⁶⁶⁰. There has been something of a decline in the number of applications issued in the Administrative Court Office in Cardiff. In 2017, there were 123 issued. In 2018, the number fell to 114. In 2019, for the year to 31 July, 68 applications were issued.
- 6.22 The Administrative Court Office in Cardiff does not only administer claims originating in Wales. It also issues and administers cases arising from the South West of England. It is estimated that around half of all judicial review applications received by the Administrative Court Office in Cardiff relate to claims originating outside Wales⁶⁶¹.
- 6.23 A small number of cases litigated in the Administrative Court in Wales are determined by a Divisional Court which is usually constituted as a judge of the Court of Appeal of England and Wales sitting with a judge of the High Court of England and Wales. However, most cases are heard by a single judge who is either a High Court Judge or a deputy High Court judge.
- 6.24 As we have explained at paragraph [2.73](#), there is on each circuit an Administrative Court Liaison Judge, though sometimes the role will be carried out by a Presiding Judge. The Administrative Court Liaison Judge is responsible for managing all the important administrative law cases arising in Wales and will try many of them. There is no fixed term for this post and since 2009 there have been six judges in this role. Some of the judges have had little prior knowledge of, or connection with, Wales.

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WS067 Bangor Public Law Research Group: 11.
WS067 Bangor Public Law Research Group: 12.

6.25 Claimants in administrative law cases which can be issued in Wales may choose to issue their claims in Wales, but there is no obligation upon them to do so. Under the current Civil Procedure Rules a claimant may issue a claim in any part of England and Wales. The evidence that we have received makes it clear that claims are often issued in other Administrative Court centres in Birmingham, Leeds, Manchester or London, even where they seek to challenge a decision of a Welsh public body⁶⁶². The total number of cases issued in the Administrative Court in Wales does not therefore represent the total number of cases issued against Welsh public bodies⁶⁶³. In 2017, there were 282 such claims issued outside Wales even though they involved a challenge to public authorities in Wales. Of those, 21 were transferred to Wales for management and/or hearing. In 2018 the comparable figures were 252 and 79 respectively⁶⁶⁴. As shown in Figure 37, in 2017 and 2018 only 44% of challenges to public authorities in Wales were heard in Wales.

Figure 37

Challenges to Welsh public authorities

| | ISSUED IN WALES | ISSUED OUTSIDE WALES | TRANSFER TO WALES | HEARD IN WALES | HEARD OUTSIDE WALES |
|-------|-----------------|----------------------|-------------------|----------------|---------------------|
| 2017 | 123 | 282 | 21 | 144 | 261 |
| 2018 | 114 | 252 | 79 | 193 | 173 |
| Total | 237 | 534 | 100 | 337 | 434 |

Source: Administrative Court Office Cardiff

6.26 Some categories of administrative law cases must still be heard at the Royal Courts of Justice in London whether or not they involve a public body outside London. For example, certain types of challenge to inquests conducted by coroners can only be brought with the consent of the Attorney General of the UK Government and, if consent is given, the challenges must be issued and heard in London.

6.27 In 1999 there was a judicial expectation that cases against Welsh public bodies should be heard in Wales⁶⁶⁵. In 2009, the judiciary put in place procedures for cases which were issued in England to be considered for transfer to Wales for management and hearing. We have set out in paragraph [6.25](#) the number of transfers made. For the future,

662 OE033 Dr Sarah Nason: 3.

663 WS120 David Gardner: 1.

664 Information provided by the Administrative Court Office Cardiff to the Commission.

665 [Para 6.19 et seq.](#)

there should be a mandatory requirement that cases brought in the Administrative Court against Welsh public bodies are issued and heard in the Administrative Court in Wales⁶⁶⁶. Provision would be required to enable cases to be issued in North Wales. Indeed we would go further and suggest that there are a number of positive reasons why these cases should be heard in Wales. First and foremost, there is a clear public interest in cases involving Welsh public authorities being heard in Wales. Such cases are likely to be publicised more fully if heard locally and therefore subject the body that has made the decision to greater scrutiny and accountability. All those persons or bodies directly affected by the decision under challenge are far more likely to engage with the case if the case is heard locally. Second, the Administrative Court in Wales was set up specifically to further the aim of promoting access to justice. Maximum use of the Court is obviously desirable. Third, the costs of proceeding locally are likely to be less than proceeding in London. Fourth, there are also indirect benefits if such cases are heard in Wales. These include developing specialism in the legal sector in Wales with the consequential boost to the legal economy and a wider contribution to the Welsh economy.

We recommend:

It should be compulsory under the Civil Procedure Rules for cases against Welsh public bodies which challenge the lawfulness of their decisions to be issued and heard in Wales.

2. The County Court

6.28 By far the greatest number of cases issued in the County Court concern civil law and family law disputes⁶⁶⁷. In addition to the jurisdiction of the County Court to determine private law disputes, statutes passed by the UK Parliament and the Assembly provide for the County Court to have jurisdiction to determine disputes arising in consequence of administrative decisions of local authorities. This is most notable in the field of housing law. The decision to confer jurisdiction upon the County Court in such cases was pragmatic. The numbers of housing cases in the Administrative Court were significant and, in consequence, taking up judicial time and resources which were needed for other more complex areas of work. Further, at that time it was not thought appropriate to confer such a jurisdiction upon a tribunal.

⁶⁶⁶ Subject possibly to a judicial discretion in exceptional circumstances.
⁶⁶⁷ Chapter 5, Chapter 7.

- 6.29 However justifiable it may have been to confer jurisdiction upon the County Court in the past in respect of administrative decisions made by local authorities, it is difficult to understand why this trend has continued. Yet it has in Wales. The Housing (Wales) Act 2014 contains provisions relating to the supply, quality and standard of housing in Wales and places a duty upon local authorities to work with people at risk of homelessness. Under the Act, a person aggrieved by a decision of a local authority can lodge an appeal on specified grounds⁶⁶⁸. The appeal is to the County Court against decisions made by a local housing authority. It is probably too soon to assess the impact of these provisions given that the Act has been in force since 2016. Evidence suggests, however, that this route of seeking administrative justice is rarely pursued⁶⁶⁹.
- 6.30 At paragraph [5.35](#), we pointed out that although housing law is fully devolved to Wales, no steps have been taken to consolidate the jurisdiction for housing disputes into one court or tribunal. At paragraph [5.56](#) we recommend that the courts and tribunals should be brought under one unified system. The adoption of this recommendation would enable the courts and tribunals to rationalise the jurisdiction and ensure that all cases relating to housing and homelessness were heard by judges who had knowledge and experience of housing and homelessness in Wales.

3. The UK tribunals

- 6.31 A large number of administrative decisions are challenged every year in tribunals which operate throughout the UK. Particular statutes of the UK Parliament confer rights of appeal to particular tribunals. Following Lord Justice Leggatt's report in 2003, extensive reform of the UK tribunals and their administration was undertaken, as we have set out at paragraph [2.75](#).

⁶⁶⁸ *The Housing (Wales) Act 2014* s88.

⁶⁶⁹ WS067 Bangor Public Law Research Group: 11 citing Anya Anya Ahmed et al (2017) *Post-implementation evaluation of Part 2 of the Housing Act (Wales) 2014: Interim Report*: 104-106.

- 6.32 The two most important UK tribunals which operate in Wales (in terms of the numbers of cases dealt with) and which hear appeals from administrative decisions made by or on behalf of UK Ministers are:
- 6.32.1 The First-tier Tribunal (Immigration and Asylum) Chamber, which hears appeals from a variety of administrative decisions made by and on behalf of the Secretary of State for the Home Department relating to immigration issues and asylum applications. Cases involving persons residing in Wales may be, and usually are, heard in Wales. The cases heard in Wales are determined by salaried or fee paid tribunal judges with expertise in this discrete area. A salaried judge is appointed as the lead judge for Wales. Most but not all appeals involve a fee (£80-140 for each person appealing), although the judge may order the Home Office to pay a “fee award” to cover this fee if the case is successful. Other than this, costs are not normally payable by the unsuccessful party. Most non-asylum immigration cases are not eligible for legal aid.
- 6.32.2 The First-tier Tribunal (Social Security and Child Support) Chamber, which hears appeals relating to a wide variety of issues related to the provision of social security. Cases involving persons resident in Wales are usually heard and determined in Wales. Such cases are determined by salaried and fee paid judges with expertise in this area of the law. When judges sit with other professionals, for example doctors, those other professionals will have relevant expertise. This tribunal, too, has a lead judge for Wales. No fees are charged to apply to this tribunal. Travel expenses may be claimed for those attending hearings.
- 6.33 Another very important UK tribunal is the Employment Tribunal as described in paragraph 5.24. Although its principal role relates to disputes between private persons (employees and employers), it has a small jurisdiction which relates to administrative decisions of public bodies⁶⁷⁰.

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The tribunal has jurisdiction to hear appeals against notices issued by health and safety legislation, notices issued in respect of underpayment of the National Minimum Wage and refusals by the Secretary of State to award certain payments arising from the insolvency of employers.

4. Welsh tribunals

- 6.34 There are five Welsh tribunals which hear challenges to decisions made by Welsh public bodies. These are in addition to the Agricultural Land Tribunal for Wales and the Residential Property Tribunal for Wales, which we have described at paragraphs 5.29 to 5.33. All the Members of the tribunals are fee-paid, save for the President of the Mental Health Review Tribunal who is part time. All these tribunals have legal and lay or specialist members.
- 6.35 The Mental Health Review Tribunal for Wales⁶⁷¹ safeguards patients who have had their liberty restricted under mental health legislation. The Tribunal reviews the cases of patients who are detained in a hospital or living in the community subject to a conditional discharge, community treatment or guardianship order. It deals with well over 2,000 cases each year, with many of the hearings taking place within the hospital in which the patient is detained.
- 6.36 The Special Educational Needs Tribunal for Wales⁶⁷² deals with appeals against local authority decisions about support for children and young people with additional learning needs (the bulk of the caseload); it also hears cases relating to disability discrimination in schools. Whilst cases are commonly brought by parents or guardians of a child or young person, children and young people are able to bring their own cases. In the financial year 2018-2019 there were 139 cases issued in this Tribunal. Once the Additional Learning Needs and Education Tribunal (Wales) Act 2018 is brought into force, the Special Educational Needs Tribunal will be replaced by the Education Tribunal. There will be a 3-year transitional period in which both tribunals operate, as children are moved onto the new additional learning needs framework introduced by the Act. The transitional period is due to commence in September 2020. The codes and regulations to be made under the Act are in development.

671 *Mental Health Act 1983 as amended by the Mental Health Act 2007.*

672 *Established in 2003 by Section 333 (1ZA) of the Education Act 1996 but predecessor pre dated devolution.*

- 6.37 The Registered Inspectors of Schools Appeal Tribunal and the Registered Inspectors of Nursery Education Appeal Tribunal⁶⁷³ exists to take appeals in relation to registered inspectors of schools and nursery education, but has had no cases which have resulted in hearings. The current President of the Special Educational Needs Tribunal for Wales was appointed as President of these tribunals in 2007.
- 6.38 The Adjudication Panel for Wales⁶⁷⁴ determines alleged breaches by elected and co-opted members of Welsh county, county borough and community councils and fire and national park authorities against their respective authority's statutory code of conduct. Some cases of alleged breach are referred to the Panel by the Public Services Ombudsman for Wales. Other cases of alleged breaches may be determined by an authority's standards committee and the elected member concerned has a right of appeal to the Adjudication Panel for Wales. Normally, there are no more than a handful of cases referred to this tribunal in any one year.
- 6.39 The Welsh Language Tribunal was established in 2015⁶⁷⁵. It is the only tribunal to be established under Assembly legislation. It deals with appeals against decisions by the Welsh Language Commissioner in relation to the Welsh Language Standards⁶⁷⁶. There are various challenges, appeals and applications for review that can be made, including by a person who has been investigated for an alleged failure to comply with a Standard and in respect of any enforcement action resulting, as set out in paragraph [11.9](#). It has a small caseload.
- 6.40 Although currently the Residential Property Tribunal for Wales is concerned mainly with private law disputes, it also has jurisdiction to determine challenges made on behalf of local authorities under the Housing (Wales) Act 2014. This Act introduced statutory requirements for the registration of landlords and agents. Rent Smart Wales, which is hosted by Cardiff Council but which ensures compliance with the legislation on behalf of all Welsh local authorities, processes and determines landlord registrations. A person aggrieved by a decision has a right to appeal to the Residential Property Tribunal in relation to a decision of Rent Smart Wales as the licensing authority.

673 A single tribunal constituted in accordance with Schedule 3 to the [Education Act 2005](#).

674 Established under Part III of the [Local Government Act 2000](#).

675 [Welsh Language \(Wales\) Measure 2011](#) s120.

676 WS116 Welsh Language Tribunal: 3.

- 6.41 All proceedings before Welsh tribunals are held in public except for those before the Mental Health Review Tribunal and the Special Educational Needs Tribunal.
- 6.42 The caseload varies significantly across the Welsh tribunals. None of the Welsh tribunals charge fees except in the circumstances described in paragraph 5.32 (for some applications to the Residential Property Tribunal). Legal aid is available for any patient involved in a Mental Health Review Tribunal hearing. In the Special Educational Needs Tribunal, appellants may seek government-funded advice through a telephone service introduced under LASPO⁶⁷⁷. This is the only Welsh tribunal where appellants and witnesses may claim some expenses. Costs are not generally payable by the unsuccessful party.

Figure 38**Caseload in the Welsh tribunals 2016-17 to 2018-19**⁶⁷⁸

| TRIBUNAL | 2016-17 | 2017-18 | 2018-19 |
|-----------------------------------------------------|---------|---------|---------|
| Agricultural Land Tribunal for Wales | 17 | 17 | 29 |
| Adjudication Panel for Wales | 3 | 3 | 2 |
| Mental Health Review Tribunal for Wales | 2,034 | 2,028 | 2,046 |
| Residential Property Tribunal for Wales | 130 | 101 | 176 |
| Special Educational Needs Tribunal for Wales | 132 | 131 | 139 |
| Tribunal under section 27 of the Education Act 2005 | 0 | 0 | 0 |
| Welsh Language Tribunal ⁶⁷⁹ | 9 | 4 | 3 |

Source: President of Welsh Tribunals First Annual Report (2019)

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WS071 SNAP Cymru: 5.

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President of Welsh Tribunals (2019) *First Annual Report*.

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Tribunal to deal with the registration of school inspectors in Wales. No tribunal has been constituted and members from the Special Educational Needs Tribunal for Wales are eligible to deal with any cases that arise.

5. Local authority appeals

- 6.43 Sitting outside the jurisdiction of any Welsh tribunal, there is an entirely separate system that deals with appeals against school admissions and exclusions. The Education Act 2002 provides the legal framework for England and Wales; there is subordinate legislation that develops the process in each nation.
- 6.44 In Wales, head teachers, governing bodies, local authorities and independent appeal panels have regard to guidance issued by the Welsh Ministers⁶⁸⁰. Welsh regulations⁶⁸¹ and statutory codes⁶⁸² make provision for the constitution and operation of panels to hear school admission and exclusion appeals. Panels are chaired by a lay person and guidance states that panel members must be impartial.
- 6.45 The 2016 report of the Committee for Administrative Justice and Tribunals, Wales⁶⁸³ noted that “*our preference would be to bring both schools appeals systems into a national Education Tribunal*”, using the expertise of the Special Educational Needs Tribunal for Wales to ensure a “*professional and independent cadre of panel chairs*” and also the availability of annual reports on appeals. The Welsh Government’s response to this report⁶⁸⁴ noted “*the Welsh Government had concluded that the [Special Educational Needs Tribunal] is not the appropriate vehicle for admissions and exclusions appeals*” but did not state why or provide an alternative solution to the issue raised.
- 6.46 In England, the Timpson Review of School Exclusion, commissioned by the Secretary of State for Education, and published in May 2019⁶⁸⁵, did not make any specific recommendations relating to appeals. Under the existing system in operation in England, parents and carers can ask for a permanent or fixed term exclusion to be reviewed by the school governors or academy trustees. In the case of permanent exclusion, review by an independent review panel can also be requested. In the case of a child with additional learning needs, a relevant expert can be requested and where a case is believed to arise from disability discrimination there is a right of appeal to the First-tier Tribunal.

680 Welsh Government (2015) *Exclusion from schools and pupil referral units.*

681 *Education (Admission Appeals Arrangements) (Wales) Regulations 2005, Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, and the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003.*

682 Welsh Government (2013) *School Admissions Appeals Code.*

683 Welsh Government (2016) *Administrative Justice: A Cornerstone of Justice in Wales.*

684 Welsh Government *Response* (2016).

685 *Timpson Review of School Exclusion* (2019).

6.47 We are concerned that school admissions and exclusions appeals panels operate without any kind of judicial scrutiny save in those very rare cases in which an exclusion leads to an application for judicial review. The role of judges in determining disputes relating to the education of pupils has steadily increased over time as functions of public bodies have increased. We consider that a thorough appraisal of the operation of local authority appeal panels and oversight by the President of Welsh Tribunals of their decision making processes is required.

6. Other panels and bodies

6.48 The Valuation Tribunal for Wales⁶⁸⁶ deals with appeals about Non-Domestic Rates and Council Tax. It has about 9000 cases a year and its budget is over £1 million. It has 104 members who elect their own President. It is not administered by the Welsh Tribunals Unit and it is not subject to the supervision of the President of Welsh Tribunals. The Welsh Government finances the Valuation Tribunal for Wales and the Chief Executive is accountable for the use of funds to the designated Welsh Government Additional Accounting Officer but the Valuation Tribunal operates independently of the Valuation Officer, the billing authority and the Welsh Government.

6.49 The Traffic Commissioner for Wales is one of eight traffic commissioners in Great Britain appointed by the Secretary of State for Transport. Traffic Commissioners are responsible for the licensing and regulation of the operators of heavy goods vehicles, buses and coaches and the registration of local bus services. They are specialist independent regulators, but they act in a judicial capacity when conducting a public inquiry. A Traffic Commissioner's public inquiry is a formal hearing to clarify information relating to a licence application or where considering regulatory action against an existing licence-holder or against a transport manager's good repute and/or professional competence. The Welsh Government provides funding for Wales to have its own full time Traffic Commissioner (the role having previously also covered the West Midlands), with safeguards in place to ensure the independence of the incumbent to undertake his or her work in Wales⁶⁸⁷. The Commissioner is not subject to the supervision of the President of Welsh Tribunals.

686 *Valuation Tribunal for Wales Regulations 2010 (SI 2010/713).*

687 *WS122 Nick Jones Traffic Commissioner for Wales: 5.*

6.50 There are also a number of instances where the Welsh Ministers have appellate functions in respect of decisions taken by public bodies in Wales. Examples are planning decisions made by local planning authorities and certain decisions made by Natural Resources Wales in relation to environmental matters.

We recommend:

All public bodies, ombudsmen and other tribunals which have been established under Welsh law or by the Welsh Government, which make judicial or quasi-judicial decisions, and are not currently subject to the supervision of the President of Welsh Tribunals, should be brought under the supervision of the President.

7. Ombudsmen

6.51 We have described the use of ombudsmen to resolve disputes between consumers and private bodies such as banks at paragraphs [5.46](#) to [5.51](#). Ombudsmen are also appointed in order to investigate complaints about public services. Ombudsmen operate independently of government and protect the rights of members of the public by investigating complaints of maladministration (most commonly where a complaint to the body in question has already failed to resolve the concern). Where ombudsmen find fault, recommendations may be made to address the specific harm caused in the case under consideration and/or to point to improvements which can avoid more systemic failures identified by the investigation.

6.52 In Wales, the principal ombudsman is the Public Services Ombudsman for Wales. This ombudsman has legal powers to look into complaints made by members of the public about maladministration in the provision of public services and about independent care providers in Wales. The Public Services Ombudsman also considers complaints that a local authority member has broken the authority's code of conduct. The Public Services Ombudsman's remit extends to most public bodies in Wales, including local authorities, local health boards, the Welsh Government, public bodies funded by the Welsh Government and housing associations. The Ombudsman is independent of the Welsh Government but is required to lay an annual report before the Assembly⁶⁸⁸.

688 *Public Services Ombudsman (Wales) Act 2005, Schedule 1, paras 14, 16, 17.*

- 6.53 The Public Services Ombudsman for Wales considered that it was a barrier to the Ombudsman’s investigative powers that complaints need to be made in writing (although there is discretion to receive a complaint in another form). The Ombudsman considered that the requirement could be at odds with equality legislation⁶⁸⁹. Allowing complaints only in writing potentially excludes people who find it difficult to write, such as people with learning difficulties or illiteracy. A similar consideration would apply to many people whose first language is not English or Welsh. The Public Services Ombudsman (Wales) Act 2019 provides for complaints to be made in any form specified by the Ombudsman in guidance⁶⁹⁰.
- 6.54 The Public Services Ombudsman must remain independent in determining complaints and cannot advocate for complainants. The Ombudsman’s website⁶⁹¹ signposts citizens to various advice and advocacy services, but the work of the Ombudsman is also hampered by the deficiencies in and the general lack of availability of adequate advice services in Wales, a subject we have considered extensively in Part 2 of Chapter 3.
- 6.55 In evidence to us, the Public Services Ombudsman for Wales called for closer liaison between his office and the courts in line with the recommendations made by the Law Commission⁶⁹², including a power for the Administrative Court to stay actions whilst the Ombudsman investigates and potentially disposes of complaints and a power for the Ombudsman to refer a point of law to the courts⁶⁹³.

We recommend:

The Administrative Court should have the power to stay court proceedings whilst the Public Services Ombudsman for Wales investigates a complaint. The Ombudsman should have the power to refer a point of law to the Court.

689 WS066 *Public Services Ombudsman for Wales: 1.*

690 *op cit n. 688: s8.*

691 *Public Services Ombudsman for Wales Website.*

692 *Law Commission, Public Services Ombudsmen.*

693 WS066 *Public Services Ombudsman for Wales: 2.*

8. The statutory Commissioners

- 6.56 In addition to the Public Services Ombudsman for Wales, there are four statutory Commissioners.
- 6.56.1 The Future Generations Commissioner for Wales to whom we have referred in paragraph [6.9](#).
- 6.56.2 The Welsh Language Commissioner⁶⁹⁴ has the power to investigate and determine complaints about the compliance of public bodies with the Welsh Language Standards. Public bodies and complainants may appeal decisions of the Welsh Language Commissioner to the Welsh Language Tribunal, described in paragraph [6.39](#).
- 6.56.3 The Older People’s Commissioner for Wales⁶⁹⁵ has powers to review⁶⁹⁶ the way in which the interests of older people are safeguarded and promoted by public bodies in the discharge of their functions and can assist older people in making complaints to public bodies.
- 6.56.4 The Children’s Commissioner for Wales⁶⁹⁷ has powers to review⁶⁹⁸ the effect on children of the exercise of functions by public bodies and to provide assistance to children in certain circumstances.
- 6.57 Each of the Commissioners has varying roles and powers. All act to hold public bodies to account. Even if these amount to little more than ‘name and shame’ powers, they make a contribution to administrative justice in Wales because they have the potential to influence the culture of public bodies and how those bodies exercise their functions. As a result, they raise standards in the way in which public services are delivered, as the Future Generations Act appears to be doing in terms of its influence on decision making by public bodies, as discussed in paragraphs [6.8](#) to [6.14](#). This can reduce the instances where citizens are required to seek individual legal redress in response to decision making by public bodies⁶⁹⁹.

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Created by the [Welsh Language \(Wales\) Measure 2011](#).
Created by the [Commissioner for Older People \(Wales\) Act 2006](#), an Act of Parliament not of the National Assembly for Wales.
OE041 Steve Bartley: 4.
Created by the [Care Standards Act 2000](#).
OE041 Rachel Thomas: 5.
op cit n. 661.

9. Reform

a) The Welsh tribunals

6.58 The Law Commission in England and Wales has agreed with the Welsh Government to undertake a review of the Welsh tribunals⁷⁰⁰. The Law Commission expects to commence its work in the second half of 2019 and to report in 2020. We welcome the Law Commission review as it is able to consider the more detailed issues in relation to the Welsh tribunals.

6.59 There are however two issues which the Welsh Government should address:

6.59.1 The Welsh Tribunals Unit should have structural independence which it currently lacks, and be placed under judicial control, similar to the way in which the Scottish Tribunals are arranged⁷⁰¹.

6.59.2 Welsh tribunals should be used for dispute resolution relating to future Welsh legislation. There has been a tendency in the legislation passed by the Assembly for it to specify that dispute resolution should take place in the County Court or in the non-devolved courts and tribunals. We regard this as anomalous when specialist Welsh tribunals exist that have the competence and capability to determine disputes.

We recommend:

The Welsh Tribunals Unit should have structural independence and the Welsh tribunals should be used for dispute resolution relating to future Welsh legislation.

⁷⁰⁰ The project will consider the operation of a single tribunal system in Wales, including the scope of the tribunal system, the role of the President of Welsh Tribunals and that of the Welsh Tribunals Unit, appointment and discipline of Tribunal judges and other members, appointment of Presidents/Deputies, power to make and standardise procedural rules, appeals processes, complaints process and protecting judicial independence.

⁷⁰¹ Scottish Tribunals are chaired by the Lord President, accountable to the judiciary and independent of the Scottish Government.

b) Wider reform

6.60 The system of administrative justice is undoubtedly difficult for individuals to understand and use. The complex relationship between the courts, tribunals and other means of redress is the result of piecemeal historical development. At paragraphs [5.52](#) and following we considered the complexity of the current system of courts and tribunals that delivered civil justice. The issues are similar in relation to the courts and tribunals that deal with administrative justice. A similar approach to that recommended for civil justice should be adopted for the courts and tribunals that deliver administrative justice. As a short term measure there is a need for better co ordination in relation to administrative justice so that the public have a clear understanding on where to go to have their disputes resolved. We recommend that this be done by the same body we recommend in paragraph [5.55](#). In the longer term they should be brought within one unified system as we recommend this in paragraph [5.56](#).

We recommend:

The recommendations for coordinating and rationalisation made for civil justice should also be applied to administrative justice.

Part 3: Coroners

- 6.61 The office of coroner is an ancient one. It came into being in order to provide a means of investigating deaths and it was one of the first English institutions to be introduced into Wales as we have mentioned in paragraph 2.8⁷⁰². The modern jurisdiction of coroners is set out in a number of UK statutes. In this report, it is necessary only to refer to the Coroners and Justice Act 2009 which provides the current framework for the appointment of coroners and the division of England and Wales into Coroner Areas. Under the 2009 Act, a coroner has a duty to inquire into the cause of death when there is reason to suspect that the deceased died a violent or unnatural death, when the cause of death is unknown and when the deceased has died while in custody or state detention⁷⁰³.
- 6.62 Approximately half of all deaths in England and Wales are referred to a coroner⁷⁰⁴. In many cases so referred the cause of death is established after a short investigation. In some cases, the coroner may need to order a post mortem. Following a post mortem a coroner may decide that the cause of death is established. Alternatively, the coroner may conclude that an inquest is required before the cause can be established. Of the 15,000 deaths reported to coroners in Wales each year approximately 2,000 result in inquests being held.
- 6.63 An inquest is a formal hearing, usually held in public, at which the coroner presides. The inquest may be held with or without a jury, depending on the circumstances of the death. At the conclusion of the inquest either the coroner or the jury (if one has been empanelled) delivers a conclusion as to the cause of death and related matters.
- 6.64 The procedure adopted at an inquest is determined by the coroner. Traditionally, coroners have adopted an inquisitorial process in which they take the lead in questioning witnesses. Increasingly, the procedure adopted is adversarial. Parties can be and often are represented at inquests and coroners frequently permit the representatives to engage in cross-examination of witnesses. In those inquests in which

702 *Wales is in some respects treated differently as, historically, coroners were able to investigate deaths outside their own areas as the death was seen to be within the principality.*

703 *Coroners and Justice Act 2009 s1(2).*

704 *A national medical examiner scheme has been introduced across England and Wales. This will reduce the number of deaths referred to the coroner but in pilot areas has resulted in a greater number of inquests being held. Referrals are also made by hospitals where the deceased died within 24 hours of admission.*

a jury is empanelled the coroner provides the jury with an explanation of any legal principles which must be applied and a summary of the evidence which has been adduced. At the conclusion of an inquest a coroner has the power and the duty to write a Prevention of Future Deaths Report if it appears there is a risk of other deaths occurring in similar circumstances. A coroner has no power to make a finding that a person or organisation involved in a person's death has committed a crime. Similarly, a coroner may not make a finding that a person or organisation involved in a person's death has civil responsibility for the death, for example under the law of tort.

- 6.65 Legal aid for representation at inquests is available only in exceptional cases. Even families of deceased persons who have died while in state custody or in a terrorist act are not represented at an inquest as of right. It is plainly fair and reasonable that they should always be represented without means testing⁷⁰⁵.
- 6.66 There are currently seven Coroner Areas in Wales: (1) North Wales East and Central; (2) North Wales West; (3) Ceredigion; (4) Carmarthenshire and Pembrokeshire; (5) Swansea Neath Port Talbot; (6) South Wales Central (which includes the whole of Powys as well as Cardiff, the Vale of Glamorgan, Bridgend and the Central Valleys); and (7) Gwent. There is currently wide variation in the geographical size and population of the areas as indicated in Figure 39.

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Rt. Hon. Dame Elisabeth Angiolini DBE QC (2017) Report of the Independent Review of Deaths and Serious Incidents in Police Custody.

Figure 39**Coroners Areas in Wales**

Source: Coroners' Society for England and Wales

- 6.67 As highlighted in paragraph [6.26](#), some challenges to inquests can only be issued and heard in London. All challenges relating to inquests into deaths in Wales should be capable of being issued and heard in Wales.
- 6.68 Although the coroners' system was reformed in 2009 to provide for the office of Chief Coroner for England and Wales, no changes were made to the financing of the system. Coroners remain funded by local authorities as explained at paragraph [2.126](#).

We recommend:

Challenges relating to inquests into all deaths in Wales should be issued and heard in Wales.

- 6.69 The coroners in Wales have raised with us a number of concerns⁷⁰⁶:
- 6.69.1 There is a considerable variance in the resources available to coroners. Pontypridd has a purpose built court that serves the vast South Wales Central area which extends to the boundaries of Powys in the north. The other areas do not always have available court rooms.
 - 6.69.2 The number of assistant coroners is not consistent as between areas.
 - 6.69.3 Various software systems are used in Wales to generate forms, documents and letters arising from coroner functions. None of these provide bilingual functionality, as is mentioned at 11.38, so correspondence cannot currently be provided in Welsh.
 - 6.69.4 It is likely that the Coroner Areas will be reduced to three or four over the next few years thereby reducing local provision.
- 6.70 Coroners and their officers have to deal with people at one of the most vulnerable times in their lives. They require high standards of inter-personal skills and sensitivity. The evidence suggests that such skills have greatly improved as a result of the work of the Chief Coroner for England and Wales.
- 6.71 As a result of the fact that there was no reform to the funding of coroners across England and Wales in 2009, the funding in Wales is ultimately provided by the Welsh Government to local authorities. The Welsh Government has no influence on policy for coroners and the service level provided across Wales.
- 6.72 Organisation and funding on an all Wales basis would better enable the provision of uniform standards and equal access to facilities.

- 6.73 As inquests should be held locally, given the issues relating to court and hearing centres addressed in Chapter 8, the provision of court rooms and hearing centres for coroners should form part of the strategy we recommend at paragraph [8.40](#).
- 6.74 We discuss in Chapter 12 the position of the judiciary in Wales; the coroner system in Wales should be brought within that system with appropriate changes as to the position of the Chief Coroner. There should be formal accountability to the Assembly.

We recommend:

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.



CHAPTER 7

Family justice: children

7. Introduction

- 7.1 The family justice system is the name used to describe that part of the justice system that deals with a wide range of concerns relating to children, the breakdown in relationships between couples and the consequences of the breakdown. The family justice system also covers wider issues such as those relating to what needs to be done when consent is needed for medical treatment which the patient does not have the capacity to give. Our focus is on the way in which it deals with children.
- 7.2 The organisation of the Family Court is much simpler than the organisation of the courts and tribunals that deliver civil justice and administrative justice. That is because a single Family Court headed by the President of the Family Division was established in 2014.
- 7.3 Within the Family Court, a distinction in relation to children is drawn between what are called ‘private law’ cases and what are called ‘public law’ cases. There are differences in the applicable law, the procedure and the availability of legal aid. Private law cases relating to children are cases that deal with the arrangements necessary after a divorce or other breakdown of relationships, where parents or other guardians or carers cannot agree on arrangements for their children. Public law cases relating to children arise out of interventions by local authorities to protect children where there are, or are believed to be, child protection concerns and a local authority seeks a care order or supervision order in respect of the child.
- 7.4 Cases within the Family Court are allocated to different levels of judge according to their complexity. Certain categories of case are restricted to High Court Judges who also do some of the most difficult cases involving care and the financial consequences of divorce on children. Other care cases are heard by Circuit Judges (or Records sitting as deputies), District Judges (or deputies) and by Magistrates (both lay and stipendiary) depending on their difficulty. Private law cases relating to children are generally dealt with by District Judges.

7.5 In this Chapter we consider the present scheme of devolution in relation to family justice and children in Part 1. In Part 2, we consider the high increase in the number of children in care in Wales (looked after children) – a public law issue. In Part 3, we turn to consider issues that arise in relation to disputes between parents in relation to children – private law issues.

Part 1: The complexity of the current devolution scheme, particularly in respect of children

1. The differences in law and procedure

7.6 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 matters⁷⁰⁷ under the current devolution scheme. The detail is set out in a written submission we received⁷⁰⁸. In summary:

7.6.1 Much of this complexity arises out of the fact that family law (and in particular legislative powers and functions relating to family law) and the court system are not devolved. Divorce, civil partnerships and the distribution of matrimonial assets on divorce and separation are also not devolved.

7.6.2 However, the legislative powers and functions of the Assembly and the Welsh Government in devolved areas such as health, education and social care have been used in such a way that some family law, and in particular the law relating to children, has been changed in Wales and differs from that in England.

7.6.3 Although there is a common court system for England and Wales and common procedure (the Family Procedure Rules 2010 apply to both England and Wales), there are important

707 WS141 *Welsh Government Supplementary Evidence on Family Justice: 1.*
708 WS153 *Ruth Henke QC: 1.*

differences in the law that has to be applied by the courts in Wales on what is commonly referred to as taking children into care.

- 7.6.4 The Social Services Act⁷⁰⁹ enacted by the Assembly in 2014 repealed Part 3 of the Children Act 1989 (the principal England and Wales Act in relation to the care and protection of children) in relation to the duties of local authorities towards children who have been or are about to be taken into care. It set out a specific regime for Wales for such children. The law in England remains that set out in Part 3 of the Children Act.
- 7.6.5 The position is further complicated by the fact that the Children Act 2004 transferred to the Welsh Government the responsibility in respect of Wales for Cafcass⁷¹⁰ which provides assistance in court proceedings relating to the taking of children into care (and similar issues in private law proceedings as we consider in paragraph 7.119). This was done at the same time that Cafcass for England was transferred to the Department for Education for UK Government reasons. It therefore appears to have been thought that because a responsibility was being transferred to the Department for Education, that responsibility in Wales should be transferred to the Assembly and Welsh Government as education was a devolved function. A non-departmental public body was established for Cafcass in England, but the Welsh Government exercises these responsibilities through Cafcass Cymru which is not organisationally independent of the Welsh Government. Departmental responsibility for Cafcass in England was transferred back to the Ministry of Justice in 2014 but remains devolved in Wales.
- 7.6.6 Cafcass and Cafcass Cymru each have their own officials (such as Guardians) who ensure that the interests of the child are fully represented before the courts. In general terms the duties of Cafcass and Cafcass Cymru are very similar. In England, the officials of Cafcass operate under the law and relevant guidance applicable in England, and in Wales the officials of

709 [Para 2.31.8.](#)

710 [Para 2.29.](#)

Cafcass Cymru apply the law and relevant guidance applicable in Wales. For example, in Wales the applicable law includes the Rights of Children and Young Persons (Wales) Measure 2011 which incorporated into Welsh law the UN Convention on the Rights of the Child. This rights-based approach can ensure children are kept out of care, or brought into care, depending on individual circumstances⁷¹¹.

7.6.7 The provision of services under Special Guardianship Orders is devolved, as is the regulation of adoption services. With a few minor exceptions, the Adoption and Children Act 2002 applies in Wales as it does in England.

7.6.8 Although domestic violence legislation falls within the scope of non-devolved matters⁷¹², the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015⁷¹³ imposes on local authorities in Wales duties to prepare and implement strategies to prevent and tackle domestic abuse, within the powers available to them. In England, the Secretary of State for Housing, Local Government and Communities launched a consultation in May 2019, Domestic Abuse Services: Future Delivery of Support to victims and their children in accommodation-based domestic abuse services, on imposing a new legal duty on local authorities to deliver through Local Partnership Boards support services to survivors of domestic abuse and their children in accommodation-based services.

7.7 The differences between family law, and in particular the law relating to children, applicable in England and in Wales are published in the Welsh family law Chapter of Butterworths Family Law Service and a Welsh supplement to The Family Court Practice (the Red Book). Legislation.gov.uk publishes the England and Wales legislation and Social Care Wales has a learning hub on its website which provides the Social Services Act and associated secondary legislation, codes and statutory guidance.

711 *OE040 Debbie Jones: 2. This lends support to the argument that too many children are being taken into care and that more should be done to support families. It also allows for the removal of children where that is in their best interests.*

712 *Para 2.44. op cit n. 158: Schedules 7A, 7B include provision for the following matters to be reserved: 7A Civil remedies in respect of domestic violence, domestic abuse and female genital mutilation; 7B Offences against the person (including offences involving violence or threats of violence) that are triable only on indictment.*

713 *Para 4.9, 4.39.*

7.8 It is disappointing that, despite this, there is insufficient awareness of the increasing divergence in family justice between England and Wales. We have received evidence that legal practitioners and lay people often do not appreciate that they need to search for Welsh legislation, unless they are prompted to do so⁷¹⁴. This is particularly the case for those who practise most of the time in England and simply assume the law is the same. It is also disappointing that there is a lack of available training courses in Wales on new Welsh legislation. One submission suggested that “*small but vital*” areas of difference in the law are yet to be fully tested, with the potential to lead to “*an interesting set of legal quandaries*”⁷¹⁵. Greater awareness amongst practitioners of the published differences between English and Welsh law would better serve those using the family justice system⁷¹⁶. In October 2012 in *Re X and Y (Children)*⁷¹⁷ the court pointed to the need for practitioners to appreciate the differences between English and Welsh law; this position should not persist seven years later.

2. Leadership and accountability in the family justice system

7.9 Those in the family justice system often work in difficult conditions and under enormous pressure. They generally work well together and ensure the system operates. However, strong leadership and clear accountability for performance are essential, particularly given the significance of the high increase in care proceedings.

7.10 The need for strong leadership and accountability was made clear in the Family Justice Review, chaired by Sir David Norgrove, which was jointly commissioned by the UK Government’s Ministry of Justice and Department for Education and the Welsh Government. Its 2011 report⁷¹⁸ concluded that “*organisational structures are complicated and overlapping, with no clear sense of leadership or accountability. No one looks after the performance for the system as a whole*”.

714 It would be helpful if Family Court judgments impacted by the divergence of law were published more widely; WS153 Ruth Henke QC: 10.

715 WS055 Association of Directors of Social Services Cymru (ADSSC): 2.

716 WS153 Ruth Henke QC: 9.

717 [2012] EWCA Civ 1500, paras 66-67 (Munby LJ), 69-72 (Pill LJ).

718 Ministry of Justice (2011) *Family Justice Review Final Report*.

- 7.11 In response to the recommendations of the Family Justice Review, a Family Justice Board was established to set direction and oversee performance improvements across the family justice system in England and Wales, and to ensure the best possible outcomes for children who come into contact with it⁷¹⁹. It did not meet for an extended period in 2017-18, but became active again in June 2018⁷²⁰. The Board aims to take a cross system approach to family justice and it is jointly chaired by Ministers from the Ministry of Justice and the Department for Education. The President of the Family Division attends as an observer – a role we explained at paragraph 2.86. The Board therefore performs the vital function of leadership and accountability.
- 7.12 There is, however, no ministerial representation from Wales. The Board is weighted to representation from England. Representation from Wales is restricted to the Chief Executive of Cafcass Cymru, the Welsh Government’s Director of Social Services and a representative from the Association of Directors of Social Services Cymru. The focus of the Board is dominated and influenced by issues that arise in England⁷²¹. It is therefore unsurprising that the members from Wales often have to remind the Board that Wales has devolved government and different legislation, policy and resource allocation that impact upon children and families in the family justice system in Wales⁷²².
- 7.13 The Board is supported by three sub-groups, including the Family Justice Council, chaired by the President of the Family Division, on which there are members from Wales, the Family Justice Young People’s Board and a Performance Improvement Sub-group.
- 7.14 There are Local Family Justice Boards across England and Wales comprised of those with delivery responsibilities in the local area; judges attend regularly as observers. As in England, there have been concerns in Wales as to the effectiveness of the Local Family Justice Boards and the role they play (or do not play) in supporting best practice and change of practice at local level. The National Family Justice Board is seeking to enhance the role of the Local Family Justice Boards in the family justice system. It is intended by the Family Justice Board that the Local Family Justice Boards provide the leadership and

719 WS141 Welsh Government Supplementary Evidence on Family Justice: 2.
720 The *minutes* of Family Justice Board meeting 6 June 2018.
721 The *minutes* of the 15 January 2019 meeting contain little reference to Wales.
722 OE013 Albert Heaney: 1.

accountability for driving local delivery as they are central to the culture change which is required as well as the cost effective performance needed. The role of the Chairs of the Local Family Justice Boards in leadership is crucial.

- 7.15 In Wales, there are three Local Family Justice Areas. Each has a Designated Family Judge and a Local Family Justice Board: (1) North Wales; (2) Swansea and South West Wales; and (3) Cardiff and South East Wales. A representative of the Welsh Government attends the Local Family Justice Boards as does the Designated Family Judge (as an observer). The others who attend are from local authorities and other devolved bodies.
- 7.16 The Family Justice Network for Wales, established in 2012, is intended to provide leadership in Wales and to provide a link to the Family Justice Board. It is coordinated by the Welsh Government and brings together key organisations within the family justice system in Wales. It provides advice and monitors the performance of the family justice system in Wales. The Network meets three times a year. It is chaired by the Director of Social Services in the Welsh Government. The judiciary⁷²³ attend meetings (in the capacity of observers), and play an important role.

3. Overall effect of the current devolution scheme

- 7.17 The evidence of the Welsh Government was that the effect of the current devolution scheme has been to divide responsibilities and interconnections within the family justice system, which can cause complexity and conflict⁷²⁴. This has been exacerbated by the increasing divergence between approaches to family justice in England and Wales and policy in the devolved fields which impact on family justice. The family justice system remains England-centric⁷²⁵. Moreover, the direction of policy in Wales is delineated in the (1) Future Generations Act which embeds in the development and delivery of policy long-term considerations regarding sustainability, and (2) the adoption of rights, including those relating to children, in international conventions. In short, the Welsh Government contended that the way in which the family justice system operates in Wales does not align with these policy objectives.

⁷²³ Including the Family Division Liaison Judge for Wales and the three Designated Family Judges for Wales.

⁷²⁴ WS141 Welsh Government Supplementary Evidence on Family Justice: 3.

⁷²⁵ OE013 Albert Heaney: 1.

- 7.18 In our view, the responsibilities of the Welsh Government for health, education and social welfare, and the responsibilities for the provision of the family justice system to underpin them, need a joined up and coherent approach particularly in relation to children being taken, or about to be taken, into care.
- 7.19 Without such a coherent structure, it is not practicable to develop a sustainable and properly resourced policy for family justice. As we explain in Part 2 of this Chapter, there are serious challenges to be met, particularly in delivery of change in approach and culture. This requires strong leadership and proper accountability within a clear and unified regime. We return to the issues of leadership and accountability at paragraphs [7.93](#) and [7.97](#) below.
- 7.20 We therefore consider that it is necessary to remove the complexity and establish a unified Welsh legal regime. It should cover the exercise of powers in relation to the family and children, bringing together the powers for health, education and welfare and the family law powers relating to children and the Family Court. Clearly, close relations with the family justice system in England should be maintained (as there are between the other nations of the UK) so, for example, that best practice can be discussed, data sets coordinated and joint training be undertaken. Although the focus of this Chapter is on children, family law needs to be considered as a whole.

We recommend:

The law relating to children and family justice in Wales should be brought together in one coherent legal system aligned with functions in relation to health, education and welfare.

Part 2: Taking children into care

1. The present legal regime for looked after children (children in care)

- 7.21 As we stated in paragraph 7.6.4, the separate statutory scheme for Wales under the Social Services Act sets out the duties applicable in Wales in respect of what is ordinarily referred to as taking children into care (what the Act calls ‘looked after children’⁷²⁶ – a term which covers children with a number of different legal statuses which we describe in paragraph 7.27).
- 7.22 In general, the provisions of the Social Services Act changed the way in which needs were assessed and services delivered in Wales. Welsh local authorities have to conduct an assessment of children who may need care and support. If a decision is made that care and support is required, a Welsh local authority will consider whether they require being “looked after” (care) or should be placed on the child protection register or whether they can simply remain subject to a care and support plan without either being taken into care or being put on the child protection register.
- 7.23 If there is credible evidence that there are reasonable grounds for believing that a child is suffering, or is likely to suffer from, significant harm as a result of the way in which the child is cared for, public law care proceedings under Part IV of the Children Act 1989 will be considered with a view to a care order or a supervision order being made. As part of the care proceedings, the local authority will provide evidence to the court setting its grounds for applying for the order and a plan that provides details of arrangements for the child and any assessments that may need to be undertaken. The court will decide whether an order should be made and, if so, what order needs to be made to safeguard the child, where the child should live and the contact arrangements with the family. A care order gives the local authority legal and parental responsibility for the child. A supervision order (which is an alternative order) does not give the local authority parental responsibility and so children under such orders are not

726 *Social Services Act 2014* s74 defines a child or young person looked after by a local authority as one who is in its care, or provided with accommodation by the authority in the exercise of social services functions.

categorised as ‘looked after’ but as children who are under the general regime for care and support we have described in the preceding paragraph. The court will try to make a decision within the statutory requirement of 26 weeks of the care proceedings being issued. The outcome for the child will usually be one of the following: returning home; going to live with a relative or family friend; going to live with a foster parent; or being adopted. Overall, 47% of children taken into care in Wales return to their families after spending time away from them under care orders.

- 7.24 Local authorities in Wales must both act in accordance with requirements and have regard to guidelines set out in a Code of Practice⁷²⁷ issued by the Welsh Government on the exercise of their social services functions and partnership arrangements in relation to Part 6 of the Social Services Act, including children and young people who are leaving or who have left care⁷²⁸.
- 7.25 It is important to point out that Wales has consistently complied with the 26 weeks deadline⁷²⁹. In the year 2016-17, despite the significant increase in the number of children subject to care proceedings, from 1,420 in 2015-16 to 1,672 in 2016-17, care cases in Wales⁷³⁰ were completed in an average of 24.5 weeks (compared to an overall England and Wales performance of 27 weeks). In 2017-18, cases were completed in 24.6 weeks. It was the best performing circuit in England and Wales for compliance with this deadline. In 2018-19, the average time to completion was 27.6 weeks.

727 *The Welsh Government issued Part 6 Code of Practice (Looked After and Accommodated Children) under [Social Services and Well-being Act 2014](#):145.*

728 *Welsh Government, [Part 6 Code of Practice \(Looked After and Accommodated Children\)](#).*

729 *WS010 Wales & Chester Circuit: 6.*

730 *Cafcass Cymru (2018) [Annual Report 2017-18](#).*

2. The very high number of children in care (looked after children) in Wales

- 7.26 Wales has a high number of children in care. Before turning to set out the explanations for this, it is first necessary to explain the different responsibilities local authorities have for children who need care and support. As at 31 March 2018, there were 16,080 children in Wales receiving care and support from local authorities⁷³¹; of these, 37.9% were looked after children and 14.8% on the child protection register⁷³². The remainder were children who were subject to care and support plans. The rate in Wales for children receiving care and support from local authorities was 255 per 10,000. The rate varied across local authorities – in Pembrokeshire it was 140 and in Merthyr Tydfil 445.
- 7.27 Looked after children are either (1) under care orders, or (2) under voluntary agreements, or (3) on remand or some other compulsory order (of which there are very few in Wales for the reasons⁷³³ explained in paragraph 7.33 and following, in relation to youth justice, or (4) under some other legal status. As the 80% of looked after children are the subject of care orders, that is our particular focus, especially given the increase in the number of children under care orders over the past five years:
- 7.27.1 The proportion of looked after children who are subject to care orders rose from 71% in 2003 to 80% in 2018; the number of those subject to voluntary arrangements declined from 27% in 2003 to 10% in 2018⁷³⁴.
- 7.27.2 Over the last five years the actual number of Welsh looked after children on care orders has increased by 39% from 3,710 to 5,155⁷³⁵.

731 *The figures for the position on 31 March 2019 will not be published until November 2019.*

732 *Wales Public Policy Centre, (2019) [Analysis of the Factors Contributing to the High Rates of Care in Wales](#).*

733 *[Para 7.21](#).*

734 *Ibid: 49.*

735 *Ibid: 42.*

7.27.3 The proportion of those under some other legal status (which included those under placement orders/freeing orders relating to prospective adoption) increased from 1% in 2003 to 14% in 2014 and declined to 9% in 2018⁷³⁶. It is not clear why this has happened. The decline since 2014 is probably due to a number of factors including a decrease in the numbers of people wanting to adopt and the impact of *Re B (2013)*⁷³⁷ and *Re B-S (2013 & 2014)*⁷³⁸, a decision on the adoption of children. There is concern that the latter may be being misinterpreted creating greater caution on the part of local authorities making “ought to be placed” decisions. In England, a decrease in adoption runs in tandem with an increase in placing children with relatives. The courts will tend to make a Special Guardianship Order at the close of care proceedings. In Wales, there is anecdotal evidence that the courts prefer to place children with parents or relatives under a care order rather than a Special Guardianship Order when the statutory criteria for a public law order is met. Hence the higher rate of conversion of care applications to care orders at the close of care proceedings may in fact be in part because of the use of care orders for children placed with parents or relatives.

7.28 Therefore the use and conduct of care proceedings are the most important issues we have to consider in relation to children and family justice.

7.29 As shown in Figure 40, the number of looked after children in Wales has increased significantly, from 4,194 in 2003 to 6,407 in 2018⁷³⁹ – an increase of more than 52%. It is striking that, whilst the child population in Wales has reduced by 0.2% since 2014, the number of looked after children has increased by 11.5%. The rate of growth in 16-17 year olds is notable⁷⁴⁰. The split between males (54%) and females (46%) has remained broadly constant.

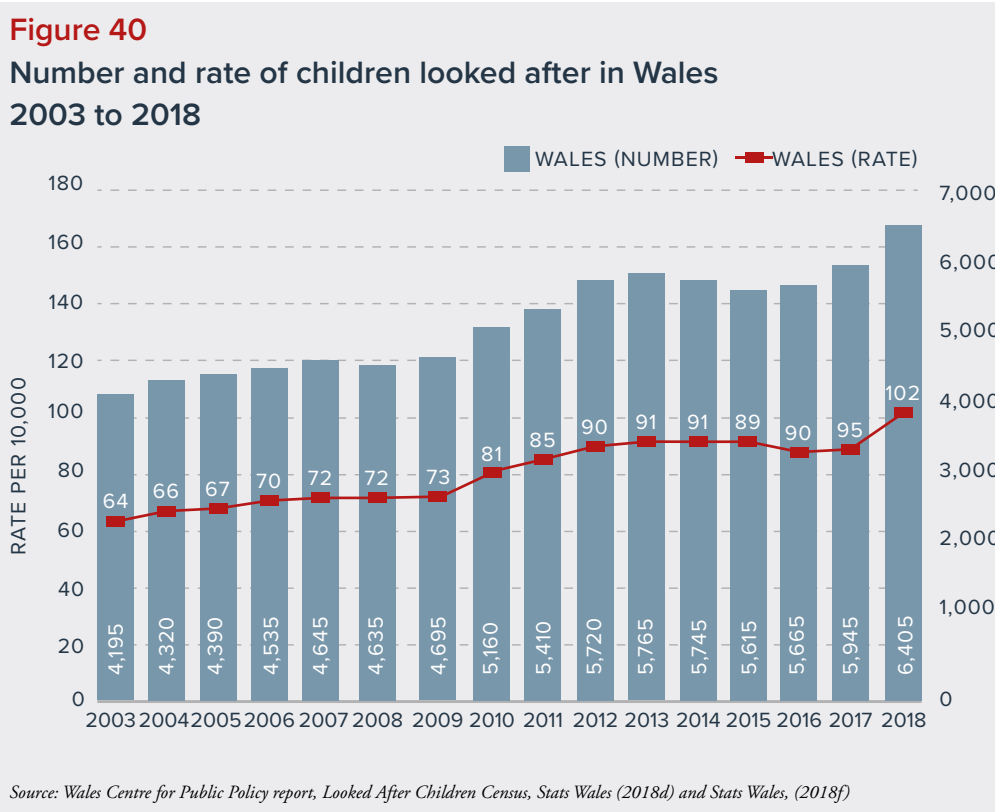
736 *Ibid.*: 49 (Figure 15) and 51-2.

737 [2013] 2FLR 1075.

738 [2013] EWCA CW.1146, [2014] 1FLR 1033.

739 *Statistics for Wales (2018) Experimental Statistics: Children looked after by local authorities, 2017-18.*

740 *op cit n.732*: 5.



