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Who we are

The Magistrates Association (MA) is the independent membership body for the magistracy. We work to promote the sound administration of the law, including by supporting our members, informing the public about the courts and the role of magistrates, producing and publishing research on key topics relevant to the magistracy, and contributing to the development and delivery of reforms to the magistracy, the courts and the broader justice system. With 15,000 members across England and Wales, we are a unique source of independent insight and information on the magistracy.

1. What is working well in the justice system in Wales? What is not working well? Are there examples of innovation and good practice, both in and beyond Wales, which should be adopted and shared?

The Magistrates Association's (MA) response to this call for evidence draws its focus from the specific knowledge of our members, and therefore centres on the role of magistrates' courts within the criminal justice system and magistrates sitting in family court.

The MA supports the continuation of England and Wales as a distinct legal jurisdiction; with common legal structures as well as laws.

However it is important to recognise that the Welsh Assembly Government (WAG) is empowered to legislate in a number of areas that impact on the justice system, and so even though justice is not a devolved area, there are now distinctions between Wales and England on some matters. Consequently, in the view of the MA, Wales must not simply be considered as one of the 'regions' of England and Wales, as there are distinct differences between Wales and any of the English regions. The MA would welcome consideration being given by Her Majesty's Courts and Tribunals Service (HMCTS) to strengthening its all-Wales focus so that changes and initiatives from United Kingdom (UK) Government, which affect Wales, are not simply rolled out without first considering the specific implications for Wales as distinct from England.

The MA acknowledge that the current administrative structure of the courts in Wales works reasonably well as, effectively, an all-Wales self-contained administration. The position of the MA is that it is important that there remains a distinct administrative structure.

Performance data for the Welsh courts show that case progression in the adult, family and youth courts is very favourable compared to national averages.

The process of devolution is, of course, continuing and further powers will be devolved to the WAG over time.



The MA welcome the fact the WAG has invested heavily in initiatives aimed at reducing crime, and the diversion of children away from the criminal justice system. There has also been a focus on the prevention of violence against women and hate crime. There has been additional focus on community service orders, education and prevention strategies. All of these strategies have been positive approaches to early intervention in relation to criminal behaviour.

The WAG has shown particular interest in youth justice. Enhanced Case Management (ECM) is a new approach to working with young people with experience of the youth justice system. It is based on the Trauma Recovery Model, and was developed collaboratively between the Youth Justice Board Cymru, the WAG, the Youth Offending Teams (YOTs) and the All Wales Forensic Adolescent Consultation and Treatment Service. ECM is an example of how the WAG has worked within the existing structures of the legal system to focus on a particular issue.

2. What are the economic, social, geographical, technological, constitutional and other barriers to improvement and how could these be overcome?

The geography and communication challenges in Wales are often not fully understood by those outside Wales, and they are rarely fully appreciated or taken into account by those planning and implementing change. Travel times in rural areas are considerably more than might be expected and, similarly, fast broadband is limited in many areas. This means court closures have resulted in a reduction in court accessibility and increased travel times, which is likely to cause difficulties for court users, staff and magistrates.

The UK Government and the judiciary have a shared commitment to a £1bn reform programme that will use modern technology and ways of working to transform our justice system. The process of digitalisation relies, however, on access to reliable internet and individuals having the necessary IT skills. Large sections of Wales (valleys, mid, east and west) are among the most deprived in Europe, let alone the UK, and this has an impact on employment levels and skills, while areas such as rural Wales are likely to struggle for access to high speed connection. Where this is lacking, the use of video links and technological solutions is challenging. In 2017, it is estimated that 87% of adults in Wales were recent users of the internet (within the last 3 months). In comparison, the figure for London is 93%. It is important to recognise that people in specific groups are less likely to be recent users – in particular, those aged over 75 and those with certain disabilities – and that these are the groups that are most likely to struggle to access a physical court. In the UK, in 2017, almost 1 in 10 adults had never used the internet.¹

3. What problems face the people who work within the justice system in Wales (including policing, prosecution, courts, prisons and probation) and the people who are affected by it?

The reduction in the number of courts has resulted in additional travel for all agencies attending court. Lack of reliable internet can make use of video links and technological solutions more challenging. The large geographical areas covered by probation and Community Rehabilitation Companies (CRCs) can present challenges regarding the establishment and maintenance of contact with offenders on programmes. In particular, the fact that there are no women's prisons creates challenges for CRCs who are supervising women on release – resettlement from a prison in England back into the community in Wales is challenging. This is magnified because there are different structures governing health, social services and education, and so interaction with those agencies is different in Wales.

¹ The Office for national Statistics Statistical Bulletin: Internet users in the UK: 2017

<https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2017>



The demise of regular court user groups, particularly those involving magistrates has not been helpful, as our members found them very useful as a forum for the exchange of information and ideas.

4. Does the justice system in Wales currently provide access to all who require its services, including advice? How would you improve access to justice in Wales?

As stated above, many people that live in remote or rural areas face long and difficult journeys to attend court, particularly if having to rely on public transport.