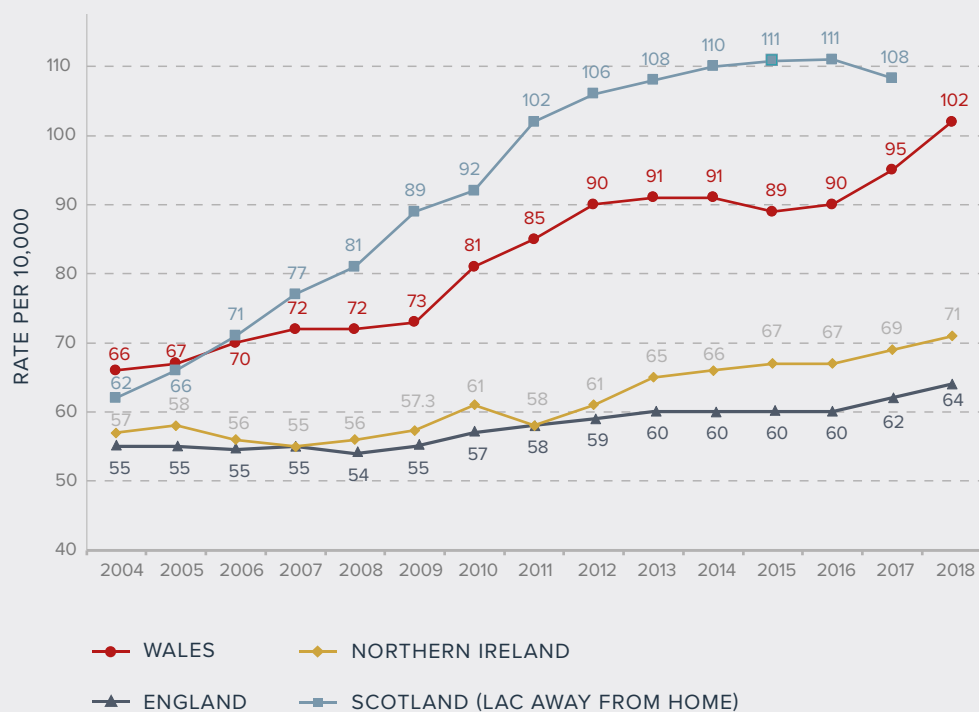
- 7.30 What is of the greatest concern to us is that the rate of looked after children in Wales is significantly higher than in both England taken as a whole and Northern Ireland. In 2018, the figure in Wales was 102 per 10,000 compared with 64 per 10,000 in England, Northern Ireland 71 per 10,000 and Scotland 108 per 10,000. While there are some differences in the way data relating to looked after children is collected and analysed, the methodology is broadly the same. What is striking is the marked and continual increase in the rate in Wales and the widening gap with England.
- 7.31 As we have said in paragraph 7.26, official statistics on the numbers of looked after children will not be available for 2018-19 until November 2019. However, the Welsh Government announced to the Assembly on 2 July 2019 that local authorities reported provisional figures (as of March 2019) showing a potential increase in the number of looked after children of around 470. This is a rate of 109 per 10,000 population⁷⁴¹. If the rate in Scotland continues to fall, this will make Wales' rate the highest in the UK.

741

Statement of Julie Morgan AM Deputy Minister for Health and Social Services (2 July 2019).

Figure 41

Comparisons of the rate of looked after children 2004 to 2018 in the UK⁷⁴²



Source: Wales Centre for Public Policy report, *Stats Wales (2018f)*, Department for Education (2018) and Department for Health (2018)

7.32 Our concern is heightened by the fact there are stark inequalities across Wales regarding the likelihood of entering care depending on where the child lives, as shown in Figure 42 and Figure 43. In 2018 the figures varied from 50 per 10,000 children in Ceredigion to 191 per 10,000 in Torfaen as shown in the following figure.

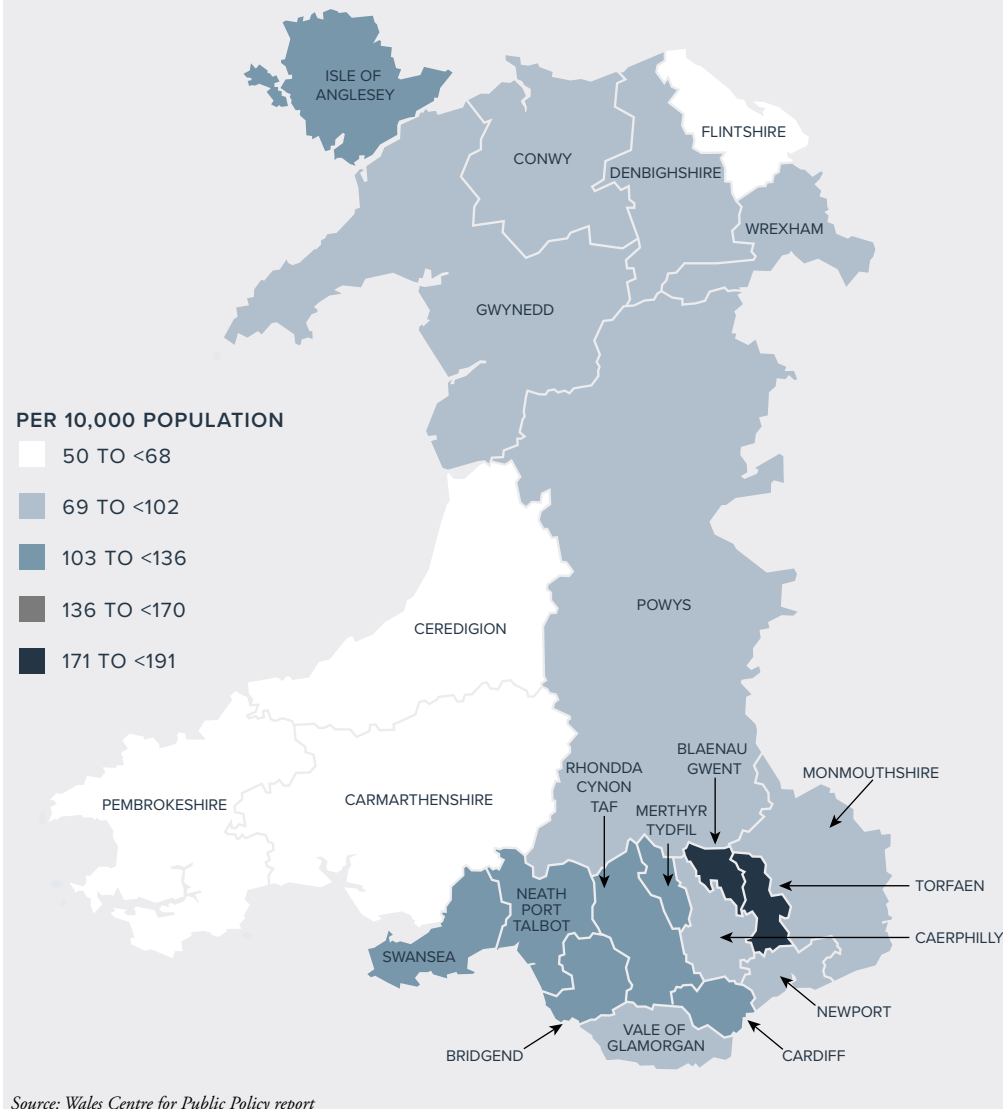
Figure 42**Variations in numbers of looked after children
by local authority in Wales**

| | 2014-15 | 2015-16 | 2016-17 | 2017-18 |
|-------------------|---------|---------|---------|---------|
| Isle of Anglesey | 65 | 80 | 105 | 107 |
| Gwynedd | 81 | 88 | 93 | 97 |
| Conwy | 72 | 78 | 82 | 99 |
| Denbighshire | 83 | 89 | 81 | 85 |
| Flintshire | 68 | 65 | 66 | 68 |
| Wrexham | 60 | 67 | 72 | 88 |
| Powys | 54 | 60 | 62 | 87 |
| Ceredigion | 62 | 63 | 61 | 50 |
| Pembrokeshire | 47 | 52 | 52 | 56 |
| Carmarthenshire | 64 | 58 | 56 | 52 |
| Swansea | 109 | 108 | 102 | 110 |
| Neath Port Talbot | 156 | 135 | 124 | 118 |
| Bridgend | 135 | 131 | 134 | 131 |
| Vale of Glamorgan | 69 | 72 | 84 | 90 |
| Cardiff | 89 | 88 | 97 | 112 |
| Rhondda Cynon Taf | 124 | 125 | 138 | 135 |
| Merthyr Tydfil | 131 | 113 | 114 | 122 |
| Caerphilly | 70 | 72 | 86 | 100 |
| Blaenau Gwent | 98 | 139 | 154 | 172 |
| Torfaen | 150 | 142 | 166 | 191 |
| Monmouthshire | 60 | 73 | 75 | 79 |
| Newport | 86 | 88 | 83 | 94 |
| Wales | 89 | 90 | 95 | 102 |

Source: Wales Centre for Public Policy report

Figure 43

Map showing rates of looked after children per 10,000 population by local authority 2017-18



3. The attempts to explain the very high rates of looked after children (in care) in Wales and variations between local authorities

- 7.33 We sought an explanation for the very high rates in Wales and for the variations between the local authority areas. The explanations proffered⁷⁴³ ranged from the suggestion that local authorities in Wales have more concern about the welfare of children than local authorities in England and that some were paternalistic and interventionist, to the way in which the judges dealt with cases. It was also suggested that it was not realistic to compare the rates of looked after children between Wales and England as a whole, given the very different socio-economic characteristics of Wales and England. It was more realistic to compare Wales with relevant regions of England, such as those in the Midlands and the North of England, which have more similar socio-economic characteristics to Wales. Welsh Government evidence suggested that, although some local authorities with relatively low rates of social deprivation had high rates of looked after children, the rates generally correlated to levels of social deprivation.
- 7.34 The Wales Centre for Public Policy studies produced the following comparison with the regions of England.

743 OE040 Debbie Wilcox: 1.

Figure 44

Comparisons of the rate per 10,000 children looked after by region across England and Wales

| | 2014 | 2015 | 2016 | 2017 | 2018 | NET CHANGE |
|--------------------------|------|------|------|------|------|------------|
| Wales | 91 | 89 | 90 | 95 | 102 | 11 |
| North East | 81 | 81 | 84 | 92 | 95 | 14 |
| North West | 81 | 82 | 82 | 86 | 91 | 10 |
| West Midlands | 73 | 74 | 73 | 75 | 78 | 5 |
| Yorkshire and The Humber | 65 | 64 | 63 | 67 | 71 | 6 |
| England Average | 60 | 60 | 60 | 62 | 64 | 4 |
| East Midlands | 51 | 53 | 53 | 55 | 57 | 6 |
| South West | 51 | 52 | 53 | 53 | 55 | 4 |
| South East | 47 | 49 | 51 | 51 | 51 | 4 |
| East of England | 50 | 48 | 49 | 49 | 49 | -1 |
| London | 54 | 52 | 51 | 50 | 49 | -5 |

Source: Wales Centre for Public Policy report

- 7.35 A number of studies⁷⁴⁴ have considered the reasons for the variations in the different parts of the UK in the rates, though as measurement factors differ a degree of caution is necessary⁷⁴⁵. However, based on a study that looked solely at Wales the authors concluded that there was a clear social gradient whereby children in the 10% most deprived “lower level super output” areas were found to be 16 times more likely to be subject to child welfare interventions than those in the 10% least deprived areas⁷⁴⁶.

744 See for example CordisBright (2013) *Research on differences in the looked after children*; Bywaters et al (2017) *Identifying and Understanding Inequalities in Child Welfare Intervention Rates: comparative studies in four UK countries*; Elliott, M. (2017) “Looked-after” children in Wales: An analysis of the backgrounds of children entering public care.

745 op cit n. 732: 47.

746 op cit n. 732: 25.

7.36 The Wales Centre for Public Policy in its *Analysis of the Factors Contributing to the High Rates of Care in Wales*⁷⁴⁷, published in May 2019 (and updated in July 2019)⁷⁴⁸, after a helpful analysis of these reports and other data, concluded that there were four main contributing factors: (1) deprivation; (2) variations in the policy and practice of the ways in which local authorities and the judiciary deal with cases; (3) parental factors⁷⁴⁹ (relating to domestic violence, substance misuse and mental health); and (4) population. Although it was not possible to reach more precise conclusions, the matters highlighted by the report included:

7.36.1 The more deprived areas in Wales typically had higher rates of children in care and higher spend per head on their children in care services. 53% of the variation in the local authority rates of children in care related to differing levels of deprivation⁷⁵⁰. Unfortunately the data used in this measure does not provide information about the circumstances in which the child was living when taken into care. Nonetheless, it was clear that levels of deprivation in the local area partly explained the differences in rates between the Welsh local authorities.

7.36.2 Some local authorities had significantly higher proportions of children with care and support plans who were either in care or on the child protection register⁷⁵¹. There are potential explanations such as demand exceeding available expenditure, but other factors such as priorities and culture of local social services and the judiciary are likely to be contributory factors.

7.36.3 The number of children being looked after has increased significantly in the age group 10-15 with this likely to affect the long-term trend of the numbers in the 16-17 year age group increasing. The overall rate in Wales in 2018 was 140 per 10,000 for those in the 16-17 year age group, with associated problems such as difficulties in placements in non-kinship care and out of area placements for older children.

747

Ibid.

748

Ibid.

749

The report showed that children in Wales were more likely to be looked after if one of both of their parents had a learning disabilities (twice as likely), had an drug or alcohol issue (twice as likely), has a mental ill health (44% more likely) and experiencing domestic abuse 29% more likely): 5-7 and 69-76.

750

op cit n. 732: 41.

751

Ibid: 43-46 and Figures 12-14.

7.36.4 The number of children under care orders has increased, but voluntary agreements have declined (as we highlighted in paragraph 7.27). Some have attributed this decline in voluntary agreements to the expression of judicial views in *Re N*⁷⁵² on the use of section 76 of the Social Services Act (the equivalent of section 20 of the Children Act)⁷⁵³. We have received evidence to suggest that this decision is perceived to be widely misinterpreted both by local authorities and sometimes by the judiciary. It has been pointed out to us that if used for its intended purpose and for defined periods then it is likely to assist, but where children are left in limbo for long periods of time it can have adverse consequences regarding a child's sense of permanence. We return to this in paragraph 7.104.

7.36.5 In Wales, the applications for care orders increased from 651 in 2009 to 1,037 in 2018, an increase of 66.3%. Applications for care orders in the period 2010-2017 were occurring at a higher rate in Wales than England. The conversion rate into resulting care orders was also higher – 78.1% resulted in care orders, rather than finding a safe way of looking after a child's welfare by sending the child home or to live with a relative⁷⁵⁴. This compares with a conversion rate of 58% in England⁷⁵⁵. The stark difference with England is shown in Figure 45.

752 [2015] EWCA Civ 1112, paras 157-171.

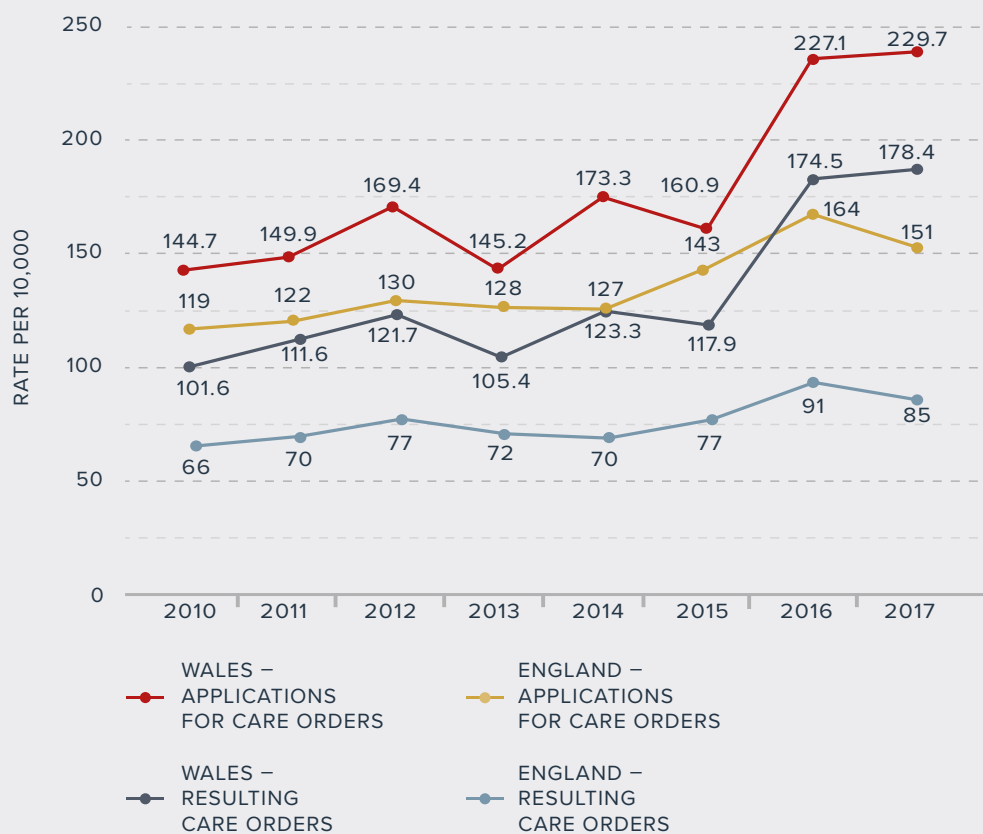
753 *Re N* / s76 should apply to children being unable to live at home for periods which are likely to be defined and for a constructive purpose. The coming into care to give the parent a break so that the parent can cope and care in the future is a proper purposeful use of s76; but using it to simply hold children open for years is not. The latter use results in remaining in care and losing opportunities such as adoption especially if they were young when they were voluntarily accommodated.

754 Caution is needed because of the way in which orders may be being made differently in Wales to the way they are made in England. There is insufficient analysis of data regarding the particular placement of children under care orders to enable there to be a proper evaluation of the anecdotal evidence about the use of kinship foster orders to which we have referred at para 7.27.3

755 Ministry of Justice, *Public Law Applications To Orders Tool*.

Figure 45

Rates per 100,000 applications for and resulting care orders per child⁷⁵⁶



Source: Wales Centre for Public Policy report and Ministry of Justice Public Law Applications to Orders Tool, 2019

7.36.6 During the same period the rate of applications for care orders and the rate of the resulting care orders made in Cardiff and South East Wales Family Justice Area were higher than in the other two Family Justice Areas in Wales – in Swansea and South West Wales and in North Wales⁷⁵⁷. The data did not permit analysis of differences in local authority and judicial practice to determine why applications for care orders were at a significantly higher rate in one of the Family Justice Areas in Wales.

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op cit n. 735: 55. Note: The rates for England have been calculated by considering the difference in the numbers for Wales to that for England and Wales. These have then been translated into a rate per 100,000 children using the 2017 mid-year population estimates (Office for National Statistics, 2018a). Since the England figures are approximate, they are presented to nearest integer. Rates have been calculated on the basis of cases by child involving the named order ie 'Care' involves applications / resulting orders for care; care + special guardianship and care + supervision.

757

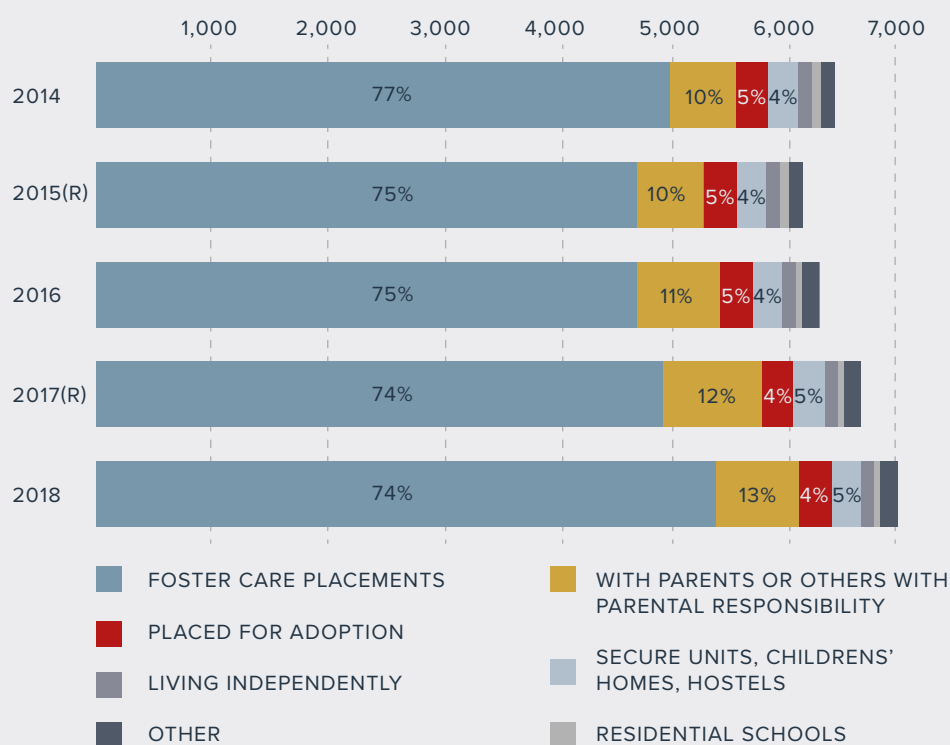
op cit n. 732: 52-58, Figure 18, Table 8.

7.36.7 Another factor was the decision of the local authority as to where the child was to be placed. The broader issues as to the best type of placement are a matter to be looked at as part of our overall recommendation for reform.

7.36.8 Over the past five years 74% of looked after children in Wales have been placed with foster carers and less than 5% in children's homes⁷⁵⁸. In the present context, it is important to note that 13% of these children are placed in Wales with their own parents or with others with parental responsibility in contrast to the position in England where the rate is 6%⁷⁵⁹; it is necessary to treat the last figure with caution as there is not always a correct distinction between orders which place the children with relatives and those that place them with parents.

Figure 46

Placements of children looked after at 31 March, 2014 to 2018 in Wales⁷⁶⁰



Source: Wales Centre for Public Policy report and Statistical First Release 112-2018 (Welsh Government, 2018c)

758

op cit n. 732: 58-65; Figure 20.

759

Ibid: 58-60.

760

Ibid: 61. Other includes residential care homes, NHS/Health Trust or other establishments providing medical or nursing care, family centre or mother and baby unit, Youth Offender Institution or prison, whereabouts unknown.

- 7.37 It is especially important to contrast the position in Northern Ireland where children’s services are managed through joint Health and Social Care Trusts rather than local authorities. Children in Northern Ireland were the most likely to be living in higher deprivation neighbourhoods, but Northern Ireland has the lowest rate of looked after children and the second lowest rate of children subject to child protection plans and registers⁷⁶¹. It is generally accepted that much further work needs to be done to understand the differences. It is clearly important that this be undertaken, though it will not be easy given the differences in legal systems, different administrative arrangements and different data collection methods.
- 7.38 It was suggested to us that the fact that 13% of looked after children (under care orders), as we have set out at paragraph [7.36.8](#), were placed with parents or those with parental responsibility was a positive factor. However, as was pointed out⁷⁶², the use of care orders for children who are at home was an unsatisfactory compromise and suggested a lack of confidence in effective supervision without a care order. Its use in such a way could be viewed as a “hedge your bets” order⁷⁶³.
- 7.39 Another factor drawn to our attention was that Wales has a high number of urgent (short notice) applications under section 31 of the Children Act 1989 though there has also been an increase in England. Cafcass Cymru reported a very sharp rise in these applications (for example in 2016-2017, the percentage increase was 86.4%). In many local authority areas, approximately 50% of section 31 applications were made on an urgent basis. Although there has been no proper analysis of the reasons for this, it has been suggested that the rise of urgent applications may be due to ineffective pre-proceedings work, or may be a strategy on the part of local authorities to ensure cases ‘jump up the queue’ given the volume of care cases which can be waiting for a first hearing. There is a pressing need to examine why so many urgent applications are being made, given that applications under section 31 of the Children Act made ‘in a hurry’ may mean that both parents and the Cafcass Guardian have insufficient time to prepare adequately for proceedings. The courts may then be asked to make decisions on poorly prepared local authority submissions.

761 *Para 7.35. Bywaters et al (2018) Child Welfare Inequalities, Journal of Social Work 1.*

762 *OE040 Jake Morgan (Association of Directors of Social Services Cymru):1.*

763 *OE040 Jake Morgan: 1. This point is confirmed in England. Recent research found inconsistent support for children returned home on supervision orders. Acting on this new evidence, a number of local authorities in England are examining how supervision orders and family restoration practice can be strengthened. Centre for Child and Family Justice (2019) [The contribution of supervision orders and special guardianship to children’s lives and family justice.](#)*

- 7.40 We conclude that, as we make clear in paragraphs 7.86 and following below, further analysis is needed. Some good analyses have been produced, but there is inadequate knowledge about the reasons behind increases in both care orders and children coming into care. It is not possible to draw sufficiently firm conclusions as to why Wales has a higher proportion of looked after children and why there is such a variation within Wales between local authorities. Although local area deprivation is, as we have said, certainly associated with patterns of entry into care, it is not clear what particular factors (such as housing, low income, young parenthood, education, crime and substance misuse), and in what combination, undermine parenting.
- 7.41 Before turning to consider our conclusions and recommendations in relation to the high number of children in care, it is first necessary to explain what steps have been taken so far to try and address the problem by the Welsh Government, in respect of Family Drug and Alcohol Courts and by the judiciary.

4. Welsh Government programmes which seek to address issues relating to children in care

- 7.42 Some important relatively small scale approaches to supporting women and families to prevent children being taken into care have been developed by the Welsh Government and implemented together with some support on reuniting children with both parents. In particular, Integrated Family Support aims to provide intensive support where children are at risk of coming into care as do “Edge of Care Services”. The *Reflect* initiative has been piloted, which provides targeted support for birth mothers who have had children removed from their care. This is an important issue particularly as parents’ repeat appearances in public law proceedings is considered to be a major contributing factor to demand. We describe each of these programmes. Further analysis to which we have referred will need to take into account proper evaluations of the programmes.

a) Integrated Family Support Teams

- 7.43 Integrated Family Support Teams were established in Wales under the Children and Families (Wales) Measure 2010. They involved a programme of at least six weeks of intensive support for families affected by substance misuse or mental health issues or domestic violence who were on the brink of having their children taken into care. The support was provided by qualified therapists, under the supervision of a consultant social worker. It aimed to increase families' confidence and ability to manage their own circumstances, with support from other specialist services where needed.
- 7.44 Evaluation of the approach in 2014 after three years of piloting⁷⁶⁴ concluded that it had been successful for short term outcomes, specifically in cases where timely intervention took place (often when a family was at a crisis point, which could be a new pregnancy) and where the family was motivated to change. It was seen as an example of successful multi-agency delivery which led to better relationships within families and was valued by the families themselves.
- 7.45 The legal requirement for local authorities to establish Integrated Family Support Teams and report annually on progress was recast in the Social Services Act⁷⁶⁵. Although there was an initial evaluation in 2014 after the Integrated Support Service Teams were first established on a pilot basis, there has been no subsequent research to establish whether the short-term gains from this approach have been sustained in the longer term. In our view further research is necessary which should systematically examine the particulars but also the overall impact on care demand of Integrated Family Support Teams, Edge of Care Services and other preventative measures and programmes. This should be done as soon as possible.

⁷⁶⁴ Welsh Government Knowledge and Analytical Services (2014) *Evaluation of the Integrated Family Support Service – Year 3*.
⁷⁶⁵ The *Partnership Arrangements (Wales) Regulations 2015*, made under the *Social Services Act* s166-169 and amended by 2017 No. 491 (W. 103) and 2019 No. 760 (W. 143), make provision for partnership arrangements between local authorities and Local Health Boards.

b) Edge of Care Services

- 7.46 In 2017-18, the Welsh Government provided £5 million to the 22 local authorities to provide Edge of Care Services. The aim was to try and help children remain in families rather than be the subject of care proceedings. It was said that local authorities had “*helped over 3,600 children to remain within the family unit, by working with more than 2,000 families*⁷⁶⁶”.
- 7.47 It is not clear to us how this was achieved. However as there are just over 6,000 looked after children in Wales, if the expenditure of £5 million has had a material effect on 3,600 avoiding care, this is remarkably successful. As we have stated in connection with Integrated Family Support Teams, further research is required as soon as possible.

c) Reflect programme

- 7.48 The *Reflect* programme has been available across Wales since 2017-18, in response to new evidence about recurrent care proceedings which found that a sizeable proportion of birth mothers who had previously had a child removed from their care returned to court within a short space of time (one in four)⁷⁶⁷, as a consequence of a new baby being born. *Reflect* was developed specifically for Wales, based on the experience of the *Pause* model in England⁷⁶⁸. It is an initiative which aims to break the cycle of repeat pregnancies and recurrent care proceedings. *Reflect* supports women to stabilise their housing situation, access treatment for presenting problems such as substance misuse and improve use of health and wellbeing services, including reproductive health care.
- 7.49 Newport City Council, with the assistance of Barnardo’s Cymru, developed an initial *Reflect* project in March 2017 to support mothers following the compulsory, permanent removal of one or more children due to child protection concerns. Welsh Government funding was provided to extend the project across the whole of the Gwent region, and in 2017-18 further funding of £850,000 was provided by the Welsh

766 Huw Irranca-Davies Minister for Children, Older People and Social Care. (2018) *Ministerial Statement to the Assembly* 13 November 2018.
 767 First estimate of recurrent care proceedings was published in England in 2015 by Professor Broadhurst and colleagues, firmly evidencing *women’s repeat appearances in public law proceedings*. The work has exposed the consequences of cutting short parents’ own rehabilitation, once children are removed from their care. Professor Broadhurst’s work has catalysed major change in England, regarding the provision of services to parents to prevent recurrent appearances.

768 Developed in Hackney and funded by the UK Department for Education to cover the position of women who had experience or were at risk of experiencing repeat removals of children from their care.

Government through the Improving Outcomes for Children Ministerial Advisory Group to support the national rollout of *Reflect* across Wales. Newport local authority has retained a national coordination function to support the rollout and share its learning and experience.

7.50 The Assembly was told on 13 November 2018⁷⁶⁹ that *Reflect* had supported 150 young parents whose children had been placed in the care system with a wide range of emotional and practical issues. It will be important to establish benchmarking statistics regarding recurrent care proceeding in Wales, to enable the impact of the national roll-out of *Reflect* to be firmly ascertained. To date, Wales does not have any statistics on this issue. It will therefore be difficult to evaluate progress at a national level, unless relevant statistics are produced⁷⁷⁰ as we have already explained.

d) Code of Practice: returning children to their birth parents

7.51 The Welsh Government published a Code of Practice which sets out local authority responsibilities under the Social Services Act for looked after children. The Code outlines the arrangements and preparations that should be made so that looked after children, where appropriate, can successfully return to their birth families. Local authorities should work in partnership with the family and the child or young person to enable them to be reunited with their family where possible, providing it is consistent with the individual child's interest. However, there is no published evidence or analysis of the operations of the Code of Practice or the important issue of reunification. This is urgently required.

5. Welsh Government Programmes of parental education

a) Give it time campaign

7.52 In addition to the specific programmes aimed at reducing the number of children taken into care and the guidance issued in relation to returning children to both their parents, we consider we should refer to two Welsh Government programmes of parental education aimed at a broad range of parents.

⁷⁶⁹

op cit n. 766.

⁷⁷⁰

The Nuffield Family Observatory began its work in the Summer of 2019 led by Professors Karen Broadhurst and David Ford and a team at the universities of Lancaster and Swansea.

7.53 The Welsh Government launched its *Parenting, Give it time* campaign in November 2015 to promote positive parenting messages through social and print media and digital advertising⁷⁷¹. A dedicated website and Facebook page provide parenting tips, information and advice, and signpost parents to sources of further support including advice about handling common parenting concerns. Every local authority in Wales provides a range of parenting support which encompasses available information and advice, parenting groups and targeted and intensive support. While local authorities are responsible for deciding the precise nature of local service delivery, the Welsh Government published non-statutory guidance in May 2017 setting out its expectations about how local authorities (and local health boards, the third sector and others providing parenting support) should provide parenting support⁷⁷².

b) Flying Start programme and Families First

7.54 The Welsh Government has spent more than £690 million on its *Flying Start* programme since it was launched in 2006⁷⁷³. It is a targeted early years programme which aims to make a decisive difference to the life chances of children aged between 0 and 4. The programme has four core elements: fully funded quality childcare; parenting support; intensive health visitor support; and support for speech, language and communication. *Flying Start* is a geographically targeted programme which uses income benefit data as a proxy indicator for poverty to target areas with the highest proportions of children aged between 0 and 3 living in income benefit households. The Welsh Government has spent more than £290 million on its *Families First* programme since it was introduced it in 2012⁷⁷⁴. It has promoted the development of multi-agency systems of support for families, particularly those living in poverty. The programme places an emphasis on early intervention and prevention, and works with the whole family to stop problems from escalating towards crisis.

771 Welsh Government, *Give it time*.

772 Welsh Government (2017) *Parenting in Wales: Guidance on engagement and support*.

773 *op cit n. 765*.

774 Welsh Government, *Families First*.

6. The provision of Family Drug and Alcohol Courts

a) The position in England

- 7.55 Another step that has been taken is the use of Family Drug and Alcohol Court. In England⁷⁷⁵ there are currently eight FDAC teams, serving 10 family courts and 18 local authority areas. FDACs are modelled on other problem-solving courts (such as those for criminal cases we described at paragraphs 4.166 and following) to provide a problem-solving approach to care cases where parents have serious problems of drug and alcohol misuse or addiction, and are at risk of having their children taken into care. FDACs are a partnership between the family courts and teams of substance misuse specialists and social workers, and help parents change their lifestyles to safely reunite families or ensure swift placements with alternative carers where reunion is not possible.
- 7.56 The first FDAC was established in London in January 2008. In 2014, an evaluation published by Brunel University⁷⁷⁶ showed that reunification rates compared favourably with standard cases (45% compared to 15%), parents had better experiences in court and there were far fewer contested cases. In 2016, a further evaluation, published by Lancaster University, looked at the durability of outcomes up to over five years following engagement with FDAC⁷⁷⁷. It found that FDAC mothers are 50% more likely to stop using drugs and are much more likely to have stayed off drugs five years after going through FDAC than mothers who go through ordinary care proceedings⁷⁷⁸.
- 7.57 In 2016, a value for money study conducted by the Centre for Justice Innovation⁷⁷⁹ found that while FDAC cases cost more initially (primarily in additional upfront treatment costs), they avoid legal and expert witness costs that otherwise would be incurred while the case is ongoing and, more importantly, save the much greater costs incurred when drug or alcohol addiction continues and the consequent damage to children.

775 WS196 Centre for Justice Innovation: 3.

776 FDAC Research Team (2014) *Changing Lifestyles, Keeping Children Safe: an evaluation of the first Family Drug and Alcohol Court (FDAC) in care proceedings.*

777 FDAC (2016) *Better Outcomes for Children and Parents.*

778 It made four statistically-significant findings: (1) Substance misuse cessation – A significantly higher proportion of FDAC than other mothers had ceased to misuse by the end of care proceedings (46% v 30%); (2) Reunification at the end of care proceedings – A significantly higher proportion of FDAC than other families were reunited or continued to live together at the end of proceedings (37% v 25%). (3) Substance misuse at the end of the five year follow up – A significantly higher proportion of FDAC than other reunification mothers were estimated to sustain cessation over the five year follow up (58% v 24%). (4) Durability of family reunification at three year follow up – A significantly higher proportion of FDAC than other mothers who had been reunited with their children at the end of proceedings were estimated to experience no disruption to family stability at three year follow up (51% v 22%).

779 Centre for Justice Innovation (2016) *Better Courts: the financial impact of the Family Drug and Alcohol Court in London.*

The better outcomes attributed to FDACs produce further cost savings, in avoided care placements, avoided returns to court, and avoided future treatment costs. Overall, the evidence from the London FDAC evaluation is that the initial investment in an FDAC is recouped within two years, and over five years for each £1 spent £2.30 is saved to the public purse⁷⁸⁰. A 2016 review of the international evidence on problem-solving courts published by the Centre for Justice Innovation highlighted that FDACs were effective in reducing parental substance misuse and could reduce the number of children permanently removed from their families. The review suggested that, amongst other things, problem-solving courts provided procedural fairness, with the perception of fair treatment leading to better compliance with court orders⁷⁸¹.

- 7.58 In 2015, the UK Government's Department for Education part funded the expansion of FDACs into ten new areas and a National Unit, made up of five partner organisations from the NHS, the third sector and higher education⁷⁸². The cessation of funding and budget constraints meant that two FDAC sites, in West Yorkshire and South West England, closed and, in September 2018, the Department for Education ceased funding the National Unit, which also closed.
- 7.59 Between September 2018 and February 2019, efforts were made to re-establish a national centre of excellence for FDAC practice. In April 2019, the Centre for Justice Innovation was funded to establish a new national partnership to support current and new FDACs across England. This new work has been funded by a consortium of private funders, including two family law firms, Hall Brown Family Law and Family Law in Partnership; LCM Wealth, which advises high net worth families; AddCounsel, a provider of bespoke behavioural health programmes; and the Hadley Trust.
- 7.60 The Department for Education announced in May 2019 it would be investing in expanding FDACs through its *Supporting Families: Investing in Practice* programme. The programme is looking to work with local authorities to further expand FDACs. It is being run in partnership with the What Works Centre for Children's Social Care, which will oversee the implementation of the FDAC programmes in local authorities and

780 Munby, J (2017) Case Note. *Family Law* 777.

781 WS196 Centre for Justice Innovation: 3-4.

782 The National Unit received funding from the UK Government's Department for Education, with local FDACs relying on financial support from local authorities and other local commissioners.

gather evidence of their effectiveness in keeping children and parents together, with the aim of spreading best practice in the future.

b) The position in Wales

7.61 No FDACs have been established in Wales. We asked the Welsh Government, given the results in England, why. We were told the establishment of FDACs had been discussed at the Family Justice Network for Wales, but none had been established for three reasons:

7.61.1 The Integrated Family Support Service in Wales (which we have described in paragraph 7.43) supports families where there are concerns about the welfare of children. As this works with families to help them make positive changes, concerns are reduced so that children can stay safely at home. The Service is commonly offered at the point of crisis prior to any court intervention and before an application for a care order is issued. It is intended to avoid the need for court intervention. In contrast, FDACs work with families who are already involved with the family courts.

7.61.2 There were not enough cases to make a FDAC viable in Wales.

7.61.3 As courts are not devolved to Wales, the Welsh Government told us it had inquired if the announcement of Department for Education funding to which we referred at paragraph 7.60 would be made available to Wales. The Ministry of Justice had not provided any central funding and in the absence of such funding, local authorities and local health boards would be expected to pay. The Welsh Government told us it was keen to explore the establishment of FDACs in Wales, but it would need to be funded by the UK Government.

7.62 We find all three explanations difficult to follow:

7.62.1 The first explanation takes no account of the overwhelming evidence that the number of applications to the court and the number of care orders made is increasing. A FDAC is intended to try and see if a better solution than making a care order can be arrived at through a court process. Despite the excellent work of the Integrated Family Support Service, the number

of cases brought before the court is increasing. A FDAC is necessary to deal with those cases where the Integrated Family Support Service has not been successful.

7.62.2 The second explanation takes no account of the fact that there was no examination of the data and no enquiry to see if a court could sit for some of the time as a FDAC and for some of the time doing its ordinary work.

7.62.3 The third explanation takes no account of the way in which funding has been found in England other than through the courts budget. Given the findings in 2016 as to savings⁷⁸³ to which we have referred, it is difficult to see why the Welsh Government has not taken similar steps to those taken in England.

We set out our views on what should be done at paragraphs [7.100](#) and following.

7. Steps taken by the judiciary

7.63 The judiciary had identified the seriousness of the crisis in relation to care in England and Wales by at the latest 2016⁷⁸⁴. In response the Care Crisis Review was launched, funded by the Nuffield Foundation and facilitated by the Family Rights Group. Its report, published in June 2018, considered the factors which had contributed to the crisis in children’s social care and family justice and how it could be addressed⁷⁸⁵. It identified 20 key options for change to local authority and court systems, and national and local policies and practices, which could contribute to reducing the increases in the number of care cases coming before the family courts and the number of children in the care system.

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Para 7.57.

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In his 15th View from the President’s Chambers in September 2016 the then President of the Family Division, Sir James Munby, highlighted the care crisis facing the family justice system, with increasing numbers of care applications and looked after children, “We are facing a crisis and, truth be told, we have no very clear strategy for meeting the crisis”.

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Care Crisis Review (2018) Options for Change.

- 7.64 A Public Law Working Group⁷⁸⁶ chaired by Mr Justice Keehan was established by the President of the Family Division to consider the current issues and develop recommendations and best practice guidance; Cafcass Cymru was represented on the working party. In a consultation published in July 2019⁷⁸⁷, 58 core recommendations were made including: (1) some directed at local authority decision making, including that the emphasis should move from whether the threshold for care proceedings was met to seeing what could be done to bring the family back from the threshold: alternatives should be exhausted before court proceedings were taken; (2) the need for a change of culture and the adoption of a cooperative and blame-free approach; and (3) much clearer guidance in relation to newborn babies.
- 7.65 The report and consultation paper of the Public Law Working Group, and the report and consultation paper of the Private Law Working Group led by Mr Justice Cobb, to which we have referred in paragraph [7.116](#), aim to address the very significant increases in the number of public law care proceedings and private law applications across England and Wales, the removal of most private law cases from the scope of legal aid, and delays caused by the increased volume of work. The focus of the two groups is upon improving professional processes and procedure and the need for collaboration across the family justice system to reduce the volume of cases and enhance the ability of the courts to deal with them justly and efficiently.

8. The financial costs of taking children into care

- 7.66 Our conclusions and recommendations must also be considered in the light of the financial costs and long-term consequences of taking children into care as well as the availability of data. The financial costs of taking children into care are very significant. It has proved difficult to establish overall costs, but the costs are substantial as the following paragraphs set out.

⁷⁸⁶ It brings together highly experienced professionals in child protection and family justice, including members of the judiciary, representatives from Cafcass, government and the third sector, lawyers and social workers.

⁷⁸⁷ Courts and Tribunals Judiciary (2019) [Consultation: Children Cases in the Family Court – Interim Proposals for Reform](#).

a) The costs of legal aid for care proceedings

7.67 As we have set out in paragraph [3.20](#), the overwhelming proportion of legal aid in care and related public law proceedings was spent on court representation and advocacy – £29.11 million. A small sum, £0.74 million, was spent on advice and assistance but no breakdown between care proceedings and private law proceedings can be provided. Some non-parent interveners and/or non-parent potential alternative carers struggle to obtain legal representation⁷⁸⁸. As set out in paragraph [3.21](#), per capita spending in relation to public law care proceedings in Wales was 32% higher than in England cumulatively over the years 2011-12 to 2017-18, but the percentage of the cut in legal aid expenditure in Wales was greater than in England.

b) The legal costs of local authorities

7.68 We have been unable to obtain overall figures from across Wales for all local authorities for each of their legal work. However, the costs are very significant.

7.69 Each local authority has a legal team for children's services. The costs vary between local authorities. The information we received indicates the annual costs for each local authority ranges between £198,000 and £469,000 each year. On top of this, in each case the local authority will have to pay for independent representation by barristers and for expert evidence. The cost varies from case to case. It is clear that the costs are rising rapidly; one authority reported its legal costs had increased by more than 30% between 2015 and 2018.

7.70 To give an illustration of the kind of cost that might be incurred, we were provided by a local authority with the costs of a case which resulted in a care order for three children. We were told it was towards the upper end but by no means unusual. The local authority had to bear the costs of six experts which the court ordered the local authority to fund; the costs include the proportion of the annual costs of that local authority allocated to this case together with the other costs incurred but do not include the costs that the Legal Aid Agency will pay for the representation of the parents and any others or for the costs of Cafcass. We have set out the total costs of legal aid in such cases at paragraph [3.17](#). The cost of Cafcass are considered at paragraph [7.78](#).

Figure 47**Costs of a care order case**

| | |
|-----------------------------------------|--------------------|
| LA SOLICITOR AND PARALEGAL COSTS | £74,805.50 |
| COUNSEL'S COSTS | |
| QC | £36,336.00 |
| Junior | £45,539.90 |
| EXPERTS | |
| 1 | £5,655.60 |
| 2 | £2,461 |
| 3 | £806.68 |
| 4 | £3,589.45 |
| 5 | £2,165.16 |
| 6 | £169.63 |
| COURT FEES | £2,870.00 |
| MISCELLANEOUS | |
| Tel Conference | £11.88 |
| Independent Legal Advice relative | £1,871.66 |
| TOTAL COST | £176,282.46 |

Source: Data provided to us by a local authority in Wales

c) The costs to local authorities of maintaining children's services is very considerable⁷⁸⁹

- 7.71** A local authority foster placement costs around £23,000 a year. The annual overhead costs for fostering teams vary in different local authorities, from £266,000 to £740,000 (an average of £576,000).
- 7.72** An independent Foster Agency costs around £43,000 a year.
- 7.73** A residential placement (average) costs around £3,000 to £3,500 per week (specialist placements can cost more, up to £9,000 per week).
- 7.74** Secure accommodation costs around £5,000 per week.

789 *op cit n. 732: 78-81. Figure 28 of the report provides more detail on the split between foster care, residential care and other expenditure.*

7.75 The overall costs of foster care and residential placements varies from authority to authority. The overall cost of foster care varies from £703,000 to £6.8 million and the cost of residential care similarly varies from £570,000 to £6.6 million.

d) Overall costs of looked after children

7.76 These costs result in the following overall expenditure by local authorities in Wales on looked after children (80% of whom are children in care)⁷⁹⁰:

Figure 48

Overall expenditure by local authorities in Wales on looked after children (£millions)

| 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 |
|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| 166.48 | 179.70 | 215.30 | 223.07 | 245.30 | 248.20 | 243.97 | 256.41 | 284.02 |

Source: StatsWales

7.77 There was a 70% increase in spending on looked after children between 2009-10 and 2017-18, from £166 million to £284 million. Even adjusting the 2009-10 figure to 2017-18 prices, the increase is still 50%. These increases (and in some cases decreases) in expenditure have varied widely between local authorities⁷⁹¹. In 2017-18, expenditure on looked after children represented 46.3% of the expenditure on all children's services by local authorities⁷⁹².

e) Cafcass Cymru costs

7.78 Cafcass Cymru's budget in 2017-18 was £10.267 million and has been set at £11.307m for 2019-20. During 2017-18 Cafcass Cymru worked with 9,000 children and young people in Wales, which represented a 6% increase from 8,500 in 2016-17. 87% were aged 11 and under. There has been an increase of 20% in the volume of children involved with Cafcass Cymru since 2015-16⁷⁹³. 92% of Cafcass Cymru's budget is absorbed by staff costs⁷⁹⁴. This uplift in the budget has meant the existing organisational structure could be funded, and it could recruit to

790 StatsWales (2018) *Social services revenue outturn expenditure by client group*.

791 WCPP Report: 81.

792 WCPP Report: 86; OE040 Debbie Wilcox: 6.

793 Cafcass Cymru *Annual Report 2017-18*.

794 The only legal cost Cafcass Cymru funds is when there is a difference in opinion of the Family Court Adviser and the child. The Family Court Adviser then has separate legal representation.

a number of practitioner posts that had been ‘frozen’ (there had been no uplift for 4 years). Cafcass Cymru is not able to quantify the costs of individual cases.

f) Other costs

7.79 A Ministerial Statement on 13 November 2018 confirmed that further funds had been allocated in relation to care, including *Reflect* services (to which we have referred at paragraph [7.42](#)), £5 million on Edge of Care Services (to which we have referred at paragraph [7.46](#)), £1 million on supporting children in care transitioning to adulthood and a further £1 million to provide personal advisers to those who had been in care.

7.80 It has not proved possible, for understandable reasons, to identify other direct costs associated with looked after children. Overall local authority spending on children’s and family services has increased by 24% in the five year period 2012-13 to 2017-18. Other direct costs need to be taken into account such as the additional health costs of supporting children in care relating to behavioural needs, therapeutic needs, complex care and medical interventions. There are also indirect costs such as the cost of providing benefits for the 38.7% of those who had left care who were not in education, employment or training⁷⁹⁵.

7.81 These significant financial costs also support the necessity to take urgent steps to reduce the number of children taken into care. One of the benefits would be producing cost savings and providing additional funds for investing in preventative approaches, which are central to the Social Services Act and the Future Generations Act. In turn, additional investment in preventative approaches should further reduce the need for so many children to go into care.

⁷⁹⁵ As at March 2019.

9. The serious long term consequences of taking children into care

- 7.82 More important than the financial costs are the long-term consequences to many of the children taken into care. Although some of the difficulties that children in care will subsequently encounter arise from what they underwent before being taken into care⁷⁹⁶, there is overwhelming evidence that many children in care are seriously disadvantaged in later life. For example, Lord Laming’s independent review for the Prison Reform Trust in 2016 of how the life chances of children in care can be transformed by protecting them from unnecessary involvement in the criminal justice system, *In Care, Out of Trouble*⁷⁹⁷, considered ways of tackling the over representation of children in care, or with experience of care, in the criminal justice system in England and Wales. In addition, it is clear from the evidence in relation to the work done on Adverse Childhood Experiences, to which we referred in paragraph 4.203 that being taken into care can have a serious impact on a child’s life. Professor Broadhurst and colleagues found that 45% of birth mothers appearing as respondents in recurrent care proceedings had been in care themselves as children⁷⁹⁸.
- 7.83 In addition to this evidence, we held an engagement session convened by Voices from Care in Cardiff with children and young people in care, or who had left care, some of whom shared positive experiences of care⁷⁹⁹. Even for those children and young people who felt that being in care was better than remaining at home, many of their experiences of the care system were poor. Apart from very difficult circumstances of removal from their families, young people described to us circumstances of high turnover of social workers preventing meaningful relationships developing with them, and poor communication resulting in their not knowing what may be happening to them, moving from one place to another, failures to take account of their views and wishes, and decisions being taken about their lives by people who did not know them. A common concern among the young people was that they were moved away from their home area because there were not enough local placements, with the consequence they lost support and stability from the people they knew. Others felt that some professionals who

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OE040 Gareth Jenkins: 3.

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op cit n. 114.

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Broadhurst, K et al (2017) *Vulnerable Birth Mothers and Recurrent Care Proceedings*.

799

ES Voices from Care.

worked with them did not always challenge them to thrive and achieve; instead they wrote them off as low achievers as they were in care. Some were concerned about the lack of support, particularly if they had additional learning needs in care. They said they felt ill-equipped with practical life skills to leave care and were unsure about the way Pathway Planning⁸⁰⁰ and When I'm Ready⁸⁰¹ operate. Some did not know of their right to an advocate, but those who did had found the advocate helpful. They told us it was hard to obtain an advocate when needed.

- 7.84 The voice of the child needs to be heard at every stage of care proceedings either directly or through Cafcass Cymru or through independent advocacy being developed by the Welsh Government⁸⁰². Some young people who had been taken into care indicated that Cafcass was not always seen as representing the child's views. The Welsh Government has funded the "Active Offer" to enable local authorities to provide a nationally consistent approach to advocacy support. Children and young people are entitled to an active offer of advocacy from a statutory Independent Professional Advocate when they become looked after or become the subject of child protection enquiries leading to an Initial Child Protection Conference.
- 7.85 It was also striking to be told that some young people in care feel strongly that their parents should have been provided with practical help to make it possible for them to stay at home⁸⁰³.

10. The lack of data

- 7.86 The bulk of the evidence we received suggested that much of the need to take children into care arose in families where there were multiple and long standing underlying problems such as those relating to health, substance misuse, unemployment and housing – what is termed comorbidity. We have referred to a similar issue and the need for a joined up approach at paragraph [4.127](#). As yet there is no evidence based on hard data that establishes this.

800 *A plan produced by a local authority for each child in care to enable them to transition successfully from care into adulthood.*
 801 *A good practice guide prepared by the Welsh Government for making and supporting arrangements for young people leaving care. It supplements the Statutory Code of Practice made under Part 6 of the [Social Services Act 2014](#).*
 802 *OE040 Debbie Wilcox (CEO Voices from care): 5.*
 803 *Ibid: 5.*

- 7.87 Research, funded by the Nuffield Foundation's Family Justice Observatory for England and Wales, is being undertaken by Lancaster University with the SAIL Databank at Swansea University. The four and a half year project announced in April 2019 will combine SAIL's infrastructure and technical expertise with Lancaster University's family justice research expertise to provide new statistical evidence specific to the family justice system, with the aim of tackling knowledge deficits. In addition, the team will support external researchers and analysts in the use of the wealth of data that is currently being deposited in SAIL and provide feedback to data providers on the scope and quality of that evidence. This is an important programme of work that will produce vital new inter-disciplinary intelligence about how the family justice system is working in Wales so that policy and practice can be developed on the basis of that intelligence.
- 7.88 As was clear to us from the evidence⁸⁰⁴ and as is apparent from the Welsh Public Policy Centre Report of May 2019⁸⁰⁵, existing published data needs to be better combined to progress understanding. New research and analysis is needed to (1) analyse the detail of factors that appear to have a causative effect on care demand (such as deprivation), and (2) ensure that the development of preventative services is based on evidence and takes into account what is known about the likely recovery and relapse patterns of people experiencing substance misuse and mental health problems.
- 7.89 Routine data produced by local authorities in Wales is put to some good use, but is at present insufficiently analysed and used to the extent it should be. This is short-sighted given the costs associated with data production and the considerable costs and long-term consequences of taking children into care. We consider that the data should be made available to the Nuffield Family Justice Observatory for safe anonymous use (for example through the Lancaster University and the SAIL Databank partnership). In our view the making available of local authority and Welsh Government data to them will lead to a better understanding of why children become looked after children and with what outcomes. It would also enable a clear understanding of the stark differences in rates of looked after children in the different local authorities in Wales. At present, fundamental decisions are taken

804 *This was the position of the panel at the OE040.*
805 *op cit n. 732: 87-88.*

about children’s futures, but without any real chance of knowing what happens to children in the longer-term. This is highly unsatisfactory.

- 7.90 The Welsh Government’s Improving Outcomes for Children Ministerial Advisory Group aims to identify what early intervention and preventative action could be taken to help reduce the numbers of children taken into care⁸⁰⁶. A report on the work of this Advisory group was given to the Assembly on 13 November 2018⁸⁰⁷ by the Minister; in the discussion that followed, reference was made the issue of the provision of hard data as part of its work programme⁸⁰⁸. A clear timetable is needed.

11. Our conclusion regarding the present position

a) The issue

- 7.91 It is evident from what we have set out that the position in relation to looked after children in Wales needs, even under the current devolution scheme, a more strategic approach with a real emphasis on culture change and delivery. The Assembly’s Public Accounts Committee report⁸⁰⁹ gives a similar picture to what we have set out. It made 12 helpful recommendations for improvement and concluded:

“The outcomes that public services deliver for care experienced children must be improved. Their individual experiences need to be better. It is not just about more money – but about using existing resources more strategically. The price is too high for a system delivering such poor outcomes – both the financial cost and more importantly the cost being paid by the children and young people in Wales who most need our care.”

- 7.92 The work programme of the Advisory Group⁸¹⁰ until the end of the current Assembly in May 2021 is focused on delivering priority areas to provide improved outcomes for children. The work programme⁸¹¹ includes increasing preventative and early intervention work with families to reduce the need for care, more effective and efficient use of funds and improved placement sufficiency in foster care, residential care, secure accommodation and for care leavers.

806 WS141 Welsh Government Supplementary Evidence on Family Justice; *Reports of the Advisory Group*.

807 *op cit n. 766: 250-262.*

808 *op cit n. 766: 264.*

809 Assembly, Public Accounts Committee (2018) *Care Experienced Children and Young People*.

810 WS193 Welsh Government letter regarding looked after children: 1.

811 *There are three work streams which are led by a Head of Children’s Service or a representative from the third sector: (1) Safely reducing the number of children in need of care; (2) having sufficient, high quality placement options for children who are looked after or leaving care; (3) supporting children who are looked after to have the best possible journeys through care and into adulthood.*

b) The important step taken by the Welsh Government on 2 July 2019

7.93 At paragraphs 7.42 and following, we described the small scale approaches taken by the Welsh Government in seeking to address issues relating to children in care. We therefore warmly welcomed (despite the reservations expressed to us about the use of targets⁸¹²) the important step set out in the statement of the Deputy Minister to the Assembly on 2 July 2019 in which she said that taking preventative action in respect of looked after children was a priority. The Deputy Minister acknowledged that the variation between areas and persistent rise in numbers of looked after children was unsustainable; and that local authorities had acknowledged the pressure being placed on children's services and the family courts. The Deputy Minister stated that the First Minister had asked for clear "*reduction expectations*" to be set to (1) reduce the numbers of children in care, (2) reduce the numbers of children placed out of county, (3) reduce the numbers of children placed out of Wales, and (4) reduce the number of children removed from parents with a learning disability. These reduction expectations would be tailored to the population and demography of each local authority. They would span the course of three years with regular evaluation and monitoring on a quarterly and year end basis. We understand that the targets require an average reduction of 4% in each of the next three years and have been agreed with 17 of the 22 local authorities. Work is being undertaken to agree similar targets with the remaining five local authorities.

7.94 This is an important first step. It is right to acknowledge the work undertaken by officials of the Welsh Government in helping the majority of the Welsh local authorities to understand the need for change, to appreciate that it was unsustainable for the existing policies to continue and that no change would occur if targets and other performance measures were not agreed.

812 *The Family Rights Group expressed strong reservations about targets (WS198: 8).*

c) Our remaining concerns – a long-term plan and the refining of the interim action

7.95 Prior to the evidence of the First Minister on 19 June 2019 to us and the emerging evidence⁸¹³ that targets were being developed (as set out in the statement made by the Deputy Minister on 2 July 2019), we had become increasingly concerned that the issues we have outlined were not being confronted by the Welsh Government and its officials. Nor were they being confronted by local authorities with sufficient urgency. Nor was action being taken on the basis of sound evidence. We were not alone in such views⁸¹⁴. This was a grave matter given the seriousness of the issues and their impact on the lives of children and their families. We had gained the clear impression from the evidence given to us, we regret to say, that amongst some was an acceptance of the apparent unavailability of high rates of children in care and a lack of urgency and a strategy to deal with the scale of the problem. Moreover, we were concerned that local authorities were accepting the high numbers of children being taken into care in the face of the evidence of poorer outcomes for children in care.

7.96 The evidence of the Association of Directors of Social Services Cymru and Voices From Care⁸¹⁵ was that there was a tendency for local authorities (which are struggling with issues such as recruitment or improving social work practice) to take a more interventionist approach. The decision making process was too complex and too many were involved, with the consequence that the best decisions were not made. Care proceedings were generally not the best way to make decisions to achieve the right outcomes for children; they were too adversarial and the children's best interests were neglected.

7.97 Our view is that this issue must be addressed by a clear long-term plan which is based on evidence. This requires action to make data held by local authorities and the Welsh Government available for the anonymised use we have described. The Lancaster University and SAIL Databank collaboration means Wales has the potential to accelerate knowledge.

⁸¹³ *This was one of the proposals made in the First Minister's manifesto in November 2019. On 1 February 2019, we were told by Mr Heaney that he was going to chair a group of stakeholders to agree bespoke targets (OE008 Albert Heaney: 6).*

⁸¹⁴ *The evidence of the First Minister to us was I have been making myself unpopular on public platforms for the last five years, but I can't convince people that anything is wrong. I don't think it is complacency. There are very committed people who want to do their best for children and they say none of the children in care shouldn't have been placed in care. I don't believe that is correct, but I think they do it thinking they are doing the right thing. They still think there is no issue even when a neighbouring local authority with similar issues take a much lower rate of children into care and it is difficult to dislodge this way of thinking.*

⁸¹⁵ *OE040 Ruth Henke QC: 2.*

- 7.98 Improved use of case and administrative data will help to ascertain the real reasons why so many children are looked after in Wales, plan a new system and identify and test new ways of working that are grounded in the best evidence. The urgency of this issue warrants a coordinated approach across government with those who fund the research and the people engaged in the research.
- 7.99 Pending that research, the position is so serious that we considered that interim action was required. This is why we welcome the statement of the Deputy Minister on 2 July 2019 as a significant first step in the firm and decisive action required on the part of the Welsh Government and local authorities in Wales, pending the completion of the research and the development of an evidence-based long-term plan.

12. The urgent interim action required

- 7.100 The serious long-term effects of taking children into care, and the high costs incurred which could instead be spent on support to enable some children to remain safely with their families, clearly demonstrate why there is a necessity to adapt the present processes while a longer term plan is developed. Until the announcement by the Deputy Minister there was the clear impression of drift and of messages delivered without detailed concrete action resulting. Therefore a plan with a clear timetable must be urgently established and implemented.
- 7.101 What is next needed in essence is a robust delivery method and a profound change in culture – matters that are often significant problems in ensuring that there is real reform in other fields of justice. Experience has shown that they can only be successfully dealt with by strong and determined leadership and constant pressure on those responsible for delivery. We therefore consider that the statement by the Deputy Minister must be supplemented by:
- a) A small all Wales delivery body should be established as a subgroup of the Family Justice Network for Wales and headed by a senior person who can provide good leadership and ensure that results are delivered in each of the 22 local authority areas and not simply the 17 that have so far agreed. The body should ask searching questions if the targets are not met and lead the adoption of the matters we set out in the next paragraph across all local authorities. The establishment of such a

group should be seen as a step towards ensuring the Family Justice Network for Wales begins to develop into a body that gives leadership and ensures accountability modelled on the Family Justice Board.

- b) It is clear from the evidence that at least a proportion of the children being taken into care could thrive at home with their families if relevant and sufficient support was provided to address legitimate areas of concern and to support parents through preventative and problem-solving approaches prior to proceedings being initiated. A change in culture is needed if this is to be achieved.
- c) Guidance to local authorities should be reviewed and should emphasise keeping the child at home with support as a central objective. Where children enter care (either on a voluntary or court-ordered basis), reunification for the long-term must be considered.
- d) Officials in the Welsh Government and in local authorities must change their culture to that of seeing that everything possible is done to support the family and keep children safely in the family.
- e) There should be close monitoring of expenditure through the Family Justice Network for Wales to ensure that local authorities are directing the focus of their expenditure to supporting the keeping of children safely at home; it is clear not enough is being spent on prevention⁸¹⁶.

7.102 If the actions taken in accordance with the new guidance and a change in culture we recommend do not produce a solution for a particular child in any given case and care proceedings have to be contemplated, much more needs to be done to make pre-proceedings a more effective way of resolving issues⁸¹⁷. Greater use should be made of the fact that the parents will by then have legal aid; local authority lawyers should be more closely engaged with the parents' lawyers, as good advocacy for the parents is important, particularly pre-hearing and at the first hearing, even though the amount of legal aid available for this purpose is fixed and gravely inadequate.

⁸¹⁶ OE040 Debbie Wilcox: 6.

⁸¹⁷ We received evidence that in some local authorities such as Swansea pre-proceedings worked well (OE040 Debbie Wilcox: 4).

- 7.103 If a solution is not achieved in the pre-proceedings and proceedings are commenced, then it should be a routine practice both in the lead up to and at the first case management hearing to examine thoroughly the feasibility of problem solving and the form it might take. The Family Justice Network for Wales should monitor and evaluate this practice. It also would be necessary for the Welsh Government and local authorities to provide the resources for coordination of multiagency teams if a problem solving approach was then adopted. We would anticipate that at that stage and throughout the proceedings (if they continued) an adversarial approach would not be the way to proceed; the approach should be inquisitorial, led by a judge with the skills to run the court in this way and the voice of the child as we have said at paragraph [7.84](#) should be taken into account at every stage.
- 7.104 As a further step, there should be immediate discussions with the judiciary with a view to the establishment of FDACs in Wales. It would be essential that the judge selected has the skill to run such a court and the support and the encouragement of the Designated Family Judge and is able to work with a key member of the local authority staff in a senior management position. Although the establishment of FDACs must be judicially led, in the light of the benefits observed in England, the Welsh Government should see the value of expending its own funds on this. A problem-solving approach need not be restricted to drug and alcohol cases. The principles of problem-solving can be applied to all neglect cases, including cases where the extended family are involved from the outset and might provide some permanence for the child. The Welsh Government should collaborate with the UK Department of Education both as to funding and to obtain the benefit of the experience gained from the Department's various different approaches to the delivery of FDACs.
- 7.105 The judiciary should take a more proactive role and ensure consistency of policy and practice is applied across Wales; it is important that there is a clear and consistent message and strong collaborative leadership. Given the authority of the judiciary, it is important that judges take a lead in ensuring the Local Family Justice Boards provide forums for constructive dialogue and a joined up review of local area practice, as is done in some major family court centres in England. This, as experience has shown elsewhere, does not involve any infringement of the independence of the judiciary. It is important to ensure that the type of disagreement to which we have referred at paragraph [7.36.4](#) (over applications under section 76 of the Social Services Act) is dealt

with constructively; judges should participate in a proper discussion of the concerns of the local authorities and the real difficulties faced by them and after such discussion work out in conjunction with the other members of the Local Family Justice Board the best way of dealing with them.

7.106 We are emphatic in our view that dialogue and discussion between the judiciary and local authorities on a regular basis is essential. Without it there will be no real improvement in the very difficult problems faced in Wales in relation to looked after children. Local Family Justice Boards with active judicial participation are critical given the need to ensure local delivery. The Family Justice Network for Wales should work to ensure that this happens and to monitor the results.

7.107 These are demanding requirements, but needed as the future of so many children is at stake.

We recommend in the short term consideration should be given to:

Pending further research and the development of a long-term strategy, an all Wales approach to family justice should be developed and led in Wales through the Family Justice Network for Wales and the Local Family Justice Boards. The approach should be followed by all local authorities for dealing with child protection referrals with the objective of avoiding care proceedings when family support would be more appropriate.

It should be a matter of routine practice prior to the first hearing in care proceedings to examine the feasibility of problem-solving and the form it might take, with a view to finding what steps short of taking a child into care can be put in place.

The voice of the child should be heard at every stage of the proceedings.

Family Drug and Alcohol Courts should be established in Wales.

13. The longer term plan

- 7.108** A longer term plan will need to be informed by the collection of better, more robust data to show the causes and effects of taking so many children into care in Wales. There is also a real need for specialist policy development assisted by much more intensive academic study in Wales of these issues; we would hope that the Welsh Government would play a significant role in securing funding for this. We expand on this in paragraph [10.45](#).
- 7.109** There is a range of issues to be considered in devising that long term plan. It must be bold and radical and not be a simple “tinkering” with the system. There are many ideas available that should assist in the formation of such a radical new policy⁸¹⁸. It would include examination of:
- 7.109.1** The extent of comorbidity of problems – housing, health, unemployment, substance misuse.
 - 7.109.2** Preventative measures.
 - 7.109.3** A re-evaluation of the approach of local authorities to intervention.
 - 7.109.4** The provision of support and independent advocacy for children.
 - 7.109.5** The provision of support and practical assistance to families.
 - 7.109.6** The need for intervention in the case of mothers who have had children taken into care before another pregnancy arises.
 - 7.109.7** Robust analysis of children’s routes into and beyond the family court.
 - 7.109.8** The relationship to youth justice and the possibility of a court which would cover criminal and civil aspects of issues, particularly problem-solving issues⁸¹⁹.

⁸¹⁸ See for example [Sir James Munby’s Eleanor Rathbone Social Justice Lecture](#) at Liverpool University in May 2018 in which he canvassed proposal for a Family Court which could deal “ultimately more importantly, dealing holistically with all the multiple difficulties and deprivations – economic, social, educational, employment, housing and health (whether physical or mental) – to which so many children and their families are victim. Family justice is swayed about something much wider than mere lawyers’ law.”

⁸¹⁹ See the policies canvassed by Sir James Munby in his 2017 [Parmoor Lecture](#) to the Howard League for Penal Reform.

- 7.109.9** The way in which the FDAC approach can be adapted should provide a wider range of problem-solving techniques across the whole of Wales so as to avoid a post code lottery in relation to the availability of more effective and fair means of resolving issues.
- 7.109.10** The provision of therapeutic support to the mother when recommended by the court.
- 7.109.11** Alignment with the principles of the Future Generations Act.
- 7.109.12** A more conjoined approach to all cases involving children, whether arising in the public or private law context.
- 7.110** Difficult decisions will have to be made on the allocation of resources. There is evidence to suggest that significantly more resources need to be invested in prevention, early intervention, support and supervision. As additional funds are unlikely to be available, we would anticipate that over the medium term the funding of this should be achieved by very significant reductions in the number of care proceedings issued and the number of children taken into care. As we have set out in paragraphs [7.66](#) and following, the costs of the current system are very high. The funds could be far better spent.
- 7.111** Such a policy will require consistent delivery across Wales. An overarching body will be required to see that there is consistent application of policy and practice across Wales. This would build on our recommendations at paragraph [7.107](#) in respect of the Family Justice Network for Wales.

We recommend:

There should be vigorous support for a programme of research to underpin reform of Welsh family justice and associated preventative services.

The overarching aim should be the reduction in the numbers of children taken into care and the provision of far better evidence of the impacts of intervention on family life.

A carefully thought through long-term policy for reducing the numbers of children taken into care should be developed after the conclusions of the research and then implemented.

Part 3: Disputes between parents over children

7.112 Where there are disputes relating to children between their parents and these cannot be resolved by consent (private law cases) an application is made to the Family Court by one of the parties (most commonly one of the parents following divorce or separation). Several issues have been drawn to our attention, including the need for better links between the criminal and family courts⁸²⁰ and the difficulties encountered by men and grandparents in obtaining access to children⁸²¹. There are two issues that we consider we must address because of the seriousness of their impact:

- The need for legal advice and representation.
- The increase in the workload of Cafcass Cymru.

1. Legal advice and legal representation

7.113 The legal aid reforms under LAPSO which we described in paragraph 3.11 have had a very significant effect on these proceedings. As explained in [Figure 6](#) at paragraph 3.22, the provision of legal aid in Wales for private law proceedings was in 2011-12 £16.39 million (£18.47 million in 2018-19 prices). In 2018-19, where legal aid is only available if there is evidence of domestic violence or child abuse, the provision was £3.23 million, a 82% real terms reduction.

820 *WS057 Welsh Women's Aid: 5.*

821 *WS079 Both Parents Matter Cymru: 3-4.*

7.114 There are clear difficulties for very large numbers of people who therefore struggle to obtain access to justice without appropriate support⁸²²:

7.114.1 Legal aid is severely restricted for most such disputes. Whilst solicitors may offer a short initial consultation for free or at a reduced price, hourly rates can be £150. Legal services are often offered on a fixed fee basis. Advice and assistance with uncontested divorce proceedings for a petitioner can be available for a fixed fee, including court fees, of around £1,000. Contested proceedings will cost considerably more, calculated on a 'time spent' basis and will range from £5,000 to £15,000 and possibly more.

7.114.2 Many people cannot pay for the advice and assistance they need and cannot access affordable loans to help them fund that advice.

7.114.3 In many cases the parents will represent themselves as litigants in person as the cost of legal representation is high⁸²³. We have received evidence that some solicitors are concerned that children are growing up without access to an absent parent because a litigant in person was unable to represent their own interests effectively⁸²⁴. There is a better prospect of resolving disputes satisfactorily if the parties have access to proper advice and assistance at an early stage.

7.114.4 As we have explained at paragraph [3.50.3](#) there is at Cardiff Civil Justice Centre a law clinic. The majority of its work relates to family justice. This is an enormous contribution by lawyers and others; it plainly makes a real difference for those fortunate enough to receive such advice, but even in Cardiff demand outstrips supply and most courts do not have the benefit of such pro bono advice.

7.114.5 Litigants often continue the proceedings with the prospect of the continuing litigation hardening the position of each party and the dispute becoming intractable. This has been happening in an increasing number of cases since legal aid was withdrawn.

822 *WS057 Welsh Women's Aid: 1, WS079 Both Parents Matter: 2, and WS032 Welsh Refugee Coalition: 1.*

823 *Sometimes grandparents will use up their life savings to pay for legal advice for the family (WS156 Melanie Hamer: 2).*

824 *WS159 CJCH Solicitors: 3.*

- 7.114.6 Although mediation can offer a quicker and less costly resolution of a dispute than can be achieved in court, there has been a decline in mediation since the general withdrawal of legal aid⁸²⁵ though £0.29 million was spent by the Legal Aid Agency in Wales on mediation in 2018-19⁸²⁶. An initial Mediation and Assessment Meeting decides whether a mediator may resolve the dispute. Legal advice will generally be that the mediator's decision will be what the judge is most likely to decide, which may encourage the parties to accept mediation. If they do not have the benefit of such advice, unrepresented litigants are likely to press ahead and obtain the decision of the judge, therefore prolonging the process and incurring greater costs.
- 7.114.7 When lawyers appear for one party against litigants representing themselves, it is claimed that the party without a lawyer is often disadvantaged as a consequence⁸²⁷. Although there is no hard evidence to substantiate this claim, it is clear that where parties represent themselves there can be significant time implications as judges spend more time helping people understand their rights and entitlements⁸²⁸ and more court time is needed to deal with such cases.
- 7.115 In a Citizens Advice survey of user experience of the family courts in 2015⁸²⁹, 72% of respondents thought that trying to solve their problems may not be worth the financial and emotional cost. This is thought to suggest that the increase in litigants in person is only the visible part of the problem, with many people simply giving up⁸³⁰.
- 7.116 At paragraph 7.64 we referred to the establishment under judicial leadership of a Public Law Working Group to address issues in relation to public family law proceedings. A Private Law Working Group, chaired by Mr Justice Cobb, was established in response to similar increases in the numbers of private cases brought by parents and family members in disputes regarding arrangements for their children, which have further added to the significant volume of children's cases determined by the

825 OE013 *Albert Heaney*: 4.

826 *Para 3.17*.

827 WS010 *Wales & Chester Circuit*: 1. A similar point was made by CJH Solicitors in relation to the ability of parents to secure access to their children if they did not have legal aid (WS159, CJH Solicitors: 3).

828 WS010 *Wales & Chester Circuit*: 1, and OE008 *Nigel Brown Cafcass Cymru*: 1.

829 Citizens Advice (2015) *Responsive Justice – How Citizens Experience the Justice System*.

830 WS058 *Citizens Advice*: 3.

Family Court⁸³¹. One of its main concerns is ensuring that the private law system can properly respond to the increase in litigants in person; it is examining ways of diverting cases because of the high volume⁸³².

7.117 As is clear from what we have set out, significant problems arise from the absence of legal aid representation in disputes relating to children. We consider the focus of assistance should be on achieving settlements without recourse to court proceedings and through greater use of alternative dispute⁸³³. Such disputes are much better dealt with if legal advice is available to both parties prior to court proceedings starting but this would require increased (or diverted) investment in early intervention to support families⁸³⁴. We therefore consider that legal aid should be provided for advice prior to court proceedings, but on a basis where the amount of legal aid provided for advice in each case is limited to a maximum modest fixed amount and subject to means testing.

7.118 The cost of providing legal representation if such disputes result in court proceedings is likely to be high and may be disproportionate. We are not in a position to cost the restoration of legal aid for court proceedings, and therefore are not in a position to recommend the provision of legal aid for this as it would not be possible to impose a fixed limit once proceedings start. We would anticipate that most cases could be resolved with legal advice before proceedings are started if the parties know that there will be no legal aid for proceedings and they must proceed at their own cost or on their own. If proceedings follow, then as the role of judges in such disputes is interventionist, the interests of justice can be protected in that way. We also consider much more should be done to alleviate the burden on the judges by providing better guidance for litigants in person written in simple English and simple Welsh. The procedures and rules of court are often difficult for litigants in person to understand and proceedings would run more smoothly if the litigant in person was better able to understand what was required and what should be done.

831 *A View from The President's Chambers.*

832 *A consultation paper* was published on 3 July 2019. The main focus of the Private Law Working Group's work is to explore ways of diverting cases at an earlier point in the process and to ensure that cases are responded to in a proportionate (reflecting the needs of the case) and timely way.

833 OE013 Albert Heaney: 3.

834 OE013 Nigel Brown, *Cafcass Cymru*: 2.

We recommend:

Legal advice should be available to each parent in private family law disputes prior to the commencement of proceedings up to a maximum fixed amount in each case.

2. The increase in the workload of Cafcass Cymru

7.119 If proceedings over children are commenced, the court will refer the case to Cafcass Cymru. It provides help to the court over arrangements for the children, for example where the children should live and who the children should see.

7.119.1 Applications⁸³⁵ received by the court are sent to Cafcass Cymru to initiate safeguarding checks with the police and local authority, and to carry out safeguarding telephone checks with the parties. Responses are subsequently distilled into a concise safeguarding enquiries report which is sent to the court and parties in time for the First Hearing Dispute Resolution Appointment.

7.119.2 At that appointment, Cafcass Cymru ensures that a Family Court Advisor is available to provide dispute resolution on appropriate cases, and to advise the court as part of its decision making on possible next steps in accordance with the needs of the case.

7.119.3 Where there are no notable safeguarding issues and parties are able to agree arrangements, approximately 30% of cases are resolved at this stage. Some cases where there are no safeguarding issues but parties are unable to agree arrangements may benefit from mediation and/or being referred to Cafcass Cymru's Working Together for Children programme.

7.119.4 In cases where there are safeguarding issues the Family Court Adviser may advise the court that a 'Fact Finding' hearing is needed, for example where domestic abuse has been alleged, or that a report from Cafcass Cymru is needed in order to

835

The Child Arrangements Programme (CAP – Practice Direction 12B) all 'child arrangements' (C100).

undertake a deeper welfare based enquiry⁸³⁶ The court's expectation is that such reports are produced within 12 weeks.

7.119.5 Cafcass Cymru's involvement in the case ends at the point of the filing of the report unless further work is ordered.

7.119.6 In particularly complex private law cases, the court may decide to make the child a party to proceedings and that a Children's Guardian from Cafcass Cymru should be appointed⁸³⁷. In effect, the allocated Family Court Adviser appoints a solicitor to represent the child and is involved until the conclusion of the court case or until the court decides a Children's Guardian is no longer needed. Such cases currently represent approximately 15% of all private law cases where Cafcass Cymru remains involved after the first hearing.

7.120 Approximately two thirds of the children with whom Cafcass Cymru worked in 2017-18⁸³⁸ were involved in private law cases. The number of children involved in such cases increased by over 20% between 2015-16 and 2017-18, from 4,902 to 5,937⁸³⁹. Similar proportions and trends are reported by Cafcass (in England). In 2019, a Reducing Parental Conflict Challenge Fund of £2.7 million was introduced in England by the UK Department for Work and Pensions to help learn more about what works in high conflict private law cases.

7.121 Although we make no specific recommendation, the increase in the work of Cafcass Cymru has been significant. It would be desirable in the general overview of care cases which we have recommended that this private law work of Cafcass be brought within that scope to ensure that the funding of Cafcass is sufficient and its organisation is effective and efficient given the considerable increase in its work in relation to taking children into care and the private law cases in disputes between parents over children.

836 *These are s7 reports stemming from that section of The Children Act 1989; such reports are termed as child impact analysis reports in Cafcass Cymru with the focus very clearly being on a consideration of how the child is experiencing the issues between the parents.*

837 *The Family Procedure Rules 2010, Rule 16.4.*

838 *These were the most up-to-date figures available to us.*

839 *Cafcass Cymru (2018) Annual Report 2017-18.*



CHAPTER 8

Delivering justice: locality and structure

8. Introduction

8.1 The previous chapters described the systems of criminal, civil, administrative and family justice in Wales and the courts and tribunals that deliver justice. This Chapter is concerned with the physical and practical experience of using a court or tribunal, for all concerned. It considers the locations and technological infrastructure and the ways in which the requirements of different users are met in terms of accessibility and the facilities, assistance and services available. Part 1 of the Chapter describes the present position and Part 2 sets out the future provision Wales needs.

Part 1: Current position

1. Overview of the court administration

8.2 All work arising in Wales for the magistrates' courts, County and Crown Courts, and for the UK, Great Britain and England and Wales tribunals whether for civil, family, administrative, youth or criminal justice, is administered in Wales by HMCTS Wales. The Welsh tribunals insert are administered separately by the Welsh Tribunals Unit.

8.3 In 2017-18 the operational costs of HMCTS in Wales were £67.6 million; it met part of this from its estimated income of £22.9 million. We have explained in paragraph [2.100](#) that fee income has risen considerably as a proportion of total expenditure. This means that the expenditure for Wales, net of fee income, was approximately £44.7 million⁸⁴⁰.

840 *Figures provided by HMCTS to the Commission.*

8.4 The National Audit Office reported in May 2018 that by 2023 HMCTS aims to employ 5,000 fewer staff in England and Wales, to reduce the number of cases held in physical courtrooms by 2.4 million a year and to reduce annual spending by £265 million. It described this as a “*daunting challenge*”⁸⁴¹. HMCTS also faces a further difficulty as the rate of pay for HMCTS staff is normally significantly less than that for an equivalent post in another government department. As there are a significant number of government departments in Cardiff and Swansea this makes the retention of good staff a further challenge.

2. Court and tribunal closures

8.5 Each of the courts and tribunals we have described in Chapters 4, 5, 6 and 7 sit at various venues in Wales. However, the number and distribution of court and tribunal venues has changed significantly since 2000 as a result of a large scale programme of rationalisation and modernisation.

8.6 Court closures in Wales have occurred over a long period of time. The establishment of the County Court in 1846 gave the impetus for courts to sit in many locations, but since that time the number of venues has gradually declined. Since 2000, many more courts have been closed. Since 2010, half of the magistrates’ courts in England and Wales have closed. In Wales, since 2010 27 closures have taken place, reducing the number of such courts from 55 to 28. It is noticeable that the majority of these closures have taken place in towns, often in rural locations across Wales. This has increased the distances required to travel to reach the nearest court considerably in some areas⁸⁴². Figure 49 gives the detail of the court closures in Wales since 2001. Figure 50 highlights the scale of the closures.

841 National Audit Office, *Early progress in transforming courts and tribunals*.
842 WS195 Dr Daniel Newman and Dr Roxanna Dehaghani: 4, op cit n. 296: 7.

Figure 49**Court closures in Wales by jurisdiction 2001 to 2010**

| 2001 TO 2010 | JURISDICTION | | | |
|----------------------------------|--------------|-------|--------------|-----------|
| | County | Crown | Magistrates' | Tribunals |
| Court | | | | |
| Bangor Magistrates' Court | | | ● | |
| Cardigan County Court | ● | | | |
| Colwyn Bay County Court | ● | | | |
| Gowerton Magistrates' Court | | | ● | |
| Holyhead County Court | ● | | | |
| Lampeter Magistrates' Court | | | ● | |
| Llangefni | ● | | ● | |
| Monmouth County Court | ● | | | |
| Neath Magistrates' Court | | | ● | |
| Newtown Magistrates' Court | | | ● | |
| Talbot Green Magistrates Court | | | ● | |
| Tenby Magistrates' Court | | | ● | |
| Tredegar Magistrates' Court | | | ● | |
| Ystradgynlais Magistrates' Court | | | ● | |

Source: HMCTS

Figure 50**Court closures in Wales by jurisdiction 2011 to 2019**

| 2011-19 | JURISDICTION | | | |
|------------------------------------------------------|--------------|-------|--------------|-----------|
| | County | Crown | Magistrates' | Tribunals |
| Closure programme 2011-12 | | | | |
| Aberdare | ● | | ● | |
| Abertillery Magistrates' court | | | ● | |
| Ammanford Magistrates' Court | | | ● | |
| Barry Magistrates' court | | | ● | |
| Cardigan Magistrates' Court | | | ● | |
| Chepstow | | ● | ● | |
| Denbigh Magistrates' Court | | | ● | |
| Flint Magistrates' Court | | | ● | |
| LLandoverly Magistrates' Court | | | ● | |
| Llangefni Magistrates' Court | | | ● | |
| Lwynypia Magistrates' Court | | | ● | |
| Pontypool County Court | ● | | | |
| Pwllheli Magistrates' Court | | | ● | |
| Rhyl County Court | ● | | | |
| Closure Programme 2016 | | | | |
| Abergavenny Magistrates' Court | | | ● | |
| Brecon | ● | | ● | ● |
| Bridgend | ● | | ● | ● |
| Caerphilly Magistrates' Court | | | ● | |
| Carmarthen | | ● | ● | |
| Dolgellau | | ● | ● | |
| Holyhead Magistrates' Court | | | ● | |
| Llangefni | ● | | | ● |
| Neath and Port Talbot | ● | | | |
| Pontypridd Magistrates' Court | | | ● | |
| Wrexham Tribunal and Hearing Centre (Rhyd Broughton) | | | | ● |

Source: HMCTS

Figure 51
HMCTS venues in Wales in 2000 and 2019



● COUNTY COURT ● CROWN COURT ● MAGISTRATES' COURT ● TRIBUNALS



3. The locations currently used

- 8.7 There are currently 28 venues for courts and tribunals in Wales. Some venues cater for more than one court or tribunal, as is shown in Figure 52.
- 8.8 The Probate Registry of Wales is part of the court system. It is located in Cardiff. There are other probate registry offices in Carmarthen and Caernarfon, which open part time and route all enquiries through the main office in Cardiff. There is a probate registry office in Bristol, which opens part time and routes all enquiries through the Cardiff office.

Figure 52**Courts and tribunals in Wales by jurisdiction in 2019**

| | JURISDICTION | | | |
|-------------------------------------------------------|--------------|-------|--------------|-----------|
| | County | Crown | Magistrates' | Tribunals |
| | Current | | | |
| Aberystwyth Justice Centre | ● | | ● | ● |
| Blackwood Civil and Family Court | ● | | ● (Family) | |
| Caernarfon Justice Centre | ● | ● | ● | ● |
| Cardiff Civil Justice Centre | ● | | ● (Family) | ● |
| Cardiff Crown Court | | ● | | ● |
| Cardiff Magistrates' Court ⁸⁴³ | | | ● | ● |
| Carmarthen County Court and Family Court & Tribunal | ● | | ● (Family) | ● |
| Cardiff Region SSCS Eastgate House | | | | ● |
| Cwmbran Magistrates' Court | ● | | ● | ● |
| Haverfordwest Magistrates' and Civil and Family Court | ● | | ● | ● |
| Llandrindod Wells Justice Centre | ● | | ● | ● |
| Llandudno Magistrates' Court | | | ● | ● |
| Llanelli Magistrates' & County Court | ● | | ● | ● |
| Merthyr Tydfil Combined Court | ● | ● | ● | ● |
| Mold Court Complex | ● | ● | ● | ● |
| Newport Crown Court | ● | ● | | |
| Newport Asylum | ● | | | ● |
| Newport Civil and Family Court | ● | | ● (Family) | |
| Newport Magistrates' Court | | | ● | |
| Pontypridd County Court and Family Court | ● | | ● (Family) | ● |
| Port Talbot Justice Centre | ● | | ● (Family) | ● |
| Prestatyn Magistrates' Court | | | ● | ● |
| Swansea Civil and Family Justice Centre | ● | | ● (Family) | ● |
| Swansea Crown Court | | ● | | |
| Swansea Magistrates' & Family Court | ● | | ● | ● |
| Welshpool Magistrates' & County Court | ● | | ● | ● |
| Wrexham Magistrates' & County Court | ● | | ● | ● |

Source: HMCTS

843 Probate Registry of Wales is located in the same building.

8.9 We have referred to the locations at which the tribunals sit in Chapters 5 and 6, but for ease of reference:

8.9.1 The Employment Tribunal (a UK tribunal) in Wales is based at Cardiff Magistrates' Court but will sit in other locations in Wales.

8.9.2 The Immigration Tribunal (a UK tribunal) in Wales is based at a site on the outskirts on Newport and sits at no other location.

8.9.3 The Social Services and Child Support Tribunal (a GB tribunal) sits from time to time at various court locations in Aberystwyth, Caernarfon, Carmarthen, Cwmbran, Haverfordwest, Llandrindod, Llandudno, Newport, Prestatyn, Port Talbot, Swansea, Welshpool and Wrexham. There is a designated tribunal centre in Cardiff.

8.9.4 The seven Welsh tribunals sit in various locations across Wales, often to suit the users of those tribunals. The great majority of the 30 administrative staff that support the tribunals are based in Welsh Government offices in Cardiff with some based at Llandrindod Wells.

8.9.5 The Mental Health Review Tribunal for Wales conducts its hearings at hospitals. Legal members of the Tribunal who deal with applications on paper and do not need to attend a hospital as a result, do not have dedicated office facilities but carry out their work from home or at their own professional offices.

8.9.6 The Special Educational Needs Tribunal for Wales, the Agricultural Land Tribunal for Wales and the Adjudication Panel for Wales are based at office premises in Llandrindod Wells. Those premises contain a room which is suitable for some types of hearings but it is common for those tribunals to use other spaces, such as rooms within hotels or courts.

8.9.7 The Residential Property Tribunal for Wales and the Welsh Language Tribunal are both based at premises at Cleppa Park outside Newport (to which they moved from a convenient location in Cardiff). Those premises have a room which can be used for hearings but the Residential Property Tribunal, in particular, also uses other facilities, especially when the dispute before the Tribunal relates to premises which are a significant distance from Newport.

- 8.10 Although distance to a court or hearing centre is an indicator that has always had to be used with very great caution in Wales⁸⁴⁴ because of the nature of the terrain and of the road system, an analysis of the change in approximate distance from local areas to the nearest court, comparing the positions in 2010 and 2019 shows that there has been a significant increase in the number of areas in Wales which are more than 20 miles from a Magistrates' Court⁸⁴⁵. In fact there are many locations which are over 30 miles from a Magistrates' Court.
- 8.11 There are particular difficulties for litigants and witnesses in Mid, West and North West Wales. As can be seen from the map at Figure 51, there is an arc stretching from Wrexham to Swansea where there are few court and tribunal buildings. For example, a person needing to travel to the Aberystwyth Justice Centre from Cardigan would have a two hour journey using public transport. There are no courts in Anglesey. The quickest way to travel from Llangefni in Anglesey to Caernarfon is by car, but anyone travelling to court by public transport would face a 90-minute journey on two buses. In many rural areas there is no public transport option⁸⁴⁶.

4. Digital services

- 8.12 The creation of the online court, which we have explained at paragraphs [5.20](#) and following, is intended to facilitate access to justice at a lower cost and make participation in a case easier by reducing the need to attend court⁸⁴⁷.
- 8.13 It was always a condition of the closures made in and after 2016 that high quality video and digital systems would be provided so that access to justice was maintained. Progress is being made in the digitalisation of court services and the provision of online procedures. For example, money claims for up to £100,000 can be made online, as can divorce applications. The Social Security and Child Support Tribunal has also digitalised some of its processes. HMCTS has partnered with the Good Things Foundation to deliver face-to-face assisted digital services through their Online Centres Network⁸⁴⁸. In 2018, the remote

⁸⁴⁴ *Observations in the Select Committee Report on the Courts of Great Session in 1817 in relation to the distance between Mold and Ruthin.*

⁸⁴⁵ *House of Commons (2019) [Constituency data: Magistrates' court closures](#).*

⁸⁴⁶ *An [example](#) provided is the 1 hour and 50 minutes (74 miles) journey from Staylitttle in Montgomeryshire to Caernarfon Magistrates' which took over the Dolgellau Magistrates' Court catchment area.*

⁸⁴⁷ *Lord Hodge (2019) [Law and technological change](#), British Irish Commercial Bar Association, Signet Library, Edinburgh: 9.*

⁸⁴⁸ *Ministry of Justice (2018) [Fit for the future: transforming the Court and Tribunal Estate](#): 43.*

witness video link facility in Cadoxton, Barry⁸⁴⁹ was booked a total of 19 times for witnesses to give evidence in Barry at trials taking place at Cardiff Magistrates' Court. This was a very low utilisation rate; the bookings resulted in four evidence sessions⁸⁵⁰. However, as we set out at paragraphs 8.34 and following below, the potential advantages of these digital reforms have not yet been realised in Wales. This is largely because of the failure to take account of the access to broadband and video networks in Wales.

5. The standard of court and tribunal facilities

- 8.14 Court and tribunal facilities need to be fit for purpose. We have visited the Civil Justice Centre in Cardiff. It is unfit for purpose. The capital city of Wales needs a court building suited to the trial of civil, administrative law and family cases. HMCTS is in discussions with Cardiff Council about alternative locations⁸⁵¹ but so far nothing has been agreed. When the Supreme Court sat in Cardiff in July 2019, it used the Assembly building. A court building fit for a capital city is urgently required in Cardiff; it should be linked to a professional hub. The contrast between what exists in London, Edinburgh and Belfast makes it clear that the current position in Cardiff is untenable⁸⁵².
- 8.15 Court and tribunal venues also need to be accessible and have appropriate facilities for court users. HMCTS has said it is committed to ensuring that access to courts and tribunals are available for all court users. Pursuant to the Equality Act 2010, there is a reasonable adjustments policy in place to accommodate those with particular access requirements. The aim is to list cases at suitable venues when there are access needs. Where access issues do arise for court users, various mitigating steps are explored, including video-conferencing from a remote site, the use of judicial or staff lifts, or later start times for those who require longer to travel to court. HMCTS told us that at least one court room at every court building in Wales is accessible for a disabled court user such as a witness, member of the public or a defendant on bail. There are six courts centres which do not provide access for disabled defendants in custody. There is more limited access for staff and judicial office holders. It is managed by deploying

849 There are also remote centres Dolgellau, Llangefni, Neath and Prestatyn.

850 *op cit n. 848. Five trials were vacated before they were due to go ahead. Of the 14 trials remaining, nine did not proceed on the day of trial because of a guilty plea, one was ineffective (adjourned for re-hearing) and four were effective.*

851 OE026 Susan Acland-Hood: 1.

852 OE014 Judiciary: 1.

them to more accessible venues⁸⁵³. However, it is regrettable that the deployment of staff and magistrates or judges should be dictated by the accessibility of venues rather than by what work they are able to do.

6. Facilities for victims, witnesses and children

- 8.16 Appropriate facilities need to be available for victims and witnesses as we have set out in paragraphs 4.47 and following. In criminal courts, in accordance with the Code of Practice for Victims of Crime and Witness Charter, victims of crime that have been called as witnesses are entitled to enter a court through a different entrance from the defendant and to sit in a separate waiting area. Other witnesses may also seek special measures to use a separate entrance and waiting area. In family courts, vulnerable parties and witnesses are also able to request the use of a separate entrance and waiting area. Court staff make alternative arrangements wherever possible if dedicated separate entrances or waiting areas are not available. HMCTS has introduced over 300 privacy screens across England and Wales in family courts over the last two years so that vulnerable parties and witnesses can be shielded from an alleged abuser in the courtroom. HMCTS is also currently introducing an additional 295 privacy screens for use in 111 Crown and Magistrates' courts across England and Wales. Video links are also used either from a secure location within a court building or from a remote location.
- 8.17 HMCTS is completing a detailed audit of facilities available for victims and witnesses of crime and vulnerable parties in criminal and family courts in England and Wales in 2019.
- 8.18 If children and young people have to attend court as defendants, victims or witnesses, appropriate provision should be available in the court building and court room. In Wales' 14 magistrates' courts, only two have specific youth courts without secure docks and separate entrances. Another court has a specific youth court, but not a separate entrance. Dedicated youth courts are routinely listed on specific days, but these are in courtrooms with a secure dock and no separate entrance⁸⁵⁴.

853 *op cit n. 848.*

854 *op cit n. 848.*

Part 2: Future provision that Wales needs

8.19 We next turn to examine what needs to be done in Wales to ensure proper access to justice before the courts and tribunals for the people of Wales.

1. The future plans of HMCTS

8.20 We asked for an assurance that there will be no more court closures. None has been forthcoming. We were told that there were no current plans to close more court buildings in Wales. HMCTS has, however, published a response to a consultation on its estate⁸⁵⁵, which adopts new principles by which any future closure of buildings will be considered. HMCTS maintains that any further closures will be based on evidence, and it is more likely to look at the issue on a site by site basis rather than large blocks of closures⁸⁵⁶. In the consultation, HMCTS said that it would be reasonable for court users to leave their home at 7:30am and return by 7:30pm. We do not consider this acceptable as it does not take into account child care and family needs or the length of the day. As we have pointed out at paragraph [4.51](#), long distances to court, particularly if the notice is short, may lead to people failing to attend to give evidence.

8.21 HMCTS' *Fit for the Future* consultation stated that:

8.21.1 Llangefni Shire Hall was available once a fortnight for civil and family matters and likewise for Magistrates' Court work⁸⁵⁷. However, the evidence given to us was that Llangefni is not being used for court sittings⁸⁵⁸.

8.21.2 Abergele Town Hall has been used for civil and family cases and will be used for Social Security and Child Support and Employment tribunals.

855 *op cit n. 851.*

856 OE026 Susan Acland-Hood: 1.

857 *op cit n. 848: 36.*

858 OE027 Eilian Williams: 4.

- 8.22 The evidence we received was that Knighton in Powys has also been used as an alternative location for the Social Security and Child Support Tribunal⁸⁵⁹. Following a technological upgrade at the hearing centre for the Social Security and Child Support Tribunal in Cardiff, there will be a trial period where hearings take place on Skype between the hearing centre and a Citizens Advice office in a location where there is no longer a venue⁸⁶⁰. However, there is no timescale for this trial period.
- 8.23 It is clear that there should be no more court closures in Wales unless and until a clear overall strategy for Wales is produced.

2. The need for a strategy

- 8.24 There has been and there is no proper strategy for court and tribunal provision in Wales. In Chapter 3 we described how cutting back on legal aid without providing an integrated plan for alternative provision (such as properly funding the third sector or investing in technology to assist litigants) has had an adverse effect on the people of Wales. In the same way, court closures should only have taken place, as had been agreed as part of the HMCTS reform programme, after fulfilment of the condition that closures would be met by:
- 8.24.1 the use of locations other than court buildings for the hearing of local cases, either on a regular basis or when the nature of a particular case required it; and
- 8.24.2 the establishment of a robust high quality video link system and effective digitalisation accessible to all.
- 8.25 Given the geography and demography of Wales, the dearth of public transport and the state of the digital network, there is after the extensive court closures little alignment between the justice system and communities and people in Wales⁸⁶¹. As set out in paragraph [8.11](#), the evidence was clear:

859 OE037 Judge Anne Curran: 3.

860 Ibid: 3.

861 ES Aberystwyth, WS078 Presbyterian Church of Wales: 1, WS094 Jeff Cuthbert: 1, WS110 Archbishop of Wales: 1, WS119 Ann Sherlock: 2.

- 8.25.1 The Bar Council of England and Wales was “troubled by the geographical lack of access to justice that arises from a combination of court closures and limited public transport. Courts should be relatively local, for accessibility and legitimacy, both in Wales and in England.” They also pointed out that residents in Wales need better access to the Court of Protection and the Intellectual Property/enterprise small claims track that only sit in London⁸⁶².
- 8.25.2 Two observations were made by retired senior members of the judiciary regarding court locations and closures. Sir Roderick Evans said that “[S]pending criteria and administrative templates set in London for England and Wales may be suitable for England but not necessarily suitable for Wales”, whilst Sir Malcolm Pill asked “[I]f a Welsh public body decides where hospitals are built in Wales, should not a Welsh public body decide where courts are built?”⁸⁶³.
- 8.25.3 Family law cases present a particular problem in Mid Wales, where the closure of courts requires legal representatives to travel long distances across rural Wales to attend routine hearings, ranging from Prestatyn or Caernarfon to Merthyr Tydfil⁸⁶⁴.
- 8.26 This problem is exacerbated by the fact that there has been a failure to produce any court estate strategy for Wales over many decades. A decision to build a court at a particular location depended on random factors such as the availability of funds at the end of a financial year, political pressure or the place of a location in the list kept by the predecessor departments to the Ministry of Justice. An example of the failure to plan properly is the inclusion of Abergavenny Magistrates’ Court in the 2010 consultation list for closure despite it being refurbished and re-opened in that year⁸⁶⁵. The Court has subsequently closed.

862 WS036 Bar Council: 2.

863 WS117 Gorwel: 6.

864 WS020 Robert Hanratty: 2, A Mid Wales solicitor emphasised in his evidence that his clients were “the most vulnerable in society in rural Wales who have almost insurmountable hurdles in ensuring they are adequately represented and in getting to court. Hearings of course are often convened at very short notice”.

865 WS074 Professor Penny Derbyshire: 1.

3. A proposed strategy

- 8.27 A strategy is clearly needed for Wales. It should be worked out in Wales and determined in Wales to meet the needs of its people and take into account geography, demography, diversity, communications and the state of the digital network. It will need to take into account the issues of accessibility and the needs of victims and children, which we have set out. It will also be necessary to take account of the fact that building and maintaining buildings that are used solely for courts and tribunals is a considerable cost, particularly when the building may only be used once a week or once a month.
- 8.28 There has been a much greater readiness in Scotland and Northern Ireland to keep buildings open even though they are not used on a daily basis. In Scotland, there are obvious geographical considerations, including those of the Highlands and Islands that make the provision of court services difficult to provide. The Sheriff Courts, which deal with a whole range of cases, provide justice at the most local levels although there is an acceptance that people in rural areas have to travel to access specialist services. Ten Sheriff Courts closed between November 2013 and January 2015. The network has been designed to keep to a minimum any increase in travel distance, travel time and costs for court users⁸⁶⁶. The Courts and Tribunals Service of Northern Ireland has explored the rationalisation of court facilities. There were two court closures in 2012⁸⁶⁷.
- 8.29 We do not think it a realistic or proportionate use of resources in Wales to return to the position of dedicated court buildings in many areas as in the past. It is necessary to take into account not only the current form of court and tribunal proceedings, but the problem-solving courts, ombudsmen, alternative dispute resolution measures we have recommended in the criminal, civil, administrative and family law (Chapters 3-7).

866 *Scottish Court Service (2018) [Shaping Scotland's Court Services the Scottish Court Service response to the consultation and recommendation for a future court structure in Scotland](#): 18. Para 3.5.*

867 *ES Courts and Tribunal Service of Northern Ireland, Belfast.*

8.30 Such a strategy must be drawn up so that it takes into account the following which we describe in more detail in the following paragraphs:

- Occasional use of buildings.
- Buildings shared with advice services.
- Use of video links and digital technology.

a) Occasional use of buildings

8.31 Until well into the second half of the Twentieth Century, courts sat in buildings that had other purposes and were used from time to time as courts. One example was the use of the Council Chamber in the Swansea City Civic Buildings. In Wales, we see the return to the use of such buildings, sometimes referred to as ‘pop up’ courts, as a necessary part of the strategy.

8.32 There are clearly practical considerations such as the volume of business⁸⁶⁸, the provision of adequate security and the maintenance of the perception of the independence of the courts. These have to be balanced against the need for visible local justice, problem-solving courts in the locality they serve, particularly for criminal cases and family cases, and the convenience of the people of Wales. If more justice related use can be found for a building, all the better. However, we cannot envisage provision of proper access to justice in Wales without the occasional use of buildings even if it is only for local sittings of the courts, tribunals or for alternative dispute resolutions.

b) Buildings shared with advice services

8.33 As will be apparent from what we have recommended in paragraphs [4.178](#) and [7.107](#), there will be a need to locate services (or at least the coordination of such services) that underpin a problem-solving approach in or near to the location at which the court has sat. Similarly, as we envisage a much clearer and coordinated approach amongst those in third sector organisations who provide advice, the location of those advice services in one location, either in a building used for court and tribunal hearings or near to such a building, needs to be considered as part of an overall strategy.

868 *WS118 Stephen Whale, former Clerk to the Justices for Wales: 8.*

c) Use of video links and digital technology

- 8.34 The third complementary solution is the use of online, video and digital communications; these are intended to, and should, go a long way to offsetting the impact of cuts and closures elsewhere in the justice system.
- 8.35 We have used video links extensively in the course of our work, with assistance of support staff at hand. We have found that if the systems are robust and supported by adequate bandwidth, a good public fibre optic network and good support staff, the taking of evidence in such a way is excellent; on occasions we have linked four different locations and frequently used Skype at some locations. The use of video links can be very effective and play a real role in providing access to justice before the courts and tribunals and for ADR without people travelling long distances.
- 8.36 The only significant difficulty we had was linking to locations in HMCTS court buildings. We understand that the difficulty is caused by the design of the system which was intended to link to other courts on the same system and not to sites away from the court estate.
- 8.37 The ability to use video links and digital communications depends, apart from the issue of the design of the video system on the court estate⁸⁶⁹, to a great extent on whether people can access and afford the broadband or mobile technology needed in order to be able to use video and digital services⁸⁷⁰. Ofcom's Connected Nations Wales Report 2018⁸⁷¹ records an improving picture of coverage. Ofcom claimed 90% of Wales is covered by a good 4G mobile service and 93% of homes and businesses have access to superfast broadband. However, the situation on coverage is very different in parts of rural Wales. In rural Montgomeryshire, for example, almost one in five premises (19%) cannot access a workable broadband service. In rural Ceredigion, the figure is 17%. These are the areas typically furthest from court venues. There is also a significant difference between the availability of broadband and take-up. Of the homes and businesses in Wales which do have access to superfast broadband, only 38% have taken up the service. The percentage falls to 26% in rural Wales.

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Para 8.36.

870 *OE013 Albert Heaney: 3.*

871 *Ofcom (2018) Connected Nations Wales Report.*

This is a general issue that we understand the Welsh Government is seeking to address. However, its importance to providing access to justice has not been sufficiently realised. All court and tribunal venues in Wales have superfast broadband⁸⁷².

- 8.38 The difficulties relating to broadband may go some way to explaining why people do not always realise that they could avoid going to court and deal with issues online or by video link. People living in Mid, West and North Wales facing a traffic offence may receive a postal requisition to attend a hearing in Llanelli and not realise they could go to a nearer court and use a video link. It appears from evidence that the video link facility between courts is rarely used⁸⁷³.
- 8.39 If technology is to be a solution for access to court then there needs to be an improvement in video link connection from external locations. Technology is good for most people but justice must be provided for all. HMCTS needs to provide free and simple to use assistance to the minority that struggle to use technology⁸⁷⁴. This could be via a free telephone line or by reintroducing a counter service at court and tribunal venues. Continued improvement is also needed with regards to coverage of superfast broadband, especially in rural Wales.

872 HMCTS information.

873 WS020 Robert Hanratty: 2.

874 OE028 Professor Richard Susskind: 1.

4. Conclusion

8.40 A strategy should be drawn up ensuring there is proper access to justice. It should include:

- 8.40.1 A workable court IT network with adequate video and digital facilities.
- 8.40.2 Free, easy to use assistance for court and tribunal users who experience difficulties with technology.
- 8.40.3 Improved information available to court users on how they can access courts, tribunals and alternative dispute resolutions remotely, including undertaking hearings by video link and using online files for all cases.
- 8.40.4 A proper digital network through broadband or 5G as it is essential in providing access to justice.
- 8.40.5 A court centre in Cardiff fit for a capital city.

We recommend:

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 in Wales.



CHAPTER 9

The legal sector and the economy of Wales

9. Introduction

- 9.1 Legal professionals provide an essential service to individuals and companies in Wales. They also make a valuable contribution to the Welsh economy in their own right. In this Chapter, we examine the scale and nature of the legal sector in Wales; the issues it faces; and the opportunities for growth and sustainability.
- 9.2 We welcomed the decision of the Welsh Government in January 2019 to commission a review of the legal sector in Wales, which was undertaken by Jomati Consultants LLP⁸⁷⁵. In its report published in October 2019, it analysed and made recommendations on the following: (1) the private practice and legal education market in Wales; (2) public sector support to the legal community in Wales; (3) legal practice in Wales in the light of constitutional developments; (4) innovation in legal practice in Wales and beyond; and (5) the key policy implications of the findings and a suggested action plan. We have taken the Jomati report into account. There are some areas where we go further than the Jomati report, particularly apprenticeships, the need for co-operation between the legal professions, a strategy for rural and post-industrial Wales, the creation of a legal services hub in South Wales and the need to teach Welsh law to undergraduates.
- 9.3 The impact of Brexit on the legal sector and the economy in Wales remains uncertain. Lawyers in Wales, like those in the rest of the UK, face limits to their practice rights and the ability of law firms to export their legal services to the EU may face restrictions. There may be barriers to attracting legal talent into the legal sector in Wales. The reality is that there is continuing uncertainty. The terms of the UK's exit may be impactful to the future growth and development of the legal sector in Wales.
- 9.4 In Part 1 of this Chapter we consider the make-up of the legal sector in Wales. In Part 2 we explain the relationship of the legal sector to the economy of Wales. In Part 3 we set out the routes to qualification as a lawyer and the specific issues relating to apprenticeships. In Part 4 we describe the main types of legal work being performed in Wales.

875 *Jomati Consultants (2019) The legal sector in Wales – a rapid review. Miles J AM, Counsel General and Brexit Minister (2019) [Rapid Review of the Welsh Government's Support for the Legal Sector in Wales](#).*

In Part 5 we examine the difficult issues relating to legal practice in the rural and post-industrial areas of Wales. In Part 6 we look at the future, the use of technology and the creation of a legal services brand in Wales.

Part 1: The make-up of the legal sector

1. Solicitors

9.5 The Law Society is the professional body responsible for regulating solicitors in England and Wales. The Law Society aims to provide support, advice and guidance on areas of practice and management⁸⁷⁶. The Solicitors Regulation Authority (SRA) reports⁸⁷⁷ that there are 10,394 law firms in England and Wales, of which 863 are licensed as an Alternative Business Structure that allows non-lawyers to own and invest in them⁸⁷⁸. 32 of the Alternative Business Structure firms are located in Wales. There are 146,850 practising solicitors with a further 49,098 non-practising solicitors on the solicitors' roll⁸⁷⁹. In Wales, (according to the SRA), there are 436 law firm 'head offices' (a term that includes a firm with only one office). Of these law firms with a head office in Wales, 39 have a branch office in England. There are around 3,855 practising solicitors in Wales, with a further 1,405 non-practising solicitors on the solicitors' roll⁸⁸⁰. The number of practising solicitors is an estimate given that some solicitors practise cross-border between Wales and England. The number of head offices and practising solicitors in Wales has increased from 391 and 3,500, respectively, in 2015-16. There are a further 51 law firms with headquarters in England and a branch office in Wales⁸⁸¹. In comparison with England, Wales is somewhat underserved on a law firm per head of population basis. The SRA estimates that, when general populations are compared, there is one law firm per 5,472 people in England, compared with one law firm per 7,962 people in Wales⁸⁸². The capacity of the firms in Wales is less because they are on the whole much smaller than those in England.

⁸⁷⁶ WS083 *The Law Society of England and Wales: 1.*

⁸⁷⁷ *Data provided by the SRA to the Commission.*

⁸⁷⁸ *The Legal Services Act 2007 allows non-lawyers to own and invest in law firms.*

⁸⁷⁹ *op cit n. 877.*

⁸⁸⁰ *Ibid.*

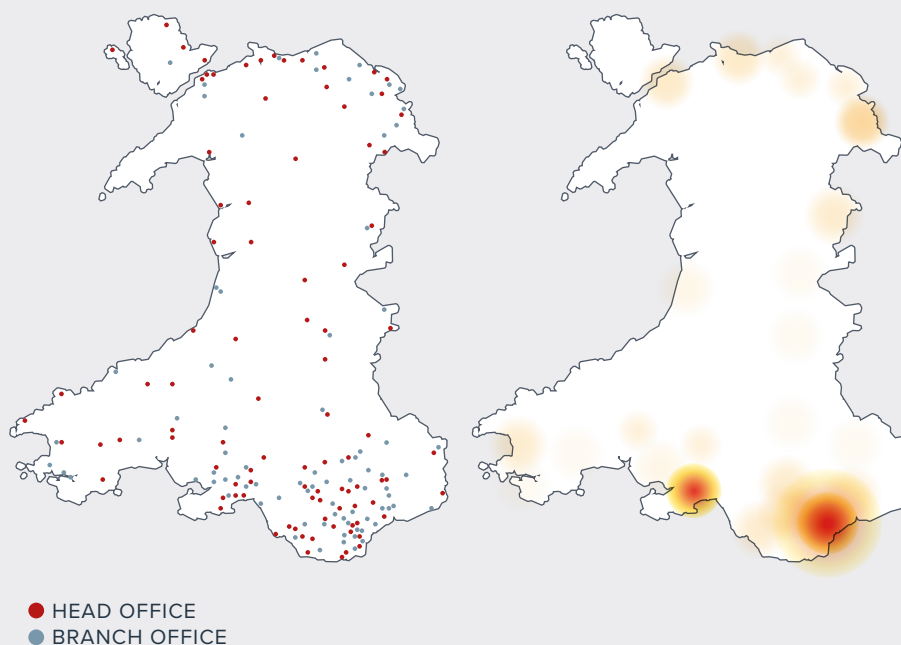
⁸⁸¹ *Ibid.*

⁸⁸² *op cit n. 875: 11.*

- 9.6 There are 713 law firm offices in Wales. Around two thirds of Welsh law firms operate only from one office (designated by the SRA as their head office) and around a quarter have no more than two branches. 54% of all Welsh-headquartered law firms are based in South Wales whilst only 9% are based in Mid Wales⁸⁸³. This mirrors the general distribution of solicitors' practices across Wales. Figure 53 shows the geographic spread and density map of main and branch offices across Wales. These mirror the main population centres in Wales.

Figure 53

Locations and heat map of the main and branch offices of law firms in 2019

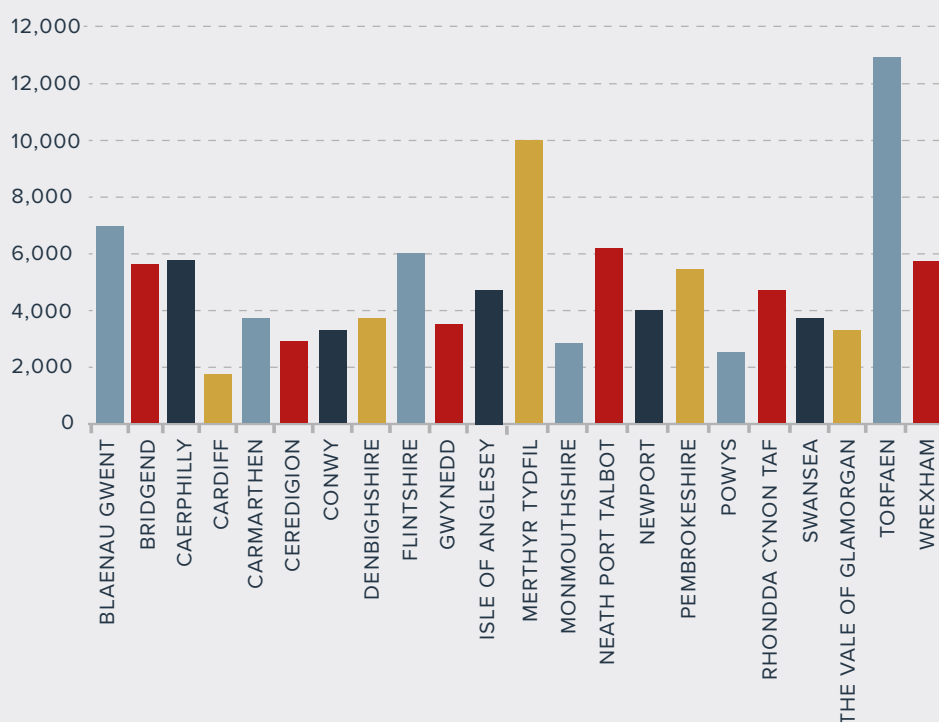


Source: Swansea University Population Data Science Team, *Unmet Legal Need in Wales*

9.7 Figure 54 shows law firms per head of population by local authority area. The best coverage is in Cardiff and the worst coverage is in Torfaen⁸⁸⁴. It is likely that areas with poorer coverage, such as Torfaen, Merthyr Tydfil, Blaenau Gwent, Wrexham and Flintshire will draw on services in neighbouring local authority areas. In the case of Wrexham and Flintshire, this will include providers in Chester and beyond in North West England.

Figure 54

Size of population per law firm by local authority area in 2019



Source: Swansea University Population Data Science Team, *Unmet Legal Need in Wales*

- 9.8 Law firms in Wales can be broadly categorised as one of three types of legal practice: (1) high street legal practices; (2) commercial legal practices; or (3) niche legal practices. The last generally operate in niche areas of commercial law, although there are examples of niche practices specialising in areas such as family law. There is a growing gap between the high street and commercial legal practices. This trend gives rise to ‘two speed law’⁸⁸⁵, a term that aptly describes the contrast in the nature of the businesses of the larger commercial practices (principally serving companies) compared to most other more traditional legal practices (principally serving individuals). The larger commercial law firms are found along the M4 corridor in South Wales, with most situated in Cardiff⁸⁸⁶. They include firms with a global presence, those with head offices (as described) in Wales and those that are branch offices of English headquartered firms. High street firms are found throughout Wales. They are the category of law firm most generally found in rural and post-industrial areas of Wales.
- 9.9 Based on the turnover of head offices, most law firms in Wales are small businesses with 56% reporting a turnover of less than £500,000 and 53% comprising less than five fee earners. The turnover of Welsh firms in the range £500,000 and £5,000,000 is broadly comparable with their English counterparts, but there is divergence at either end of the scale. At the upper end, 8.2% of English firms and 3.6% of Welsh firms generated turnover in excess of £5,000,000; whilst at the lower end, 0.5% of English firms and 13.3% of Welsh firms have a turnover of less than £100,000⁸⁸⁷. Large firms by revenue are relatively few in Wales and very small law firms are far more prevalent in Wales than in England.

885 *ES Carmarthen.*

886 *WS061 Welsh Government (Economy and Transport): 7.*

887 *WS019 Legal Services Board: 4.*

- 9.10 In terms of the protected characteristics of solicitors in Wales⁸⁸⁸;
- 9.10.1 The gender balance of practising certificate holders is 55% female and 45% male. Of the 1,074 partners in Wales, 37% are female and 63% male. In England the comparable gender balance is 51% female and 49% male, with 31% of all partners being female and 69% male. The disproportionate gender balance between solicitors and partners suggests that retention of women in the solicitors profession may be a concern.
 - 9.10.2 The percentage of solicitors who declare themselves as BAME and with practising certificates at an address in Wales or, if not attached to an organisation, with a personal address in Wales, is 4%. This compares to 17% in England. This reflects the BAME people populations of both nations.
 - 9.10.3 Solicitors working in Wales are generally older than solicitors working in England and Wales. 47% of practising certificate holders in Wales are aged 45 years and over, compared to 41% in England and Wales as a whole⁸⁸⁹. Indeed, in West Wales and Mid Wales more than 60% of criminal law solicitors are over 50 years old.
 - 9.10.4 1.2% of practising certificate holders in Wales consider that they have a disability.
- 9.11 The age profile of solicitors combined with the very small number of training contracts available in Wales each year are indicators that the Welsh solicitors' profession risks significant demographic pressures over the next few years. This is exacerbated by the large percentage of students who choose to leave Wales to study law. Succession issues for the profession are therefore more pronounced in Wales, which is not attracting or retaining sufficient talent for the future sustainability of the sector.

888 *op cit n. 877.*

889 *op cit n. 877.*

- 9.12 The Jomati report, to which we referred and explained at paragraph [9.2](#), assumes that, like the Welsh higher education sector as a whole, a strategy of “*educate legal talent for export*” must form a significant part of these Welsh law schools’ business models⁸⁹⁰. It is impossible to know how many students intended to work in the Welsh legal sector. In 2017-18, of the 1,640 Welsh students who studied law at a Welsh university, many did not enter the legal market as trainee solicitors or pupil barristers. This is in part due to the lack of training opportunities in Wales with the consequence that they seek qualification in England, or take other employment either within or outside the legal profession.
- 9.13 In terms of the Welsh language, 1,172 practising solicitors indicate that they speak Welsh and in 2017-18 there were 777 practising certificates issued in Welsh⁸⁹¹.

2. Barristers

- 9.14 The Bar Council represents barristers in England and Wales. It promotes the Bar’s specialist advocacy and advisory services, access to justice, high standards of ethics, and equality and diversity across the profession⁸⁹². There are 16,598 practising barristers in England and Wales of whom 360 or 2.17%⁸⁹³ had a practising address in Wales. As at 1 July 2019, 25 (6.1%) of barristers in Wales were QCs compared to 11.17% for the Bar in England and Wales. Figure 55 shows the number of barristers who are self employed in England and Wales and Wales over the period December 2010 to July 2019. Over the period, the number of self employed barristers in Wales has increased by 9% compared to 5% for England and Wales as a whole.

890 *op cit n. 875: 24.*

891 *SRA (2018) Annual Review 2017-18: 67.*

892 *The Bar Council.*

893 *Data provided by the Bar Standards Board to the Commission.*

Figure 55**Self-employed barristers 2010 to 2019**

| | ENGLAND AND WALES | | | WALES | | |
|-----------|-------------------|-------------------|-----------------|-------|-------------------|-----------------|
| | Total | Self-Employed No. | Self-Employed % | Total | Self-Employed No. | Self-Employed % |
| Dec 2010 | 15,436 | 12,472 | 80.80% | 275 | 268 | 87.01% |
| Dec 2011 | 15,052 | 12,218 | 81.17% | 308 | 270 | 86.82% |
| Dec 2012 | 15,450 | 12,566 | 81.33% | 311 | 277 | 82.44% |
| Dec 2013 | 15,532 | 12,661 | 81.52% | 336 | 282 | 82.46% |
| Dec 2014 | 15,683 | 12,683 | 80.87% | 342 | 279 | 81.34% |
| Dec 2015 | 15,855 | 12,716 | 80.20% | 343 | 292 | 82.95% |
| Dec 2016 | 16,044 | 12,787 | 79.70% | 352 | 280 | 82.35% |
| Dec 2017 | 16,408 | 13,057 | 79.58% | 340 | 287 | 82.23% |
| Dec 2018 | 16,655 | 13,220 | 79.38% | 349 | 294 | 81.89% |
| July 2019 | 16,092 | 13,108 | 79.31% | 360 | 293 | 81.39% |

Source: Bar Standards Board

- 9.15 In addition to barristers with a practising address in Wales, barristers from chambers in Chester and the North West of England practise in North Wales. As we have explained in paragraph 2.13, Chester was part of the Welsh Circuit until 2006 and barristers practising in North Wales found it convenient to locate their chambers in Chester as it facilitated practising there and in other areas in North West England. Barristers based elsewhere in England also practise in Wales, particularly from sets of chambers in Bristol and London.
- 9.16 Most barristers resident in Wales practise from chambers in South Wales. The majority of barristers are based in Cardiff at six sets of chambers: 9 Park Place; 30 Park Place; Apex Chambers; Civitas Law; Coal Lex; and Temple Court Chambers. In Swansea, there are three sets: Angel Chambers; Iscoed Chambers; and Pendragon Chambers. One set of chambers, Cathedral Chambers, is located in Newport. A few chambers based outside Wales have opened annexes in Cardiff. Examples are Cornerstone Barristers and Queen's Square.

- 9.17 In terms of the protected characteristics of barristers in Wales;
- 9.17.1 The gender profile of barristers with a practising address in Wales is comparable for barristers as a whole for England and Wales. In Wales, 38.06% are female and 61.39% are male, and in England and Wales 37.17% and 62.05%, respectively. As is the case with regards to solicitors (paragraph 9.10.1) the retention of women at the Bar may be a concern⁸⁹⁴.
 - 9.17.2 The percentage of barristers in Wales who describe themselves as BAME is 5.28% compared to 13.34% in England and Wales. The percentage of BAME people in Wales is 5%.
 - 9.17.3 The age profile of practising barristers is comparable between Wales and England and Wales, with 70% and 69.2%, respectively, aged 54 years and under.
 - 9.17.4 3.9% of barristers in Wales consider that they have a disability compared to 3.1% in England and Wales.
- 9.18 In terms of the Welsh language, the number of members of the Wales and Chester Circuit who are Welsh speakers is around 20%⁸⁹⁵.

3. Chartered Legal Executives and other legal professionals

- 9.19 In addition to solicitors and barristers, Chartered Legal Executives and six other professions are regulated in the legal services sector. They are: Licenced Conveyancers; Patent Attorneys; Trade Mark Attorneys; Costs Lawyers; Notaries; and Chartered Accountants.
- 9.20 The Chartered Institute of Legal Executives is the professional association for Chartered Legal Executives in England and Wales. It has 20,850 members of which 1,145 live in Wales⁸⁹⁶. The Institute does not hold data on the number of its members who are Welsh speakers. In terms of the protected characteristics of its members:

⁸⁹⁴ OE009 Paul Hopkins QC:4. Simmons, R (2018) *Tackling the Problem of Female Talent Retention*.

⁸⁹⁵ OE009 Legal Professions: 4.

⁸⁹⁶ Data provided by CILEx to the Commission.

- 9.20.1 In England and Wales, 75% of the Institute's members are female. This is the same gender balance as for members who live in Wales.
- 9.20.2 In Wales, 5% of the Institute's members describe themselves as BAME, compared to 11% for England and Wales. A quarter of the Institute's new students are BAME.
- 9.20.3 70% of the Institute's membership in Wales is aged below 44 years of age, compared to 65% for England and Wales.
- 9.20.4 1% of the Institute's membership in England and Wales consider that they have a disability. This is the same proportion as in Wales alone.
- 9.21 For other regulated legal professionals, the total number of professionals who are registered as working in Wales is very small. For example, there are some 15 Costs Lawyers working in Wales and six members of the Chartered Institute of Trade Mark Attorneys. In terms of their impact on the Welsh economy, these niche regulated professions do not rank highly⁸⁹⁷.

4. Alternative legal service providers

- 9.22 The Legal Services Act 2007 allows non-lawyers to own and invest in law firms. A major aim of the introduction of Alternative Business Structures was to allow new forms of capital into regulated law firms to improve market efficiency. The first licences were issued in 2011. Licensed firms have been predominantly existing law firms converting to Alternative Business Structures rather than new law businesses. Firms that have adopted an Alternative Business Structure are proportionately more likely to invest in their business than other law firms⁸⁹⁸.

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898

op cit n. 875: 21.
Legal Services Board (2017) Evaluation ABS and investment in legal services 2011-12 to 2016-17 – Main Report: 4.

- 9.23 There are currently 863 Alternative Business Structure licensed law firms in England and Wales, 32 of them in Wales⁸⁹⁹. As such, there are fewer Alternative Business Structure law businesses in Wales than in England in comparative terms⁹⁰⁰. Some 4% of regulated providers based in Wales are licensed as an Alternative Business Structure, whereas the England and Wales average is around 7%⁹⁰¹.
- 9.24 Some of the larger Alternative Business Structures are Deloitte, Ernst & Young, KPMG and PricewaterhouseCoopers, accountancy practices, often referred to as the ‘Big Four’⁹⁰². They are becoming increasingly active providers of legal services. Our engagement meetings with Deloitte, Ernst & Young, KPMG and PricewaterhouseCoopers⁹⁰³ have confirmed that they have the scale and resources, including in the development and deployment of new technologies, to offer innovative and multidisciplinary models that offer integrated solutions for their clients. Deloitte employs 2,400 lawyers, Ernst & Young has 2,200 lawyers in 81 countries, KPMG has 1,800 lawyers in 75 jurisdictions and PricewaterhouseCoopers employs 3,600 lawyers in 98 countries⁹⁰⁴. They are well positioned to compete for business with commercial law firms in Wales, if they choose to do so.
- 9.25 Deloitte has a significant presence in Cardiff. It has over the past eight years built a delivery centre in Cardiff employing 1,100 people, making it the second largest Deloitte office in the UK. It offers services in 55 different languages and is moving into legal services⁹⁰⁵.
- 9.26 Other significant Alternative Business Structure licensed businesses in Wales include Admiral Law, NewLaw Solicitors, Carbon Law and CJCH Solicitors⁹⁰⁶.

899

op cit n. 877.

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WS019 Legal Services Board: 4.

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op cit n. 875: 58.

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Deloitte, Ernst & Young, KPMG, PwC.

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Meetings held on 26 March 2018, 11 June 2018 and 13 June 2018.

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Financial Times (2018) [The Big 4 circle the legal profession.](#)

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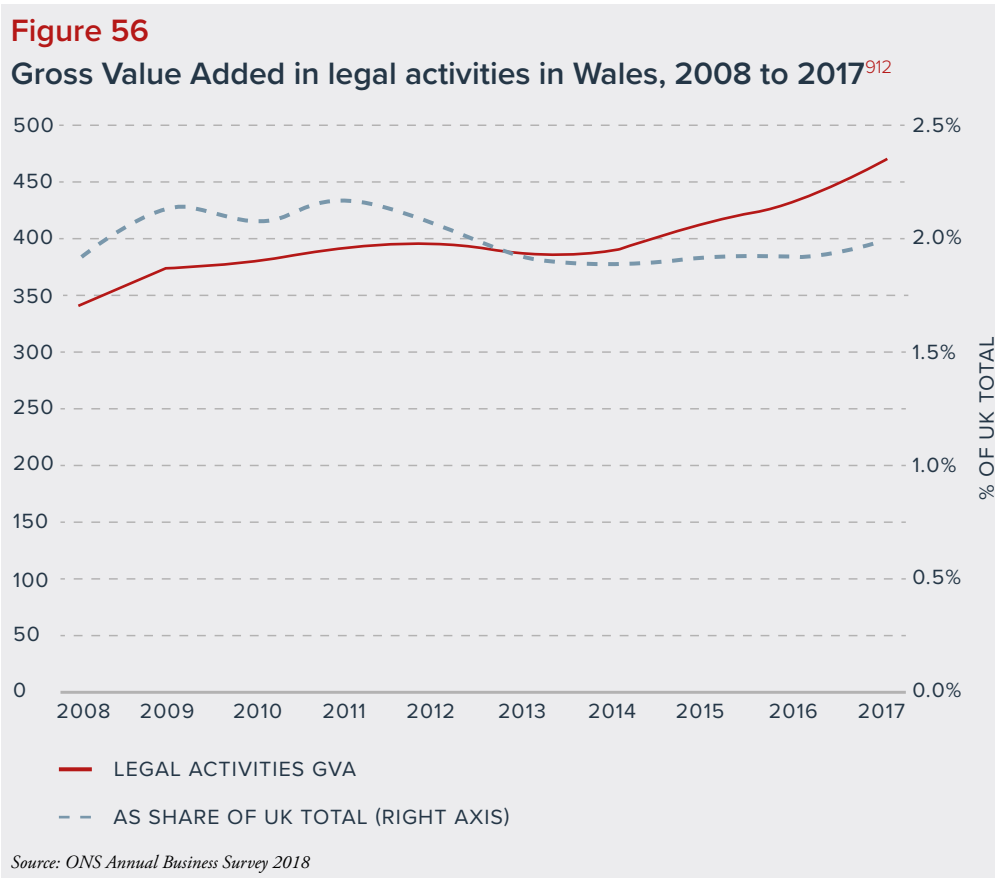
OE028 Nearshoring: 1.

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Full accounts filed at Companies House state that Admiral Law had a turnover of £18.44 million for the year ending 31.12.17 and NewLaw Solicitors had a turnover of £20.69 million for the year ending 30.06.18. Carbon Law and CJCH Solicitors are exempt from filing full accounts.

Part 2: The relationship to the economy

9.27 As we have set out in paragraph 1.17.1, we have been assisted by the report of the Wales Governance Centre on the contribution of the legal services sector to the Welsh economy⁹⁰⁷. The report seeks to evaluate the value of the sector as is usual in terms of Gross Value Added⁹⁰⁸. The report estimates that the Gross Value Added in legal activities in Wales in 2017 was £473 million, or £151 per person. This was similar to the report in November 2018 by CityUK⁹⁰⁹ which estimated the Gross Value Added for legal services in Wales in 2016 as £431 million⁹¹⁰. This has grown since 2013, as shown at Figure 56. Wales' share for the UK as a whole has fluctuated at approximately 2% through this period (the grey dotted line in Figure 56). It is estimated that legal activities account for approximately 0.8% of the Welsh economy. Agriculture, forestry and fisheries account for a similar proportion (£510 million). Financial and insurance activities account for 4.5% (£2,825 million)⁹¹¹.



907 *op cit n. 97: 16-17.*

908 Gross Value Added measures the output of an industry, after accounting for its consumption of goods and services used in order to produce that output.

909 CityUK (2018) *Legal excellence, internationally renowned: UK legal services 2018.*

910 As explained in *The Legal Economy in Wales 2016-17*, the calculation by CityUK was produced using a slightly different methodology.

911 StarsWales (2018) *Gross Value Added in Wales by industry.*

912 ONS (2018) *Annual Business Survey*. ONS (2018) *Regional gross value added.*

- 9.28 The underlying state of the Welsh economy creates a difficult environment for the legal sector in terms of the sector's own scale, opportunities to specialise and growth prospects solely from the Welsh economy. There are fewer commercial opportunities in Wales than there were in the 1990s. There has been a decline in the number of significant businesses with headquarters in South Wales. There has been a trend for corporate finance teams in some banks and accountants to locate in Bristol⁹¹³.
- 9.29 Whilst the state of the Welsh economy is crucial for the success of the Welsh legal sector a strong and vibrant Welsh legal sector is a fundamental component of the support for Welsh business. The economic environment and levels of indigenous demand for commercial legal services in Wales contrasts to the position in some other areas of the UK.
- 9.30 The legal sector in Leeds, for example, is based on a strong financial services sector; there is also a good level of small and medium sizes enterprises that require access to legal advice services. In consequence there is an active local economy supporting a healthy ecosystem for the legal sector. The local Law Society, Leeds City Council, legal professionals and academia came together in partnership to promote the legal sector in Leeds through 'Leeds Legal'⁹¹⁴. Outside of London, the North West of England and Yorkshire and the Humber are currently the largest legal economies in England and Wales⁹¹⁵.
- 9.31 Despite the current economic situation, we believe it is possible to build a legal services brand in Wales, as has happened in Leeds and Belfast⁹¹⁶. Cardiff has a high level of legal activities, businesses and employees for a city of its size⁹¹⁷. Figure 57 ranks UK cities by the prevalence of legal activities businesses per 10,000 head of population. Cardiff is in fifth position providing a good base from which a legal services brand in Wales can be established. We explain how this should be done in paragraphs [9.90](#) and following.

913 *WS103 Huw Williams: 7.*

914 *ES Leeds.*

915 *op cit n. 97: 19.*

916 *OE025 Brian Dolaghan: 2.*

917 *op cit n. 97: 24.*

Figure 57**UK cities (excluding London) by number of legal activities businesses per 10,000 head of population**

| RANK | CITY | LEGAL ACTIVITIES BUSINESSES (LOCAL UNITS ⁹¹⁸) | | LEGAL ACTIVITIES EMPLOYEES | | LEGAL AND ACCOUNTING SERVICES GROSS VALUE ADDED | |
|------|------------|-----------------------------------------------------------|----------------------|----------------------------|--------------------------|-------------------------------------------------|--------------|
| | | Per 10k population | Share of total units | Per 10k population | Share of total employees | £ million | Share of GVA |
| 1 | Belfast | 13.7 | 3.5% | n/a | n/a | 506 | 3% |
| 2 | Edinburgh | 11.4 | 2.5% | 118.3 | 1.9% | 688 | 3% |
| 3 | Leeds | 10.0 | 2.4% | 115.1 | 2.1% | 947 | 4% |
| 4 | Liverpool | 9.7 | 3.1% | 81.8 | 1.7% | 525 | 4% |
| 5 | Cardiff | 9.7 | 2.4% | 110.7 | 1.9% | 404 | 4% |
| 6 | Cambridge | 9.5 | 1.9% | 113.8 | 1.5% | 231 | 4% |
| 7 | Exeter | 8.9 | 2.1% | 115.6 | 1.6% | 121 | 2% |
| 8 | Manchester | 7.8 | 1.9% | 79.1 | 1.7% | 1857 | 3% |
| 9 | Bristol | 7.5 | 1.7% | 86.8 | 1.6% | 733 | 3% |
| 10 | Oxford | 6.2 | 1.6% | 43.4 | 0.6% | 110 | 2% |
| 11 | York | 6.0 | 1.4% | 60.0 | 1.2% | 61 | 1% |
| 12 | Glasgow | 5.7 | 1.6% | 77.6 | 1.4% | 707 | 3% |

Source: Guto Ifan, *The Legal Economy in Wales*

9.32 The Wales Governance Centre report⁹¹⁹ concludes that in comparison with regions in England and other parts of the UK, Wales's legal economy compares favourably in terms of the number of providers of legal services and the number of employees. However, the earnings and the value-added of those employees are relatively low. Cardiff's legal services sector, in terms of the number of firms and employees, is doing well relative to its size and the overall economy. But outside Cardiff and Swansea, the number of legal services providers and employees is spread thinly, with the consequent difficulties in access to legal services for businesses and individuals, particularly in rural and post-industrial areas of Wales (we explain at paragraphs 9.67 and following).

918 Local units are defined as individual sites that belong to a business. While most businesses operate on one site, some businesses will have more than one site, and will count as more than one local unit.

919 *op cit n. 97: 31.*

9.33 The Welsh Government's Economic Action Plan⁹²⁰ sets the framework for Welsh Government economic development support across sectors. It should take account of the role that a vibrant legal sector can play. Greater alignment between those sectors receiving Welsh Government economic development support, such as the creative industries, and the legal sector would also help to build the capacity of the Welsh legal sector and support the broader economy in Wales. This is not a matter for the Welsh Government alone. The Law Society, the Bar Council, academia and the legal sector itself all have a role in promoting and building the capacity of the legal sector in Wales.

Part 3: Qualification as a lawyer

1. Solicitors

9.34 The Solicitors Regulation Authority sets the education and training standards for solicitors. There are a variety of routes by which people can qualify as a solicitor. The present route to qualification is through completing (1) an academic stage through a qualifying law degree (or non-law degree together with a law conversion course⁹²¹), (2) a vocational stage through a Legal Practice Course, and (3) a work based stage through two-year training contract or period of recognised training. The Solicitors Regulation Authority has estimated the fees of the Legal Practice Course as being up to £16,750⁹²².

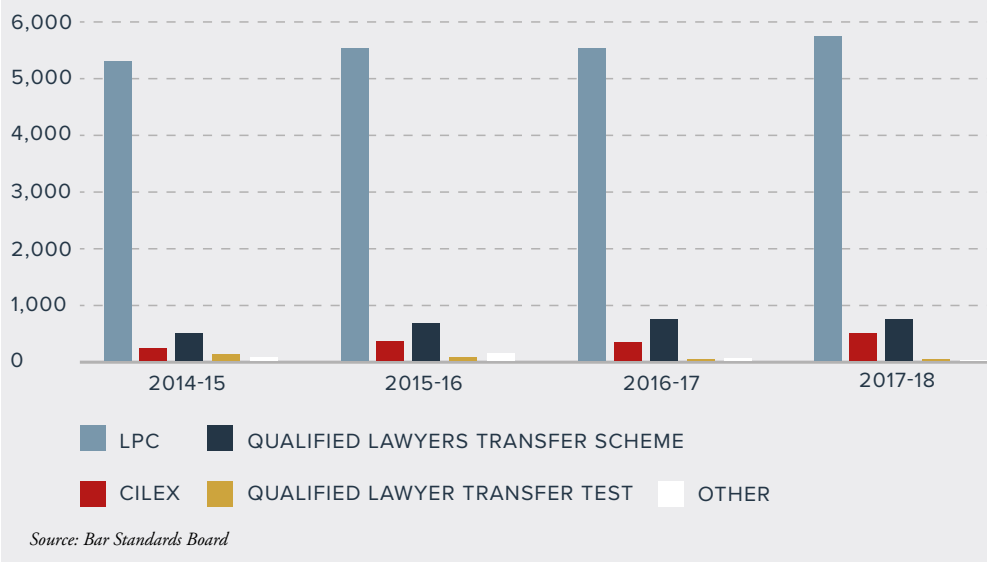
9.35 In 2017-19, 6,083 periods of recognised training commenced in England and Wales, 164 of which were in Wales⁹²³. As is clear from the small number of work-based training opportunities in Wales, competition is generally intense to secure a training contract. As there are 390⁹²⁴ Legal Practice Course places available at Welsh universities, there are about 2.4 students studying for the Legal Practice Course in Wales for every training contract available in Wales⁹²⁵. It is theoretically possible for those who have completed the academic and vocational stages of training, and with a portfolio of relevant legal work experience to

920 Welsh Government (2017) *Prosperity for All: economic action plan*.
921 *Either the Common Professional Examination or Graduate Diploma in Law*.
922 OE016 Julie Brannan: 3.
923 *op cit n. 875*.
924 *Information provided by LPC providers to the Commission*.
925 *op cit n.875: 27*.

make an application to the SRA for exemption from the requirement to undertake a period of recognised training (usually via a training contract). Such exemptions are difficult to secure⁹²⁶.

- 9.36 The limited opportunities to complete the vocational stage of training therefore act as a significant barrier to qualifying as a solicitor in Wales, as the small number of training contracts in Wales has a direct impact on the number of new solicitors entering the profession in Wales. Given that only 164 such contracts were awarded in Wales in 2017-18, Welsh training contracts account for about 2.7% of the England and Wales total. It has not been possible to obtain figures for the number of applications by those who have completed the Legal Practice Course in Wales to firms in England, in search of training contracts that are not available in Wales⁹²⁷. The relative age profile of solicitors in Wales, set out in paragraph [9.10.3](#), demonstrates that the need to train and retain future solicitors and practice owners in Wales is crucial.
- 9.37 The route to qualification will change in 2021 when the SRA introduces the SQE. We discuss this and the role of education in paragraphs [10.26](#) and following.
- 9.38 Figure 58 shows the numbers qualifying as solicitors in England and Wales between 2014 and 2018. It highlights the dominance hitherto of the Legal Practice Course route to qualification.

926 *ES Cardiff Law Society's Junior Lawyers Division.*
927 *op cit n.875: 27.*

Figure 58**Number and route of those qualifying as a solicitor in England and Wales**

2. Barristers

- 9.39 The Bar Standards Board sets the education and training standards for qualifying and practising as a barrister in England and Wales. There are presently three stages to the standard training requirements leading to qualification: (1) academic; (2) vocational, and (3) work-based.
- 9.40 The academic stage is by a qualifying law degree or non-law degree together with the Graduate Diploma in Law conversion course. After joining an Inn of Court and passing the Bar Course Aptitude Test, the vocational stage involves the Bar Professional Training Course, a full-time one year course. The cost of the Bar Professional Training Course ranges from £13,000 to £18,000 depending on location. Work-based learning is provided through a pupillage of one year under the supervision of an experienced barrister. Before being called to the Bar, students are required to complete a minimum number of ‘Qualifying Sessions’, which are professional development events to complement the vocational stage of training.
- 9.41 Obtaining a pupillage to complete the vocational stage of training is highly competitive. In May 2018, only 42.7% of Bar Professional Training Course graduates enrolled on the course between 2012-13 and

2015-16 had started a pupillage⁹²⁸. In 2017-18, 499 first six pupillages commenced in England and Wales, 11 of which were in Wales. In the same year, 510 second six pupillages commenced in England and Wales, and again 11 were in Wales⁹²⁹. Wales therefore provides around 2% of the pupillages in England and Wales.

- 9.42 There is some evidence that ethnicity has a significant effect on whether Bar Professional Training Course graduates obtain pupillage. BAME graduates are roughly half as likely to obtain pupillage as white graduates with similar prior educational attainment⁹³⁰.
- 9.43 The Bar Standards Board intends to institute changes to the Bar qualification rules⁹³¹. The new rules received approval from the Legal Services Board on 28 February 2019⁹³² and took effect in April 2019. Implementation is at an early stage but changes include broadening the base of organisations, including employers, able to offer pupillage to prospective barristers. The Bar Standards Board is receiving applications from new pupillage providers. It has provisionally authorised one new vocational training provider⁹³³ and is in discussions with other potential new pupillage providers.

3. Chartered Legal Executives

- 9.44 Another route to becoming a lawyer is qualifying as a Chartered Legal Executive through the Chartered Institute of Legal Executives. The stages for qualifying as a Chartered Legal Executive are broadly similar to those for the solicitors' and barristers' professions. A person must complete the academic stage of training and successfully complete the appropriate Chartered Institute of Legal Executives diplomas. A person who has completed a qualifying law degree and the Legal Practice Course or the Bar Professional Training Course is exempt from further academic study and can become a Graduate Member of the Chartered Institute of Legal Executives on payment of a relevant fee. The vocational stage follows the academic stage. A person must complete at least three years of qualifying employment and work-based learning. There must be two years consecutive employment before a person

928 Bar Standards Board, *Becoming a barrister*.

929 *op cit* n.892.

930 Bar Standards Board (2017) *Exploring differential attainment at Bar Professional Training Course and Pupillage – a quantitative study*.

931 It received approval from the Legal Services Board on 28 February 2019 to introduce new qualification rules.

932 OE016 Julie Brannan, Crispin Passmore, Ewan Macleod: 1.

933 *The Inns of Court College of Advocacy*.

applies for Fellowship of the Chartered Institute of Legal Executives. They must demonstrate in their application that they meet the relevant work based competencies.

- 9.45 The Chartered Institute of Legal Executives' route to qualification as a legal professional is more accessible, flexible and affordable⁹³⁴ than the two other routes. It provides a non-university route to achieving the academic stage of legal training. Students can study, often on a part time basis, through local colleges or by distance learning and at a pace of their choosing; they can be in relevant employment whilst doing so. The Institute estimates that it costs a person on average less than £10,000 to qualify as a Chartered Legal Executive, which is much less than the costs to qualify as a solicitor or a barrister⁹³⁵. The Institute reports that because the qualification is more affordable, employers have made a financial contribution to study and examination costs for 67% of students.
- 9.46 A chartered legal executive who has followed the route to qualification as set out by the Chartered Institute of Legal Executives can be a partner in a law firm, an independent practitioner, an advocate or a judge at certain levels of the judiciary.

⁹³⁴ WS068 CILEx: 3.

⁹³⁵ *Ibid.*: 3, footnote 1.

4. Apprenticeships

- 9.47 Legal apprenticeships provide a fourth route to qualification. Since 2016, it has been possible to pursue qualification as a legal professional, including as a probate technician, chartered legal executive or solicitor, in England and Wales through an apprenticeship. The SRA reports that in England the number of solicitor apprenticeships continues to increase. There were 25 solicitor apprenticeships in 2016 (the first year they were offered on a funded basis) rising to 75 in 2017 and 133 in 2018⁹³⁶.
- 9.48 Apprenticeships are a devolved matter in Wales⁹³⁷, as we have set out at paragraphs 4.127 and following in relation to police apprenticeships. However, legal apprenticeships have been a low priority for the Welsh Government. This route to qualification as a solicitor is not available in Wales. In an engagement session junior lawyers told us that it was an attractive route to qualification as training is fully funded and apprentices are in full-time employment⁹³⁸. However, the academic stage of training is expensive and students are often making a significant personal financial commitment when they embark on their legal training without a guarantee of securing vocational training.
- 9.49 The recruitment, retention and training of talent to sustain the legal sector in rural and post-industrial areas of Wales is a significant issue, as we have set out. It is difficult to attract and retain high quality candidates unless they have some personal connection to Wales⁹³⁹. As we will set out in paragraphs 9.74 and following, a strategy is needed for the legal sector to address this and other issues affecting legal practices in these areas.
- 9.50 We therefore welcome the fact that the Welsh Government began in 2019 to engage with representatives of the legal sector and the Law Society to identify policy needs regarding legal apprenticeships. The lack of funded legal apprenticeships in Wales as a route into the legal profession nonetheless remains a significant issue⁹⁴⁰, particularly with the introduction of the SQE scheduled for 2021. As apprenticeships leading to qualification are available in England, there is a risk of a loss

936 *op cit n. 875: 49.*

937 *Para 9.34. Anyone in Wales over 16 can apply for an apprenticeship. The employer must cover the wages – it must be at least the minimum wage and Welsh Government funds all (or most) of the training costs.*

938 *ES Swansea Law Society's Junior Lawyers Division.*

939 *ES Cardiff.*

940 *WS023 Speakeasy: 5.*

of legal talent from Wales unless real progress is made by the Welsh Government and the legal profession in Wales.

- 9.51 Apprenticeships are key to tackling some of the issues facing the sustainability of the legal professions in Wales, particularly given the demographic issues facing the solicitors' profession, as discussed at paragraph 9.10.3. Apprenticeships also have an important role to play in helping to increase the diversity of the legal sector in Wales by attracting those that might not go on to higher education. Apprenticeships provide a route through which people can choose to remain in rural or post-industrial areas, obtain employment in the law in their local area and gain qualification as a legal professional.

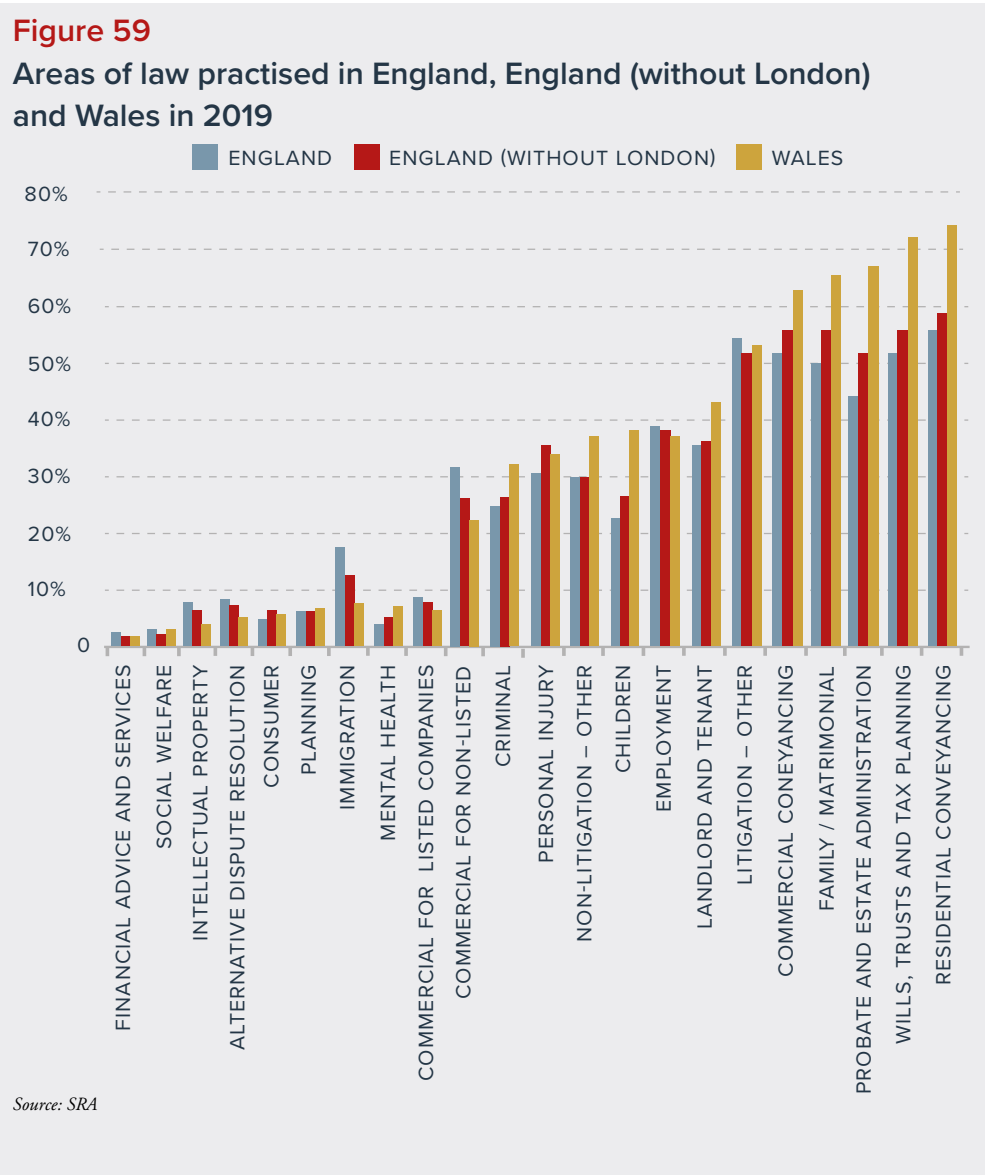
We recommend:

The Welsh Government should, in close consultation with the legal professions, provide fully funded legal apprenticeships to enable people to qualify as legal professionals in Wales.

Part 4: Legal work performed in Wales

1. The general scope of the available work

9.52 In general, most Welsh solicitors' firms are perceived and categorised as high street practices offering traditional legal services. Figure 59 compares the areas of legal specialism offered by law firms in England, England excluding London and in Wales.



- 9.53 In Wales, there is a reliance on private client legal specialism – some 74%, 73%, 65% and 63% respectively of solicitors firms do conveyancing, wills, probate and family law. Those specialising in criminal law are 31%. Whilst the type of work that firms in Wales specialise in is of the type that will meet most people’s legal needs, taken as a whole and excepting the larger commercial firms, law firms are less likely to offer specialist commercial, corporate and intellectual property work, which has the potential to generate significant revenues for them⁹⁴¹. For niche work such as listed company commercial and corporate work (to which we referred to at paragraph 9.8), practices in Wales are almost on a par with counterparts in England excluding London.
- 9.54 Few law firms in Wales practise social welfare law. At paragraphs 3.9 and following, we discussed the impact of the LASPO reforms on civil legal aid and the provision of social welfare advice. Although the third sector is increasingly endeavouring to provide services in place of law firms, the disappearance of legal aid in a large number of areas has created a void which cannot always be fully met by voluntary services⁹⁴². In addition, fewer firms in Wales specialise in ADR compared to England, a subject considered at paragraphs 5.39 and following.
- 9.55 In paragraph 9.75, we propose a strategy to reinvigorate the rural and post-industrial legal sector. As part of that strategy, we see opportunities in rural and post-industrial areas for law firms to build on existing collaboration with other professional firms, such as accountants, financial advisers and surveyors, to expand business networks in the local area. Together they can work with universities and colleges in the wider region to increase knowledge transfer by sharing educational and training resources, and strengthen relationships with law schools to further develop the talent pool of law graduates.

941 WS108 JNP Legal: 1.

942 WS020 Robert Hanratty: 1.

- 9.56 The SRA considers that the wider legal economy in Wales is generally less diverse than in England⁹⁴³. When economic fluctuations impact, for example, on the home-buying market, the effects on law firms may be more disproportionately felt in Wales compared to England because of the relatively high proportion of residential conveyancing work⁹⁴⁴ in Welsh law firms.
- 9.57 Barristers who practise from chambers in Wales have specialisms across a range of practice areas. Numerically, there are more barristers practising in criminal law and in family law than in other fields of law. That is to be expected since most of the work of the courts in Wales is concerned with those areas of law. However, there are a number of barristers who practise in civil law and/or public law. Their specialisms include personal injuries, clinical negligence, employment, immigration and asylum, inquests, business and property law and administrative law. This picture is similar to that which is to be found in the many legal centres in England where the bulk of the court work undertaken in those centres is criminal or family.

2. The export of legal work

- 9.58 Commercial law firms in Wales have grown principally through exporting legal services to England and beyond. In one sense, this is not surprising given the high level of economic interlinkages between Wales and England in general, the existing common legal system of England and Wales and the common right to practice⁹⁴⁵. However, the relative weakness of other sectors of the Welsh economy means that there is limited indigenous demand for commercial legal services⁹⁴⁶. Commercial law firms in Wales have therefore had to look beyond Wales in terms of their client base⁹⁴⁷. They have developed in some cases as niche practices providing high quality ‘City’ legal services at a competitive cost base from their South Wales location. In addition to growing their respective client base outside Wales, some commercial firms have opened offices in England to service their clients⁹⁴⁸. One law firm that has adopted this approach derives 46% of its turnover from the firm’s offices in Cardiff; the remainder is derived from England⁹⁴⁹.

943 *op cit n. 875.*

944 *WS020 Robert Hanratty: 1.*

945 *op cit n. 997: 23.*

946 [Para 9.28.](#)

947 *OE031 Kathryn Roberts: 4, WS101 Professor Richard Percival: 3.*

948 *ES Cardiff.*

949 *WS103 Huw Williams: 7.*

- 9.59 The limited demand in Wales for commercial legal services applies to barristers as it does to solicitors. Those barristers who wish to develop their practice in commercial law have to look beyond Wales to the major English cities. However, securing work in England is not confined to those barristers who wish to develop their practice in commercial work. A number of barristers who practise from chambers in Wales obtain work over a wide range of civil and public law from solicitors based in England. Barristers in Wales are included on panels of counsel maintained outside Wales, for example by the UK Government Legal Department. Many barristers based in chambers in Wales will be instructed by solicitors in law firms and public bodies based in England and will regularly attend courts and tribunals in England. Some barristers based in Wales travel extensively across England and Wales and conduct civil and public law cases in Bristol and the West Country, Birmingham and the Midlands and in London and the South East. However, it appears that some solicitors and public bodies in Wales tend to instruct barristers based in England in some of the specialist areas of work with the result that a significant proportion of the fees arising from Welsh cases are exported to England⁹⁵⁰.
- 9.60 We have discussed with representatives of the Bar the need to modernise their chambers structure. Although this is a matter for the Bar, we would anticipate that with such restructuring the range and high quality of the specialists practising in Wales would be more readily apparent and provide much greater confidence in the ability of the Bar in Wales to undertake specialist work to the highest standards.

3. The importance of public sector work

- 9.61 Public sector work is important to most Welsh commercial firms. Although margins are tight⁹⁵¹, it provides a stable, through-the-cycle workflow⁹⁵². Concern was expressed to us about the National Procurement Service solicitors' framework and, as perceived, the unnecessary loss of certain Welsh public sector legal work to providers who are not based in Wales⁹⁵³.
- 9.62 Under the current Welsh National Procurement Service solicitors' framework, 89% of the Welsh Government expenditure on legal

950 *WS010, Wales & Chester Circuit: 28.*

951 *ES Cardiff.*

952 *WS103 Huw Williams: 5.*

953 *ES Law Society Seminars Cardiff.*

services in terms of value is to legal firms based in Wales, and for the public sector as a whole it is 91%. Of the 19 firms on the current framework, 11 are based in Wales.

9.63 There is an argument that Welsh public sector spending on external legal services provided by solicitors in Wales is so small in terms of the turnover of those firms that it is difficult to see how it might meaningfully influence the overall health of the Welsh legal market⁹⁵⁴. However, bearing in mind the size of solicitors' firms in Wales as explained at paragraph 9.9 above, a small amount of public sector work would be extremely beneficial to some of those firms. In addition, the Welsh public sector already spends a high proportion of its budget for external legal services on solicitors' firms with a Welsh presence, as illustrated in Figure 60. In the period 2016 to 2018, 90.92% of expenditure by the Welsh public sector as a whole was on solicitors firms with a Welsh presence. For the same period, 88.15% of Welsh local authorities' expenditure on external legal services was spent on law firms with a Welsh presence. As this is at odds with the perception of practitioners about the extent to which Welsh public sector work leaks out from Wales, it is essential that there is greater transparency about the level and distribution of the Welsh public sector's expenditure on external legal services.

Figure 60

Breakdown of total Welsh National Procurement Service solicitor firm spend by the Welsh public sector

| YEAR | FIRMS WELSH POSTCODE £ MILLION | FIRMS WITH WELSH BASE £ MILLION | TOTAL SPEND IN WALES £ MILLION | TOTAL SPEND IN WALES % | TOTAL SPEND OUTSIDE WALES £ MILLION | TOTAL SPEND OUTSIDE WALES % | TOTAL SPEND OVERALL £ MILLION |
|------|--------------------------------|---------------------------------|--------------------------------|------------------------|-------------------------------------|-----------------------------|-------------------------------|
| 2016 | 1.237 | 0.578 | 1.816 | 95.24 | 0.091 | 4.76 | 1.907 |
| 2017 | 1.706 | 1.446 | 3.152 | 90.69 | 0.323 | 9.31 | 3.475 |
| 2018 | 3.189 | 1.775 | 4.964 | 89.57 | 0.589 | 10.43 | 5.542 |

Source: Jomati report

- 9.64 However, the position as regards the procurement of barristers' services by the Welsh public sector is very different. Although Wales has an active civil and public law Bar, in a significant number of cases counsel based in chambers outside Wales are instructed⁹⁵⁵. The evidence of the Counsel General was that 45% of the Welsh Government's instructions to counsel go to barristers based in Wales on its panels, and two-thirds of counsel in Wales that apply to the Welsh Government's panels are appointed. The evidence provided to us indicated that a significant proportion of Welsh local authority court work goes to barristers based outside Wales.
- 9.65 The priority must therefore be to develop the capacity of the Bar in Wales. Public sector procurement must play an important role⁹⁵⁶. To facilitate this, the Welsh Government, in addition to the other recommendations we have made in this Chapter, can act through its procurement capacity to encourage all lawyers in Wales to collaborate more amongst themselves and with law schools. The Welsh Government must also keep a careful watch over the way local authorities instruct barristers; regular reports should be provided to the Counsel General by each local authority.
- 9.66 There is a further risk that existing legal capacity and expertise can be lost to Wales if public sector work undertaken in Wales both for the Welsh Government and Welsh local authorities is subsequently contracted to providers outside Wales⁹⁵⁷. Public sector procurement is, however, subject to the Public Sector Procurement Directives. The law on this is detailed and it is not appropriate for us to make further recommendations. We will simply observe that Welsh public bodies must adhere to Welsh language legislation⁹⁵⁸. It is likely to be beneficial to them to contract with a provider who is able to provide a service in Welsh.

We recommend:

There should be greater transparency about the level and distribution of expenditure on external legal services by the Welsh Government, each Welsh local authority and all other public bodies in Wales. The procurement of barristers' services should be reformed to help build the capacity of the Bar in Wales.

955 *WS010 Wales and Chester Circuit: 6.*
956 *OE001 Counsel General Jeremy Miles: 2.*
957 *WS103 Huw Williams: 5.*
958 *Welsh Language (Wales) Measure 2011, OE029 Jonathan Hopkins: 3.*

Part 5: Rural and post-industrial Wales

1. The current position

- 9.67 The Jomati report did not consider the rural and post-industrial areas of Wales but recommended that the Welsh Government undertakes further work in relation to the legal sector in these areas⁹⁵⁹.
- 9.68 The matter is of great importance to rural and post-industrial Wales. As explained in paragraph 9.8, there is a growing gap between larger predominantly commercial practices based principally in Cardiff and Swansea and other legal practices in the rural and post-industrial areas of Wales, where most Welsh solicitors' firms are more likely to offer traditional high street services than those in England.
- 9.69 The small size of many law firms, the ageing profile of practitioners, the difficulty in training and retaining talent, the need for continuing professional development and keeping pace with legal technology are all issues which have a significant impact on the sustainability of firms. Legal aid reforms, the closure of many local courts and other changes to the justice system are impacting on such firms. Economic factors such as the closure of high street businesses and banks are also impacting on local communities and on the smaller law firms that serve them⁹⁶⁰. It is clear that there is a general lack of appetite on the part of lawyers to join many legal practices at junior and partner level in rural and post-industrial areas, due to poor economics, potential liability issues and the lack of prospects⁹⁶¹. In paragraph 9.53, we referred to the reliance of many law firms on private client specialisms, including conveyancing, wills and probate. There is increasing competition in these more traditional areas of legal services from alternative providers such as accountants, estates agents, surveyors and insurance companies. The loss of income streams to solicitors from this work is compounding the viability issues for many smaller law firms.
- 9.70 Relatively few firms in Wales have converted to limited liability partnerships⁹⁶². The effect is that a number of practices are thought to be effectively unable to cover their run off insurance for potential

959 *op cit n. 875: 115.*

960 *OE027 Eilian Williams: 4.*

961 *OE016 Crispin Passmore: 3; ES Swansea Law Society's Junior Lawyers Division.*

962 *Law Society seminar, 16 July.*

liabilities and unable to attract successors. This extends to firms being acquired by others. This is creating a barrier to succession planning, particularly for practices in rural areas and smaller towns. The consequence is that there are fewer viable legal practices, which reduces choice for consumers and impacts on access to justice.

- 9.71 The cuts to legal aid arising from LASPO in 2012, the effects of which we have described in paragraphs [3.9](#) and following, have had a disproportionate impact on legal practices in rural and post-industrial areas of Wales⁹⁶³. Firms have retrenched the services they offer in an effort to ensure they remain viable businesses. This has created a void in the provision of legal advice which as we have explained is to a considerable extent being met by third sector advice providers⁹⁶⁴; Shelter Cymru, for example, is the only housing legal aid provider in North and Mid Wales⁹⁶⁵.
- 9.72 Fully funded legal apprenticeships, as we recommend at paragraphs [9.47](#) and following, would in our view enable people to qualify as legal professionals and work in the legal sector in Wales, particularly in their local areas. This is critical to the future sustainability of many smaller law firms.
- 9.73 Innovative approaches can also support smaller legal practices to work collaboratively to retain business in Wales and to develop specialisms. In addition to the suggestion for collaboration with other professions which we make at paragraph [9.55](#), examples include fee share arrangements for referrals work and opportunities to bid for referrals. A scheme currently operates under the banner of the Legal Network Wales⁹⁶⁶ that enables firms to refer work they are unable to do to other firms within Wales who can undertake that work in return for a share of the fees. Legal Network Wales also provides member firms with economies of scale for being part of the Network, for example through consolidated procurement opportunities.

963 WS177 and WS190 *The Law Society: 1-2*, WS105 *Justice: 2*.

964 WS020 *Robert Hanratty: 1*.

965 OE008 *Citizens Advice Cymru, Support Through Court and Shelter Cymru: 1*.

966 Hugh James, [Legal Network](#).

2. A coherent and integrated strategy

- 9.74 Other sectors in Wales are supported by business development advice specific to their sector. Models exist in Wales for publicly funded business advice services being available to other sectors, for example agriculture and the services provided by Farming Connect⁹⁶⁷. Wales' smaller legal practices would benefit from a bespoke business development and advice service to help them build business viability and resilience.
- 9.75 A strategy must be developed to reinvigorate the rural and post-industrial legal sector with the objective of developing leadership skills and improving business resilience, robustness and relevance. The measures and mechanisms that should be put in place to achieve this should include:

9.75.1 A 'legal academy' should be established to encourage the development of leadership skills in the sector, particularly an understanding of inspirational ideas and innovation, and of technology. It would provide opportunities for practitioners to meet with inspirational and innovative people in the legal sector, develop their leadership skills, action learning, understand technological advances, media training, how to network effectively and would require participants to set goals as individuals and as a group.

9.75.2 Training in business improvement in the legal sector is scarce within Wales. There is a need for a more strategic approach to business training provision. Areas covered should include: legal firm business planning; effective firm merger/ amalgamation; developing people within legal firms; marketing for legal firms; and venturing in to new markets/provision of new services.

- 9.75.3 A mentoring and coaching scheme or service targeted at those in the legal sector including new entrants, businesses considering significant strategic change in direction, individuals looking to exit the industry and businesses or individuals facing difficulties or hardship. The service could also be suitable for individuals looking for a second opinion, sounding board and support with day to day business.
- 9.75.4 A matching service for practitioners is needed to assist in the process of amalgamating businesses where the need arises. A package of documents or access to independent legal or accountancy advice may also facilitate this process. This may also involve access to the SRA one-to-one liaison where that is necessary to further enable the transition.
- 9.75.5 A programme of exchanges would enable practitioners to experience different practice on a placement basis. This may be of particular interest to young lawyers but also to those considering a move back to Wales from elsewhere before making a long-term commitment.
- 9.75.6 Discussion groups for professionals across professional disciplines would encourage networking and economic ecosystem stakeholder engagement. This has been developed in and around Wrexham⁹⁶⁸.
- 9.75.7 Legal hubs at locations across Wales would provide access to legal resources to support legal practices, including access to specialist legal business consultants. They could act as a focal point for networking events and discussion groups and support wider advice services from the third sector. Welsh universities could support such hubs across Wales⁹⁶⁹ as could local authorities.

968 OE009 Mark Evans: 4.

969 [Para 10.24.](#)

- 9.75.8 Succession planning by trained facilitators should be available to develop succession plans with practitioners and assist in the process of merger, sale or transition of a business to its younger members.
- 9.75.9 Events for continuing professional development should be organised to introduce new technology, personal development, business models and ideas and improve efficiencies and productivity. As well as being about knowledge transfer they would offer networking opportunities for practitioners in rural and post-industrial areas.
- 9.75.10 Business planning surgeries should be provided so that firms can have an hour of time with a legal firm consultant as a precursor to proper business planning. Business Wales currently provides support to develop plans but is rarely able to offer advisors who have experience in preparing business plans for law firms.
- 9.75.11 New ‘technical advice notes’ would assist with business planning.

- 9.76 The Welsh Government should in cooperation with practitioners and law schools (in the way we recommend in paragraph [12.111](#)) develop and implement such a strategy to give effect to the vision and measures set out in the preceding paragraph that are critical to reinvigorate the rural and post-industrial legal sector. These are very modest measures which should not be costly to achieve⁹⁷⁰.

We recommend:

The Welsh Government should develop and implement as soon as possible our proposed strategy to reinvigorate the rural and post-industrial legal sector in Wales.

970 Existing facilities could be utilised in Welsh universities and business support services could be funded by Welsh Government based on the Farming Connect model.

Part 6: Technology and a legal services brand in Wales

1. The significance of technology

9.77 The five leading UK-headquartered solicitors' firms⁹⁷¹, the big four accountancy practices and to a lesser extent the next tier solicitors' firms are using technology as a strategic enabler to deliver scalable, cost effective and client centric solutions⁹⁷². Artificial Intelligence (AI) is at an early stage of development and deployment in the legal sector⁹⁷³ but this is changing quickly. AI is expected to enable tasks to be performed more efficiently and effectively. At the same time, it creates new challenges to ensure that AI does not introduce systematic bias into decision making, due to the design of the algorithms that go into it. Legal practitioners will need to have the skills both to use AI and to challenge it when necessary. Whilst there are legal practices in Wales deploying technology to deliver commoditised, high volume work, Welsh legal practices do not at present have sufficient capacity to develop or acquire new technologies. Indeed, whilst legal services in the public sector have adopted technology in a significant and successful way, in the private sector the adoption of technology “barely exists”⁹⁷⁴ in Wales.

9.78 Current IT solutions exist to support modern legal practice. For example, the Microsoft cloud platform has specialist applications to support subjects⁹⁷⁵ including legal services. There is an opportunity for better knowledge sharing of the extent to which current IT solutions can support the improved delivery of legal services. However, leading technology requires investment. Law firms in Wales, especially those in post industrial and rural areas may sometimes find such investment difficult to make.

971 The “Magic Circle” firms.

972 ES (Hugh James), (Jomati Consultants), (Linklaters, Clifford Chance, Herbert Smith Freehills), (Deloitte), (Ernst & Young) and (Allen & Overy).

973 ES Brad Hilderbrandt, London.

974 *op cit* n. 875: 6.

975 ES Microsoft.

- 9.79 There is a significant role for universities to both train Welsh law students in the use of new technologies for modern legal practice and to assist legal practices to deploy and develop technology as is explained in paragraphs [10.31](#) and following. This was a key proposal of the Welsh Government commissioned Doolan report on the future of the legal profession in Wales. The report recommended that Government funding be provided to support a centre for innovation in law to act as a focal point for global innovation in legal services, linking to the legal sector in Wales. The Welsh Government commissioned a further report from PricewaterhouseCoopers to investigate establishing such a centre⁹⁷⁶. The Welsh Government did not take forward the recommendations in either of these reports. We consider this to be a significant missed opportunity to support the legal sector in Wales. In comparison, Swansea University's Centre for Innovation and Entrepreneurship in Law (CIEL) has responded to the challenges identified in these reports, particularly around emerging technologies and innovation in legal services. It is, however, an underused asset. It is essential to encourage the dissemination and transfer of the knowledge available in specialist centres such as the CIEL across the legal sector in Wales.
- 9.80 The market for legal services is changing with increasing competition from new providers and the big four accountancy practices through Alternative Business Structures licences. As drivers of new technology, the big four are expected increasingly to bring innovation into the sector, accelerating change. A South Wales legal centre (as we will explain in paragraph [9.87](#) below) would attract investment in new technologies building on the work of, and possibly in conjunction with, the CIEL to create a cluster relating to new technologies. With strong connectivity, it would equally be possible for such a centre to act as a hub for those working in Mid, West and North Wales.

We recommend:

The Welsh Government should provide strong support for investment in technology, especially in post-industrial and rural Wales.

976

The Welsh Government received the Doolan and PricewaterhouseCoopers reports in draft in July 2015 and June 2016, respectively.

2. The creation of a legal services brand in Wales

- 9.81 Limited market opportunities and competition between providers of legal services in Wales mean that there has been limited cooperation to build the sense of a Welsh legal services sector that is comparable with legal centres in the regions of England or with Northern Ireland or Scotland.
- 9.82 We have referred at paragraph 9.30 to the “Leeds Legal” brand built on the successful collaboration of the local Law Society, Leeds City Council, legal professionals and academia. It is disappointing to say the least that there has been nothing similar in Cardiff. The explanation given to us has been limited market opportunities and competition between providers whilst the Jomati report concluded that many law firm leaders do not consider they share common problems with peers⁹⁷⁷.
- 9.83 Other centres in the English regions, Scotland and Northern Ireland have successfully promoted themselves as locations of choice for law and other professional services business to establish shared services offices serving their clients. Belfast has been preeminent in establishing itself as a nearshoring centre for legal services. Citigroup locating in Belfast in 2004 was critical. It was followed by Herbert Smith Freehills, Allen & Overy, Axion and Baker McKenzie. Firms such as Fieldfisher and Shoosmiths have followed. PricewaterhouseCoopers has flourished in Belfast and it employs in excess of 1,000 people in the city. Belfast has very much played to its strengths as a location offering a value proposition for business, access to talented individuals and a pool of some 500 graduates produced annually by the city’s universities. It also has a reputation for innovation in technology, bolstered by the collaboration between academia and law firms and particularly through the Legal Innovation Centre in Ulster University⁹⁷⁸. Belfast’s success has been driven by collaboration between the public and private sectors and academia. Invest NI, the economic delivery agency of the Northern Ireland Executive, has been instrumental in building Belfast as a nearshoring centre.

977 *op cit n. 875: 70.*

978 *OE028 Nearshoring: 1.*

9.84 Whilst Belfast has led the way, other cities in the UK have also had success in attracting significant inward investment from legal and other professional services firms. Manchester hosts four large firms, including Freshfields and the core of Addleshaw Goddard's Transaction Support Team. Figure 61 illustrates UK nearshoring operations for cities excluding Belfast.

Figure 61

Law firm nearshore UK operations

| FIRM NAME | LOCATION (S) | YEAR ANNOUNCED/ OPENED | APPROXIMATE HEADCOUNT | EMPLOYEES/ SEEKING QUALIFIED LAWYERS? |
|-----------------------------|---------------------------------------------|------------------------|-----------------------|---------------------------------------|
| Addleshaw Goddard | TST support team spread across four offices | 2010 | 175 | Yes |
| Lewis Silkin | Cardiff | 2012 | 43 | Yes |
| Ashurst | Glasgow | 2013 | 350 | Yes |
| Bryan Cave Leighton Paisner | Manchester (ICSM office) | 2014 | Refused to declare | Refused to declare |
| Hogan Lovells | Birmingham | 2014 | 55 | Yes |
| Freshfields | Manchester | 2015 | 800 | Yes |
| Latham and Watkins | Manchester | 2015 | Refused to declare | Yes |
| Norton Rose Fulbright | Newcastle | 2016 | 140 (planned) | Yes |
| Clifford Chance | Newcastle | 2018 | 60 | Yes |
| Reed Smith | Leeds | 2018 | 30 | Refused to declare |
| Taylor Wessing | Liverpool | 2018 | 25 | Yes |

Source: Jomati report

9.85 It is possible that Belfast is starting to reach capacity as a nearshoring centre. Since 2014, several large international legal practices have chosen to establish their own service centres in alternative UK locations⁹⁷⁹. This presented an opportunity for Wales, but it was not taken. We have referred to the failure to implement the Doolan and PricewaterhouseCoopers reports at paragraph [9.79](#).

979

op cit n. 875: 115.

- 9.86 The Welsh Government’s Economic Action Plan sets out ‘calls for action’ that are relevant to building a cohesive legal sector in Wales, including innovation, entrepreneurship, high quality employment, skills development and digitisation⁹⁸⁰. The Economic Action Plan sets the framework for government economic development support across sectors. It provides the framework for government, the Law Society, legal practices and academia to collaborate to build a more cohesive South Wales regional legal centre with the aim to promote exports, reduce leakage, attract talent and promote the region for nearshoring opportunities. Firms have nearshored to South Wales (see Figure 61) and the Welsh Government has in the past come close to securing significant nearshoring investments⁹⁸¹.
- 9.87 South Wales in particular has the attributes to attract law and other professional services businesses wishing to nearshore as part of their business model:
- 9.87.1 a good pool of potential recruits from the high ratio of graduates and undergraduates per head of population;
 - 9.87.2 innovative legal education, most notably thorough the CIEL at Swansea University, to deliver skills in technology-driven legal practice;
 - 9.87.3 a value proposition in terms of commercial rents;
 - 9.87.4 connectivity to London which will be enhanced when the rail electrification work is complete; and
 - 9.87.5 a global location between time zones looking east and west.

980 Welsh Government, *Business, economy and innovation*.
981 *op cit* n. 875: 4, footnote 9, WS083, WS177 Law Society: 1.

- 9.88 We note that significant professional services firms have already located in South Wales. As we have explained at paragraph 9.25, Deloitte has over the past eight years built a delivery centre in Cardiff. Admiral Law employs 47 solicitors across two locations in Cardiff and Newport, but its total employee headcount stands at around 600⁹⁸². Clustering is important, and entities such as Deloitte and Admiral Law can retain and draw talent into South Wales and act as the genesis for a larger nearshoring centre.
- 9.89 There is a vital leadership role for the Welsh Government at senior level to develop a targeted campaign to attract new nearshorers to the legal centre of South Wales. Such leadership and effective execution has in the past been lacking and significant opportunities were lost as we have explained.

We recommend:

The Welsh Government must provide clear leadership and support for the legal services sector. This should be targeted, user-friendly, flexible and attractive to potential inward investors especially with establishing a technology-based nearshoring centre as an objective.

- 9.90 We see the potential to create a legal centre in South Wales to meet the needs of two markets. First, the conventional legal market that currently exists based on commercial law firms successfully exporting legal services to England and beyond. Second, a nearshore location servicing the global legal market. Such a centre should be founded on offering technology-based services. The strong potential of this opportunity was made clear in the evidence of Professor Richard Susskind; he pointed out that no area in the UK is currently a predominant market leader in technology-based services⁹⁸³.
- 9.91 A strong Bar is also a key element of a vibrant legal sector, as is the case in Bristol⁹⁸⁴. The Welsh Bar loses work to other centres including Bristol, Birmingham and London⁹⁸⁵, often because of a perceived lack of specialism or strength in depth of the Welsh Bar⁹⁸⁶. A more cohesive approach is needed between solicitors and the Bar to develop specialisms, for example in relation to business and property law to support SMEs and to develop a stronger ecosystem for the Welsh legal sector. This

982 *Ibid.* 21, footnote 9.

983 OE028 Professor Richard Susskind: 2.

984 ES Bristol.

985 ES Cardiff.

986 ES Cardiff.

would enable more work to remain in Wales and offer more career progression routes for young lawyers in Wales. Among other ideas suggested to us are that the Bar Council should support the principle that Welsh cases should be tried in Wales and it should encourage barristers instructed by public bodies in Wales to become tenants in chambers in Wales. The Bar Council should also encourage leading counsel who are instructed in cases in Wales to work with local junior counsel with the objective of strengthening the development of specialisms among juniors in Wales. This has been the practice of leading counsel in work done overseas. We were encouraged by the Bar Council's approach to Wales at its meeting in Cardiff in July 2019 and would anticipate that it would consider other proposals.

9.92 The creation of a court fit for a capital city, as we have set out at paragraph 8.14, should be part of this strategy. Such a court would be an important element in establishing South Wales as a strong regional legal centre⁹⁸⁷.

We recommend:

The Welsh Government, legal professionals in Wales, the Law Society, the Bar Council, other professional bodies and academia should work in partnership. They should develop and promote the capabilities of the legal sector, promote South Wales as a legal centre and increase the export of legal services.

987 *Law Society Seminars, 16 July 2018.*



CHAPTER 10

Knowledge, skills and innovation

10. Introduction

- 10.1 Vital for the success of the Welsh legal sector and to securing the aim of a fair, just and prosperous Wales is the quality of higher and further education and research in law and related subjects, and of professional legal education.
- 10.2 There is a perception that law is irrelevant for the majority of the population but the Rule of Law is at the heart of democracy. It is fundamental to enabling people to access their rights. An understanding of the function of law and legal institutions should be a basic part of education. In Chapter 3 we emphasised the importance of access to information and advice: as we have said at paragraph [3.52](#) this needs to be underpinned by public legal education⁹⁸⁸. This is especially true for children and young people as it has an important role to play in enabling them to understand their rights and responsibilities, the operation of the legal system and in reducing crime as mentioned throughout Chapter 4.
- 10.3 This Chapter outlines in Part 1 the current position and the significant changes needed in Wales. As has been pointed out⁹⁸⁹, law schools and professional legal education must address the fundamental changes brought about by globalisation, technology and competitive market pressures. These issues have also been highlighted in an important report by the Learned Society of Wales⁹⁹⁰. Part 2 assesses what is needed to enable Welsh universities to face up to these changes but to do so in a way that takes advantage of the gradual development of Welsh law. Part 3 considers what can be done to improve public understanding of the law, in the short and in the longer term.

988 WS077 Dr Simon Hoffman: 3.

989 By Chief Justice Sundaresh Menon of Singapore in his James P White Lecture at the University of Indiana in October 2018: *Law Schools - A Time of New Burdens and New Beginnings*.

990 Learned Society of Wales (2018) *Wales and the World, Learned Society of Wales, The future for legal education and practice in Wales*.

Part 1: Higher and professional education

1. Higher education

- 10.4 From 1893 to 2007, the University of Wales was a federal institution with constituent colleges. Most of the present universities in Wales were formerly colleges under the University of Wales.
- 10.5 Law is taught at undergraduate level at six Welsh universities: Aberystwyth, Bangor, Cardiff, Swansea, University of South Wales and University of Wales Trinity St David. Postgraduate courses and PhD supervision are provided at Aberystwyth, Bangor, Cardiff, Swansea and University of South Wales.
- 10.6 Criminology is taught at seven Welsh universities: Aberystwyth, Bangor, Cardiff, Swansea, University of South Wales, University of Wales Trinity St David and Wrexham Glyndŵr.
- 10.7 Policing studies are taught as a separate undergraduate degree at three Welsh universities: University of South Wales, University of Wales Trinity Saint David and Wrexham Glyndŵr.
- 10.8 In 2016-17, 4,140 students studied law as a full or joint honours degree in Wales, 3,200 as undergraduates and 940 as postgraduates. This makes 4.6% of the total law students in the UK, which broadly reflects Wales' share of the UK population.

Figure 62

Law students numbers in UK and Wales 2016-17

| 2016-2017 | UK | WALES (INCLUDING OPEN UNIVERSITY) | % OF UK HE STUDENTS STUDYING LAW IN WALES |
|---------------------------------------|--------|-----------------------------------|-------------------------------------------|
| Undergraduate student enrolments | 69,595 | 3,200 | 4.6% |
| Postgraduate student Enrolments | 20,135 | 940 | 4.6% |
| Undergraduate qualifications obtained | 19,540 | 985 | 5% |
| Postgraduate qualifications obtained | 11,680 | 620 | 5.3% |

Source: Welsh Government

- 10.9 The institutional landscape of Welsh law schools is very diverse. Among the Welsh universities, Figure 63 shows that Cardiff and Swansea are by far the largest legal education providers.
- 10.10 Despite the Welsh Government's desire to support part-time study as a means to improve the uptake of legal education, only 105 of the 3,790 students enrolled on legal courses in Wales in 2016-17 studied part-time. Whilst data from the UK's Higher Education Statistics Agency suggests that around 11% of all students in Welsh universities studied for their undergraduate degrees part-time in 2016-2017; in terms of law courses, only the University of South Wales (USW) exceeded that percentage at undergraduate level (14%). Aberystwyth, Swansea and Trinity Saint David had almost no part-time students for their undergraduate law courses. Bangor and Cardiff had 4%. The Jomati report suggests that Welsh universities could do more to encourage the part-time study of law at an undergraduate level, even just to bring legal studies up to the average level of undergraduate courses in Wales⁹⁹¹. We believe that this could assist in promoting a more diverse legal system in Wales.
- 10.11 On a more positive note, those studying at a post-graduate level are more likely to do so part-time (Aberystwyth 58% of all law students, Cardiff 42%, and University of South Wales 48%). These percentages are ahead of the Welsh average as according to the Higher Education Statistics Agency, 24% of all postgraduate students in Wales studied part-time during 2017-2018. However, only 7% of Bangor University students and 12% of students at Swansea University studied part-time during this period.

991 *op cit n. 875: 23.*

Figure 63
Breakdown of law student numbers in Wales by institution 2017-18

| Institution | UNDERGRADUATE | | | POSTGRADUATE | | | GRAND TOTAL |
|------------------------------------------|---------------|-----------|--------------|--------------|------------|------------|--------------|
| | Full time | Part time | All | Full time | Part time | All | |
| Aberystwyth University | 305 | - | 305 | 30 | 30 | 60 | 365 |
| Bangor University | 240 | - | 245 | 60 | 15 | 75 | 320 |
| Cardiff University | 950 | 35 | 985 | 265 | 180 | 445 | 1,430 |
| Swansea University | 930 | - | 930 | 200 | 35 | 235 | 1,165 |
| University of South Wales | 370 | 15 | 385 | 50 | 70 | 120 | 500 |
| University of Wales, Trinity Saint David | 10 | - | 10 | - | - | - | 10 |
| Total Welsh Universities | 2,805 | 50 | 2,860 | 605 | 330 | 935 | 3,790 |

- 10.12 Figure 64 demonstrates the important place of international students in the legal education sector in Wales as well as the many students from elsewhere in the UK who are educated in Welsh law schools. Figure 65 shows the known destination of just under half of the law students who left higher education in Wales in 2016-17. A significant percentage leave Wales after graduating. A large percentage also leave Wales to study law.
- 10.13 The lack of clarity on the impact of Brexit has raised two main concerns at Welsh universities. First, a potential lack of access to EU research funding, and second that international students may be deterred from applying to study in Wales. The Jomati report highlights a survey of 336 students at Welsh universities in which 84% believed that post-Brexit Wales would become a less attractive place for EU students to come and study law, and 82% believed that Wales would become a less attractive place for EU lecturers to teach and research law⁹⁹².

992 Jomati report, *The legal sector in Wales – a rapid review*: 106.

Figure 64**Law student numbers in Wales by domicile 2017-18**

| | ABERYSTWYTH UNIVERSITY | BANGOR UNIVERSITY | CARDIFF UNIVERSITY | SWANSEA UNIVERSITY | UNIVERSITY OF SOUTH WALES | UNIVERSITY OF WALES TRINITY ST DAVID | ALL |
|---------------|---------------------------|----------------------|-----------------------|-----------------------|------------------------------|--------------------------------------------|-------|
| Wales | 100 | 110 | 565 | 500 | 355 | 10 | 1,640 |
| Rest of UK | 125 | 95 | 475 | 400 | 45 | - | 1,140 |
| Other EU | 30 | 50 | 55 | 65 | 30 | - | 230 |
| Non-EU | 110 | 60 | 340 | 205 | 75 | - | 790 |
| All | 365 | 315 | 1,435 | 1,170 | 505 | 10 | 3,800 |

Source: SRA

Figure 65**Law graduates in Wales known destination (2016-17 cohort)**

| DESTINATION | STUDENTS |
|---------------------------------|----------|
| Wales | 235 |
| England | 150 |
| Channel Islands and Isle of Man | 5 |
| Other EU | 15 |
| Non EU | 5 |
| Not known | 545 |
| Total | 955 |

Source: SRA

- 10.14 Figure 66 shows some of the rankings of Welsh law schools in the UK made by the media and other bodies. Only Swansea University law school is ranked in the top 35 by all the major ranking organisations. Each ranking has a different methodology but we include the Figure as indicative of students' perceptions.

Figure 66
Welsh law school rankings in the UK

| LAW SCHOOL | TIMES (2018) | GUARDIAN (2019) | COMPLETE (2020) | UK UNIVERSITIES (2018) |
|-------------|--------------|-----------------|-----------------|------------------------|
| Aberystwyth | 48 | 77 | 42 | 70 |
| Bangor | 63 | 28 | 51 | 44 |
| Cardiff | 32 | 52 | 32 | 36 |
| Swansea | 30 | 29 | 35 | 30 |
| USW | 110 | 48 | 81 | 77 |

Source: Times, Guardian, Complete, UK Universities rankings

- 10.15 Students from Wales studying in Wales pay slightly lower fees than students from England and Wales studying in England⁹⁹³. Maintenance loans are provided by both the Welsh Government and the UK Government but the Welsh Government also funds maintenance grants for students from Wales. Extra support is available for people with long-term health conditions or who have someone who depends on them financially. EU students and migrant workers can also access support, sometimes on the same terms as UK nationals resident in Wales. Postgraduate students can also apply for loans from Student Finance Wales. In August 2019, the financial support from the Welsh Government for Welsh students starting a postgraduate course increased from £13,000 to up to £17,000 towards their studies and living costs⁹⁹⁴.
- 10.16 We are concerned that some of the most able students leave Wales and do not return. The Welsh Government *Seren Network*⁹⁹⁵ encourages the most academically able students to go to “what are generally recognised as the top performing universities in the UK,” although the Welsh Government “would not stop them going to any university of their choice.” We were provided with a list of an amalgam of the Sutton Trust 30 and the Russell Group 24. The only Welsh university was Cardiff. There was one Northern Irish and four Scottish universities. It is difficult to see how this policy assists in creating strong law schools in Wales. On the contrary, the Welsh Government should have confidence in the Welsh law schools. It should assist in their

993 £9,000 in Wales and £9,250 in England. Until 2016, Welsh students paid £3,810, irrespective of which university they attended. However, this is estimated to have cost the Welsh Government £234 million per year. In May 2019 the Independent Panel Report to the Review of Post-18 education and funding recommended that tuition fees in England be reduced to £7,500. It also recommended that the UK Government should restore maintenance grants.

994 Student Finance Wales, *Postgraduate Students*.

995 Welsh Government, *Seren Network*.

development as being amongst the best in the United Kingdom⁹⁹⁶. This would provide the additional benefit of developing work on issues of particular importance to Wales such as that being undertaken at the CIEL in Swansea University. This would encourage the most able law students to remain in Wales. As we make clear at paragraph [12.28](#) the retention and the return of the most able lawyers is of crucial importance to the justice system in Wales.

2. Professional education and training

- 10.17** We have set out the requirements for professional legal qualification and the changes underway at paragraph [9.34](#) and following. Law schools presently offering professional legal training must have the Graduate Diploma in Law and Legal Practitioners Course approved by the SRA and the Bar Professional Training Course approved by the Bar Standards Board. From September 2020 at the earliest, there will be a very significant change for solicitors which will have a substantial impact on law schools as the SRA intends to introduce the Solicitors Qualifying Examination (SQE). We describe the significance of this change and the opportunities it provides in paragraph [10.27](#). It will require a prospective solicitor after receiving a degree or equivalent qualification or experience to complete a two-year period of qualifying work experience and pass a suitability test.
- 10.18** Another way into the legal professions is through CILEx which we have described in detail in paragraphs [9.44](#) and following. It is a non-university route to qualify as a lawyer, and students do not require minimum qualifications before undertaking studies⁹⁹⁷. The training is more accessible and affordable and this is reflected in the diversity of CILEx lawyers as we have set out in paragraph [9.20](#).

⁹⁹⁶ Professor Hazelkorn, E (2016) *Towards 2030: A Framework for Building a World Class Post Compulsory Education System for Wales*.
⁹⁹⁷ WS068 CILEx: 3.

Figure 67**Professional legal education – providers in Wales**

The Legal Practitioners Course (LPC) is offered in three Welsh universities: Cardiff, Swansea and University of South Wales.

The Bar Professional Training Course (BPTC) is offered at one Welsh university: Cardiff.

Six Welsh institutions are CILEx providers: Brightlink Learning Cardiff, Cardiff College Online, Cardiff & Vale College, Coleg y Cymoedd, Coleg Gwent and University of Wales Trinity St David.

Figure 68**Student numbers in professional legal education courses in 2019**

| COURSE | ORGANISATION | STUDENT NUMBERS | TOTAL |
|--------|------------------|-----------------|-------|
| LPC | Cardiff | 180 | |
| | Swansea | 120 | |
| | USW | 90 | 390 |
| BPTC | Cardiff | 84 | 84 |
| CILEx | Throughout Wales | 371 | 371 |

Source: Data provided to us by the professional legal education providers in Wales

- 10.19 It is crucial that there is a strong link between the Welsh law schools and the professions in Wales. This would offer many opportunities and benefits for students and the professions. In discussion with the professions, the Welsh law schools should consider what role they have in increasing the number of legal apprenticeships in Wales. As we stated at paragraph 9.51, apprenticeships should play a key role in tackling some of the issues facing the sustainability of the legal professions in Wales.

Part 2: Reform: innovation and collaboration

1. Overview

- 10.20 Our starting point is the need to consider not only the particular characteristics of Wales, but also the place of Wales in the UK and internationally, and most especially in the common law world. Both internal and external perspectives on knowledge, skills and innovation are required to sustain a thriving legal and justice ecosystem in Wales.
- 10.21 A number of our recommendations reflect (1) the need to address globalisation, technological changes and pressures in the market for legal services, (2) the inter-relationship between education, training and research and standards of excellence which are vital to the highly competitive market in legal services, and (3) the need for a radically different approach to cooperation among key education and training providers in Wales. While the sector demonstrates some strengths, here as elsewhere there is a real need for far-reaching change and development if the Welsh law schools are to meet these challenges and make a significant contribution to a just, fair and prosperous society in Wales.
- 10.22 Despite the advantages of Wales' comparatively small size, the lack of collaboration between the law schools⁹⁹⁸, and between the law schools and the legal professions, is a significant impediment. This may have arisen in part due to an emphasis on competition between the law schools. However, we were pleased to record that all law schools in Wales are open to collaborating with each other⁹⁹⁹.
- 10.23 There is a Welsh Centre for Crime and Social Justice which brings together the criminology schools from seven Welsh universities, but this is mainly limited to an annual two-day residential conference. More is needed to encourage research and collaboration between the schools. We therefore recommended in the course of our work the establishing of a Law Council of Wales. We published a consultation paper in October 2018 at the Legal Wales conference in Aberystwyth: see paragraph [12.103](#). We are encouraged that all the Welsh law schools want to be involved in the proposed Law Council¹⁰⁰⁰.

⁹⁹⁸ OE044 Heads of Law Schools: 5.

⁹⁹⁹ OE005 Professor Daniel Wincott: 2, OE044 Head of Law Schools: 1.

¹⁰⁰⁰ OE044 Heads of Law Schools: 1.

- 10.24 Welsh universities can be strong local hubs within their communities. Universities can provide space where people connect, have physical space and access to resources. They could provide their communities with business support, technological advice and facilities¹⁰⁰¹. We were encouraged to see that Swansea University supports local solicitors' firms in South West Wales to access legal materials¹⁰⁰².
- 10.25 As mentioned in paragraph [9.75.1](#), training for business skills to improve the legal sector is rare. Universities have a key role in offering training to legal firms in the following areas: legal business planning; developing people; merger with other firms; marketing; and legal technology within a small firm.

2. Higher education

- 10.26 The higher education sector in Wales is subject to intense competition, as Wales' universities compete to attract UK and international students (with many coming from other jurisdictions in the common law world). The data at Figure 63 highlights the point that Wales produces more law graduates than can at present find work in Wales, even for those who are from Wales originally. We have set out at paragraphs [9.51](#), [9.76](#) and [9.92](#) our recommendations aimed at retaining a higher proportion of Welsh law graduates in the Welsh legal sector.
- 10.27 The teaching of law in Wales must reflect not only the fundamental changes brought about by globalisation, technology and competitive market pressures, but also (1) the fact that most of the law applicable in Wales is law that is common to England and Wales, (2) that many who practise as lawyers need an essential grounding in law with a comparative perspective, and (3) the fact that Wales has its own distinctive body of law. We have no doubt that it is possible to combine these three considerations¹⁰⁰³, not least in terms of the worldwide family of common law jurisdictions, as well as European law and international law. Furthermore, as also discussed in paragraph [9.37](#), significant opportunities for innovative approaches to academic legal education will be presented by the Solicitors Qualifying Examination. Universities will have greater flexibility as to what can be taught. We would expect the Welsh law schools to collaborate to produce syllabuses that would

1001 OE007 Professor Andrew Murray: 3.

1002 OE044 Professor Elwen Evans QC: 8.

1003 *op cit n. 993.*

meet not only the aims we have set out but also the aims in respect of digitalisation and artificial intelligence we describe in the next section. There are parallel developments in training for the Bar which could also provide similar opportunities¹⁰⁰⁴.

- 10.28 Law graduates from Welsh and English universities must be able to practise in both nations¹⁰⁰⁵. Wales must also remain an attractive location for international students. This is vital for the Welsh law schools both in financial and competitive terms and for a suitably rich and rounded student experience. One Welsh medium student from Bangor University who wanted to practise in Wales said that the closest Legal Practitioners Course to North Wales is Chester, with no option to study in Welsh. There was a worry that this could encourage people to remain in England after networking there¹⁰⁰⁶. The commitment to teaching Welsh law need not conflict with the delivery of a legal education that can be used internationally¹⁰⁰⁷.
- 10.29 Welsh law schools must therefore offer a firm foundation for a career across the world, particularly in common law jurisdictions. Welsh universities must make greater use of the different approaches that the law enacted in Wales has taken in some fields (such as the environment and the well-being of future generations) as a basis for teaching comparative law and legal studies associated with devolved governance. Close engagement with the law-making process in the devolved institutions is but one example of the potential for both home and overseas students to develop their skills. Such opportunities should be actively exploited by the Welsh law schools.
- 10.30 We note the existence of similar developments and initiatives in Scotland and in Northern Ireland (Figure 69). More particularly, we note the evident ability of law schools in Scotland and Northern Ireland to attract large numbers of international students into a ‘small’ jurisdiction. There is no reason why the Welsh law schools cannot be similarly creative in this regard. Students from countries like Canada have been willing to study Welsh law because they know that they have to adapt their learning to the multiple jurisdictions at home¹⁰⁰⁸.

1004 *op cit n. 896. WS041, WS176 Solicitors Regulation Authority: 2.*

1005 *WS194 Jonathan Haydn-Williams: 1.*

1006 *ES Bangor University Law School.*

1007 *WS067 Bangor Law School Public Law Research Group: 23, WS044 Thompsons Solicitors: 1, WS025 Dr Nathan Gibbs: 1.*

1008 *OE030 Professor Thomas Watkin QC: 2.*

Figure 69**Legal education initiatives in Scotland and Northern Ireland****Dual Qualified degrees**

Aberdeen, Strathclyde and Dundee Universities provide dual qualification degrees. On graduating with this degree, students have a choice of jurisdictions where they can study for their postgraduate professional qualification, including England and Wales. In Strathclyde University, students who wish to have an opportunity to continue studying in Northern Ireland can take an elective honours module on the law of evidence in their fourth year of study.

LLB (Common Law)

This is an undergraduate degree programme at the University of Glasgow that started in September 2018. The course is designed for international students but also for students from the UK outside Scotland. It is accredited as a qualifying law degree by the Law Society of England & Wales under the present accreditation regime. The course is not an automatic qualifying degree for countries outside England & Wales, but provides the foundation for a professional qualification as a lawyer in common law countries¹⁰⁰⁹.

English law LLB

In Aberdeen, Dundee, Glasgow and Strathclyde Universities, students can take an English law LLB degree to enable them to study for their postgraduate professional qualification in England or Wales.

Queen's University, Belfast

Each undergraduate law degree is a qualifying degree for students intending to qualify to practise in Northern Ireland, England or Wales. The teaching tends to concentrate on the law existing in England and Wales and where there are points of difference with the law in Northern Ireland these usually provide opportunities for comparison and critical analysis¹⁰¹⁰.

We recommend:

Welsh law schools must reassess their undergraduate programmes to take advantage of the scope for comparative studies and transferable qualifications.

1009 WS190 *The Law Society of England and Wales: 4.*
1010 WS134 *Dr Brian Jack: 5.*

3. Law and innovation: digitisation and artificial intelligence

- 10.31 Some Welsh law schools have addressed the need for innovation in the design and delivery of both undergraduate and postgraduate courses. At Bangor, for example, there are 16 different LLB programmes including law with Chinese, French, German and Italian¹⁰¹¹. There is also much by way of outreach and practical engagement. Typical is Swansea University, where criminology and law students are given an opportunity as part of their undergraduate degree to work in the University’s law clinic and also to engage with local schools¹⁰¹².
- 10.32 By far the more important area for change and innovation is the need for legal education to encompass technological development – digitalisation and artificial intelligence¹⁰¹³. Changing technology means legal practice will have to change to accommodate it¹⁰¹⁴. As Professor Richard Susskind has pointed out, the UK lags behind other nations in adapting its legal education to meet these changes¹⁰¹⁵. A notable exception has been the University of Ulster¹⁰¹⁶.
- 10.33 The evidence of Professor Susskind was that “*It is embarrassing how few centres there are in the UK in the legal technology sphere, certainly when compared internationally*”. We regret to report that there is a comparative lack of engagement in Wales with the opportunities presented by digitisation and the rise of AI¹⁰¹⁷. We are particularly concerned about this in terms of student employment prospects and because the training of Welsh law students in legal technology and AI is crucial for the success of the legal professions in Wales (as we have explained at paragraph [9.77](#) and following)¹⁰¹⁸.
- 10.34 There is one major exception in Wales – the CIEL at Swansea University. Its initiatives include coding training for law students and continuing professional development and training. This is an example that must be followed by the other Welsh universities. It is also important to note that the University of South Wales and Cardiff and Vale College are the UK’s first academic institutions to become members of the Legal

1011 WS092 Bangor Law School: 3.
 1012 WS086 Professor Jane Williams: 2.
 1013 OE010 Professor Scott Storch: 1.
 1014 *op cit n. 848.*
 1015 OE029 Professor Richard Susskind: 1.
 1016 OE028 Brian Dolaghan: 5.
 1017 ES Bangor University Law School.
 1018 OE007 Dr Anna Donovan: 1. WS124 Elliott Ash: 1.

Technology Core Competencies Certification Coalition, an organisation setting the global standard for legal technology proficiency in industry. Large firms across the world use the Coalition's legal technology core competencies in relation to the skills needed to remain competitive. The University of South Wales intends to incorporate the competencies into the practical modules of their curricula to ensure students have the crucial digital skills relevant to the modern workplace¹⁰¹⁹. Cardiff University is also in the process of redesigning curricula through consultation with law firms and will be offering a data analytics module¹⁰²⁰.

- 10.35 Welsh Universities must in our view move rapidly to revise their curricula to teach what is perhaps best described as 'law tech'. Not only is this essential for student education, but it would be a real demonstration of the Welsh Universities' renewed vigour and outward facing approach, to attract the best students. Close consultation and engagement with the professions and their regulators must be part of this new approach; for the professions, the provision of easily accessible short courses is an obvious starting place. We were encouraged to see that a number of universities in Wales already provide continued professional education courses to the legal professions¹⁰²¹.

We recommend:

Law tech must be taught to all students and the professions across Wales.

1019 OE044 Tim John: 4.
1020 OE044 Professor Urfan Khaliq: 2.
1021 OE044 Head of law schools: 8.

4. Welsh law

- 10.36 The evidence provided by the Welsh law schools identified a series of individual institutional responses to the increasing divergence of the law in Wales and the law in England¹⁰²². In the law clinic in the University of South Wales, the students are made aware of the growing body of Welsh law through a number of scenarios. One scenario deals with homelessness where there is a marked difference in the law between England and Wales¹⁰²³.
- 10.37 However, it is important to appreciate that such responses do not paint the full picture. The provision is patchy and is heavily reliant on individuals¹⁰²⁴. Some students from Bangor University did not consider that they have had the background knowledge about divergence in Wales. However, others made reference to an available module within the University which covers such issues¹⁰²⁵. As previously mentioned, several of the institutions are highly reliant on students from outside Wales. In trying to attract students from across the world, Welsh law is often ignored, even though there are advantages in teaching Welsh law as part of a common law education¹⁰²⁶.
- 10.38 The same may be said of both criminological and policing studies in Wales. The policing degree modules, we were told, lack reference to Wales¹⁰²⁷. In our view, the educational response, in undergraduate and postgraduate courses, to devolution in these subject fields remains largely undeveloped.
- 10.39 There is evidence that students have an interest in Welsh law. In a student survey across all Welsh law schools in 2015, 100% of respondents who intended to pursue a career in Wales and 77% of respondents who intended to pursue a career outside Wales stated an interest in learning about Welsh law. 80% of non-UK/EU students wanted to be taught about the implications of Welsh devolution law¹⁰²⁸.

1022 WS092 Bangor Law School: 1-2, WS107 Cardiff Law School: 3-4, WS096 University of South Wales School of Law: 3.

1023 OE011 Hannah Menard: 1.

1024 OE006 Dr Catrin Fflur Huws: 1.

1025 ES Bangor University Law School.

1026 OE006 Professor Thomas Watkin: 1.

1027 OE011 Professor Iolo Madoc-Jones: 2.

1028 WS073 Prof Richard Owen: 8.

- 10.40 The Jomati report¹⁰²⁹ argues that the Welsh Government needs to appreciate that Welsh law schools are unlikely to make Welsh law central to their undergraduate teaching courses or research focus as, for universities, Welsh legal education is based around the export of legal talent. At present, Welsh law schools have no clear incentives to focus heavily on the teaching of Welsh law. The authors recommend that, rather than expecting that Welsh law might become a focal point of undergraduate law study, it may be more productive for the Welsh Government to support the teaching of Welsh law at postgraduate level, with courses aimed at Wales-based practitioners. Whilst it is important to encourage postgraduate study of Welsh law, it is our view that the Jomati recommendation is wrong and that it is crucial that Welsh law is taught to undergraduates in Welsh law schools. We do however see the Welsh Government and the proposed Law Council of Wales having crucial roles in encouraging Welsh law schools to teach Welsh law.
- 10.41 However, there is a major impediment to teaching Welsh law to undergraduates. There is a lack of formal recognition of Welsh law and Welsh devolution in academic textbooks that are used in universities in the UK. Law schools in Wales have shown a marked failure to work together to produce on a collaborative basis textbooks and other teaching materials essential to the teaching of Welsh law, as legal publishers are not prepared to produce them. In a survey of legal textbooks, Professor Thomas Watkin QC found that there is little attention paid to Welsh devolution¹⁰³⁰. The books are simply not being produced by Welsh university law departments¹⁰³¹. Professor Watkins QC suggested that self-publication through the universities would have to be self-financing due to the limited market¹⁰³². An example of success is Northern Ireland where there are many publications that centre upon the procedural and substantive law in Northern Ireland¹⁰³³.

1029 Jomati Report, *The legal sector in Wales – a rapid review*: 139, and OE045 First Minister: 5.

1030 WS033 Professor Thomas Watkin QC: 2.

1031 *op cit n.* 875: 86. The Report discovered a handful of Welsh law-specific books. However, these publications were few and far between: it was far easier to discover materials on medieval Welsh law than on many areas of contemporary legal practice, which contained Welsh-law specific elements.

1032 OE030 Professor Thomas Watkin QC: 2.

1033 WS135 Professor Gordon Anthony: 7.

- 10.42 Continuing legal education for solicitors and for barristers in Wales also needs to reflect Welsh law. There appears to be no dedicated system for updating solicitors and barristers in Wales on developments in Welsh law. In our view it should be a basic responsibility of the Law Society in Wales and the barristers' Wales and Chester Circuit to provide regular training sessions on Welsh law to ensure practitioners are appropriately knowledgeable and up-to-date. Universities also have a role. We note that the University of South Wales delivers specific courses to the employees of the Intellectual Property Office¹⁰³⁴. Similar arrangements should be made with the legal professions¹⁰³⁵.
- 10.43 The Judicial College prepares materials for the judiciary on Welsh law. Here again collaboration is necessary so that resources can be better deployed. The Judicial College, the Law Society, the Wales and Chester Circuit and the law schools should combine resources to prepare materials on the developments in Welsh law. We explore further the potential of collaboration in paragraph [12.103](#).
- 10.44 We also consider that much needs to be done to improve the teaching of law through the medium of Welsh; our views and recommendations are at paragraphs [11.29](#) and following.

We recommend:

All university and college education providers in Wales should teach Welsh law as part of the ordinary undergraduate syllabus and work together to produce the necessary materials.

We recommend:

The place of Welsh law and the distinctiveness of the law in Wales should be properly reflected in professional and continuing legal education and training.

1034
1035

*OE011 Hannah Menard: 4.
Recommendations of the Independent Advisory Committee.*

5. Knowledge base and research

- 10.45 In the course of our work it became clear that there is insufficient research on the justice system in Wales. There are some bright spots. There is collaborative research between Aberystwyth University, Bangor University, Cardiff University and Cardiff Metropolitan University into administrative justice in Wales. We also note the Economic and Social Research Council and Welsh Government joint funding of the Wales Governance Centre's research programme in parallel with our work. Speaking more generally, out of 3,800 law students in Wales in 2016-17, fewer than 1.5% were engaged in research degrees¹⁰³⁶.
- 10.46 We are also concerned that the Research Excellence Framework¹⁰³⁷ operates in a way that does not encourage the submission of work in the medium of Welsh. There is a perception that the assessment methods discourage work that is not in the medium of English¹⁰³⁸. This should be addressed by the Welsh Government.
- 10.47 Furthermore, as stated at paragraph [1.21](#), a recurring issue in our inquiries and work has been the lack of Wales-only statistics in the field of justice. This is also illustrated in relation to criminal justice and children in care in Chapters 4 and 7 of this report. The lack of specific data has inevitably contributed to a major deficiency in Wales specific research.
- 10.48 Research in law, criminology and policing is crucial for the development of strategies for the justice system in Wales which we have said are required, for example in criminal justice and children in care¹⁰³⁹. We see a critical role for the Law Council of Wales as we recommend at paragraph [12.111](#).

We recommend:

Wales specific data should be collected and published on a sufficient scale to enable disaggregation, with a view to proper evidence-based policy development and as a basis for research.

1036 *op cit n. 993: 6.*

1037 *The REF is the system for assessing the quality of research in UK higher education institutions.*

1038 *OE006 Dr Catrin Huws: 3.*

1039 *Para 12.44 et seq.*

Part 3: Public legal education

- 10.49 For the reasons set out in paragraph [10.2](#), we take the view that it is essential that more effort is invested in public legal education¹⁰⁴⁰.
- 10.50 We emphasise the particular importance of public legal education for children and young people. Indeed, we see it as crucial to the future generations' agenda in Wales. Work is already ongoing to increase children's awareness about their rights and obligations especially through the work of School Liaison Police Officers¹⁰⁴¹. This should extend into improving children's awareness about the law and thereby help with improving access to justice, not only in the short but also in the longer term.
- 10.51 The work at Bangor and Swansea Universities and their broader networks are important examples of what can be done, particularly Swansea University's Children's Law Centre and the street law module which is available to undergraduate and postgraduate students in law and criminology¹⁰⁴². As part of their assessments, students have interactive sessions at secondary schools on law-making in Wales, racism, hate crime, social media/right to be forgotten and employment law¹⁰⁴³.
- 10.52 The Welsh Government is introducing a new curriculum in 2022 designed to allow schools and teachers the flexibility to develop a curriculum in their schools that meets the needs of their learners. The draft curriculum¹⁰⁴⁴ was published for consultation in April 2019 and while law is not one of the six areas of learning it can be included in all of them. The new curriculum, through the Humanities Area of Learning and Experience, aims to give learners an understanding of historical, geographical, political, economic and societal issues and provides opportunities to develop and engage in informed discussions about ethics, beliefs, religion and spirituality. Through questioning and evaluating existing responses to challenges and opportunities, learners will be expected to consider the impact of their actions when making choices and exercising their democratic rights and responsibilities including legal rights.

1040 *Para 3.61.*

1041 *Funded by the Welsh Government as discussed in paras 2.119 and 4.94.*

1042 *WS164 Dr Chris Marshall: 3.*

1043 *WS086 Professor Jane Williams: 3.*

1044 *Welsh Government (2019) [Draft Curriculum for Wales](#).*

10.53 There is an opportunity for a collective effort by universities, colleges, schools, the third sector and government at all levels in Wales to make this a reality. They should share good practice and resources to equip children and young people, as well as adults who may not have confidence in the justice system (including those convicted of offences), with the knowledge and confidence to ask questions and seek support¹⁰⁴⁵.

We recommend:

The Welsh Government should lead the development and implementation of an action plan to promote and support public legal education, particularly for children and young people.



CHAPTER 11

The Welsh language

11. Introduction

- 11.1 The factor which most clearly identifies the distinct nature of the communities of Wales is the Welsh language.
- 11.2 In order to deliver speedy and effective justice and the proper provision of access to justice, taking into account the geography and demography of Wales, Welsh language provision must be of a high and consistent standard across the justice system. The proportion of people who can speak Welsh is increasing in Wales as a whole, reaching nearly 30% in 2018; and within that, the number of fluent Welsh speakers has also been increasing. There is a substantial number of Welsh speakers across Wales with over half the population in Carmarthenshire, Ceredigion, Gwynedd and Anglesey speaking Welsh, and in Gwynedd the proportion is over three quarters.
- 11.3 Welsh Government policy is to aim for one million Welsh speakers by 2050 and to make the Welsh language an integral element of all aspects of everyday life¹⁰⁴⁶. Given that the workplace is central to our day-to-day lives, it provides an important context for an individual's linguistic development by providing opportunities to use, practise and learn Welsh¹⁰⁴⁷. A focus on this topic was an essential part of our work given the equal status of the Welsh language with the English language in Wales, the need for a Wales of vibrant culture and a thriving Welsh language (one of the seven shared goals in the Future Generations Act¹⁰⁴⁸), and the other rights enshrined in legislation on the Welsh language. Throughout this report, we have highlighted good practice but also instances where the lack of Welsh language provision is an issue. Part 1 of this Chapter sets out the constitutional position and the historical perspective. Part 2 describes the present position and draws together a picture of what needs to change.

1046 *Welsh Government (2017) [Cymraeg 2050: A million Welsh speakers](#).*

1047 *Ibid.*

1048 *[Para 6.8](#).*

Part 1: Bilingualism in the justice system

1. Historical perspective

- 11.4 Paragraphs [2.2](#) to [2.29](#) set out the historical context. For centuries, Welsh was the language of the law and its own legal terminology was developed. The use of Welsh came to an end following the Acts of Union which made English the only language of the courts. Court records were kept in English only except for slander cases where the exact words of the alleged slander had to be recorded. This remained the law until gradual recognition was introduced by the Welsh Courts Act 1942¹⁰⁴⁹.
- 11.5 Since the Welsh Courts Act 1942, a party or witness has been able to give evidence in Welsh in the courts and tribunals of Wales. The Welsh Language Act 1967 further strengthened the status of the Welsh language in courts by granting an absolute right to testify in Welsh. However, there is no right for a defendant to insist on being tried by a jury with adequate knowledge of Welsh. The main argument against is that this would offend the principle of ‘random selection’. The better view is that the victim and the defendant are entitled to a jury that understands the language they have a right to use on a basis of equality with English and the principle of random selection would be maintained as there will still be a random selection from a sufficiently broad cross section of the people of Wales given the number that speak Welsh. A Private Members’ Bill was brought unsuccessfully by Hywel Williams MP in 2007 to amend the Juries Act 1974 to provide that in certain cases all members of the jury are bilingual in English and Welsh.

1049 Lord Lloyd Jones, D (2017) *The Welsh Language Act 1967: The first 50 years*: 2.

2. The constitutional position

- 11.6 Bilingualism is a foundational constitutional principle of democratic devolution in Wales. Since the creation of the Assembly there has been equal treatment of English and Welsh languages¹⁰⁵⁰ and both languages are of equal standing in Assembly legislation¹⁰⁵¹. Further, the Welsh Ministers must adopt a strategy setting out how they propose to promote and facilitate the use of the Welsh language¹⁰⁵².
- 11.7 The principal statutes that contain provision relating to the Welsh language are the Welsh Language Act 1993 and the Welsh Language (Wales) Measure 2011. The principle of equality between English and Welsh was recognised in the Welsh Language Act 1993. This required public bodies operating in Wales to treat the English and Welsh languages on a basis of equality and to prepare Welsh language schemes in the conduct of public business and the administration of justice as we have explained at paragraph 2.14. Subsequently, the Welsh Language (Wales) Measure 2011 created the office of Welsh Language Commissioner and the requirement for public bodies in Wales to comply with Welsh language standards rather than preparing their own Welsh language schemes. However, it is likely that most UK Government institutions will operate language schemes for some time to come¹⁰⁵³.
- 11.8 The 2011 Measure stipulates that “*persons in Wales should be able to live their lives through the medium of the Welsh language if they choose to do so*”. It provides that the Welsh Ministers can specify five types of standards in regulations¹⁰⁵⁴. Although it is the Welsh Ministers that specify the standards, it is for the Commissioner to decide which standards a body has to comply with by serving the body with a compliance notice. The compliance notice can require a body to comply with one or more standards, or with standards in some circumstances or in some areas (provided it is reasonable and proportionate). The Commissioner is not obliged to require every body to comply with every standard. The compliance notice must also state the date (or dates) by which the body is required to comply with a standard¹⁰⁵⁵.

1050 *Government of Wales Act 1998* s47.

1051 *Ibid* s156.

1052 *Ibid* s78.

1053 Welsh Affairs Committee, *written evidence*: 3.

1054 These include; service delivery standards, policy making standards, operational standards, promotion standards, and record keeping standards.

1055 The standards made to date are found in the following regulations: *The Welsh Language Standards (No. 1) Regulations 2015*, *The Welsh Language Standards (No. 2) Regulations 2016*, *The Welsh Language Standards (No. 4) Regulations 2016*, *The Welsh Language Standards (No. 5) Regulations 2016*, *The Welsh Language Standards (No. 6) Regulations 2017*, *The Welsh Language Standards (No. 7) Regulations 2018*.

- 11.9 As we have explained at paragraph 6.39, the Welsh Language Tribunal was established in April 2015 to deal with appeals against decisions by the Welsh Language Commissioner in relation to Welsh Language Standards.
- 11.10 The current scheme of devolution limits the powers given to the Welsh Language Commissioner¹⁰⁵⁶ under the 2011 Measure when it comes to those affected by the justice system in Wales. In terms of the justice system, the four police forces of Wales, British Transport Police in Wales, Independent Office for Police Conduct, British Nuclear Police and five of the Welsh tribunals¹⁰⁵⁷ (described at paragraphs 6.34 and 8.9) are within the scope of the Welsh language standards¹⁰⁵⁸. The police came within the scope at the same time as other emergency services.
- 11.11 The other organisations and bodies which are part of the justice system in Wales remain subject to the provisions in the Welsh Language Act 1993 under which they have a duty to treat the Welsh and English languages on the basis of equality in the administration of justice. Therefore they, and bodies accountable to them, have statutory obligations under the Act. To bring other justice organisations into the scope of the compliance regime under the 2011 Measure would require the consent of the Secretary of State. The Home Office and the Ministry of Justice are not specified in the Welsh Language Act 1993 as having to prepare a Welsh Language Scheme but they have done so. Both the Ministry of Justice and the Home Office updated their schemes in 2018 in line with the Welsh Language Act 1993¹⁰⁵⁹.
- 11.12 Therefore justice bodies in Wales may be:
- Subject to the Welsh Language Measure if specified;
 - Subject to the Welsh Language Measure due to UK ministerial consent;
 - Subject to the provisions of the Welsh Language Act 1993 if specified;
 - Subject to the provisions of the Welsh Language Act 1993 by voluntary undertaking to create a scheme.

1056 *op cit n. 94: 86.*

1057 *The Mental Health Review Tribunal for Wales; The Special Educational Needs Tribunal for Wales; The Residential Property Tribunal Wales; The Valuation Tribunal for Wales; The Agricultural Land Tribunal for Wales.*

1058 *OE041 Aled Robert: 2.*

1059 *Ministry of Justice (2018) [Welsh Language Scheme](#).*

11.13 There has been a significant improvement within the justice system of the recognition of the Welsh language. HMCTS has a Welsh language unit based in Caernarfon which works well at a reasonable cost and the translation and interpretation services are examples of best practice within the public sector¹⁰⁶⁰. However, we have received evidence that the engagement from justice organisations is varied¹⁰⁶¹. The Welsh Language Commissioner has no regulatory powers over justice bodies that are subject to the Welsh Language Act 1993. As mentioned in paragraph 11.10 this includes most justice organisations but their duty to treat the English and Welsh languages on a basis of equality is a legal obligation with which they must comply in all aspects of the administration of justice. It is clear that the powers under the 2011 Measure are needed to see the duties are given clear expression and enforced.

We recommend:

All justice bodies should be subject to the Welsh Language Measure 2011.

1060 WS192 *Cymdeithas Cyfeithwyr Cymru: 1.*
1061 OE041 *Aled Roberts: 4.*

Part 2: The current position and recommendations for change

1. Information, advice and assistance

11.14 There is no statutory requirement on third sector organisations to provide services in Welsh; none provided us with a breakdown of the proportion of their services provided in Welsh. At least a proportion of the websites and publications of the major charities (Citizens Advice, Shelter Cymru, Age Cymru, and Llamau) are bilingual. The Legal Aid Agency is expected to update its own Welsh language scheme. Legal aid forms are available in Welsh.

2. Police

11.15 7% of South Wales Police officers are fluent in Welsh, 2.6% in Gwent, 32.5% in North Wales and 26% in Dyfed Powys¹⁰⁶². The usual practice by the forces is to provide Welsh speaking officers if someone wishes to provide evidence in Welsh. Consecutive translation is used when interpretation is required for any languages other than English during interviews as simultaneous translation would not work without considerable investment and changes to equipment and infrastructure.

3. Courts, tribunals and the legal professions

11.16 In 2018-19, the Welsh language was used in around 1,000 court and tribunal hearings. This is an increase from around 570 court and tribunal hearings in 2015-16. Around one third of the judiciary based in Wales speak Welsh: detailed figures are given in Figure 70 below. When decisions are being made about the need to appoint new judges for Wales consideration is always given to the number of those who will be required to demonstrate their ability to conduct a hearing through the medium of Welsh. As is shown in paragraphs [9.13](#) and [9.18](#), 30% of solicitors and 20% of barristers speak Welsh.

1062 *Information provided by the Police Liaison Unit to the Commission.*

Figure 70**Percentage of judiciary in Wales who speak Welsh**

| POSITION | PERCENTAGE THAT SPEAK WELSH |
|------------------------------------|-----------------------------|
| Deputy District Judge | 39% |
| District Judge | 29% |
| District Judge (Magistrates Court) | 28% |
| Recorders | 14% |
| Deputy Circuit Judges | 28% |
| Circuit Judges | 39% |

Source: Judicial College

- 11.17 The Judicial College’s Welsh Training Committee plans to train judges who have competence in Welsh, but insufficient confidence to conduct proceedings in Welsh¹⁰⁶³. It was suggested to us that Welsh language advocacy courses should be offered to solicitors and barristers. Successful courses were held in Caernarfon some years ago, with many attendees¹⁰⁶⁴, but have not been held for a number of years.

We recommend:

The Bar, CILEx and the Law Society should provide courses on using Welsh in the workplace, similar to those used by the Judicial College.

- 11.18 Cases that require the use of Welsh and English can be heard at any location as interpreters can, using modern technology, provide simultaneous translation without the need for booths¹⁰⁶⁵. The judiciary in Wales are very supportive of the Welsh language but the use of Welsh in the courts needs to be normalised rather than being considered an exception; it also needs to be normalised in written work and correspondence¹⁰⁶⁶.

1063 Lord Chief Justice (2018) *Report*.

1064 WS060 Osian Roberts: 1.

1065 WS192 Cymdeithas Cyfeithwyr Cymru: 2.

1066 WS060 Osian Roberts: 1.

- 11.19 We have received evidence that in tribunals, if a request is made to use the Welsh language, there is a longer waiting period for listing. There are insufficient Welsh speaking court staff in Prestatyn and Wrexham as those courts cover areas with a large proportion of Welsh speakers¹⁰⁶⁷. The evidence we received was that the setting up of a centralised County Court Money Claims Centre and a Business Centre in Salford and Northampton has caused delays in commencing cases in Welsh¹⁰⁶⁸. There should be Welsh speakers in each court call centre, as opposed to a designated line for the whole system whose operators have to refer to the specific court before responding. Welsh speaking court staff at every court centre would improve the experience of the justice system for Welsh language speakers.
- 11.20 Magistrates' Court sentencing guidelines should have been available in Welsh by 2019¹⁰⁶⁹. However, we have been told that this is unlikely to happen within that timeframe but that the Sentencing Council is still committed to providing sentencing guidelines in Welsh. This is unacceptable. The Magistrates' Court guidelines and all other guidelines should be available in Welsh in line with the principle of equality between the English and Welsh languages. New guidelines should be prepared simultaneously in English and Welsh. We believe that there is a general need for better long-term planning to improve Welsh language services across the system. There are potential succession issues due to the limited number of Welsh speaking Deputy District Judges (Magistrates' Court) and Recorders. Consideration is also needed, when appointing court and tribunal staff, to making sure that services can be offered through the medium of Welsh¹⁰⁷⁰. The same is true of intermediaries¹⁰⁷¹ as there is only one Welsh speaking intermediary in Wales¹⁰⁷².

1067

Ibid.: 1.

1068

Ibid.: 1.

1069

WS005 *Sentencing Council for England and Wales*: 2.

1070

WS122 *Traffic Commissioner*: 5.

1071

Assists in the communication between lawyers and vulnerable witnesses.

1072

WS100 *Robert Thomas, Registered Intermediary*: 2.

4. Offender management and rehabilitation

- 11.21 In December 2018 the Welsh Language Commissioner reported on the rights and experiences of Welsh speaking prisoners¹⁰⁷³. Prisoners are entitled to express themselves in their own language in Wales as HMPPS is subject to the duty in Wales to treat both languages on a basis of equality.
- 11.22 However, this is not a specific consideration when placing Welsh prisoners. There are more legal rights for prisoners to use Welsh in Welsh prisons than in English prisons. This is a particular issue for women since female offenders given a prison sentence have to serve that sentence in England¹⁰⁷⁴. Just because female offenders are in an English prison should not mean that they have limited access to materials in Welsh¹⁰⁷⁵. There is a lack of Welsh language books and media in prisons and no Welsh language chaplaincy. The situation is made more complex because prisons are the responsibility of the UK Government while a number of matters affecting the well-being of prisoners are devolved.
- 11.23 Welsh language provision should be offered in English prisons with a large number of prisoners from Wales. In Gwynedd, out of 400 offenders engaged with the probation service, 375 prefer to communicate in Welsh and around half are in prison¹⁰⁷⁶. Parole hearings cannot be conducted through the medium of Welsh¹⁰⁷⁷. We do not understand how this can be justified in Wales as consistent with treating the Welsh language and the English language on the principle of equality where the prisoner wishes the hearing to be conducted in Welsh.
- 11.24 Similar considerations apply to probation services, where the ability of probation officers to communicate in the client's preferred language can be a significant factor in establishing a relationship of trust with their client and securing positive outcomes.

1073 Welsh Language commissioner (2018) *Lifting the lid on the experiences of Welsh speaking prisoners.*

1074 WS064 Welsh Language Commissioner: 4.

1075 Welsh Government (2019) *Reforming Outcomes.*

1076 WS127 Parole Board: 2.

1077 WS127 Parole Board: 2.

5. Technology and digital services

- 11.25 Welsh Government policy aims to ensure that the Welsh language is at the heart of innovation in digital technology to enable the use of Welsh in all digital contexts¹⁰⁷⁸.
- 11.26 It is notable that in some parts of Wales with the highest proportion of Welsh speakers, people are faced with a combination of (1) limited access to broadband and 4G mobile services, (2) much longer journeys to court venues as a result of the court closure programme described at paragraphs [8.5](#) to [8.8](#), and (3) limited or delayed access to Welsh language information and justice services online through GOV.UK.
- 11.27 The Money Claims Online service and accompanying guidance and telephone service are presented in English, with no visible Welsh language option. Those wanting to make a money claim in Welsh cannot claim online, which is a cheaper option in terms of court fees.
- 11.28 This position is unacceptable. It is simply wrong that the three factors to which we have referred in paragraph [11.26](#) should together combine to deny proper access to justice and at the same time defeat the policy of the Welsh Language Act 1993 in treating English and Welsh on a basis of equality in the administration of justice. The court closure process was premised on the proper availability of digital services in rural communities as we have explained at paragraph [8.13](#). Steps should be taken to ensure that the UK Government departments responsible for broadband and mobile data services address the issues we have identified so that the Welsh language has equal footing in digitised processes and information resources.

We recommend:

Digital services that are being introduced must be accessible, free help must be available and all must be available in Welsh at the same time as the English version.

¹⁰⁷⁸ *op cit n. 1049.*

6. Welsh medium legal education

- 11.29 It is essential that there is proper provision for teaching law through the medium of Welsh. A properly bilingual legal system which involves bilingual drafting of legislation and legal advice and advocacy in both languages depends on this.
- 11.30 There is no doubt that students studying through the medium of Welsh have to do more work in terms of learning legal vocabulary in both languages¹⁰⁷⁹. However, such hard work is essential if lawyers are to be sufficiently bilingual to research the law in English and Welsh and to conduct trials and present legal arguments with equal fluency in English and Welsh. This is done in other jurisdictions such as Canada and Wales can achieve this with a new emphasis in its law schools.
- 11.31 Coleg Cymraeg Cenedlaethol plays a crucial role in ensuring the teaching of law through the medium of the Welsh language by planning, supporting and funding the provision of Welsh medium higher education across Welsh universities. The provision is uneven and there is a lack of long-term planning. This is also the case with Welsh medium teaching of criminology and policing. Figure 71 shows that the numbers of students taking legal subjects taught through the medium of Welsh is very low. We have heard evidence that the demand from students is low¹⁰⁸⁰.

1079 OE030 Professor Thomas Watkin QC: 2.

1080 OE011 Professor Iolo Madoc Jones, Hannah Menard, Bronwen Williams: 2.

Figure 71**Student numbers on law courses with some Welsh medium teaching**

| LAW SCHOOLS | 2010-11 | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 |
|-----------------------------------------|-----------|-----------|-----------|------------|------------|-----------|------------|------------|
| Aberystwyth University | 30 | 25 | 35 | 25 | 30 | 25 | 25 | 35 |
| Bangor University | 35 | 40 | 5 | 30 | 35 | 40 | 45 | 25 |
| Cardiff University | 10 | 5 | 10 | 30 | 30 | 20 | 25 | 30 |
| Swansea University | 0 | 5 | 0 | 25 | 10 | 10 | 15 | 10 |
| University of South Wales | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| University of Wales Trinity Saint David | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total Welsh universities | 80 | 75 | 50 | 110 | 105 | 95 | 110 | 100 |

Source: Welsh Government

- 11.32 The current arrangements for professional legal education, which do facilitate some teaching through the medium of Welsh but do not permit the examinations to be taken in Welsh, can rightly be seen as discriminatory and may be a factor influencing the demand for Welsh medium education. Members of the public who want their cases to be heard in Welsh are entitled to be represented by those who can demonstrate their competence in Welsh. The assessment of a lawyers' ability to conduct a case in Welsh is part of the assessment of an applicant for a judicial post for which there is a requirement for the judge to be able to conduct the trial in Welsh. The fact that professional legal education in Wales is not available completely through the medium of Welsh does not reflect the bilingual nature of the Welsh law. As a matter of principle, all professional legal examinations for those wishing to practise in Wales should be made available in a generally accessible way and through the medium of the Welsh language¹⁰⁸¹. We appreciate that the regulators¹⁰⁸² will have to do this by a phased approach, starting with at least one examination in Welsh.

1081 WS145 Professor Gwynedd Parry: 12.

1082 [Para 12.133.](#)

We recommend:

Professional legal education for those wishing to practise in Wales must be available in the Welsh language with the phased introduction of the availability of all professional examinations in Welsh.

- 11.33 We mentioned at paragraph 10.41 a further problem arises because there are few legal textbooks or teaching materials in the Welsh medium. A similar problem arises in relation to the teaching of law through the medium of Welsh. While significant efforts are being made to improve matters – in particular at Bangor law school, which has an active programme for developing a Welsh language textbook series on core subjects – the current deficiency is a significant disincentive to studying law through the medium of Welsh. The failure of the law schools to work together is largely responsible for this deficiency¹⁰⁸³. Digital technology should and can be used to drive an increase in the number of Welsh law textbooks.
- 11.34 For the teaching of law through the medium of Welsh to thrive, the teaching in both languages needs to be provided in the same form, from using textbooks to going to lectures. The problem begins before reaching university. Students who choose to study law at A Level and move to a sixth form college where law is taught through the medium of English are unlikely to opt to study law through the medium of Welsh at university¹⁰⁸⁴. Law is taught as an A Level subject through the medium of Welsh at some Welsh medium secondary schools. The problem continues after leaving university. A small but instructive example is the need to change the referee form for joining the Inns of Court (which is the only way to qualify as a barrister in England and Wales) which asks what percentage of the applicant's higher education is taught through the medium of English. This is a clear discouragement to those wishing to study through the medium of Welsh¹⁰⁸⁵.

1083 OE006 Professor Thomas Watkin QC: 2.

1084 OE006 Professor Thomas Watkin QC: 2.

1085 OE006 Dr Catrin Fflur Huws: 2.

- 11.35 Welsh medium law teaching requires the adoption of a collaborative and coordinated approach across the Welsh law schools. Concerted action to address the lack of materials is an obvious starting point. This needs to be done in a formal setting and must not be reliant on individuals. We see this as one of the tasks for the proposed Law Council of Wales (see paragraph [12.103](#)).
- 11.36 In paragraphs [10.41](#) and following we have highlighted both the importance and the challenges of ensuring that students of law and legal professionals are able to continue their education and training in Welsh throughout their academic and professional careers. There is an opportunity to improve the position. The Welsh Government aims to develop a post-compulsory education provision which increases rates of progression and supports everyone, whatever their command of the language, to develop Welsh language skills for use socially and in the workplace¹⁰⁸⁶.

We recommend:

Welsh law schools must collaborate on Welsh medium legal education, especially as regards the provision of teaching materials.

1086 *op cit n. 1049.*

7. Local Government

11.37 The Social Services Act also creates a legal framework to improve the well-being of people who require care and support. Part 2 of the Act places the care and support duties for adult prisoners on the local authority where the prison is located. It also provides that local authorities should make sure Welsh language services are built into planning and delivery and that Welsh language services are offered to Welsh speakers without them having to request it¹⁰⁸⁷. This suggests that local authorities should offer Welsh language services to prisoners in Wales proactively, and that local authorities need to plan to ensure that this is possible.

8. Coroner services

11.38 A striking example of a gap can be demonstrated by reference to Welsh language provision in coroner services. They deal with people at the most vulnerable time of their lives. The people of Wales are entitled to a coroner service that meets the needs of Wales and provides uniform standards. It is therefore unacceptable, as we set out in paragraph [6.69.3](#), that coroners in Wales cannot send forms, documents or letters in Welsh as the software they use cannot generate bilingual forms¹⁰⁸⁸.

We recommend:

All coroner services should be available in the Welsh language.

¹⁰⁸⁷ *op cit n. 1056.*

¹⁰⁸⁸ *WS163 HM Coroners (Wales): 1.*

9. Conclusion

- 11.39 According to Welsh Government policy, it is essential that there are no barriers to receiving services in Welsh and that Welsh language services are widespread, offered proactively, and are of an equivalent quality to those offered in English. It is clear that the current justice system fails to meet this test despite the provisions of the Welsh Language Act 1993 requiring the languages to be treated on the basis of equality. Steps must be taken to ensure that the whole system does so for the future. This is another example of the “jagged edge”. As the Welsh Government has the chief responsibility for the Welsh language and the UK Government has the chief responsibility for the justice system this has led, despite some good efforts, to a lack of a systematic approach.
- 11.40 Progress is being made, in many cases with the help of the statutory requirements for Welsh language schemes and standards and the work of the Welsh Language Commissioner. However, there are too many gaps and much depends on individuals. Language rights are not consistently respected. For a nation with bilingual legislation and language rights enshrined in law, this is not sustainable. Language planning policy methods must be adopted to reflect the social, economic and political changes that shape, and which will continue to shape, contemporary Wales. Every organisation concerned with justice, including educational and professional bodies, must see its Welsh language provision as a core part of an overall system. This may be difficult to achieve, but is necessary in order to secure the vitality of the Welsh language for future generations.



CHAPTER 12

Governance, the law of Wales and the judiciary

12. Introduction

- 12.1 We have set out our recommendations on important changes that need to be made to improve the system of justice in Wales for the people of Wales. These include the provision of legal advice, the reduction of crime, better rehabilitation of offenders, better outcomes for children rather than taking them into care by aligning justice policy with health and social policy, modernising legal education and encouraging the development of the legal profession in Wales. We have made recommendations that the issues relating to the justice system should be determined in Wales and delivered through bodies based in Wales. In considering how that determination in Wales and delivery should be established, we examine in this Chapter the different ways in which it could be achieved – matters of governance and devolution.
- 12.2 In Part 1 of this Chapter we explain our objectives and our approach and why it is unhelpful to look at this in terms of a “separate jurisdiction”, but rather in terms of five specific issues. We explain in the remaining parts of the Chapter how those issues are considered.

Part 1: Our objectives and our approach

1. Our approach to testing the way forward

- 12.3 As we foreshadowed at paragraph 1.4, we have tested our recommendations against the following principal factors:
- 12.3.1 **Justice is at the heart of any system of democratic government of a nation:** The justice system is not an island. It is integral to ensuring that the rights of the people of Wales are in every respect protected, enhanced and enforced. The enforcement of law and the just determination of disputes are essential to a fair and just society.
- 12.3.2 **Needs of the people of Wales:** The people of Wales are entitled to a system for the provision of justice that meets their specific needs and takes into account demography, geography, diversity and equality. It should not be based upon the requirements of others.

- 12.3.3 Alignment and a whole system approach:** As justice is not an island, the policies for justice have to be aligned with other policies, particularly in relation to health, education, social welfare, jobs and economic development. Similarly, the delivery of justice needs to be aligned with the delivery of health, education, social welfare, housing and other services such as those provided by the third sector. There should be a coherent overall strategy of which the strategy for justice is an integral part.
- 12.3.4 Funding and resources:** The funds that are available to spend on the provision of justice necessarily relate to the provision of funds for services in relation to matters such as education, health and social welfare. A budget for expenditure, policies dependent upon that budget and the delivery of those policies require judgements to be made on how much should be allocated to each and how an integrated approach can deliver greater efficiencies. These judgements need to be made taking into account expenditure on all services across the board. The balance of expenditure needs to be carefully assessed and publicly justified.
- 12.3.5 Leadership, capacity, capability and confidence:** There can be no effective delivery of justice without a structure that provides good leadership which can develop the necessary depth of capability, capacity and confidence across the justice system.
- 12.3.6 The advantages of Wales' size:** Wales' relatively small size enables greater flexibility and ease in getting decision makers together with a small and agile team to get things done more cohesively.
- 12.3.7 Accountability:** There must be accountability through arrangements that are clear and easy to understand; a complex jigsaw of responsibilities hampers accountability. This can be provided in different ways, but all, including judges¹⁰⁸⁹, are accountable.

1089

An explanation of judicial accountability is given on the [Courts and Tribunals Judiciary website](#).

- 12.3.8 The long-term result:** Proper provision may require a long-term view to be taken even at the expense of short term discomfiture. The system must be sustainable in the long-term.
- 12.3.9 The constitution of the UK:** The governance and devolution schemes should strengthen the constitution of the UK. They must take into account the overall symmetry between the Assembly and the Welsh Government in the Welsh devolution scheme and the overall symmetry as between Scotland, Northern Ireland and Wales in devolution across the UK.

2. Our consideration of the issues

- 12.4** Governance and related subjects are often discussed under the heading of ‘jurisdiction’. Jurisdiction can have a number of different meanings¹⁰⁹⁰. It can refer to one or more of the territory or persons or subject matter over which (a) a court has the power to deliver justice, or (b) in respect of which a legislature can pass legislation or (c) over which the executive government can make decisions¹⁰⁹¹.
- 12.5** As the history of justice in Wales which we have summarised at paragraphs [2.2](#) and following shows, the powers can be brought together in different combinations. For example, from 1536 to 1830, Wales had its own system of courts that enforced the law made by Parliament in Westminster and from 1999 to the present day the laws made by the Assembly in Cardiff have been enforced by the court system based in London.
- 12.6** For these reasons we do not think it helpful in providing an informed consideration of the issues simply to pose a question – should there be a separate Welsh jurisdiction? In reality this question breaks down into a number of different parts, each of which needs to be addressed in its own right. We consider it better to examine the issues under the following headings:

¹⁰⁹⁰ This was explored in a number of the submissions we received, notably from Professor Richard Percival, Dr Tom Hannant and Professor Tim Jones. The Assembly’s Constitutional and Legislative Affairs Committee conducted an Inquiry into a Separate Welsh Jurisdiction and published its [report](#) in December 2012.

¹⁰⁹¹ Jurisdiction is also used to delineate the powers of a court – such as in the phrase criminal or civil jurisdiction. It can be used to distinguish between power in relation to objects (jurisdiction in rem) or over people (in personam jurisdiction).

- a) Executive and legislative powers
- b) Greater clarity as to the law applicable in Wales
- c) The professions
- d) The judiciary
- e) The infrastructure that supports justice

12.7 In Part 2 of this Chapter we set out the options for executive and legislative devolution and make our recommendations. In Part 3, we consider the issues of governance in respect of the different options and whether reform is necessary even under the current scheme of devolution. In Part 4, we consider greater clarity as to the law applicable in Wales and the position of the professions. In Part 5, we consider the judiciary and the infrastructure that supports justice. In that context we go on to examine in Part 6 two related matters. The first concerns safeguards for the independence of the institutions of justice and their accountability. The second concerns Wales as a just, equal and diverse nation. Finally, in Part 7 we consider the way in which the implementation of our recommendations should take place and how that implementation should be monitored.

12.8 Before turning to the first of the five headings in paragraph [12.6](#), it is necessary to highlight our broad conclusions to three basic questions we have posed. (1) Is the current scheme of devolution unjustifiably complex? (2) Have the significant changes over the past 20 years been properly accommodated in the current scheme of devolution? (3) Is there an issue of leadership in the justice system in Wales?

3. Is the current scheme of devolution unjustifiably complex?

12.9 As we have explained¹⁰⁹², the present system of devolution is very complex, difficult to understand and therefore not a firm basis for proper democratic accountability. Is it justifiable?

12.10 In the main, the transfer of powers was not the product of any carefully thought through or logical scheme of devolution, but of the way in which powers were from time to time transferred to the Secretary of State for Wales in the period prior to 1999 and thereafter through a somewhat piecemeal approach.

¹⁰⁹² [Para 2.31 - 2.46.](#)

- 12.11 The result is a fragmented and complex justice system where, despite much reference to coordination and partnership working, far too much is done in silos and there is no overall approach to tackling the priorities and needs of the people of Wales¹⁰⁹³. There is very limited opportunity under the current scheme of devolution and the way it is operated for a more coherent approach that uses resources more effectively and is specifically directed at the needs of Wales.
- 12.12 It is difficult for the citizen to understand who is responsible for which function of government¹⁰⁹⁴. This does not make for proper accountability.
- 12.13 We have sought to find a justifiable or logical explanation of the current scheme of devolution and considered whether the complexity stands in the way of a coherent approach to justice and the principal factors set out in paragraph 12.3. As is evident from what we have set out in the preceding Chapters, we have concluded that the complexity does stand in the way. It should be changed.

4. Have the significant changes over the past 20 years been properly accommodated in the current scheme of devolution?

- 12.14 There has been significant change over the past 20 years since the National Assembly was created. How well has the current scheme accommodated it?
- 12.15 The justice system itself has undergone substantial change. It is evident from the preceding Chapters that in many respects it does not meet the needs of Wales. For example, the removal of legal aid, the failure to provide an advice service sufficient to take its place, the very high cost of using the courts, the failure to develop alternative means of dispute resolution and the closure of so many courts without being able to provide effective alternatives through buildings for occasional use has resulted in a denial of the availability of justice to many people in Wales. If not remedied, as has been made clear, there is a threat to the Rule of Law.

1093 WS030 *Institute of Welsh Affairs: 1.*
1094 OE003 *Alun Davies AM: 1.*

- 12.16 New technologies are transforming the way that people can interact with the justice system as well as the way that legal business is done. There has been insufficient delivery and take-up of technology in Wales and insufficient focus on the importance of ensuring that the justice system in Wales must treat the English and Welsh languages on a basis of equality.
- 12.17 Criminal justice policy does not devote enough resources to coordinated intervention to prevent people entering into the criminal justice system. It does not provide effective rehabilitation. On the contrary, research suggests that Wales has an exceptionally high rate of imprisonment. There is no properly coordinated approach to the operation of the criminal justice system.
- 12.18 The proper approach to criminal justice recognises that tackling serious issues facing the people of Wales such as mental health and drug addiction can only be addressed by aligning justice, health, social welfare and education policies and aligning the system for their delivery.
- 12.19 The number of children in care has risen to unacceptable levels. There needs to be better coordination within the family justice system. The courts need to be better aligned with social policy for children and families.
- 12.20 The roles of the Lord Chancellor and the judiciary have significantly changed. Many of the functions that the Lord Chancellor exercised are exercised through the Lord Chief Justice. One illustration of this is that when coherence needed to be brought to the Welsh language policy for the courts and tribunals, the committee established in 1999 was called “The Lord Chancellor’s Standing Committee for the Welsh Language”, as it reflected the responsibilities the Lord Chancellor had as a judge and a minister in respect of justice. Although it has retained this title, it would not be so named today. More significantly, it is the judiciary that takes a clear lead not only in the delivery of justice in the courts and tribunals, but in relation to the modernisation of justice.

- 12.21 Wales has clear and far sighted policies on future generations, sustainability and international standards on human rights¹⁰⁹⁵. These are, however, not integrated with the justice system. The distinctive legal framework being developed to underpin these policies, including the creation of independent public officers whose role is to promote and protect rights, is not aligned to the justice system.
- 12.22 Since 2011, the Assembly has had power to pass its own legislation and has done so by passing over 40 Acts as referred to at 2.37. However, legislation often needs machinery for implementation through the courts and tribunals. Wales does not have the machinery to do so either by the adoption of a coherent system with the UK Government Departments or by doing so directly.
- 12.23 The fact that Wales has its own separate, but small, judiciary in the Welsh tribunals is recognised. As we have explained, however, this adds to the fragmentation and does not take account of the need for an integrated approach to civil and administrative justice.
- 12.24 A growing proportion of the Welsh law is bilingual, as laws enacted by the Assembly are developed in Welsh and English and both languages have equal status¹⁰⁹⁶. However, not all justice related bodies have been made subject to the Welsh Language Measure 2011.
- 12.25 We have considered whether the current scheme of devolution has properly accommodated these changes. It is again evident from the preceding Chapters that it has not done so.

5. Is there an issue of leadership in the justice system in Wales?

- 12.26 Good and accountable leadership is a precondition to the success of a nation and to the operation of the functions of government. Such leadership is necessary to nurture capability, capacity and confidence for those who work in government or who are to be attracted to work in government. It is essential for the development of government policy and effective and accountable delivery of policies and services.

1095 [Para 2.31.8, 4.9, 6.8 et seq.](#)

1096 [Para 2.22.](#)

- 12.27 As we have explained at paragraph 2.30, the Welsh Government and the Assembly have a number of responsibilities and functions in relation to justice. These functions and responsibilities have grown over the last 20 years. Nonetheless, there is no single Minister responsible for these functions and responsibilities of the Welsh Government and no Justice Committee in the Assembly. While the structures under the current scheme of devolution are in significant part responsible for this state of affairs, the result is that it is difficult to discern a coherent leadership structure for justice within the Welsh Government and the Assembly.
- 12.28 A lack of a leadership structure and of leadership adversely affects the formation of policy and delivery in any nation. We have received evidence of where legal opportunities have not been taken – see the examples we set out at paragraph 12.71 below. There is also evidence which suggests that there has been a failure to address an essential need – the development of policies for law schools and other bodies that can nurture and retain the ablest students in Wales and encourage those students who study outside Wales to return. In our view, the implementation of such policies could have a very significant effect in assisting the development of capacity, capability and confidence which is so necessary for the proper performance of the justice functions undertaken in Wales.
- 12.29 The need for leadership is not confined to government. Leadership in the legal sector whether in law firms, the Bar, academia, or elsewhere is essential given the challenges facing justice in Wales. The sustainability of the legal sector itself is challenged in many ways as described in our report, including the cuts in legal aid, accelerating new technology and growing competition from new service providers including those beyond Wales. Lawyers in leadership positions need to understand those challenges and their responsibilities including their civic responsibility.
- 12.30 Leaders in the sector need to promote not only organisational goals but also societal goals. To do so, lawyers need to learn not only about styles of leadership and influence, organisational dynamics, governance and decision making, talent management and succession, change strategies (including mergers and acquisitions) and innovation, but also the importance of justice, diversity, ethics and other wider social issues.

- 12.31 The Lord Chief Justice heads the whole of the judiciary of England and Wales. Inevitably, the Lord Chief Justice must rely upon the support of other senior leadership judges. However, the members of the senior judiciary who have a specific role in relation to Wales (the Presiding Judges and Liaison Judges) are often in post for comparatively short periods of time. Presiding Judges take on a number of different and important leadership functions yet they serve as such judges for a maximum of four years. The Liaison Judges sometimes serve for even shorter periods. On any view it is difficult for such judges to develop and properly exercise their leadership skills in such short periods of time when at the same time they are expected to preside over the most serious cases arising in Wales. As we conclude in paragraph [12.141](#), the system of Presiding Judges which operates throughout the regions of England and in Wales is no longer appropriate for Wales given the need to provide Wales with judicial leadership tailored to its particular needs and the requirements for engagement with the Welsh Government and the bodies that have responsibilities for the justice system in Wales.
- 12.32 Welsh law schools have a central role in preparing student lawyers to be future leaders. As for today's leaders both in the private and public sectors, they have to be supported to understand their responsibilities, to be equipped with the skills to navigate the highly challenging and rapidly changing environment and to become more effective and impactful leaders for the benefit of their organisations, the legal sector and society as a whole.
- 12.33 The development of leadership of the public and private justice sector in Wales and the capacity, capability and confidence which such leadership builds is crucial. Overall, there is an urgent need to improve upon current leadership structures and capabilities both in respect of current responsibilities and in preparation for new responsibilities we recommend.

Part 2: Executive and legislative powers

12.34 Against that background, we first consider the scope for reform under the current scheme of devolution. Second, we consider the option of executive devolution and third, that of legislative devolution.

1. Option 1: Reform under the current scheme of devolution

12.35 In the preceding chapters, we have recommended that significant changes are needed to the existing justice system in Wales and suggested that the determination of some matters needs to be made in Wales. These include legal aid¹⁰⁹⁷, policing policy¹⁰⁹⁸, youth justice¹⁰⁹⁹, an overarching offender rehabilitation strategy¹¹⁰⁰, family justice¹¹⁰¹, the court and tribunal infrastructure in Wales¹¹⁰² and the approach to both legal education and the promotion of the legal sector¹¹⁰³.

a) Strategic and delivery boards

12.36 We have also suggested in respect of strategy, policy and delivery, that two existing boards be developed:

12.36.1 The existing All Wales Criminal Justice Board be replaced by a new board, the Wales Criminal Justice Board with clear responsibilities and powers, including the powers of the Policing Board, as set out at paragraph [4.25](#) and following.

12.36.2 The existing Family Justice Network for Wales be made an effective body with clear responsibilities and powers as set out in paragraph [7.100](#) and following.

1097 [Para 3.66 and 3.84.](#)

1098 [Para 4.146.](#)

1099 [Para 4.194.](#)

1100 [Para 4.290.](#)

1101 [Para 7.107.](#)

1102 [Para 8.40.](#)

1103 [Para 9.89, 10.3 et seq.](#)

We have also suggested that two new bodies be created:

- 12.36.3** An independent body to give strategic direction for funding both for legal aid and the third sector as set out at paragraph [3.66](#).
- 12.36.4** An independent body to co-ordinate civil and administrative justice as set out at paragraphs [5.55](#) and [6.60](#).
- 12.37** These boards, taking advantage of Wales' size, can be developed or created under the current scheme of devolution. Although they would not be able to develop the full potential envisaged, it would make a material difference and provide essential experience and leadership if these were set up as soon as possible.
- 12.38** Each of these boards should operate in an open, transparent and accountable manner through (1) a website that clearly identifies the current membership, the dates of meetings, the agendas for meetings and minutes of meetings and policy papers, and (2) periodic reporting to the Assembly.
- 12.39** To avoid duplication of effort, it would be necessary to abolish as many as possible of the other bodies exemplified in Figure 14 which appears at paragraph [4.4](#).
- 12.40** The active cooperation of the Ministry of Justice and the Home Office would be needed. Direct and unfettered engagement with those with the necessary expertise, functions and responsibilities in the Ministry of Justice and the Home Office should take place as long as the current scheme of devolution continues.
- 12.41** We address the way in which judicial engagement should be achieved at paragraph [12.142](#) and following below.
- 12.42** We also address at paragraph [12.103](#) below the creation of a Law Council of Wales.

b) Implementation of some particular recommendations

12.43 There are many other recommendations that should also be implemented as part of the immediate reform that is possible under the current scheme of devolution. These include:

- Long-term arrangements for police apprenticeship and legal apprenticeship funding¹¹⁰⁴.
- Effective arrangements between the Welsh Government, the Assembly and the judiciary for engagement on proposed legislation¹¹⁰⁵.
- Bringing all tribunals and public bodies exercising functions in devolved subject areas which make judicial or quasi-judicial decisions not currently subject to the supervision of the President of Welsh Tribunals under the supervision of the President of Welsh Tribunals¹¹⁰⁶.
- The development of an all Wales approach to the reduction in and handling of care proceedings through the Family Justice Network for Wales and the Local Family Justice Boards under good leadership¹¹⁰⁷.
- Vigorous support for the project being undertaken by the Family Observatory and the SAIL Databank¹¹⁰⁸.
- All the recommendations on supporting the legal sector and on legal education¹¹⁰⁹.

1104 [Para 4.131 and 9.51.](#)

1105 [Para 12.140.](#)

1106

[Para 6.50.](#)

1107

[Para 7.107.](#)

1108

[Para 7.111.](#)

1109

[Para 9.51, 9.66, 9.76, 9.80, 9.89, 9.92, 10.30, 10.35, 10.44, 10.48, 10.53.](#)

There are further recommendations which could be taken forward by agreement between the Welsh Government and the UK Government, or with the support of the UK Government. These include:

- Expanding the Support Through Court so it is available at all courts and tribunals in Wales¹¹¹⁰
- Establishing a system of problem-solving criminal courts and Family Drug and Alcohol Court in Wales¹¹¹¹
- Rapidly establishing a sustained, comprehensive network of services and centres as alternatives to custody for women in Wales¹¹¹²
- Collating needs assessments of Welsh offenders to identify the range and timing of interventions required in both prisons and the community. Mapping this against detailed reoffending data collected by local authority area in Wales¹¹¹³
- Digital court services and other dispute resolution services that are accessible, with free assistance available to help individuals use them¹¹¹⁴
- Making it compulsory under the Civil Procedure Rules for cases against Welsh public bodies which challenge the lawfulness of their decisions to be issued and heard in Wales¹¹¹⁵
- Making all challenges relating to inquests of deaths in Wales capable of being issued and heard in Wales¹¹¹⁶
- Making justice bodies subject to the Welsh Language Measure 2011¹¹¹⁷

1110 [Para 3.66.](#)
 1111 [Para 7.107.](#)
 1112 [Para 4.276.](#)
 1113 [Para 4.290.](#)
 1114 [Para 5.22.](#)
 1115 [Para 6.27.](#)
 1116 [Para 6.68.](#)
 1117 [Para 11.13.](#)

We would encourage the judiciary to adopt the recommendations we have made as to:

- Intensive alternatives to custody, including those with treatment requirements¹¹¹⁸, within the current sentencing framework.
- Encouraging in the lead up to and at the first case management hearing a thorough examination of the feasibility of problem-solving and the form it might take.¹¹¹⁹

c) Providing better data and information

12.44 As we have noted at paragraph [1.21](#), we have encountered problems with data in almost every aspect of our inquiries. It has proved very difficult for the Commission and others to access disaggregated data for Wales as distinct from England and Wales¹¹²⁰. There also needs to be mapping of this data against the offender assessment data (collected by the Probation Service when an offender is referred to probation services) which summarises the characteristics and needs leading to an individual's criminal behaviour.

12.45 In relation to family justice, we have pointed out the importance of the work being undertaken by Lancaster University and the SAIL Databank to establishing a long-term policy¹¹²¹.

12.46 We also consider that the data in relation to justice should be mapped against data collected on health needs or indicators of deprivation as is being undertaken by the SAIL Databank. They should include, so far as possible, data on protected characteristics. Together these would begin to provide a stronger evidence base for meaningful deliberations on where to target resources for maximum impact and local solutions to criminality, reoffending and rehabilitation.

1118 [Para 4.288.](#)

1119 [Para 7.103.](#)

1120 *op cit n.94: 133-134.*

1121 [Para 7.86 et seq.](#)

d) The current scheme does not provide a solution to the fundamental problems we have identified

12.47 However, reform under the current scheme of devolution would be what is often called a ‘sticking plaster’ solution. We do not see how it is possible to carry out the changes that are needed in a way that provides a practical long-term solution and makes a real difference to the people of Wales. Without substantial devolution of justice functions, some fundamental matters would not be addressed. We highlight three such matters below.

12.48 The first is resources. A coherent policy cannot be devised and delivered without control over resources. A clear illustration is the way in which resources are spent on criminal justice. If more is to be done to try and prevent people entering the criminal justice system or to help those entering it to be more effectively rehabilitated, it will be necessary to rebalance the expenditure within the criminal justice system. The most effective way this can be done is to spend (1) more on preventing people entering the criminal justice system through, for example, increasing the resources for better mental health and treatment of substance misuse and robust, effective sentencing in the community, and (2) less on sending people to prison. This cannot be done under the current system for a number of reasons, including the non-devolution of sentencing policy and the allocation of resources within the criminal justice system. Wales should be able to lead on the design and implementation of policies and the allocation of resources in a way tailored to the needs of the people of Wales.

12.49 The second matter is the inability to achieve alignment of justice policies and other policies. Justice would remain an island. There would be no coherent and joined up approach between other functions and policies determined in Wales by the Assembly and the Welsh Government and justice policy and the operation of the justice system in Wales, particularly in relation to criminal and family justice as we have explained.

12.50 The third matter is a lack of accountability. This is exemplified in the lack of performance reporting where attempts have been made to bring about a more coherent and joined up policy in criminal justice¹¹²².

1122 [Para 4.137](#), 4.221, 7.9 et seq, 7.94.

2. Option 2: Executive devolution

12.51 We next consider whether a scheme of executive devolution would address the issues we have raised.

a) The powers of the Mayors in London and Manchester

12.52 We have examined in paragraphs [4.80](#) and [4.210](#), the UK Government's policy of executive devolution to London and Manchester, where attempts have been made to provide a more coherent system by devolving powers over the police and giving greater influence over other justice matters to the elected Mayors¹¹²³. The circumstances are however very different in Wales. Both London and Greater Manchester have one police force, with the Mayor as the PCC. They operate within the same policy and legislative framework as all their partner organisations and that framework is set by the UK Government and Parliament. The UK Government retains ultimate control over what resources are transferred and for what purpose. We do not consider that this would be a practical solution in Wales, let alone a principled one, especially in the light of democratic devolution.

b) The use of “blueprints”

12.53 As discussed in paragraphs [4.219-4.221](#), blueprints for youth justice and female offenders developed jointly between Ministry of Justice bodies (HMPPS Wales and the Youth Justice Board) and the Welsh Government, announced in May 2019, are even further from providing a solution. They are aimed at securing further improvements through closer partnership working, without changing responsibilities for the policies, legislation or resources involved. The aspirations, approaches and principles they set out are ones which accord with our analysis. However, crucially, it is not clear who will be held to account for results. The implementation plans contain commitments to explore and consider options, but no firm commitments to investment or to achieving a measurable impact. There is no overall accountability, no overall financial control and no guarantee that they will remain unaffected by changes in policy at UK Government level. The legal aid, court and tribunal and probation reforms introduced by the UK Government are a salutary reminder of the adverse impacts such policy changes can have.

1123 *WS147 Theo Huckle QC: 5. op cit n. 94: 45.*

c) Our conclusion on the option of executive devolution

- 12.54 The joint commissioning approach envisaged in the blueprints referred to above or the executive devolution of the type currently offered to London and Manchester – or even executive devolution as has previously applied to other policy areas in Wales, with the transfer of budgets and order-making powers to the Welsh Ministers – would leave the overall determination of policy in relation to justice with the Home Secretary and the Justice Secretary. It would not resolve the three fundamental matters we have highlighted of resources, alignment and accountability. It would perpetuate the present incoherence of policy and delivery. It would produce a new ‘jagged edge’.
- 12.55 Wales has a legislature with primary law-making powers and is in an entirely different position to London and Manchester where any powers devolved are purely executive powers. Transferring significant executive functions to the Welsh Government alone would further increase the complexity of the Welsh devolution scheme and blur lines of accountability, without providing the scope for reform. The days of the Welsh Ministers making proposals for primary legislation to the UK Parliament on matters for which they are responsible, with the Assembly having a watching brief, are only of historic interest. Nor should they return. Devolving executive powers alone would not enable the justice system in Wales to be designed to meet the needs of the people of Wales in relation to language, demography and geography. It would also not provide the clear lines of accountability and leadership required for a coherent and effective justice system.
- 12.56 We therefore have come to the clear conclusion that executive devolution alone would not be in the interests of the people of Wales.

3. Option 3: Legislative devolution

a) Benefits in Scotland and Northern Ireland

12.57 We have examined the ways in which legislative and executive powers, including powers relating to justice, have been devolved to Scotland and Northern Ireland. These have enabled the alignment of justice policy with social policy and the application of a “whole system” approach to the allocation of resources and the provision of good leadership. Accountability is clear. As a result, there is a more coherent approach which has benefitted their citizens. For example:

12.57.1 Policies have been devised which meet their needs; for example, in Scotland, despite a slightly smaller per capita expenditure, 70% of the population is eligible for some form of legal aid as compared to 40% in England and Wales¹¹²⁴.

12.57.2 Children of primary school age in Scotland will no longer be arrested and treated as offenders, as a result of the Age of Criminal Responsibility (Scotland) Act 2019.

12.57.3 The Northern Ireland Department of Justice was able to decide its own approach to reducing legal aid expenditure and chose not to adopt the Transforming Rehabilitation approach to probation which has proved so costly in England and Wales.

12.57.4 Innovative approaches to community orders and problem-solving courts in a range of areas have been piloted in Northern Ireland¹¹²⁵.

1124 [Para 3.80.](#)
1125 [Para 4.173.](#)

b) Symmetry in Wales and the UK

12.58 We have considered the arguments for and against legislative devolution of justice matters to Wales. We believe that the legislative powers of the Assembly should correspond as closely as possible with the executive powers of the Welsh Government. Any mismatch, for example devolving executive powers over policing and the court service while leaving legislative powers over these matters with the UK Parliament, would severely limit the extent to which a coherent justice policy for Wales could be determined and delivered.

12.59 There is also a strong case for symmetrical devolution of justice within the UK. This would make the scheme of devolution clearer and assist in addressing issues caused by the “jagged edge”. Bringing the level of justice devolution broadly in line with that of Scotland and Northern Ireland would clarify the principles through which justice is delivered across the UK.

c) Our conclusion by testing against the principal factors

12.60 As previously set out¹¹²⁶, two of the key considerations are alignment and resources. With legislative devolution, the Assembly and the Welsh Government would be able to set justice policy so that it aligned with the social, economic, demographic and cultural policies in Wales, particularly in relation to criminal and family justice and the real reforms required in those areas. They would be able to allocate and prioritise expenditure accordingly. The Assembly and the Welsh Government would control the areas which currently straddle the devolved and non-devolved divide, such as housing and rehabilitation of former offenders and policing and mental health services¹¹²⁷. Justice would no longer be an island.

12.61 The Assembly and the Welsh Government have already taken on additional responsibilities for primary legislation and taxation, demonstrating their ability to develop the capacity and capability required. An example we cite throughout our report is the Future Generations Act. Another is the acknowledgement of the work done in Wales by the Home Office in its consultation on a new legal duty to

1126 [Para 12.44 and 12.49.](#)

1127 *op cit n. 94: 13.*

support a multi-agency approach to preventing and tackling serious violence¹¹²⁸. There are further examples of innovation in the legislative sphere, as with the proposal to codify Welsh legislation¹¹²⁹. In policy terms, Wales has taken a lead on action to combat domestic abuse, hate crime and modern slavery and its work on youth justice has been emulated elsewhere. Legislative devolution would provide more scope for innovative policies.

12.62 However, as we have said, leadership is a key issue. Legislative devolution would remove the structural issues relating to leadership and enable the key issues of good leadership and its role in developing capacity, capability and confidence to be addressed.

12.63 Legislative devolution encompassing all the areas we have examined (from legal aid to civil, family and administrative justice, from policing and criminal justice policy to sentencing and offender management and from courts and tribunals to the judiciary) is, in our view, essential if Wales is to have a coherent policy of social justice and equality, and to ensure that resources are appropriately allocated to ensure a proper balance between expenditure on preventing or tackling problems at the outset and expenditure on dealing with the problems that result¹¹³⁰.

As a practical long-term solution, we recommend:

There should be legislative devolution of justice. Restrictions and reservations governing the Assembly's power to legislate on all forms of justice, including policing and offender management and rehabilitation, should be removed, so that it corresponds more closely with the position of the Northern Ireland Assembly and the Scottish Parliament.

In tandem with the removal of reservations and restrictions on the Assembly's powers, responsibility for executive functions in relation to justice in Wales should be transferred to the Welsh Government.

1128 Home Office (2019) *Consultation on a new legal duty to support a multi-agency approach to preventing and tackling serious violence*.
1129 WS080 Law Commission, p4.
1130 *op cit n. 94*: 66.

4. The scope of non-devolved matters

12.64 There are certain powers that are most appropriately exercised on a UK-wide basis. We believe that the matters reserved to the UK Parliament and the scope and interpretation of those matters are on the whole successfully dealt with in the Northern Ireland Act 1998 and the Scotland Act 1998 and that this model should be used as a basis for the devolution of justice powers to Wales. There will be bodies, such as the security services and the National Crime Agency, which remain UK-wide organisations. While these agencies already work with the devolved administrations and local government, if justice and policing powers were transferred to Wales, consideration would need to be given to new concordats being agreed between the Welsh Government and the Home Office and the Ministry of Justice¹¹³¹. The relationship was discussed on our second visit to Belfast in April 2019 in specific areas where a clear understanding of respective responsibilities and joint working arrangements is required. In April 2010 a concordat was agreed between the UK Government and the Northern Ireland Executive setting out arrangements for upholding the independence of the judiciary as an essential part of supporting the Rule of Law.

5. The allocation of resources

12.65 In 2017-18 almost £1,165 million was spent on the justice system for Wales, which equates to around £370 per person in Wales and around 3.6% of total identifiable public spending for Wales¹¹³². Almost 40% of this expenditure is already contributed through the Welsh budget and local taxation.

12.66 Revenue expenditure on court and tribunal services and legal aid in Wales is below what would be its population share. Increased capital investment in reforming the prison estate is urgently needed across England and Wales. As the Justice Committee has said¹¹³³, “*the Treasury must be able to recognise the wider implications of the decision not to invest in the prison and probation systems. It should take this into account in the next Spending Review exercise which should be broadened to encompass a more systematic approach to managing the £15,000 million a year costs of reoffending.*”

1131 [Para 2.31](#).

1132 [Para 2.129](#), *op cit.* 98: 5.

1133 *op cit n.* 560.

- 12.67 Continued investment in digital and online facilities is essential¹¹³⁴. Devolution of justice will need to be accompanied by a full transfer of resources, both revenue and capital¹¹³⁵. In areas where Ministry of Justice or Home Office agencies continued to provide services for Wales, or relied on Wales to provide services for England (as for example with prison accommodation), specific agreements will need to be drawn up. There will need to be a transparent and fair calculation of the resources involved, in line with the recommendations of the Public Accounts Committee report on funding for Scotland, Wales and Northern Ireland¹¹³⁶.
- 12.68 On that basis, we see no reason why the devolution of the Ministry of Justice and Home Office operational functions discussed in the preceding chapters should not be cost neutral overall. In the short term, there would be a need for ‘invest to save’ projects to achieve a further shift towards early intervention and problem-solving approaches, but in the longer term, cost savings to the wider public service in Wales should result. We discuss policy costs at paragraph [12.93](#) and following.

We recommend:

Devolution of justice must be accompanied by a full transfer of financial resources, including all identifiable administrative and capital resources relating to Wales.

1134 WS165 Michael Draper : 4.

1135 These will include significant capital expenditure at Cardiff, Swansea and Usk/Prescoed as we stated at para 4.244.

1136 House of Commons Committee of Public Accounts (2019) [Funding for Scotland, Wales and Northern Ireland](#).

Part 3: Changes needed in the governance institutions

12.69 As we have made clear, substantial reform is essential. Many changes can and should be made under the current devolution scheme. Building on those changes, further changes will be needed with legislative devolution. This Part sets out what needs to be changed under the current scheme of devolution and what further will be needed with legislative devolution.

1. The Welsh Government

a) Changes required under the current scheme of devolution

12.70 While it is for the First Minister of Wales to decide on the shape of each ministerial portfolio, the Welsh Government in our judgement requires at least a Deputy Minister who has responsibility for, and is accountable in relation to, justice matters¹¹³⁷. A number of justice and judicial functions are already divided between the First Minister, the Counsel General and a Cabinet Minister. These primarily involve:

- The consideration of whether Welsh Government Bills are within legislative competence, including enforcement provisions, and the defence in the Supreme Court of any challenge that provisions of a Bill approved by the Assembly are outside competence.
- The putting into operation and enforcement of law made by the Assembly.
- The organisation, publication and accessibility of the law passed by the Assembly and the Welsh Ministers.
- Responsibility for Welsh Government interests in community safety, youth justice, violence against women, sexual violence, domestic abuse, modern slavery and hate crime.
- Liaison with the police, Police and Crime Commissioners, Ministry of Justice and Home Office.

1137 *OE031 Legal jurisdiction and governance: 1.*

- The responsibilities in relation to the taking of children into care: including Cafcass Cymru (which is currently within the Health and Social Services portfolio).
- The responsibility of the Government for the machinery of justice which is devolved, particularly the Welsh tribunals.
- The performance management of projects and delivery¹¹³⁸.

12.71 In our judgement, these responsibilities are not being discharged in an effective and coordinated manner in part because there is no clear leadership structure. Although there have been some policies which have improved outcomes in Wales such as those in youth justice (see paragraph [4.192](#)) the lack of clear and accountable leadership in the field of justice has had an adverse impact on Wales. Examples are:

- 12.71.1 The failure to carry through a scheme for alternative dispute resolution¹¹³⁹.
- 12.71.2 Failures in family justice, particularly to establish Family Drug and Alcohol Courts¹¹⁴⁰.
- 12.71.3 The failure to develop apprenticeships in the police and the professions¹¹⁴¹.
- 12.71.4 The failure to achieve a proper system of procurement of legal work¹¹⁴².
- 12.71.5 The failure to achieve developments similar to those in Northern Ireland in the law tech sector¹¹⁴³.
- 12.71.6 The long delay in the implementation of the Renting Homes (Wales) Act 2016¹¹⁴⁴.

We will return to these issues when we consider the civil service at paragraph [12.91](#) below and address the need for regular engagement with the professions and law schools.

1138 [Para 4.217.](#)
 1139 [Para 5.45.](#)
 1140 [Para 7.61.](#)
 1141 [Para 4.131.](#) [Para 9.48.](#)
 1142 [Para 9.61.](#)
 1143 [Para 9.81.](#)
 1144 [Para 5.9.](#)

12.72 There need to be clear lines of accountability for justice within the Welsh Government. Bringing together the current justice functions held by the Welsh Government within a single portfolio would also provide a basis for developing a coherent overview of the justice and legal system in Wales, particularly in the light of Wales' size and relatively small population. It would also enable there to be a single Minister who could work to develop the legal sector in Wales in a coherent way and be accountable for this. However, the role of the Counsel General, as the chief legal adviser to the Welsh Government, should be a separate, non-portfolio role, which would include the leadership of the Government Legal Service in Wales. This is the classic position across the common law world.

b) Changes required with legislative devolution

12.73 Legislative devolution of powers relating to justice will clearly require the establishing of a new Justice Department in the Welsh Government. The responsibilities of the Home Secretary and the Secretary of State for Justice should be exercised by one Welsh Minister, no doubt of full Cabinet Ministerial rank as in Scotland and Northern Ireland, and not divided.

We recommend:

Clear and accountable leadership on justice in the Welsh Government must be established under the current scheme of devolution.

We recommend:

With legislative devolution, there must be a new Justice Department in the Welsh Government led by a Cabinet Minister.

We recommend:

The office of Counsel General should continue as an office that provides independent legal advice to the Welsh Government and heads the Government Legal Service in Wales.

2. The need for change in the Assembly's structures

a) Changes required under the current scheme of devolution

- 12.74 Under the current devolution scheme, the Assembly manages its committee business so that for those justice related matters which are within its remit, it can carry out an examination using its procedure for joining parts of committees together for particular tasks. This avoids the need to formally establish another committee. This approach has been exemplified by the inquiries so far undertaken by Assembly committees into justice issues, such as the inquiries in 2019 into health and social care provision in Welsh prisons; mental health in policing and police custody; and voting rights for prisoners. The Assembly's Children, Young People and Education Committee will also scrutinise the Welsh Government's Bill on the removal of the defence of reasonable chastisement¹¹⁴⁵.
- 12.75 The need for such inquiries exemplifies the move to the much more proactive role required of the Assembly under the current scheme of devolution. Other examples of this need are the justice impact assessment which has to be prepared for every Bill presented to the Assembly¹¹⁴⁶ and the scrutiny needed of the bilingual aspects of all legislation. The Assembly is a unique legislature in the UK insofar as it legislates bilingually at all parts of the legislative process with both texts treated for all purposes as being of equal standing¹¹⁴⁷. Bills are considered in both languages in plenary, committee and with any amendments. This further increases the importance of scrutiny to ensure the accuracy and equivalency of Bills and amendments in both languages.
- 12.76 There is a real need for the Assembly actively to scrutinise the actions of the Welsh Government in its justice functions given the failures we have enumerated at paragraph 12.71. We were not surprised that the Wales Governance Centre's report *Justice at the Jagged Edge* expressed the view that some policing and justice issues were not receiving the necessary scrutiny as a result of a number of different factors¹¹⁴⁸.

1145 The Stage 1 debate regarding the *Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill* is scheduled to take place in plenary on Tuesday 17 September 2019.

1146 In accordance with s110A of the Government of Wales Act 2006, as amended by the Wales Act 2017.

1147 OE035 Dr Dai Lloyd AM: 7.

1148 *op cit* n. 94: 120.

12.77 There will also be a need to consider the operation and the reports of the bodies to which we have referred at paragraph 12.36. It would be appropriate for the leaders of the judiciary to appear once a year before a committee of the Assembly in much the same way as the Lord Chief Justice of England and Wales appears before the Justice Committee of the House of Commons.

12.78 At paragraph 12.187 below, we recommend a further role for the Assembly in relation to the recommendations we have made in this report.

b) Changes required with legislative devolution

12.79 With legislative devolution, the Justice Department within the Welsh Government would need to be scrutinised by, and accountable to, the Assembly. The classic model for this is a justice committee. The creation of such a committee would increase the scrutiny of policing and justice bodies in Wales. Distinct Welsh inquiries are rarely undertaken by the UK Parliament's Home Affairs or Justice Committees. Since 2005, the Welsh Affairs Committee has carried out three separate inquiries into imprisonment in Wales, as well as two inquiries into policing. However, this is unsatisfactory as the Committee does not hold the relevant UK Ministers to account.

12.80 For comparison purposes, the Scottish Parliament has a Justice Committee with nine members and a policing sub-committee with seven members. When sitting, the Northern Ireland Assembly¹¹⁴⁹ has a Justice Committee with 11 members. Both Committees play an influential and effective role in informing the development of justice policy and holding the executive to account.

12.81 Accountability would be strengthened when the government proposing the Bill also has responsibility for the costs and operation of the justice system. The Assembly would be able to scrutinise and directly influence the impact on the justice system of the Bills presented to it. It would be easier for the implications for enforcement, in terms of procedure for example, to be considered and implemented in a timely way. This is standard in Scotland and Northern Ireland.

1149 *It has been suspended since 9 January 2017.*

- 12.82 The Assembly is currently considering potential reform of its size and electoral arrangements, as it is empowered to do by the Wales Act 2017. The Expert Panel on Assembly Electoral Reform in 2018 found that “*the National Assembly is too small to carry out its responsibility effectively*”¹¹⁵⁰. The numbers are not sufficient to scrutinise legislation to the degree that would be desirable. Devolution of justice, including policing, prisons and probation, will increase the pressure for the number of Assembly members to be augmented. It appears to be generally accepted that the size of the Assembly should be increased. However, the details and electoral arrangements are still under consideration.
- 12.83 Although it is for the Welsh Government to prioritise the content of its legislative programme and for the devolved legislature to prioritise its topics for scrutiny, we see considerable difficulties in legislative devolution of justice without an increase in the size of the Assembly. Under current arrangements, both the Assembly and the Welsh Government would face significant difficulties even if they only sought to bring about some of the more important changes we have recommended. Indeed, we would find it difficult to see how there could be proper scrutiny of a Justice Department or of Bills relating to justice if there was no increase in the size of the Assembly.

We recommend:

The Assembly should take a more proactive role in appropriate scrutiny of the operation of the justice system.

Legislative devolution will require the establishment of a Justice Committee in the Assembly.

1150 *National Assembly for Wales (2019) [Assembly Reform Programme](#).*

3. Local Government

a) Changes required under the current scheme of devolution

- 12.84 The structure of local government in Wales is not within our remit. We have therefore concluded that it would not be appropriate for us to comment on the structure of local government or the number of authorities in Wales.
- 12.85 It is important to recognise the vital role played by local government in Wales, especially in key front line services such as education, social work and environmental protection. However, change is essential to the way in which the 22 local authorities operate in relation to justice under the current scheme of devolution. Figure 14, set out in paragraph 4.4, shows the complexity at national and regional level in Wales. It is expensive and wasteful. That system must be streamlined and simplified as committees and boards have developed without any consideration having been given to the need to merge them with existing bodies; the result has been a proliferation of committees with many dealing with the same subject matter. Wales needs the strategic bodies we have recommended (as summarised at paragraph 12.36).
- 12.86 Streamlining the structures will be difficult under the present devolution scheme as some bodies have been established under policy decided or legislation passed in Westminster and some under policy decided or legislation passed in Wales. The Crime and Disorder Act 1998 is a prime example of legislation which has been amended to try to take account of UK and Welsh responsibilities for partnerships: it is still not fit for purpose. The Welsh Government established its own regional and national groups for modern slavery and domestic abuse, possibly because it did not control the agendas of other groups, such as Criminal Justice Boards, owned by Whitehall departments.

12.87 There is plainly scope for large scale rationalisation and the saving of time and resources by reducing the number of committees and ending the proliferation of groups with specific, but still overlapping, remits. We consider:

- Public Service Boards should be the primary means of developing local coordination and delivery across all the services.
- It is not sensible to have more than one body responsible for coordination at the local level. Community Safety Partnerships should therefore be subsumed into Public Service Boards.

12.88 There is more scope for local authorities to come together and deliver on a regional basis under the strategic direction of the Wales Criminal Justice Board. A similar streamlining could take place with regard to family and civil/administrative justice, given our proposals at paragraph [12.36](#). In the light of the important role local authorities play in providing joined up services to support a coherent approach to justice, they should be supported in efforts to increase genuine joint working with others and reduce time spent on meetings to discuss coordination.

b) With legislative devolution

12.89 A smaller, consolidated and simplified structure would be easier to achieve through Assembly legislation, aided by the removal of the duplication caused by the current split of accountabilities between the UK and Welsh Governments.

We recommend:

Where there is overlap between the roles of local, regional and national boards, committees and partnerships, they should be merged.

4. The civil service

a) Changes under the current scheme of devolution

12.90 We have referred to the structural issues in relation to leadership which would be addressed by the implementation of the recommendation we have made for a single portfolio for justice. However, that would be the starting point.

12.91 It is clear from the evidence we have received and our inquiries that there is a real and urgent need to increase leadership skills in the civil service in the Welsh Government in relation to matters affecting justice. We have been unimpressed by the way in which some issues have been dealt with – see for example our comments on family justice at paragraphs 7.91 and following. Such leaders need to build capacity, capability and confidence within the civil service.

12.92 One of the issues that better leadership must address is engagement with the legal profession and the law schools. There is little mutual understanding or joint working and it is for the Minister as we recommend, with responsibility for the justice portfolio (ably supported by the civil service) to develop this.

b) Changes required with legislative devolution

12.93 The Welsh Government estimate of additional costs of policy capacity in justice, if it was devolved, is £14 million per year¹¹⁵¹, assuming a directorate of 200 staff. Information on the costs of Ministry of Justice or Home Office officials currently engaged on policy in relation to Wales is not available¹¹⁵². Experience has shown that the devolved administrations generally receive less resource than is needed to undertake new devolved policy functions¹¹⁵³ as the UK Government takes the position that additional policy costs should be borne by the devolved administration as they are costs that would not have otherwise occurred. However, the Welsh Government estimate appears to be based on continuing old models of working rather than adopting a new approach. Nor is it proportionate.

1151 WS188 Supplementary evidence Welsh Government: 15.

1152 The Public Accounts Committee report on Funding for Scotland, Wales and Northern Ireland records that HM Treasury was unaware of any regional (sic) analysis or breakdown of UK Government spending on salaries by Department but agreed to write to confirm what was publicly available.

1153 Letter from First Minister, 26 July 2019. Example given of the *Social Security (Scotland) Act 2018*. The Financial Memorandum to the Bill identified estimated administration costs of £144-£156 million per year and implementation costs of £308 million. The actual amounts transferred were £66 million per year and a one-off payment of £200 million.

- 12.94 In our view, Wales must not replicate the Whitehall approach to justice policy in the structure of its civil service. That approach is costly, inefficient and is not these days suited to the proper development of policy. Most civil servants do not stay long enough in post to develop the necessary expertise to develop policy, in contradistinction to the position when civil servants would often specialise in an area of justice policy and be expert in it.
- 12.95 The Welsh Government should build on its existing successful experience of developing expertise by drawing on external advice, as with the Tax Advisory Group for Wales. It should develop its working relationship with the leaders of the legal profession and the law schools and seek the assistance of leading academics who should with a small body of civil servants provide advice to Ministers. It should look to other models of policy development further afield, most obviously in small countries¹¹⁵⁴. However, there will be a need to engage with law schools in Wales to ensure that they develop experts of the highest quality in all relevant areas of justice.
- 12.96 Offender rehabilitation, as discussed in paragraphs [4.241](#) and following, would be part of the executive functions of the Welsh Government.

We recommend:

The Welsh Government should address policy issues relating to justice by using external experts who can report jointly with civil servants to Ministers.

The Welsh Government and the legal sector should develop a joint leadership programme.

1154 *For example, Latvia has a small department of highly capable civil servants with policy work being developed by committees of practitioners and academics.*

5. The governance of policing

a) Changes required under the current scheme of devolution

12.97 The Welsh Government provides considerable funds for the police in Wales. There is a need for close working relations. However, there has to be openness and transparency and holding to account for the effective use of all police funding provided by the Welsh Government. We consider that this would be best done through the new Wales Criminal Justice Board which we have recommended should take over the functions of the Policing Board for Wales. This should provide a means of accounting for performance to the Minister responsible for justice in the Welsh Government.

b) Changes required with legislative devolution

12.98 Any significant change to the police would require legislative devolution. We draw attention to some of the issues, but consider that the decision on the method of governance in the event of legislative devolution should be decided by the Assembly.

12.99 The governance provided by the PCCs is one which has been subject to much comment. Of particular note is the ‘one-to-one’ nature of the relationship between the PCC and the Chief Constable. The operational independence of the Chief Constable is a fundamental principle of policing, it should not be compromised. It is also a fundamental constitutional principle and essential to the Rule of Law. It would be unlawful to infringe it. For operational matters the Chief Constable is accountable to the law and the law alone¹¹⁵⁵.

12.100 Scrutiny of PCCs is provided by the Police and Crime Panels. Whilst this body is constituted from local authority and independent members it has a limited role in relation to the PCCs’ precept proposals and appointment of Chief Constables.

12.101 In the context of Wales, legislative devolution would provide a real opportunity to re-examine the governance arrangements for policing, recognising the changing approaches across England and building on the foundations laid by the current PCC model.

1155 *R v Commissioner of Police of the Metropolis, Ex parte Blackburn* [1968] 2 QB 118.

12.102 Additional matters which merit consideration include the arrangements for inspection and investigation and the configuration of the Welsh police forces. These could be taken forward under existing arrangements. However, it is more appropriate that these are matters to be decided in Wales, following on from our recommendation at paragraph 4.146 that policing policy should be set in Wales.

We recommend:

With legislative devolution, the governance arrangements for the police should be re-examined.

6. Law Council of Wales

a) Our proposal and its publication

12.103 We turn in this part to the establishment of a Law Council of Wales¹¹⁵⁶. As this does not require any change to the current devolution scheme and as there is a need to progress the establishment of such a Council, we issued a consultation paper in October 2018. We received a number of responses.

12.104 In early October 2019 we published this part of our report as it was not contingent on any other issues we are considering and does not necessarily require any action by the Assembly or the Welsh Government. It was and remains very important that this be taken forward given the matters that need to be resolved on a timely basis.

b) The details of the proposed Law Council of Wales

12.105 During the Legal Wales Conference in 2017, Lord Lloyd-Jones called for the establishment of an Institute of Welsh Law to promote the study of Welsh law and to avoid duplication of work. Lord Lloyd-Jones saw the Welsh Government as having a crucial role in coordinating the Institute, with the Welsh law schools, the professional bodies and the Judicial College being collaborators. He also saw a role for the Learned Society of Wales, the Legal Wales Foundation¹¹⁵⁷ and close liaison with the Law Commission in view of its responsibilities for law reform in Wales.

1156 *Welsh Government Commission on Justice in Wales (2018) [Law Council of Wales Discussion and consultation paper](#).*
1157 *Legal Wales Foundation. Others such as Professor Gwynedd Parry and Professor Richard Owen have called for the establishment of a similar body.*

- 12.106 The need for collaboration across the professions and the law schools has long been recognised in Scotland. This is reflected in the long-established Joint Standing Committee for Legal Education in Scotland (JSC). This is a non-statutory body that brings together people with a key role (judiciary, the Bar, Law Society, the law schools and lay members) in relation to legal education and training in Scotland. The JSC aims to promote the interests of legal education in academia and in the legal professions. It cannot require any organisation to do anything, but it does have political force. Its negotiations with the Scottish Government blocked the SQE being introduced in Scotland. The JSC is not funded by the Government and is resourced mainly by Edinburgh University Law Faculty which provides the meeting room for the JSC, its secretariat and website.
- 12.107 However, the Law Council we propose for Wales will go further than legal education. As set out in the consultation paper¹¹⁵⁸, a similar institution in Wales would be a voice for legal Wales by promoting awareness of Welsh law, ensuring the provision of legal resources through the medium of Welsh and helping Welsh law schools to provide their students with the necessary education and training to thrive in practice. Building on the good work of the Legal Wales Foundation, the Council should be an umbrella body that shares resources, supports training on Welsh law for the judiciary and the professions and ensures collaboration and cooperative working. The responses to our consultation paper indicated wide support for such a Council, with detailed comments on its composition and the support needed for a secretariat.
- 12.108 In light of the consultation, our view is that the Law Council should comprise a senior Welsh judge the President of Welsh Tribunals, three representatives of the legal profession, heads of law schools, a lay representative with experience of business and legal affairs, the Counsel General and one member each from the Legal Wales Foundation, the Law Commission and the Judicial College. It is our view that a committee that we refer to in paragraph 12.109 should have a balanced membership and be as small as practicable. Ideally the heads of the Welsh law schools should be represented by two of their number, but the way in which they participate can be left to agreement between them and the senior Welsh judge. There should also be an

1158 *op cit n. 1156.*

annual meeting involving broader representation from all those with an interest in legal education and professional development within the legal sector¹¹⁵⁹.

12.109 We would anticipate that a small committee would be formed of around five or seven members that would carry out the functions of the Law Council. The membership of the Council and the possible development of specialist bodies should be kept under review.

12.110 The Law Council should have a designated secretariat team that develops and maintains a clear forward work programme. The secretariat should be responsible for scheduling meetings and publishing agendas, minutes and papers produced by the Council. We would expect it to be jointly funded by the law schools and the professions.

12.111 The Law Council should be established as soon as practicable.

We recommend:

A Law Council of Wales should be established to promote the interests of legal education and the awareness of Welsh law, to ensure proper provision of teaching the law in Welsh, and to assist students in their education and training as future practitioners.

1159

Given the wide proposed membership of the Law Council, the proposed broader representation at an annual meeting would need to involve in addition the professional representative and regulatory organisations such as the Law Society, the Bar Council, the Solicitors Regulation Authority, the Bar Standards Board, CILEx, the Legal Services Board, and organisations providing and accrediting legal education and training.

Part 4: Clarity on the law of Wales and the professions

1. Greater clarity as to the law applicable in Wales – the law of Wales

- 12.112 As explained at paragraph [2.34](#) to [2.41](#), there is a law of England and Wales that comprises laws applicable only to Wales, laws applicable only to England and laws applicable to England and Wales. Within this body of law, there is a growing divergence between English law and Welsh law (as we have used that term in paragraph [2.35](#)) particularly in planning, social welfare, renting of housing (when the Welsh legislation is brought into force), family justice and the approach to sustainability, future generations and international standards for fundamental rights, as we have already noted¹¹⁶⁰.
- 12.113 In October 2016, the Law Commission published its report on *The Form and Accessibility of the Law Applicable in Wales*¹¹⁶¹. It drew attention to the difficulties in accessibility and the need to structure Welsh law in a more systematic and organised manner. It recommended codification. A project to codify planning law reported in November 2018 and a Bill to codify Planning Law is in the course of preparation. The Legislation (Wales) Act 2019, which received Royal Assent on 10 September places a legal duty on the Welsh Government to make the law accessible and clear and makes provision for codification.
- 12.114 Although these commendable efforts are being made to clarify Welsh law and make it more accessible, it does not aid clarity for laws which apply only to England to form part of the law of England and Wales, or vice versa, when the legislatures in Westminster and Cardiff are making different laws on the same subject matter.
- 12.115 Questions of accessibility of the law applicable to Wales and divergence between the laws applicable in England and Wales have also been examined by the Independent Expert Advisory Committee to which we referred in paragraph [2.28](#)¹¹⁶². As well as highlighting the need

1160 [Para 1.12-1.14](#).

1161 Law Commission (2016) *Form and Accessibility of the Law Applicable in Wales*.

1162 Independent Expert Advisory Committee for ongoing review of the operation of justice in Wales (2019) *First report*.

for continued work to improve the accessibility of Welsh law, it noted that increasing divergence of “*Welsh and English law was inevitable, given that there are two legislatures making laws within the England and Wales jurisdiction*”¹¹⁶³. It recommended action to ensure that those involved in implementing and applying the law were made aware of differences¹¹⁶⁴.

- 12.116 None of these measures will amount to a sustainable, medium or long-term solution.
- 12.117 There is a significant body of evidence that it is sometimes very difficult to identify whether the laws passed by the UK Parliament apply to England and Wales or to England alone or to Wales¹¹⁶⁵. Acts passed by the UK Parliament which apply only to England do not include the word “England” in their short title¹¹⁶⁶. The Law Commission has concluded that access to and understanding of the law across the UK is difficult and that in Wales the process of devolution has made things even more complicated¹¹⁶⁷.
- 12.118 Moreover in many contracts between parties doing business in foreign states which provide for a choice of law, it is the law of England, not the law of England and Wales, that is selected as the applicable law. English law is the “brand” which is used in international commercial disputes and there is much to be said for clarifying this.
- 12.119 Since laws made by the Assembly and those laws made by the UK Parliament which apply only to England both “extend to England and Wales”, they are part of a single legal system. The laws are therefore automatically recognised by the courts across England and Wales. We received evidence¹¹⁶⁸ this had the advantage that if a case arose which involved both English and Welsh interests, a court in England or Wales would be able to decide which law was applicable based on the circumstances of the case, without needing to consider formal “conflict of laws” rules.

1163 *The report described the position as follows: The Assembly will continue to develop legislation that creates laws that apply only in Wales, some with new criminal offences, licensing provisions, enforcement measures and more, all having varying degrees of impact on the UK justice system, courts and tribunals. Similarly, England-only legislation passed in the UK Parliament may require different approaches to justice delivery when compared against arrangements that are in place in respect of Welsh legislation, and may have impacts on devolved services. The system would increasingly become unmanageable, so more steps need to be taken to further strengthen the system.*

1164 *At paras 10.44 and 12.140.2 we have made recommendations on early notification of changes and on education and training as part of our much wider recommendations.*

1165 *WS142 supplementary evidence of the Welsh Government: 4.*

1166 *WS072 Association of Judges of Wales, p3, WS142 Welsh Government: Counsel General, p10.*

1167 *Law Commission, The Form and the Accessibility of the Law Applicable in Wales (Law Com No 366); JJE: 15.*

1168 *OE030 Sir Stephen Laws Pg 1.*

- 12.120 However, as the divergence increases, this one single advantage of operating within an England and Wales legal system (which arises only in the cases that go to court) is outweighed by the importance of being clearly able to identify the differences in the law applicable to Wales compared with England and the distinct legal reality that exists in Wales¹¹⁶⁹. The evidence we received and our own experience demonstrated the increasing difficulties in identifying the law applicable in Wales. The risks that flow from the failure to identify the applicable law and to recognise the differences between the laws in Wales and in England far outweigh the case for continuation of the present approach.
- 12.121 From a day-to-day and practical viewpoint, it is far better to have the law applicable to Wales identified as the law of Wales. Any question as to whether it is the law of England or the law of Wales that applies to a particular issue can be resolved by private international law conflicts of law rules or specially developed rules. Identifying a law of Wales and a law of England would assist the public, practitioners and the courts. Rather than complicating matters, it would show practitioners and the public that there is a difference between the law applicable in Wales and the law applicable in England.
- 12.122 We have therefore concluded that by far the better course is no longer to maintain a single law of England and Wales while making continuous adjustments to take account of the increasing divergence between laws made for England by the UK Parliament and by UK Ministers and laws made for Wales by the Assembly and by Welsh Ministers. This is a route to increasing complexity and confusion. We believe that it is better to draw a clear distinction between the law applicable in Wales (the law of Wales) and the law applicable in England (the law of England).
- 12.123 A draft clause for separation has been put forward in clause 78 of the draft Wales Bill published by the Welsh Government in 2016¹¹⁷⁰ and would form a starting point for the necessary legislative provision. From the date such a provision takes effect, UK Parliamentary legislation would only form part of the law of Wales when it applied in Wales, as in the case for legislation on non-devolved matters. Similarly, legislation made by the Assembly would apply in Wales and form part of the law of Wales. Rules would have to be developed for deciding whether

1169 WS33 *Thomas Watkin*, p1. WS065 *Catrin Fflur Huws*, p2.
1170 WS188 *The draft Government and Laws in Wales Bill*; 1.

the law of Wales or the law of England applied in particular cases, but precedents for this exist both in relation to Scots and Northern Ireland law and in private international law¹¹⁷¹, and for the enforcement of judgments as already exist with Scotland and Northern Ireland¹¹⁷². The Assembly would no longer be able to make consequential amendments to England and Wales legislation, a point acknowledged by the Welsh Government¹¹⁷³.

We recommend:

The law applicable in Wales should be formally identified as the law of Wales, distinct from the law of England.

2. The professions

12.124 As explained at paragraphs 9.5 and following, the legal professions, principally solicitors, barristers and members of CILEx, currently practise across England and Wales. Likewise, they are subject to regulation on an England and Wales basis. In the light of the divergence between the law applicable in Wales and the law applicable in England, we considered whether there was a case for creating separate legal professions for Wales. We examined what models exist for this and whether they would be either necessary or desirable.

a) Alternative models

12.125 The first alternative model we considered was replicating the model that operates between English and Welsh practitioners and practitioners in Northern Ireland:

12.125.1 The Qualified Lawyer Transfer Scheme is for lawyers qualified in England and Wales or Northern Ireland who seek to transfer between jurisdictions. No further examination or training is necessary, but various character checks are undertaken and a nominal fee needs to be paid.

1171 Many are set out the “Rome Regulations” which will continue to be applicable in the UK either as part of EU law or retained EU law under the [European Union \(Withdrawal\) Act 2018](#).

1172 [Civil Jurisdiction and Judgments Act 1982](#) ss 18, 19.

1173 WS188 *The draft Government and Laws in Wales Bill*: 1.

- 12.125.2 In England and Wales, the Law Society has a comprehensive multiple choice test and Objective Standard Clinical Examination (OSCE) designed to test the legal knowledge and skills of overseas transfer applicants. Solicitors from Northern Ireland are exempt from these, but have to consent to a criminal record check and a credit check and produce a certificate of good standing from the Law Society of Northern Ireland. There is a fee of £100. Applicants are required to confirm that they have no criminal convictions or police cautions, that they have not been declared bankrupt, had County Court judgments against them or been subject to disciplinary proceedings. If they do have any of these, they are required to provide references from two professional referees (their employer and one other) who refer to the circumstances in which these arose.
- 12.125.3 Solicitors applying to transfer from England and Wales to Northern Ireland must also produce a certificate of good standing from the Law Society of England and Wales, together with a certified copy of their admission certificate to the roll, a brief description of their professional experience post admittance and two references from solicitors of at least five years' standing who are members of the Law Society of Northern Ireland. A fee of £150 applies. There is no requirement to demonstrate knowledge or understanding of Northern Irish law.
- 12.125.4 Barristers in England and Wales with three or more years' practice can be called to the Northern Ireland Bar with a minimum of formality and no examination on Northern Ireland law. The same applies to a Northern Irish barrister wishing to practise in England and Wales or the Republic of Ireland. English and Welsh barristers can also practise in smaller Commonwealth jurisdictions without any formal training in local law.
- 12.126 We do not recommend this alternative. It is largely formal. It is in our judgement much better to have a system that reflects the reality. The system that operates between Northern Ireland and England and Wales would not advantage Wales.

- 12.127 The second alternative we considered was that which operates in Australia. To practise law in Australia, a person must first be admitted as a lawyer of the Supreme Court of an Australian State or Territory (each is its own jurisdiction) and then hold a practising certificate issued by the regulatory authority relevant for solicitors, barristers, or both in that State or Territory. The Mutual Recognition Act 1992 (Cth) was enacted to promote the freedom of movement of goods and service providers in a national market in Australia. The States and Territories have enacted similar legislation, and together, these Acts enable the mutual recognition of a number of professions and trades. Once lawyers are admitted as a lawyer in a State or Territory and hold an accompanying practising certificate, they are eligible to practise in other States or Territories either directly or by registering via a mutual recognition scheme – there is no requirement to be re-admitted as a lawyer of the Supreme Court in the State or Territory in which a person may wish to practise.
- 12.128 This system of mutual recognition was supplemented by recognition between Australia and New Zealand under the Trans-Tasman Mutual Recognition Act 1997. This provides for a mutual “fast-track” process to enable lawyers from each nation to be admitted and practise in the other nation.
- 12.129 Australia developed as a series of states, each with the three branches of government. It came together as a Federation in 1901. As the century developed, it became necessary to ensure a national market in services. It was constitutionally necessary to enact mutual recognition Acts at both federal and State level, because no single jurisdiction could impose its requirements upon the courts of other polities within the federation. The system operates well, but it is necessarily accompanied by a range of regulatory and administrative adjustments governing which jurisdiction shall have the carriage of disciplinary or similar investigations.
- 12.130 The Australian model is considered unnecessary and, indeed, unwieldy as it would apply to Wales. A single market for legal services already exists between England and Wales with lawyers presently permitted to practise in both England and Wales. The market is competitive, and we see no benefit in creating two systems of regulation and professional qualifications and then re-erecting a market through legislation to create a market similar to the Australian system.

b) Continuation of the present system

- 12.131 Some expressed concern that if there was a separate Welsh legal profession, clients would be discouraged from instructing Welsh firms¹¹⁷⁴. The Welsh Government has made clear it understands the concerns of commercial solicitors in Wales; it says it will do all it can to facilitate the practice of commercial and business law in Wales on an international basis¹¹⁷⁵. Most of the commercial areas of law, as is the case in Scotland and Northern Ireland, will be unchanged under the system of legislative devolution.
- 12.132 Nor do we consider that separate legal professions for Wales would be necessary for the development of the law in Wales. The contribution of the legal professions will be made by those who practise in Wales; that does not require separate professions, but rather leadership and the confidence building measures by the Welsh Government and the Assembly and the close involvement of the professions in the development of legal policy, as we have advised at paragraph [12.95](#). The professions are under a duty not to undertake work in which they do not have the requisite knowledge. This would be the case when it comes to practising law in Wales¹¹⁷⁶.
- 12.133 We consider that even with legislative devolution and with the separation of the law of England and Wales into the law of England and the law of Wales, there should be a continuation of the present system. Practitioners should be able to practise in England and Wales and the professions should be jointly regulated. We also consider the same position should continue in the event that a separate judiciary for Wales is developed up to the level of the Court of Appeal¹¹⁷⁷.

1174 *Engagement sessions.*

1175 *WS142 Counsel General: 17.*

1176 *WS194 Jonathan Haydn-Williams: 1.*

1177 *[Para 12.135](#) et seq.*

12.134 The one necessary change would be arrangements for the Regulators (the SRA, the Bar Standards Board and CILEx Regulation Limited) to have accountability to the Assembly. Under the current scheme of devolution, the Regulators should develop a relationship with the Assembly given the role the Assembly already has in relation to the justice system as a whole. With legislative devolution a formal accountability would be necessary.

We recommend:

The present system where legal practitioners can practise in England and Wales and the legal professions are jointly regulated should be continued.

Part 5: The judiciary and the infrastructure that supports the justice system

1. The issues in relation to the judiciary

12.135 Wales has a small judiciary that is quite distinct from that of England at the level of first determination – the Welsh tribunals which have a President and has their own separate administration, which we have recommended at paragraph [6.59.1](#) be put on a more appropriate constitutional basis.

12.136 The question as to whether there should be a more fully developed distinct and separate judiciary for Wales for both the courts and some other tribunals at levels up to the Court of Appeal was raised by the Welsh Government's draft Government and Laws in Wales Bill in 2016.

12.137 That issue would arise in the context of the adoption of our recommendation of legislative devolution of justice. Before we turn to consider that, we must first consider whether any changes are required under the current scheme of devolution.

2. The position of the Welsh judiciary under the current scheme of devolution

12.138 As we have explained¹¹⁷⁸, the position of the judiciary has changed in many respects since the Constitutional Reform Act 2005. Judges are much more actively engaged in leading aspects of reform, have exercised considerably greater leadership responsibilities for the delivery of justice and have engaged extensively with the UK Government and the UK Parliament.

12.139 However, in Wales there has been less engagement and the extent of that engagement has depended to a considerable extent on the way the Presiding Judges and other members of the Senior Judiciary have exercised their leadership responsibilities. With the development of democratic devolution and the role that the Welsh Government in fact has in relation to justice, there is a need for a relationship with the Assembly, the Welsh Government, the professions in Wales and the community at large that reflects the changes that have taken place since 2005.

12.140 It is clear to us from our review of the entire justice system that there needs to be significant change to ensure that the justice system in Wales is not disadvantaged.

12.140.1 Good leadership is required.

12.140.2 There needs to be better engagement between the Assembly, Welsh Government, and the judiciary over a range of issues which are important to the good governance of Wales. This includes in particular engagement over proposed and actual legislative changes building on the arrangements in place for the Welsh Government to engage early in the legislative process with the judiciary in respect of new Welsh legislation¹¹⁷⁹.

1178

[Para 2.85 et seq, 12.20.](#)

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As set out in Desk Instruction 7 (2017) in relation to engaging with the judiciary on matters of policy and legislation affecting the judiciary and the courts and benefiting from the technical expertise of the judiciary. First issued in November 2013 between the Lord Chief Justice and the First Minister.

- 12.140.3 The judiciary need to participate as observers in the Wales Criminal Justice Board¹¹⁸⁰, the Civil Justice Board¹¹⁸¹ and engage with the local criminal justice boards.
- 12.140.4 The judiciary needs to increase its participation in the Family Justice Network for Wales¹¹⁸² and to play a full role in the Local Family Justice Boards.
- 12.140.5 The judiciary should promote and co-ordinate dispute resolution before the courts, tribunals, ADR and ombudsmen.
- 12.140.6 The judiciary needs to address the structural weakness we have explained at 2.95.
- 12.141 To bring about this change we consider that there should be a significant change to the structure of the way in which the senior judiciary are engaged in Wales under the current scheme of devolution. Although the decision must under the UK Constitution be a matter for the Lord Chief Justice of England and Wales, we consider that the model of Presiding Judges is in no longer apposite for Wales even under the current system of devolution. In particular, as indicated at paragraph [12.31](#) above, the rotation of appointments works against the development of a consistent leadership role. The interaction between the Welsh Government and the judiciary is characterised by a range of formal and informal contacts at different levels, as we set out in paragraphs [2.87](#) to [2.89](#).
- 12.142 We consider that what is needed is a very senior judge at the level of the Court of Appeal appointed to lead the existing body of High Court Judges who presently exercise the responsibility for Wales as Presiding Judges, Supervising Judges, Liaison Judges and President of Welsh Tribunals. The appointment of a judge at the level of the Court of Appeal is necessary to reflect in Wales a relationship between the judiciary and the Welsh Government and the Assembly which is appropriate for the constitutional position that exists in Wales under the current scheme of devolution. It is too heavy a burden for the Lord Chief Justice to carry out in addition to the other significant responsibilities of that office. The Lord Justice appointed to this role for a period of time

1180 [Para 4.31.](#)

1181 [Para 12.36.4.](#)

1182 [Para 7.106.](#)

should have the experience and skills to engage on a regular basis with the Assembly and the Welsh Government and establish working relationships such as those that have been developed between the senior judiciary, the Departments in Whitehall and the UK Parliament. That would ensure that modernisation of the justice system is geared to meet the needs of Wales, to support the local professions, to provide the appropriate judicial voice in the justice system and to ensure the justice function benefits the people of Wales.

12.143 The Lord Justice would also be responsible for ensuring that the Court of Appeal sits regularly in Wales and that its sittings are published well in advance¹¹⁸³.

12.144 We envisage the appointment being made by the Lord Chief Justice of England and Wales after consultation with the First Minister and the Lord Chancellor.

12.145 In both Northern Ireland and Scotland with their separate judiciaries the standing of a very senior judge has made a very considerable difference to the quality and operation of their justice systems.

We recommend:

The organisation of the senior judiciary in Wales should be changed to provide the necessary working relationships and leadership within Wales.

1183 [Para 4.163](#).

3. The position of the judiciary with legislative devolution

12.146 We next turn to consider our recommendations in relation to the judiciary under legislative devolution. There are in effect two options – a continuation of the system as we have recommended it be reformed, and the development of a separate judiciary for Wales for the courts up to the level of the Court of Appeal and a similar development in respect of tribunals.

a) The retention of the existing system

12.147 One of the considerations has been the issue relating to leadership and the retention of the ablest lawyers in Wales, a subject we have considered more generally at paragraphs 12.124 and following. Concerns expressed to us were that if a separate judiciary was established some legal professional talent would go to London. Wales would lose the benefit of the expertise it enjoys from London-based judges. Wales would have a lower quality judiciary compared with the current system. Wales would be too small to produce enough judges of sufficient quality.

12.148 Further, it was argued that the continuation of legal professional practice on an England and Wales basis, as recommended at paragraph 12.133, may mean that the most able, particularly at the Bar, would continue to be attracted to practise in London as there is more high value and interesting work.

12.149 Judicial appointment might be sought by such practitioners in England, if there was a separate Welsh judiciary, as the work would be more interesting than in Wales. Concern was also expressed that if the best did not join a Welsh judiciary, then more legal work could go outside Wales. In the law relating to property and business, litigants would agree jurisdiction clauses under which disputes would be determined in London.

- 12.150 Similar arguments have been made in the past against entrusting functions to Wales. When arguing against the establishment of a Secretary of State for Wales on the lines of the Scottish Secretary of State in 1946, a Cabinet paper drafted by Herbert Morrison argued that administration in Wales would deteriorate in quality. “*Wales could not carry a cadre of officials of the highest calibre and the services of high English Officials would no longer be available*¹¹⁸⁴”.
- 12.151 Likewise some of the arguments were raised in strikingly similar terms before the Sub-Committee on the Judiciary of the Speaker’s Conference on Home Rule in 1920-21 – including the argument that there would always be the “*tendency for the aspiring lawyer to come where the biggest prizes are offered*¹¹⁸⁵”.
- 12.152 In the light of what has happened over the last 30 years, particularly in respect of the strength and range of work for the Bar in Wales, we accept there is a risk of some further loss of able practitioners were Wales to seek to establish its own judiciary.

b) A separate judiciary for Wales

- 12.153 However strong those considerations are, we have come to the view that, in the context of legislative devolution of justice functions, a separate judiciary up to the level of the Court of Appeal should be established in Wales.
- 12.154 There are a number of considerations that have led us to this view. Amongst the more important are;

1184 Morrison, H. *Cabinet paper on the Administration of Wales and Monmouthshire*; cited in Morgan, K O (1981) *Rebirth of a Nation Wales 1880-1980*: 377.

1185 Sir Claud Schuster, *Permanent Secretary to the Lord Chancellor 1915-1944*. A summary is set out in the Lord Morris of Borth y Gest Lecture 2000 (1 *Welsh Legal History Review* 113); see further, Evans, A (2016) *Wales as Nation or Region? The Conference on Devolution’s Judiciary Sub-Committee, 1919-20*. 28 *Welsh History Review* 146.

- 12.154.1 We have been impressed by the strong leadership provided in Northern Ireland by the Lord Chief Justice of Northern Ireland and in Scotland by the Lord President. Similar arrangements should prevail in Wales. This is essential to the overall independence of the justice system and its effective operation and to a proper balance between the executive, legislative and judicial branches of government. In our view, this is an essential aspect of good governance for the people of Wales under a democratic model of government.
- 12.154.2 Under legislative devolution of justice, leadership by a Chief Justice of Wales offers a more robust and secure long-term solution, as well as solid advantages in terms of central positioning and scope for innovation, and wider engagement and visibility in the Welsh polity.
- 12.154.3 The law which is developing in Wales and the system in which it is developed will continue to differ from that in England and that pace will increase with legislative devolution. A particularly important factor would in all likelihood be a sentencing regime in Wales with a different approach to that in England.
- 12.154.4 The legal work that would be generated in Wales, though not of the value that could be obtained in London, would be of sufficient interest and quality to attract the most able.
- 12.154.5 The leadership and development of a legal system and law based on different principles particularly as regards sustainability, future generations and the standards of international conventions would be positively attractive to those wishing to become judges as part of their interest in public service.
- 12.154.6 The increased demands of judicial management of cases and for modernisation, and the growing impact of new technologies on legal practice and procedure, require more agile judicial leadership in the conditions of small nation governance.

- 12.155 In the light of democratic devolution, it is appropriate for Wales to join the great common law family of state and sub-state systems in having matching legislative and executive and judicial branches of government.
- 12.156 A separate judiciary would require an independent method of judicial appointment, discipline and removal. The appointment system should draw from as wide a field as possible, to ensure a high quality and diverse range of candidates.
- 12.157 A separate Welsh judiciary could be created either immediately on the coming into force of legislative devolution or by setting out in the Act of the UK Parliament a mechanism through which the Welsh Assembly could decide at a future point in time to establish a separate judiciary.
- 12.158 We would on balance favour the second course, as it would enable the Assembly to choose the appropriate time to establish a separate judiciary based on the considerations which have led us to recommend the establishment of a separate judiciary in the context of legislative devolution.
- 12.159 The establishment of a separate judiciary would properly involve a High Court and a Court of Appeal along the lines of Northern Ireland, although we envisage the new High Court of Wales initially being formed of a Chief Justice and several senior judges in charge of criminal, civil, family and administrative law. A Court of Appeal could be formed by the High Court judges with a President of the Court of Appeal presiding.

We recommend:

Legislation should provide for a High Court and a Court of Appeal of Wales to be established by the Assembly.

4. Integrated system of courts and tribunals

12.160 With the establishment of a separate judiciary for Wales, we would recommend that the courts and tribunals be merged into a single structure for the reasons we have outlined at paragraphs [5.56](#) and [6.60](#), save possibly for those UK tribunals which administer UK or GB law, which are for immigration, social security and employment law. These would remain as at present part of the UK or GB system. We cannot make a firm recommendation about this exception as the experience in Scotland of merging these tribunals needs to be evaluated when the merger is completed.

5. Wales and the Supreme Court

12.161 Given the present composition of the UK Supreme Court, the emerging position of the UK Supreme Court as a Constitutional Court particularly in relation to devolution¹¹⁸⁶ and the development of the law in Wales described throughout our report, 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. The judge should not only have knowledge of and experience of practice in Welsh law, but also knowledge of and practical experience of the operation of the scheme of devolution for Wales as well as an understanding of Wales as a distinct part of the United Kingdom with its own government and legislature.

We recommend:

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.

¹¹⁸⁶ *The position of the Supreme Court as a Constitutional Court is considered by Lord Reed in his Bentham Association Lecture 2019, (University College London, March 2019): The Supreme Court 10 Years On. The three Welsh constitutional cases are referred to at footnote 168.*

6. The administration of the courts and tribunals

- 12.162 As we have explained at paragraph [6.59.1](#) we have recommended that the administration of the Welsh tribunals should be organised along the lines of the Scottish model. Looking forwards, the Welsh tribunals and their administration should be seen and treated as part of Wales' own emergent judicial system.
- 12.163 Consideration should be given under the current scheme of devolution to bring together all the courts and tribunals that sit in Wales, including Welsh tribunals. As HMCTS is established and governed by a framework agreement between the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals, it should be possible to create under similar arrangements a court and tribunal service for Wales by agreement between the Lord Chancellor, First Minister, Lord Chief Justice, the Senior President of Tribunals and the President of Welsh Tribunals with specified responsibilities for courts and tribunals that sit in Wales.
- 12.164 With legislative devolution of justice functions and the establishment of a separate judiciary for Wales, the Welsh Tribunals Unit redesigned to follow the Scottish model would be the basis for a Welsh court and tribunal service. This would be judicially led, with a Chief Executive accountable to a board with legal professional, business and lay membership chaired by a senior judge. Within the budget set by the Welsh Government and approved by the Assembly, the Welsh Tribunals and Courts Service would have freedom to manage its buildings, staff and systems. This would allow it to decide on matters such as the future location of court / tribunal buildings and the development of simpler, online procedures, based on an assessment of priorities in the light of local needs.
- 12.165 This model of administration service would be able to tailor its services to our recommendations for the integration of the court and tribunal system by the Assembly so that, for example, housing issues are dealt with by a single judicial body.

We recommend:

With legislative devolution, a Welsh Courts and Tribunals Service should be developed from the base of a Welsh Tribunals Unit reformed on the model of the Scottish Courts and Tribunals Service.

7. The infrastructure that supports justice

12.166 We use the term “justice infrastructure¹¹⁸⁷” to encapsulate the large-scale mix of bodies that have an ancillary role in supporting the delivery of justice as set out in Appendix D. The justice infrastructure in England and Wales is much larger than in Scotland and Northern Ireland. The Ministry of Justice currently works with 34 agencies and public bodies, the Home Office with 30 and the Attorney General’s Department with four.

a) Policing and probation

12.167 Although we have addressed the question of police governance at paragraphs [12.98](#) and onwards, there is a need to consider the position of a number of organisations intrinsically linked with policing that would be affected by legislative devolution¹¹⁸⁸. The bodies concerned with national security, such as the Security Services and the National Crime Agency, would not be directly affected by devolution. Similarly, the Civil Nuclear Constabulary, Ministry of Defence Police, Serious Fraud Agency, British Transport Police, National Police Air Service and statutory Commissioners for UK wide regulation, such as the Investigatory Powers Commissioner, would not be directly affected. Consideration would need to be given to certain other bodies referred to in paragraph [4.84](#), in particular the arrangements for inspection and investigation.

12.168 Police forces are inspected by Her Majesty’s Inspectorate of Constabulary and Fire and Rescue Services and investigated by the Independent Office for Police Conduct. Whilst those arrangements are valuable and could be continued, there would also be an opportunity to do something different. There are two alternatives which should be considered.

1187 *Le Sueur, A (2015) The Foundations of Justice, in Jowell J. et al (eds) (2015) The Changing Constitution.*
1188 *WS102 Police Superintendents’ Association: 3.*

- 12.169 The Welsh police forces work closely with devolved public bodies. The first approach might be one which provides a focus on the entirety of the public service and criminal justice system response to an incident or crime. An example of this would be the public protection arena where the police service activity is closely aligned with the work of social services, health and often education. Whilst we received evidence from Her Majesty's Chief Inspector of Constabulary and Fire and Rescue Services, Sir Tom Winsor¹¹⁸⁹ that his inspectorate works with devolved inspection regimes there is potential, with legislative devolution, that a Welsh Policing Inspectorate could be developed. This would have the advantages of fully understanding the devolved public service environment and of maximising the links with other devolved inspection arrangements. There would even be potential for a single Welsh public service inspectorate (as the work of the police is so closely aligned with their devolved partners).
- 12.170 A second approach under legislative devolution of justice would be a joint inspectorate of criminal justice, drawing as Northern Ireland does on the expertise of the separate inspectorates of Police and Prisons in England and Wales, which we have discussed at paragraph [4.168](#). However, in any such joint inspectorate it would be vital to safeguard the distinctive responsibilities of HM Inspectorate of Prisons in terms of monitoring and reporting on the way in which the human rights of those detained are being respected. In the light of our recommendations about offender rehabilitation, it would also be for consideration how this might affect the remit HM Inspectorate of Probation.
- 12.171 Similarly, the arrangements for the Independent Office for Police Conduct could be delivered in a different way. Whilst we have had evidence¹¹⁹⁰ that the focus of Independent Office for Police Conduct investigations is moving from an adversarial one to one of learning lessons, there is a real opportunity for a lessons learned approach to become the method of operating for investigating activities of the Welsh Police forces. Such a move would mirror the approach adopted in the aviation and medical sectors.

1189 OE018 Sir Thomas Winsor : 2.

1190 OE019 Police Associations.

12.172 As with the suggestions made for the Inspectorate, the arrangements for the Independent Office for Police Conduct could be closely aligned with the wider Welsh public service investigation and inspection regime or with the criminal justice system. We make no specific recommendations on inspection and investigation, since we regard these as matters to be decided in Wales following legislative devolution.

12.173 As a further example, the relationship of the Welsh police to the College of Policing would need to be reviewed with legislative devolution. In all these cases, it will be crucial to ensure effective systems are in place that maintain interoperability with policing throughout the United Kingdom.

b) A prosecution service

12.174 With legislative devolution of justice to Wales, then (as the Silk Commission pointed out) it would be for the Assembly to decide whether to establish a single independent prosecution service for Wales. Such a service would properly operate under the arms-length supervision of the Counsel General to ensure that decisions on prosecution were made independently of any political or governmental influence. With a separate judiciary for Wales it would be expected that a prosecution service for Wales be established.

c) Other bodies

12.175 Legislative devolution will require the Welsh Government and the Assembly to consider whether to invite other bodies to continue to provide services to Wales or to establish Welsh bodies. Appropriate criteria in deciding how to proceed would include the scale of the institution and the relative costs of establishing a new body; the scope for merging bodies in Wales; the requirement for specific knowledge and expertise, either in a particular field or in relation to Wales; and the volume of work required to make an organisation viable. Some bodies could be invited to continue to provide for Wales, for example the Law Commission and the Criminal Cases Review Commission.

12.176 These are important matters. However, decisions on them can only follow the principal decisions on governance and devolution. For example, the implications for judicial bodies¹¹⁹¹ would fall to be considered at the point when the creation of a separate Welsh judiciary was being contemplated.

We recommend:

With legislative devolution, the Welsh Government will need to review, and keep under continuing review, the justice infrastructure for Wales.

1191 *The Judicial Appointments Commission, Judicial Appointments and Conduct Ombudsman, Judicial College, Judicial Conduct and Investigation Office, Judicial Office.*

Part 6: Independence of the justice system: Wales as a just, equal and diverse nation

1. Safeguarding the independence of the institutions of justice and their accountability

- 12.177 Whilst it is essential that the judiciary and other institutions have an interdependent relationship with the Welsh Government and the Assembly (as we have discussed at paragraphs [12.138](#) and following) it is of fundamental importance that the institutions of justice in Wales are, and are seen to be, independent. Welsh Ministers are currently subject to the duty under section 3(1) of Constitutional Reform Act 2005 – “*all with responsibility for matters relating to the judiciary or otherwise to the administration of justice must uphold the continued independence of the judiciary*”. However, there are specific references to Scotland and Northern Ireland, which each have their own legislation regarding judicial independence. With legislative devolution of justice, it would be essential for the Assembly to pass an Act equivalent to the Judiciary and Courts (Scotland) Act 2008.
- 12.178 In the case of the judiciary and the prosecution authority, their independence must be absolute. Their accountability is, in the case of the courts, public decision making with an appellate structure. The decisions of a prosecutor are subject to judicial review. Both the judiciary and the prosecution authorities have an explanatory accountability by the provision of annual reports to Parliament. The President of Welsh Tribunals reports annually to the Assembly.
- 12.179 In the case of the police, they must have full operational independence. This includes full independence in relation to their prosecution decision making both as regards policy and individual cases. The accountability of the Chief Constable for such decisions should remain as at present through judicial review as a requirement of the Rule of Law and as a means of ensuring uniform application across Wales, unless differences are objectively justifiable.

2. Wales as a just, equal and diverse nation

a) Diversity

12.180 Justice in Wales should be for the people of Wales. A focus of this approach would be to address the current inequalities in the justice system with regard to Black, Asian and Minority Ethnic groups, women, LGBT people, disabled people and those on low incomes or subject to other economic disadvantages. These inequalities need to be tackled with greater determination. We welcome the initiatives the Welsh Government has taken with respect to hate crime. We also welcome the work undertaken as a result of Welsh legislation aimed at tackling violence against women, sexual violence and domestic abuse. We have highlighted some of the further steps which are necessary:

- 12.180.1** Alternatives to custody for women convicted of offences, particularly those with caring responsibilities, should be developed – see paragraphs [4.271](#) and following.
- 12.180.2** Research to establish the underlying causes of the over-representation of people from Black, Asian and Minority Ethnic backgrounds in the justice system in Wales¹¹⁹².
- 12.180.3** Increased support for front line services to support individuals suffering from mental ill health, to avoid the need for them to come into contact with the justice system.
- 12.180.4** Apprenticeships in the police and legal professions (see paragraphs [4.131](#) and [9.51](#)). There should be an emphasis on seeking to attract recruits from under-represented groups and those from more deprived socio-economic areas.
- 12.180.5** Steps should be taken to raise awareness in Wales of entitlements to legal aid and other available advice, as well as contributing evidence about where eligibility thresholds should be set and supporting pilots to establish the most effective means of delivering early advice on issues such

1192 [Para 4.76.](#)

as welfare benefits and housing problems (see paragraphs [3.66.3](#) and [3.66.4](#)). This need not await the establishment of an independent body.

12.180.6 HMCTS should publish its audit of the accessibility of courts in Wales to allow scrutiny of priorities for investment.

12.180.7 Providing support for the use of digital services for those who are not able to use a digital system, as we have suggested at paragraph [8.13](#).

b) Fairness and equality

12.181 With legislative devolution of justice, the Welsh Government and the Assembly should make significant reforms which would make a material contribution to Wales being a just, equal, diverse and prosperous nation. We have already explained the contribution that could be made, but the following is a summary:

12.181.1 The provision of advice and legal aid to enable people in Wales to access support at an earlier stage and avoid the need for court proceedings – see paragraph [3.66](#).

12.181.2 A scheme for ombudsmen services to deal with the majority of small civil disputes – see paragraph [5.57](#).

12.181.3 Designated courts to adopt a problem-solving approach engaging a range of services to ensure that, where a case has had to come to court, the issues faced by both victims and defendants can be addressed in a holistic way – see paragraph [4.166](#).

12.181.4 Recruitment to the judiciary – see paragraph [12.156](#). This should be mirrored for other appointments in the justice system. The establishment of a strong, distinct legal identity for Wales in terms of both its legislation and its administration of justice would strengthen the appeal to those seeking a career or to build a business in Wales. This could result in new career opportunities for a more diverse range of people.

3. Conclusion

- 12.182 There are both significant needs and significant opportunities to achieve a reformed justice system which is truly integrated into policies for a fair, just and prosperous Wales. We are encouraged by the insights and determination of those who contributed to developing this vision.
- 12.183 There are undeniably serious issues in the way of achieving what we have set out, particularly leadership, capacity, capability and confidence and the retention of the ablest in Wales or the encouragement of their return. However, we believe that these, if fully addressed in the round across the Welsh education system and in government, should not stand in the way of achieving the fundamental and necessary changes we have identified.

Part 7: The implementation and monitoring of our recommendations

12.184 We have made a number of recommendations throughout the report which could be implemented under the current scheme of devolution to the benefit of the people of Wales. Many of the recommendations however will require legislation of the UK Parliament.

12.185 It would be unacceptable and a wrong to the people of Wales to fail to reform the justice system as it currently operates.

12.186 A start needs to be made immediately. The Welsh Government should set out its list of the recommendations it will seek to implement under the current scheme of devolution. We would hope and expect that the Home Office and the Ministry of Justice would work with the Welsh Government to implement those recommendations.

12.187 The Assembly should be closely involved in the ongoing process of reform. We envisage a small committee being formed to monitor on an open and transparent basis the implementation of the recommendations under the current scheme of devolution and review on a regular basis the progress that is being made towards implementing the recommendations that require legislation of the UK Parliament.

We recommend:

The Welsh Government should begin the process of reform by listing the recommendations it will seek to implement whilst the current scheme of devolution continues. The Assembly should make arrangements to monitor and review the process of reform.



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APPENDIX B

Expert contributors

We would like to thank the following for their particular assistance to the Commission in the consideration of its report:

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Ruth Henke QC

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Umar Hussain MBE

Director of Finance, South Wales Police

Guto Ifan

Wales Governance Centre

Dr Robert Jones

Wales Governance Centre

Sir James Munby

Chair of the Nuffield Family Justice Observatory and former President of the Family Division (retired in 2018)

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Commissioners' biographies

Lord Thomas of Cwmgiedd, Chair of the Commission on Justice in Wales

Lord Thomas was appointed as the Lord Chief Justice of England and Wales in 2013 and retired in October 2017. He was called to the Bar in 1969 and became a Queen's Counsel in 1984. He was appointed an Assistant Recorder in 1984, a Recorder in 1987 and a High Court judge in 1996. His other senior judicial leadership roles include Presiding Judge of the Wales and Chester circuit, Senior Presiding Judge for England and Wales, Vice-President of the Queen's Bench Division and President of the Queen's Bench Division. He is Chancellor of Aberystwyth University, Chairman of the Financial Markets Law Committee and President of the Qatar International Court.

Simon Davies

Mr. Davies was most recently the Chief People, Legal and Strategy Officer and a member of the Executive Committee of Lloyds Banking Group, following 25 years at Linklaters, one of the leading global law firms and the last eight of those years as Firmwide Managing Partner. He is a Solicitor of the Senior Courts of England and Wales, has practised in Hong Kong and Japan, and is closely involved with fostering relations between the UK and China.

Professor Elwen Evans QC

Professor Evans is one of the UK's leading criminal barristers who led the prosecution in the April Jones murder case and the defence team in the Gleision mine disaster case. She sits as a Recorder at the Crown Court and was appointed Head of the College of Law and Criminology at Swansea University in 2015.

Dr Nerys Llewelyn Jones

Dr Llewelyn Jones is Managing Partner of Agri Advisor in Carmarthenshire, which she founded in 2011 to provide specialist legal and advocacy services to farmers, landowners and people living in rural areas. She has first-hand knowledge of the farming industry and a PhD in Sustainable Agriculture and its Implementation at an International, European and regional level. She is an accredited mediator and a fellow of the Agricultural Law Association.

Juliet Lyon CBE

Ms. Lyon is a Visiting Professor at the School of Law, Birkbeck, University of London and Chair of the Independent Advisory Panel on Deaths in Custody. She is a member of the Advisory Council of the Winston Churchill Memorial Trust. Previously she was Director of the Prison Reform Trust and Secretary General of Penal Reform International. She had a lead role on women's justice as a Commissioner of the UK Women's National Commission.

Sarah Payne CBE

Ms. Payne's former roles include Director for the National Offender Management Service in Wales, Chief Executive of the Wales Probation Trust and Chair of the All Wales Criminal Justice Board. She now works as an independent advisor on health, security and social justice matters and was a member of the advisory panel for the Lammy Review which recently reported on the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System.

Professor Rick Rawlings

Professor Rawlings is Professor of Public Law at University College London and Distinguished Honorary Professor at Cardiff University. He has written extensively about Welsh devolution, and on many other aspects of UK and European public law. A former Legal Adviser to the House of Lords Constitution Committee, he is a fellow of the Learned Society of Wales and Honorary Bencher of Middle Temple. He was most recently a Leverhulme Major Research Fellow.

Professor Peter Vaughan QPM

Professor Peter Vaughan was appointed Chief Constable of South Wales Police in 2010 and retired at the end of 2017, after 33 years police service. As Chief Constable he was a vice president of the Association of Chief Police Officers (ACPO) and vice chair of the National Police Chiefs' Council (NPCC). He also chaired the Welsh Chief Officer Group, the Cwm Taf Regional Collaboration Board and the Welsh Joint Emergency Service Group. He was also the national police lead for the service response to the Strategic Policing Requirement. Peter is the Vice Lord Lieutenant for the County of Mid Glamorgan. In January 2018 he became Professor of Policing and Security at the University of South Wales.

Sir Wyn Williams

Sir Wyn was called to the bar in 1974 and became a Queen’s Counsel in 1992. He served as a Recorder until his appointment as a specialist Chancery judge for Wales in 2004. He was appointed a High Court judge in 2007 and assigned to the Queen’s Bench Division. He served as a presiding judge for the Wales Circuit and as Deputy Chairman of the Boundary Commission for Wales, and was appointed the first President of Welsh Tribunals in December 2017.

Members of the Secretariat

Andrew Felton, Secretary to the Commission (December 2017)

Kate Cassidy OBE, retired Director, the Welsh Government (February 2019)

Lauren Cooper, PhD student, Cardiff University (April 2019 – September 2019)

David Gordon, on secondment, Chief Inspector, South Wales Police (March 2018 – February 2019)

Chris James (March 2018)

Nick Johnson (March 2019)

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David Slade (March 2019)

Katherine Thomas (March 2019 – June 2019)

Rhys Thomas, on secondment, Barrister, Iscoed Chambers, Swansea (January 2018)

Martin Wade (October 2018)

The other members of the Secretariat were seconded by the Welsh Government.



APPENDIX C

Principles for recommendations as set out in our call for evidence¹¹⁹³

- i. The centrality of justice to good governance, prosperity and fairness in society in Wales.
- ii. The underpinning of the Rule of Law and the independence of the judiciary.
- iii. The establishment of a robust and sustainable justice system in Wales, one which is characterised by clarity, coherence and, where appropriate, local accountability.
- iv. The delivery of speedy and effective justice in Wales in all types of cases and at proportionate cost.
- v. The proper provision of access to justice across Wales, including proper access to legal advice and to lawyers, taking into account the geography and demography of Wales, the availability of public transport and other services, the adequacy of the digital infrastructure and the significant areas of economic deprivation, both rural and post-industrial.
- vi. The proper coordination and integration of services and support in Wales across all areas of justice, particularly in relation to resolving problems relating to debt, housing and employment, and in reducing offending and rehabilitating offenders.
- vii. The provision of a strong and sustainable legal services sector based in Wales which utilises the most up-to-date technology and which is highly competitive both in expertise and cost.
- viii. The provision of socially inclusive legal and vocational education and training in Wales which meets the needs of people in Wales, is cost effective and is at the forefront of equipping lawyers for modern day practice in a global market.
- ix. The treatment of the English and Welsh languages on the basis of equality.

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<https://gov.wales/sites/default/files/publications/2018-02/180227-commission-justice-wales-call-for-evidence.pdf>

Written evidence

| | |
|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| WS001 | Fiona Wilson Researcher, Glyndŵr University, Wrexham |
| WS002 | Professor Stephen Case Professor of Criminology, Loughborough University |
| WS003 | Kenny MacAskill Cabinet Secretary for Justice, Scotland 2007-2014 |
| WS004 | Ian Winrow Lecturer in Law, Bangor Law School; Practising Solicitor Advocate |
| WS005 | Sentencing Council for England and Wales |
| WS006 | Dr Howard Williamson Professor of European Youth Policy, University of South Wales |
| WS007 | Transform Justice Transform Justice is a national charity working for a fair, humane, open and effective justice system |
| WS008 | Graham Morgan Retired educationalist |
| WS009 | RSPCA |
| WS010 | Wales & Chester Circuit |
| WS011 | AdviceUK AdviceUK is a registered charity supporting the UK's largest network of independent advice services |
| WS012 | Judge's Council Committee for Wales |
| WS013 | Citizens Advice Swansea Neath Port Talbot |
| WS014 | Professor Jonathan Shepherd Crime and Security Research Institute, Cardiff University |
| WS015 | Dr John Deering and Professor Martina Feilzer Dr Deering is Associate Professor, Criminology / Criminal Justice and Youth Justice, University of South Wales Professor Feilzer is Professor in Criminology and Criminal Justice, Bangor University |
| WS016 | Nadine Marshall A Voice for Conner, a campaign by the family of the murder victim Conner Marshall |
| WS017 | Regional Tribunal Judge Anne Curran Regional Tribunal Judge for Wales and South West England for the Social Security and Child Support (SSCS) jurisdiction |

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| WS018 | Crown Prosecution Service The CPS prosecutes criminal cases that have been investigated by the police and other investigative organisations in England and Wales |
| WS019 | Legal Services Board The Legal Services Board is an independent body responsible for overseeing the regulation of lawyers in England and Wales |
| WS020 | Robert Hanratty Hanratty and Co. Solicitors, Newtown, Powys |
| WS021 | Bevan Foundation A think tank specialising in inequality, injustice and poverty in Wales |
| WS022 | Her Majesty's Chief Inspector of Prison (HMCIP) Her Majesty's Inspectorate of Prisons is an independent inspectorate |
| WS023 | Speakeasy An independent advice centre that provides free legal advice in Cardiff |
| WS024 | Professor Peter Raynor Emeritus Research Professor in the Department of Criminology, Swansea University |
| WS025 | Dr Nathan Gibbs Lecturer in Law, Aberystwyth University |
| WS026 | Caerphilly Council Including Blaenau Gwent & Caerphilly Youth Offending Service |
| WS027 | Dr Maurice Vanstone Emeritus Professor in the Department of Criminology, Swansea University |
| WS028 | Disability Wales National association of all disabled people's organisations in Wales |
| WS029 | Welsh Local Government Association The WLGA is a politically led cross party organisation that seeks to give local government a strong voice at a national level |
| WS030 | Institute of Welsh Affairs An independent think tank |
| WS031 | Howard League for Penal Reform The oldest penal reform charity in the UK |
| WS032 | Welsh Refugee Coalition A coalition of organisations working in Wales with asylum seekers and refugees |
| WS033 | Professor Thomas Watkin QC Honorary Professor School of Law and Politics, Cardiff University First Legislative Counsel to the Welsh Government 2007-2010 |
| WS034 | The Magistrates Association |
| WS035 | Youth Offending Team Managers Wales A forum consisting of 17 of the 18 youth offending teams in Wales |
| WS036 | Bar Council |

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| WS037 | Police Federation of England and Wales |
| WS038 | Swansea County Council |
| WS039 | Youth Justice Board for England and Wales |
| WS040 | Plaid Cymru |
| WS041 | Solicitors Regulation Authority |
| WS042 | Dr Jonathan Evans Professor of Youth Justice Policy and Practice, University of South Wales |
| WS043 | Unison |
| WS044 | Thompsons Solicitors Thompsons Solicitors is a UK-wide law firm with a network of offices across the UK, including Scotland and Northern Ireland. |
| WS045 | Dr Robert Jones Lecturer, Criminology, University of South Wales and Wales Governance Centre, Cardiff University. |
| WS046 | Shelter Cymru Wales' people and homes charity |
| WS047 | Helen Hodges PhD Student, Hillary Rodham Clinton School of Law, Swansea University |
| WS048 | Welsh Government |
| WS049 | Mair Williams Mair Williams Solicitors, Aberystwyth |
| WS050 | Stephen Carr Safer Communities Programme Manager, Welsh Local Government Association |
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| WS052 | Professor Keith Bush QC Honorary Professor, Hillary Clinton School of Law, Swansea University |
| WS053 | Judicial Appointments Commission |
| WS054 | Isle of Anglesey County Council |
| WS055 | Association of Directors of Social Services (ADSS Cymru) Professional and strategic leadership organisation for social services in Wales |
| WS056 | Prison Reform Trust Independent UK charity working to create a just, humane and effective penal system |
| WS057 | Welsh Women's Aid National charity in Wales working to end domestic abuse & all forms of violence against women |
| WS058 | Citizens Advice Wales |

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| WS059 | Bob Chapman Chair, National Advice Network Wales 2015-2018 |
| WS060 | Osian Roberts Partner, Guthrie Jones and Jones Solicitors, Denbigh |
| WS061 | Welsh Government - Economy and Transport |
| WS062 | Her Honour Judge Mererid Edwards Welsh Language Liaison Judge |
| WS063 | Civil Justice Council |
| WS064 | Meri Hughes Welsh Language Commissioner 2012-2019 |
| WS065 | Dr Amanda Clare and Dr Catrin Fflur Huws Dr Clare is a Senior Lecturer in Computer Science and Dr Huws is a Senior Lecturer in Law, Aberystwyth University |
| WS066 | Nick Bennett Public Services Ombudsman for Wales Investigates complaints from members of the public about alleged maladministration and service failure by the bodies which are listed in Schedule 3 to the Public Services Ombudsman (Wales) Act 2019 |
| WS067 | Bangor Law School Public Law Research Group Dr Sarah Nason, Lecturer in Administrative Law and Jurisprudence; Stephen Clear, Lecturer in Constitutional and Administrative Law, and Public Procurement Law; Dr Hayley Roberts, Lecturer in Public International Law; Aled Griffiths, Lecturer in Law |
| WS068 | Chartered Institute of Legal Executives |
| WS069 | National Association of Probation Officers Cymru |
| WS070 | Professor Iolo Madoc-Jones, Dr Wulf Livingston and Dr Caroline Hughes Professor Madoc-Jones is Professor of Criminal and Social Justice, Dr Livingston is a Reader in Social Science and Dr Hughes is Associate Dean, Faculty of Social & Life Sciences; Senior Lecturer, Criminal Justice, Wrexham Glyndŵr University |
| WS071 | SNAP Cymru A charity providing information, advice and support for parents, children and young people who have, or may have, special educational needs or disabilities |
| WS072 | Association of Judges of Wales |
| WS073 | Professor Richard Owen Professor of Legal Studies, Hilary Rodham Clinton School of Law, Swansea University |
| WS074 | Professor Penny Darbyshire Retired professor at Kingston University and adjunct professor at the University of Notre Dame, Indiana, London Law Centre |
| WS075 | Sophie Howe, Future Generations Commissioner for Wales |
| WS076 | Welsh Chief Constables |
| WS077 | Dr Simon Hoffman Associate Professor in Law, Co-coordinator Observatory on Human Rights of Children, Hilary Rodham Clinton School of Law, Swansea University |

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| WS078 | Presbyterian Church of Wales |
| WS079 | Families Need Fathers, Both Parents Matter Cymru Charity offering help and support for separated families |
| WS080 | Law Commission |
| WS081 | Support Through Court The Support Through Court helps litigants in person to represent themselves through the civil and family courts |
| WS082 | False Allegations Support Organisation UK A voluntary organisation dedicated to providing support to anyone affected by a false allegation of abuse in the UK |
| WS083 | Law Society of England and Wales |
| WS084 | The Wallich Centre A Welsh homelessness charity |
| WS085 | Professor Luke Clements Professor of Law and Social Justice, University of Leeds |
| WS086 | Professor Jane Williams Lead on Innovation and Engagement, Hillary Rodham Clinton School of Law, Swansea University |
| WS087 | Arfon Jones Police and Crime Commissioner for North Wales |
| WS088 | Equality and Human Rights Commission |
| WS089 | Swansea University Miscarriage of Justice Project A project run by the Swansea University Legal Centre, located at the Hillary Rodham Clinton School of Law |
| WS090 | Swansea University Law Clinic The Clinic is a pro bono service and has been operating since March 2017 |
| WS091 | Universities' Police Science Institute at Cardiff University |
| WS092 | Bangor Law School |
| WS093 | Tom Jones OBE Former Legal Aid Commissioner |
| WS094 | Jeff Cuthbert Police and Crime Commissioner for Gwent |
| WS095 | LawWorks LawWorks (the Solicitors Pro Bono Group) is a charity which aims to promote, support and facilitate pro bono legal services |
| WS096 | University of South Wales Law School |
| WS097 | TA LAW, Swansea TA LAW is a firm of social welfare lawyers |
| WS098 | Hafal Hafal is a charity which speaks for people in Wales with a serious mental illness |

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| WS099 | Professor Kate Williams Professor in Criminology, University of South Wales and Welsh Centre for Crime and Social Justice |
| WS100 | Robert Thomas Registered intermediary |
| WS101 | Professor Richard Percival Professor of Criminal Law and Practice (Law Reform) at Sheffield University |
| WS102 | Police Superintendents' Association of England and Wales |
| WS103 | Huw Williams Vice Chairman and Partner, Geldards Law firm until 2019. Chief legal advisor to the National Assembly for Wales Commission from July 2019 |
| WS104 | Independent Office of Police Conduct The Independent Office for Police Conduct oversees the police complaints system in England and Wales |
| WS105 | Justice An all-party law reform and human rights organisation working to strengthen the justice system |
| WS106 | Criminal Cases Review Commission |
| WS107 | Cardiff Law School |
| WS108 | JNP Legal A law firm with offices in Merthyr Tydfil, Nelson and Cardiff. |
| WS109 | Dr Tom Hannant Lecturer in Law, Hilary Rodham Clinton School of Law, Swansea University |
| WS110 | Archbishop of Wales , the Most Reverend John Davies |
| WS111 | The Right Honourable Alun Michael Police and Crime Commissioner for South Wales |
| WS112 | Caswell Jones Solicitors Law firm based in Caerphilly |
| WS113 | Enhanced Harm Reduction Group for Wales A submission from the Transform Drug Policy Foundation, Barod, Kaleidoscope, Huggard Centre, Release, the Wallich, the North Wales Police and Crime Commissioner, and Professor Katy Holloway at the University of South Wales |
| WS114 | Kaleidoscope Charity supporting those with drug, alcohol and mental health |
| WS115 | Constitutional and Legislative Affairs Committee, National Assembly for Wales |

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| WS116 | Welsh Language Tribunal |
| WS117 | Gorwel – The Welsh Foundation for innovation in Public Affairs Independent Welsh think-tank |
| WS118 | Stephen Whale Former Clerk to the Justices and Secretary to the Advisory Committees for Wales |
| WS119 | Ann Sherlock Senior Lecturer in Law, Aberystwyth University |
| WS120 | David Gardner Barrister and Administrative Court Office Lawyer for Wales 2009 – 2017 |
| WS121 | Why Me? Why me? is an independent charity that campaigns to promote restorative justice for the benefit of victims of crime |
| WS122 | Nick Jones Traffic Commissioner for Wales |
| WS123 | Professor Nick Fyfe Dean of Social Sciences and Scottish Institute for Policing Research |
| WS124 | Elliott Ash Assistant Professor of Economics, University of Warwick |
| WS125 | Joint Standing Committee for Legal Education in Scotland A non-statutory body that brings together all the key stakeholders in relation to legal education and training in Scotland |
| WS126 | Early Action Together programme A multi-agency partnership between public health and policing in Wales, funded by the Home Office Police Transformation Fund |
| WS127 | The Parole Board |
| WS128 | Public Law Wales A specialist association established as part of the legal profession in Wales' response to devolution. |
| WS129 | Professor T.H. Jones Professor of Public Law, Hillary Rodham Clinton School of Law, Swansea University |
| WS130 | Public Law Project Public Law Project is a national UK charity committed to helping poor and marginalised communities through the application of public law principles |
| WS131 | Riverside Advice Welfare rights advice service based in Cardiff |
| WS132 | Professor Alan Paterson OBE Director, Centre for Professional Legal Studies, Strathclyde University |

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| WS133 | Emyr Lewis Senior partner in Wales for Blake Morgan LLP until 2019. Head of Department of Law and Criminology, Aberystwyth University from September 2019 |
| WS134 | Dr Brian Jack Director of Education, School of Law, Queen's University, Belfast |
| WS135 | Professor Gordon Anthony Professor of Public Law, School of Law, Queen's University of Belfast; Barrister |
| WS136 | Baroness Newlove Victims' Commissioner 2012 – 2019 |
| WS137 | Clinks The national infrastructure organisation supporting voluntary sector organisations working in the criminal justice system in England and Wales |
| WS138 | Good Things Foundation A charity and the UK's leading digital inclusion organisation |
| WS139 | Advice Mid Wales - Bro Ddyfi Advice Centre An impartial, free, confidential advice service based in Machynlleth |
| WS140 | Welsh Government – Education and Employment |
| WS141 | Welsh Government – Family Justice |
| WS142 | Welsh Government – Law and Constitution |
| WS143 | Welsh Government – The Role of Legal Services and the Legal Profession in the Welsh Economy |
| WS144 | Welsh Government – Supplementary Paper from the Cabinet Secretary for Local Government and Communities |
| WS145 | Professor R. Gwynedd Parry Department of Welsh, Academi Hywel Teifi, Swansea University |
| WS146 | Norfolk Community Law Service Free service meeting unmet legal need in Norfolk |
| WS147 | Theo Huckle QC Head of Clinical negligence and Personal Injury Team and Doughty Street Chambers, Counsel General for Wales 2011-2016 |
| WS148 | Welsh Government – Access to Justice and Human Rights |
| WS149 | Dr Joe Tomlinson Lecturer in Public Law, King's College London; Research Director, Public Law Project |
| WS150 | Bawso Specialist support provider for people in Black, Asian and Minority Ethnic communities affected by domestic abuse and violence against women |
| WS151 | Dafydd Llywelyn Police and Crime Commissioner, Dyfed Powys |
| WS152 | MEEE – My Education Employment Enterprise Employment programme provider – pilot HMP Berwyn |

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| WS153 | Ruth Henke QC Head of 30 Park Place, specialist barrister in family law |
| WS154 | Jamie Grundy – Licence to Learn Independent trainer and educator |
| WS155 | Public Law Project and Dr Sarah Nason, Bangor Law School An independent national legal charity |
| WS156 | Melanie Hamer Director, Wendy Hopkins Family Law Practice, Cardiff |
| WS157 | Scottish Law Commission |
| WS158 | Legal Advice Centre (University House) Advice provider based in London |
| WS159 | CJCH solicitors Law firm with offices in Cardiff, Bristol, Bridgend, Barry and London |
| WS160 | Avon and Bristol Law Centre The Law Centre provides legal advice in Employment, Discrimination, Public Law, Mental Health, Housing, Immigration (including Asylum) and specialist Welfare Benefits. In Wales the Law Centre works with children and young people who are asylum seekers. It also provides mental health tribunal representation to patients detained in hospitals in Wales |
| WS161 | Dr Daniel Newman Senior Lecturer in Law, Cardiff University |
| WS162 | British Transport Police |
| WS163 | Mark Layton Senior Coroner for Carmarthenshire and Pembrokeshire, on behalf of the Senior Coroners in Wales |
| WS164 | Dr Chris Marshall Director, Knowledge Economy, Hillary Rodham Clinton School of Law, Swansea University |
| WS165 | Professor Michael Draper Director Swansea Academy of Inclusivity and Learner Success, Hillary Rodham Clinton School of Law, Swansea University |
| WS166 | Professor Roger Smith OBE Professor of Law at London South Bank University and an honorary professor at the University of Kent |
| WS167 | Anna Barlow Researcher, Department of Law, Åbo Akademi University, Finland |
| WS168 | Dr Marie Burton Lecturer in Law, Middlesex University |
| WS169 | Cathedral Chambers, Newport |

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| WS170 | His Honour Judge Jarman QC Chancery Judge for Wales – Business and Property Courts Administrative (including Planning) Court; His Honour Judge Harrison Designated Civil Judge for Wales; Her Honour Judge Edwards Family Judge, Welsh Language Liaison Judge; District Judge James Welsh Language Liaison Judge, Wales Training Judge |
| WS171 | Dr Sophie Chambers Lecturer in Criminology and Criminal Justice. University of South Wales |
| WS172 | Chief Fire and Rescue Advisor and Inspector Wales (CFRAIW) |
| WS173 | Professor Ruth Costigan Professor of Legal Studies, Hillary Rodham Clinton School of Law, Swansea University |
| WS174 | Dr Jennifer Sigafos and Dr James Organ Lecturers in Law, University of Liverpool |
| WS175 | Welsh Government – Minister for Health and Social Services |
| WS176 | Solicitors Regulation Authority Second submission |
| WS177 | The Law Society of England and Wales Second submission |
| WS178 | Huw Williams Second submission |
| WS179 | Resolver A free and independent support service for UK consumers |
| WS180 | District Judge Hywel James Welsh Language Liaison Judge, Wales Training Judge |
| WS181 | Elin Jones AM, Llywydd, National Assembly for Wales |
| WS182 | Regional Employment Judge Barry Clarke Wales Employment Tribunal |
| WS183 | Clinks Network – Lloyds Bank Foundation The foundation partners with small and local charities to help people overcome complex social issues |
| WS184 | Welsh Government – Minister for Health and Social Services Supplementary submission |
| WS185 | Clinks Network – Pact Group A national charity which supports prisoners, people with convictions and their families |
| WS186 | Winston Roddick CB QC Barrister at 9 Park Place, Cardiff; Counsel General to the National Assembly for Wales 1999-2003; Police and Crime Commissioner for North Wales 2012-2016 |
| WS187 | Riverside Advice Second submission |

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| WS188 | Welsh Government – The Draft Government and Laws in Wales Bill |
| WS189 | Professor Christopher Hodges Centre for socio-legal studies, University of Oxford |
| WS190 | The Law Society of England and Wales Third submission |
| WS191 | Hafal, CAIS and the Morgan Academy A charity which speaks for people in Wales with a serious mental illness; CAIS is a voluntary sector provider of personal support services in Wales; The Morgan Academy is a research based think tank |
| WS192 | Cymdeithas Cyfieithwyr Cymru Cymdeithas Cyfieithwyr Cymru is the only professional association for English/ Welsh translators and interpreters |
| WS193 | Albert Heaney, Director, Social Services and Integration, Welsh Government |
| WS194 | Jonathan Haydn Williams Solicitor and Senior Counsel, Goodman Derrick LLP |
| WS195 | Dr Daniel Newman and Dr Roxanna Dehaghani Lecturers in Law, Cardiff University |
| WS196 | Centre for Justice Innovation A justice reform charity |
| WS197 | Action for M.E. A UK Charity supporting those with M.E. |
| WS198 | Family Rights Group A charity that works with parents whose children are in need, at risk or are in the care system and with wider family who are raising children unable to remain at home |
| WS199 | Swansea & District Law Society |
| WS200 | Huw Williams, Keith Bush QC, Emyr Lewis, Paul Hopkins QC, Jonathan Elystan Rees QC and, Rhodri Williams QC Submission about accommodation for civil justice in Cardiff |
| WS201 | David Fox A diversity practitioner |
| WS202 | Sally Holland, Children’s Commissioner for Wales |
| WS203 | Dr Alyson Rees Senior Lecturer, School of Social Sciences, Cardiff University |
| WS204 | The Right Honourable Mark Drakeford AM, First Minister of Wales |
| WS205 | Jeremy Miles AM, Counsel General and Brexit Minister |

Oral evidence

| DATE | PANEL | | ATTENDEES |
|----------|------------------------------------------------------------|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 15.11.18 | First Minister of Wales | OE001 | The Right Honourable Carwyn Jones AM, First Minister of Wales 2009-2018 |
| 15.11.18 | Counsel General | OE002 | Jeremy Miles AM Counsel General |
| 15.11.18 | Cabinet Secretary for Local Government and Public Services | OE003 | Alun Davies AM Cabinet Secretary for Local Government and Public Services 2017-2018 |
| 10.12.18 | Advice services, third sector and access to justice | OE004 | Bob Chapman – Chair, National Advice Network 2015-2018 |
| 13.12.18 | Education, training and research | OE005 | Professor Iwan Davies – Swansea University Professor Daniel Wincott – Cardiff University |
| 13.12.18 | Education, training and research | OE006 | Dr Catrin Fflur Huws – Aberystwyth University Professor Thomas Watkin QC – Cardiff University |
| 13.12.18 | Education, training and research | OE007 | Dr Anna Donovan – University College London Professor Andrew Murray – London School of Economics |
| 14.12.18 | Advice services, third sector and access to justice | OE008 | Eileen Pereira – Support Through Court Lizzie Iron – Support Through Court Mabel Thompson – Support Through Court Jenny Bibbings – Shelter Cymru John Puzey – Shelter Cymru Fran Targett – Citizens Advice Cymru |
| 18.1.19 | Legal profession | OE009 | Mark Evans – Chair of the Law Society Wales Committee Paul Hopkins QC – Leader of Wales and Chester Circuit Rhodri Williams QC Frances Edwards – Committee member, Chartered Institute of Legal Executives |

| DATE | PANEL | | ATTENDEES |
|---------|--------------------------------------------------------|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 18.1.19 | Legal sector: ethics, competence and access to justice | OE010 | <p>Professor Richard Moorhead – University College London</p> <p>Professor Nigel Savage, former President, University of Law</p> <p>Professor Scott Slorach – University of York</p> |
| 18.1.19 | Professional and clinical education | OE011 | <p>Professor Iolo Madoc Jones- Professor of Criminal and Social Justice at Wrexham Glyndŵr University</p> <p>Dr Wulf Livingstone – Reader in Social Science at Wrexham Glyndŵr University</p> <p>Bronwen Williams – Law Lecturer at University of Wales Trinity St David</p> <p>Hannah Menard– Director of the Legal Advice Clinic at University of South Wales</p> |
| 1.2.19 | Alternative Dispute Resolution | OE012 | <p>Elizabeth Ashford – Monmouthshire Mediation</p> <p>Alyson Houghton – Monmouthshire Mediation</p> <p>Brian Evans – Lanyon Bowdler Solicitors</p> <p>Edward Perkins – Edward JH Perkins Rural Chartered Surveyors</p> |
| 1.2.19 | Family justice | OE013 | <p>Albert Heaney, Director, Social Services and Integration, Welsh Government, and Chair of the Welsh Justice Family Network</p> <p>Nigel Brown, Chief Executive, Children and Family Court Advisory and Support Service (Cafcass Cymru)</p> |
| 1.2.19 | Judiciary | OE014 | <p>Mr Justice Lewis- Presiding Judge of the Wales Circuit</p> <p>Mr Justice Birss – Chancery Supervising Judge for the Midland, Wales and Western Circuit</p> <p>Mr Justice Picken – Presiding Judge of the Wales Circuit</p> |

| DATE | PANEL | | ATTENDEES |
|---------|--------------------------------|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.2.19 | Legal aid | OE015 | <p>Professor Alan Paterson OBE – Director, Centre for Professional Legal Studies at Strathclyde University</p> <p>Anna Barlow – Researcher at Åbo Akademi University, Finland</p> |
| 8.2.19 | Legal professions | OE016 | <p>Julie Brannan – Solicitors Regulation Authority</p> <p>Crispin Passmore – Crispin Passmore Consulting. Former Director of Policy at the Solicitors' Regulation Authority</p> <p>Ewen MacLeod – Bar Standards Board</p> |
| 8.2.19 | Police and Crime Commissioners | OE017 | <p>South Wales PCC – The Right Honourable Alun Michael</p> <p>Gwent PCC – Jeff Cuthbert</p> <p>Dyfed Powys PCC – Dafydd Llywelyn</p> <p>North Wales PCC – Arfon Jones</p> |
| 8.2.19 | Youth justice | OE018 | <p>Keith Towler, Youth Justice Board Member for Wales</p> <p>Lynzi Jarman, Youth Justice Board Director of Innovation and Engagement in Wales</p> <p>Stephen Wood, Service Manager Youth Justice Gwynedd and Ynys Mon</p> |
| 14.2.19 | Police Scotland | OE019 | <p>Chief Constable Iain Livingstone QPM – Police Scotland</p> |
| 14.2.19 | Inspectorate | OE020 | <p>Dame Glenys Stacey – Chief Inspector of Probation</p> <p>Sir Thomas Winsor – Chief Inspector of Constabulary and Chief Inspector of Fire & Rescue Services</p> <p>Peter Clarke CVO OBE QPM – Chief Inspector of Prisons</p> |

| DATE | PANEL | | ATTENDEES |
|---------|----------------------------------------------------------------------------------------|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 14.2.19 | Police Associations | OE021 | Steve Trigg – Police Federation Paul Griffiths – Superintendents Association Tony Brown – Superintendents Association |
| 14.2.19 | Women | OE022 | Anne Fox – Clinks Jenny Earle – Prison Reform Trust Dr Kay Richmond – Soroptimist International GBI |
| 15.2.19 | Chief Constables | OE023 | Chief Constable Matt Jukes QPM – South Wales Chief Constable Carl Foulkes – North Wales |
| 15.2.19 | College of Policing | OE024 | Mike Cunningham – CEO College of Policing |
| 15.2.19 | CPS | OE025 | Barry Hughes – Chief Crown Prosecutor Wales |
| 15.2.19 | HM Courts and Tribunals Service Legal Aid Agency HM Prison and Probation Service | OE026 | Susan Acland-Hood – HM Courts and Tribunals Service HMCTS Shaun McNally CBE – Legal Aid Agency Michael Spurr CB – HM Prison and Probation Service Amy Rees – HM Prison and Probation Service |
| 22.2.19 | Legal practice in Wales | OE027 | Neil Buckley – CEO Legal Services Board Steve Brooke – Head of Policy Development and Research Legal Services Board Professor Angela Devereux – Swansea University Legal Practice Course Eilian Williams – Tudur Owen Roberts Glyn & Co Anne Smith, Harrison Solicitors Alison Stace – Allington Hughes Solicitors |

| DATE | PANEL | | ATTENDEES |
|----------|-----------------------------------|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 22.2.19 | Nearshoring | OE028 | Wayne Harvey – Senior Partner Wales, Deloitte LLP Brian Dolaghan – Business Development Director Invest NI Professor Richard Susskind OBE Peter Lee – CEO Wavelength Law |
| 22.2.19 | Procurement | OE029 | Jonathan Hopkins – Welsh Government Deputy Director Procurement Policy, Innovation and Sustainable Development Carla Lavender – Welsh Government Procurement Services |
| 07.3.19 | Legal jurisdiction and governance | OE030 | Theodore Huckle QC Professor Thomas Watkin QC Sir Stephen Laws |
| 15.03.19 | Legal jurisdiction and governance | OE031 | Emyr Lewis – Blake Morgan. Head of Department of Law and Criminology, Aberystwyth University from September 2019 Chris Nott – Capital Law Kathryn Roberts – Eversheds Sutherland) Alun Jones – Hugh James Solicitors |
| | Legal jurisdiction and governance | OE032 | Huw Williams – Geldards. Chief legal advisor for the National Assembly for Wales Commission from July 2019 Fflur Jones – Darwin Gray Angharad Woodland – Woodland Davies Emyr Jones – Francis Taylor Building |

| DATE | PANEL | | ATTENDEES |
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| 15.03.19 | Administrative justice | OE033 | <p>Professor Sir Adrian Webb – former chair of the Administrative Justice and Tribunals Council, Welsh Committee and Committee for Administrative Justice and Tribunals Wales</p> <p>Ray Burningham – former Chief Executive of the Administrative Justice and Tribunals Council and Secretary to the Committee for Administrative Justice and Tribunals Wales</p> <p>Dr Sarah Nason – Bangor University</p> |
| 21.03.19 | National Assembly for Wales | OE034 | <p>Elin Jones AM – Llywydd of the National Assembly</p> <p>Manon Antoniazzi – Chief Executive and Clerk</p> <p>Elizabeth Jones – Senior Legal Adviser</p> |
| | | OE035 | <p>Mick Antoniw AM, Labour</p> <p>Neil Hamilton AM, UKIP</p> <p>Dr Dai Lloyd AM, Plaid Cymru</p> <p>David Melding AM, Conservative</p> |

| DATE | PANEL | | ATTENDEES |
|----------|------------------------------------------|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 22.03.19 | Equality and diversity | OE036 | <p>Rebecca Hilsenrath – CEO Equality and Human Rights Commission</p> <p>Martyn Jones – CEO of Learning Disability Wales</p> <p>Andrew White – CEO Stonewall Cymru</p> <p>Cerys Furlong – CEO Chwarae Teg</p> |
| | Administrative justice/tribunal | OE037 | <p>Carolyn Kirby – President, Mental Health Review Tribunal for Wales</p> <p>Regional Tribunal Judge Anne Curran – First Tier Tribunal (Social Security and Child Support)</p> <p>Regional Employment Judge Barry Clarke – Wales Employment Tribunal</p> <p>Dr Christopher McNall – President, Agricultural Land Tribunal Wales</p> <p>Richard Payne – President, Residential Property Tribunal Wales</p> |
| | Advice sector (Smaller providers) | OE038 | <p>Denise Inger – SNAP Cymru</p> <p>Barbara Kerridge – Riverside Advice</p> <p>Cyril Breeze Evans – Advice Mid-Wales</p> <p>Warren Palmer – The Speakeasy</p> |
| 29.03.19 | Health, wellbeing and future generations | OE039 | <p>Sophie Howe – Future Generations Commissioner for Wales</p> <p>Janine Roderick – Adverse Childhood Experiences, Public Health Wales</p> <p>Alun Thomas – CEO Hafal</p> <p>Stephen Carr – Welsh Local Government Association, Prevention and Community Safety</p> |

| DATE | PANEL | | ATTENDEES |
|----------|------------------------------------------|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 08.04.19 | Local government | OE040 | <p>Debbie Wilcox – Leader of Welsh Local Government Association</p> <p>Naomi Alleyne – Director, Social Services and Housing</p> <p>Stephen Carr – Welsh Local Government Association, Prevention and Community Safety</p> |
| | Commissioners | OE041 | <p>Aled Roberts – Welsh Language Commissioner</p> <p>Rachel Thomas – Office of the Children’s Commissioner for Wales</p> <p>Steve Bartley – Office of the Older People’s Commissioner for Wales</p> <p>Ruth Marks – CEO Wales Council for Voluntary Action</p> |
| | Ombudsmen | OE042 | <p>Debbie Enever – Financial Ombudsman’s office</p> <p>Professor Christopher Hodges – Professor of Justice Systems, University of Oxford</p> <p>Professor Russel Griggs OBE</p> |
| 09.04.19 | Family justice and looked after children | OE043 | <p>Ruth Henke QC</p> <p>Jake Morgan – Association of Directors of Social Services Cymru lead on the Family Justice Board</p> <p>Andrew Jarrett – Association of Directors of Social Services Cymru lead for children</p> <p>Debbie Jones – CEO of Voices From Care Cymru</p> <p>Gareth Jenkins – Head of Children’s Services at Caerphilly County Borough Council</p> |

| DATE | PANEL | | ATTENDEES |
|----------|----------------------|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 09.04.19 | Heads of law schools | OE044 | <p>Dr Nathan Gibbs – Lecturer, Aberystwyth University Law School</p> <p>Dr Gwilym Owen – Senior Lecturer, Bangor University Law School</p> <p>Professor Urfan Khaliq – Head of Law, Cardiff University</p> <p>Professor Elwen Evans QC – Head of the Hillary Rodham Clinton School of Law, Swansea University</p> <p>Tim John – Head of Law, University of South Wales</p> |
| 19.06.19 | First Minister | OE045 | <p>The Right Honourable Mark Drakeford AM – First Minister</p> <p>Jeremy Miles AM – Counsel General and Brexit Minister</p> <p>Dr Hugh Rawlings CB – Director, Constitutional Affairs, the Welsh Government</p> |
| 28.06.19 | Victims | OE046 | <p>Victims’ Commissioner – Dame Vera Baird</p> <p>Victim Support – Max Thomas</p> |

External engagement with the public, professions, Whitehall departments and politicians

| DATE | VENUE | MEETING & DESCRIPTION |
|----------------------|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| JANUARY 2018 | | |
| 26 January | Cardiff Business School | Wales Centre for Public Policy Expert round table meeting at Cardiff Business School & Postgraduate Teaching Centre |
| 31 January | Swansea University | LegalTech Wales conference |
| FEBRUARY 2018 | | |
| 12 February | Senedd, Cardiff Bay | National Association of Probation Officers Cymru event |
| MARCH 2018 | | |
| 6 March | Cardiff | Meeting with Mr and Mrs Marshall, the parents of the murder victim Conner Marshall |
| 15 March | London | Political engagement with The Right Honourable Alun Cairns MP, Wales Office Secretary of State for Wales Alun Cairns MP, and Lord Bourne of Aberystwyth, Parliamentary Under Secretary of State for Wales 2017-July 2019 |
| | | Amy Rees, Executive Director HMPPS Wales |
| 17 March | Law Society Wales, Cardiff | Wales Committee Law Society – Presentation on the Commission on Justice in Wales |
| 19 March | Ty Hywel, Cardiff | Mick Antoniw AM, Andrew RT Davies AM, Neil Hamilton AM, Elin Jones AM and Mark Reckless AM |
| 22 March | Aberystwyth University | Lord Thomas lecture |
| 26 March | London | Hywel Williams MP, Plaid Cymru |
| | | Baroness Randerson Parliamentary Labour Party |
| 26 March | Cardiff | Public Law Project Wales Conference – Sir Wyn Williams’ speech |
| 26 & 27 March | Cardiff | Meetings with law firms |
| March 28 | Llandrindod | Welsh Chief Police Officers Group meeting – presentation on work of the Commission |

| APRIL 2018 | | |
|-------------------|--------------------------|-------------------------------------------------------------------------------------------------------|
| 19 April | Cardiff | Meeting with the Future Generations Commissioner for Wales |
| 20 April | Carmarthen | Meetings with law firms |
| 26 April | Cardiff | Meetings with Hugh James / Involegal |
| 26 April | Trafalgar House, Cardiff | Meeting with the National Advice Network Wales |
| 30 April | Gregynog | All Wales Criminology conference – presentation on work of the Commission |
| MAY 2018 | | |
| 3 & 4 May | Edinburgh | Meetings with senior judiciary, senior civil servants, Police Scotland, Scottish Ministers |
| 11 May | Llandrindod Wells | Meetings with law firms |
| 15 May | Swansea Law School | Meetings with the heads of law schools |
| 17 May | London | Meeting with Jomati Consultants |
| 30 May | London | Meeting with Brad Hildebrandt, Hildebrandt Consulting (management and consulting advice to law firms) |
| JUNE 2018 | | |
| 4 June | Aberystwyth & Aberaeron | Meetings with Ceredigion Council Law Department, law firms and Aberystwyth University |
| 4 June | London | Meeting with Professor Nigel Savage former President, University of Law |
| 5 June | London | Meetings with law firms and with the University of Law |
| 11 June | Cardiff | Meetings with Deloitte and Eversheds Sutherland |
| 11 June | Cardiff | Meetings with counsel at 30 Park Place and Civitas Law |
| 13 June | London | Meeting with Mark Sweeney, Kate Morris and Justin Russell, Ministry of Justice |
| 13 June | London | Meeting with Ernst & Young |
| 14 June | London | Meeting with Michael Spurr CB & Amy Rees, HM Prison and Probation Service |
| 14 June | London | Meeting with Reena Sengupta, RSG Consulting (research and consultancy to law firms) |
| 14 June | London | Meeting with Alison Saunders, Director of Public Prosecutions |
| 19 June | London | Meeting with Scott McPherson, Ministry of Justice Meeting with Susan Acland-Hood, HMCTS |
| 25 June | Bristol | Meetings with law firms |
| 26 June | Bristol | Meetings with counsel at St John's Chambers and Guildhall Chambers |

| JULY 2018 | | |
|-----------------------|-------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2 July | Cathays Park, Cardiff | Meeting with Deputy PCCs and Chief of Staff |
| 4 July | Cardiff | Welsh Language Tribunal – presentation on the work of the Commission |
| 6 July | London | Meeting with Allen & Overy |
| 11 July | London | Meeting with Jessica Jacobson, Institute for Criminal Policy Research Meeting with Senior Judiciary |
| 13 July | CPS Wales Offices, Capital Tower, Cardiff, | Meeting with CPS Wales |
| 16 July | Law Society Offices, Capital Tower, Cardiff | Law Society seminars |
| 16 July | Cardiff | Meeting with Microsoft |
| 17 July | Cardiff | Visit to Her Majesty's Prison Cardiff |
| 17 July | Cardiff | Meeting with Support Through Court Meeting with Jomati Consultants |
| 23 July | Llanelwedd | Engagement sessions at the Royal Welsh Show including Rural Crime Forum, Agricultural Law Association, Farmers' Union of Wales and National Farmers' Union |
| 24 July | London | Meeting with Lord Bourne of Aberystwyth, Parliamentary Under Secretary of State for Wales 2017-July 2019 Meeting with Edward Argar MP, Parliamentary Under Secretary of State at the Ministry of Justice Meeting with Professor Dame Hazel Genn, University College London |
| AUGUST 2018 | | |
| 9 August | National Eisteddfod Cardiff | Professor Elwen Evans QC Annual Law Society Lecture |
| 10 August | National Eisteddfod Cardiff | Justice in Wales talk with Dr Nerys Llewelyn Jones and Rhys Thomas |
| 14 August | Swansea Law School – Centre for Innovation and Entrepreneurship in Law (CIEL) | Meeting to discuss the work of CIEL in connection with technology and innovation |
| SEPTEMBER 2018 | | |
| 17 September | Senedd, Cardiff | Administrative justice in Wales workshop led by Dr Sarah Nason, Bangor University Law School |
| 19, 20 September | Cardiff | Meeting with Wales & Chester Circuit Meetings with Judiciary in Wales |
| 25 September | Belfast | Meetings with law firms, Invest Northern Ireland, Ulster University, Queen's University and PricewaterhouseCoopers |

| OCTOBER 2018 | | |
|----------------------|---------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 12 October | Aberystwyth University | Legal Wales Conference – Breakout session on the work of the Commission |
| 16 October | Pontypridd Police Station | Multi Agency Safeguarding Hub / Victims' groups / Adverse Childhood Experiences |
| 17 October | Butetown Community Centre, Cardiff | Equality and diversity engagement event |
| NOVEMBER 2018 | | |
| 1 November | 30 Park Place, Cardiff | Meeting with the Welsh Bar regarding procurement |
| 2 November | Cathays Park, Cardiff | Meeting with the Counsel General |
| 7 November | Birkbeck, University of London | International Seminar on criminal justice |
| 9 November | South Wales Police HQ | Meeting with Police and Crime Commissioner's office |
| 15 November | Cardiff Crown Court | Meeting with the Wales and Chester Circuit |
| DECEMBER 2018 | | |
| 7 December | London | 7th Civil Justice Council National Forum – Andrew Felton's presentation on the Commission |
| 13 December | Cardiff | Meeting with heads of chambers |
| JANUARY 2019 | | |
| 16 January | Law Society Wales Offices, Capital Towers Cardiff | Meeting with the Law Society Wales Committee |
| 23 January | Assembly | Meetings with Elin Jones AM, Llywydd of the National Assembly, Manon Antoniazzi, Chief Executive and Clerk, and Assembly officials Meeting with Mark Reckless AM, Chair of the Cross-Party Law Group Meeting with John Griffiths AM, Chair of the Cross-Party Policing Group |
| 29 January | London | Meeting with Edward Argar MP, Parliamentary Under Secretary of State at the Ministry of Justice Meeting with Home Office officials |
| FEBRUARY 2019 | | |
| 12 February | Aberystwyth University | Rhys Thomas' Lecture to Welsh medium law students on the work of the Commission |
| 21 February | Cardiff | Blake Morgan seminar – Simon Davies' presentation on the Commission |
| 21 February | Cardiff | Meeting with Law Society Wales |

| MARCH 2019 | | |
|-------------------|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7 March | Cardiff | <p>Meeting with tribunal judicial leads</p> <p>Rhiannon Walker, President of the Special Educational Needs Tribunal Wales</p> <p>Carolyn Kirby OBE, President of the Mental Health Review Tribunal Wales</p> <p>Claire Sharp, President of the Adjudication Panel Wales</p> <p>Professor Keith Bush QC, President of the Welsh Language Tribunal 2014-2019</p> <p>Richard Payne, President of the Residential Property Tribunal</p> <p>Dr Chris McNall, Chairman of the Agricultural Land Tribunal</p> <p>Regional Tribunal Judge Barry Clarke, Employment Tribunal</p> <p>Judge Nigel Osborne, First-tier Tribunal Immigration and Asylum</p> <p>Regional Tribunal Judge Peter Maddox, First-tier Tribunal Social Entitlement</p> |
| 13 March | London | <p>Meeting with London Mayor's Office</p> <p>Meeting with Cressida Dick CBE QPM, Commissioner of the Metropolitan Police</p> |
| 21 March | Cardiff, Ty Hywel | Lunch event with Assembly Members |
| 27 March | Rhyl | Engagement event with service users and professionals organised by Cymorth Cymru, an umbrella body for providers of homelessness, housing-related support and social care services in Wales |
| APRIL 2019 | | |
| 3-5 April | Belfast | <p>Northern Ireland visit</p> <p>Meetings with Department of Justice, Probation Board of Northern Ireland, Northern Ireland Courts and Tribunals Service, most recent Justice Committee Chair, Police Service of Northern Ireland, Director of Public Prosecutions, Attorney General and the Lord Chief Justice</p> |
| 8 April | Cardiff | Admiral legal team |
| 9 April | Cardiff | Cardiff Bar and law firms |

| MAY 2019 | | |
|------------------|------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 May | Carmarthen | Meeting with sole legal practitioners |
| 8 May | Cardiff | Cardiff Bar and law firms |
| 15 May | Cardiff | Cymorth Cymru conference involving professionals and practitioners from the housing sector Juliet Lyon CBE presentation on the work of the Commission |
| 20 May | London | Association of London Welsh Lawyers |
| 30 May | Cardiff | Care leavers focus group convened by Voices From Care |
| JUNE 2019 | | |
| 4 June | Swansea | Law Society – Junior lawyers engagement event |
| 5 June | Cardiff | Law Society – Junior lawyers engagement event |
| 7 June | Her Majesty's Prison Cardiff | Serving prisoners focus group |
| 18 June | Caerphilly | Engagement event with Disability Wales to consider disabled peoples' experiences of the justice system |
| 20 June | London | Meeting with the Right Honourable David Lammy MP to discuss his review of the treatment of Black, Asian and Minority Ethnic individuals in the criminal justice system |
| JULY 2019 | | |
| 2 July | London | Meeting with the Parliamentary Labour Party |
| 4 July | Swansea | Shelter Cymru – Homes and Places Conference Sarah Payne CBE presentation on the work of the Commission |



APPENDIX D

Justice infrastructure

| BODY | TERRITORIAL COVERAGE |
|-------------------------------------------------|-------------------------------------|
| Advisory Committee on Justices of the Peace | England and Wales |
| Bar Standards Board | England and Wales |
| British Transport Police | England, Scotland and Wales |
| Cafcass | Wales |
| Civil Justice Council | England and Wales |
| Civil Nuclear Police Authority | England, Scotland and Wales |
| Civil Procedure Rule Committee | England and Wales |
| College of Policing | England and Wales |
| Coroners Office | England and Wales |
| Crown Prosecution Service | England and Wales |
| Criminal Cases Review Commission | England, Northern Ireland and Wales |
| Criminal Injuries Compensation Authority | England, Scotland and Wales |
| Criminal Procedure Rules Committee | England and Wales |
| Equality and Human Rights Commission | England, Scotland and Wales |
| Family Justice Council | England and Wales |
| Family Procedure Rules Committee | England and Wales |
| HMCTS | England and Wales |
| HM Crown Prosecution Service Inspectorate | England and Wales |
| HMI Constabulary | England, Northern Ireland and Wales |
| HMI Prisons | England, Northern Ireland and Wales |
| HMI Probation | England and Wales |
| HMPPS | England and Wales |
| Independent Advisory Panel on Deaths in Custody | England and Wales |
| Independent Monitoring Boards | England and Wales |
| Independent Office of Police Conduct | England and Wales |
| Insolvency Rules Committee | England and Wales |
| Judicial Appointments Commission (JAC) | England and Wales |
| Judicial Appointments and Conduct Ombudsman | England and Wales |
| Judicial College | England and Wales |
| Judicial Conduct Investigation Office | England and Wales |
| Judicial Office | England and Wales |

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| Law Commission | England and Wales |
| Legal Aid Agency | England and Wales |
| Legal Ombudsman | England and Wales |
| Legal Services Board | England and Wales |
| Ministry of Defence Police | UK |
| National Crime Agency | UK |
| National Crime Agency Remuneration Review Body | UK |
| Office of Public Guardian | England and Wales |
| Office of the Immigration Services Commissioner | UK |
| Official Solicitor & Public Trustee | England and Wales |
| Parole Board | England and Wales |
| Police Remuneration Review Body | England and Wales |
| Prison & Probation Ombudsman | England and Wales |
| Prison Service Pay Review Board | England, Northern Ireland and Wales |
| Public Service Ombudsman Wales | Wales |
| Sentencing Council | England and Wales |
| Serious Fraud Office | England and Wales |
| Solicitors Regulation Authority (SRA) | England and Wales |
| Tribunal Procedure Committee | England and Wales |
| Victims' Commissioner | England and Wales |
| Welsh Tribunals Unit | Wales |
| Youth Justice Board | England and Wales |