In terms of the custodial estate, there is no women's prison in Wales. With regard to young people, there is no youth custodial establishment in North Wales. South Wales is better served for young people, with Hillside Secure Children's Home in Neath, and HM Prison and Young Offenders' Institute Parc, in Bridgend. Women prisoners are most often sent to HMP Styal, near Manchester, and HMP Eastwood Park which is situated between Gloucester and Bristol. Young offenders are often sent to HM Prison and Young Offenders' Institution Stoke Heath, in Shropshire. Being incarcerated a long way from home potentially creates a number of negative impacts on the prisoner, including reduced family visits and the associated weakening of family ties. It is sometimes harder to put a suitable release package in place for those who are imprisoned further away from home. Elements such as family mediation work and 'through the gate work' are more difficult when greater distances are involved.²

As a consequence of devolution, there are key differences in the provision of health and local authority services in Wales, in comparison to England. In particular, Liaison and Diversion is provided by NHS England with the aim to identify vulnerable people early to help improve health and criminal justice outcomes, whereas a different system, the Criminal Justice Liaison Service, operates in Wales in each of the seven Local Health Boards. The police and probation need to work with these services, and so there is potential for confusion across the two countries, and the requirement for additional resources to be able to work with differing rules in these areas.

5. What impact has devolution had on the justice system in Wales? What impact do you believe devolution will have in the future?

The MA's focus in replying to this call for evidence is the impact upon the work of the magistrates' court within the family and criminal justice systems.

Magistrates must follow the law: whether legislation created by Government or case law determined in the jurisdiction up to the Supreme Court. As justice is not devolved, it is the UK Government that generally creates the legislation to be followed but where the WAG are using their devolved powers to legislate in other areas, this will impact on the law that must be followed by the judiciary in Wales. So although criminal justice matters are not devolved, there are some specific provisions where the WAG can exercise devolved powers, such as landlord legislation, the setting of speed limits on Welsh roads and the licensing of taxis and private hire vehicles.

Sentencing decisions in the Welsh courts are made with reference to the guidelines issued by the Sentencing Council for England and Wales. It is likely that specific Welsh legislation in criminal and family proceedings will increase over time, leading to a greater divergence between the English and Welsh jurisdictions. It will therefore be important for the Sentencing Council to ensure that where the process or law is different in Wales, this is clearly stated in any guidelines.

² http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women/why%20women_final.pdf

The impact of distance from home on children in custody, A thematic review by HM Inspectorate of Prisons (2016)



In respect of family proceedings, under the Wales Act 2017, the WAG can specifically legislate where the welfare of children ordinarily resident in Wales is or may be in question in the following areas: welfare advice to the courts; representation in respect of such proceedings; and provision of support (including information and advice) to children ordinarily resident in Wales and their families. So most agencies that are party to family court proceedings are devolved: for example, Children and Family Court Advisory and Support Services (CAFCASS) has a distinct service for Wales: CAFCASS Cymru. There is also a Children's Commissioner for Wales, an example of an independent office championing the rights of children in Wales. The WAG has a particular focus in the areas of social care and health: which means they set different priorities and policies than are found in England. Therefore those sitting in family court in Wales have to respond to different issues and stakeholders, particularly in relation to public law cases.

6. Could local authority services in relation to justice and the local provision of legal advice be better organised and co-ordinated with policing, prosecution, courts, prisons and probation?

It is the experience of our members that the merging of different court structures has not been without challenges, particularly for Youth Offending Teams and the National Probation Service/Community Rehabilitation Companies, although this is probably reflected nationally.

7. Are there changes that should be made to the capabilities and effectiveness of the ways in which the police, probation and prisons approach their tasks? What should be done to increase community safety, wellbeing and social cohesion and reduce crime? What can be learnt from other countries where rates of crime and imprisonment are lower?

This question is beyond the scope of the MA, although the Association is, of course, wholly supportive of initiatives that have the intention of increasing community safety, wellbeing and social cohesion and reducing crime. The MA supports early intervention, particularly with children and young people. This includes the provision of support to children via family proceedings as well as for those who come into contact with the criminal justice system.

The MA supports the co-location of mental health specialists with police agencies so that people with vulnerabilities can be identified on interaction with the police and diverted as appropriate, and, where a criminal justice response is needed, signposted to the right support. Vulnerabilities can include mental health issues, learning disabilities, autistic spectrum disorder (ASD) as well as substance abuse problems.

It is important that custody is only used when it is inevitable – and in the case of children and young people, as a last resort. However, if custody is necessary – then the focus on rehabilitation means that there must be a focus on successful resettlement. This involves the maintenance of positive relationships which aid integration back into the community, safe and secure accommodation and appropriate support.

Women offenders may have particular needs which need to be accommodated within the justice system. This includes being identified and understood as individuals with trauma backgrounds where appropriate, and the provision of suitable accommodation and childcare which meets women's needs.

The MA commends efforts to take learning from other countries with lower rates of crime and imprisonment.



8. What impact is the divergence between Welsh and English law having upon sentencing? What impact do you foresee in the future? Should Wales implement a different approach to sentencing than England? If yes, what lessons can be learnt from other jurisdictions?

Magistrates continue to sentence by reference to the Sentencing Council of England and Wales guidelines. There are, however, already some distinctions in terms of law and prosecution, for example prosecution from Welsh only bodies such as Rent Smart Wales (landlord and tenant legislation). As the law in Wales diverges and distinct offences are created that only apply to Wales, it is important that the Sentencing Council provides distinct guidelines as appropriate.

9. What are the capabilities in the justice system in Wales for responding to Brexit?

This question does not fall within the remit of the MA and therefore we do not offer comment.

10. What steps do you think need to be taken to facilitate positive change in the justice system in Wales?

It is the position of the MA that access to justice for all is the key – whether in terms of the Welsh language, physical or online access to the courts, and the availability of legal advice. The justice system should provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all. In the absence of this, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable. The Welsh language scheme has momentum and is making access easier for many which is encouraging and to be commended.

The reform agenda presents challenges to the continued provision of access to justice for all, and the overriding concern for reform must be the provision of equal access to justice.

11. How could the strength and sustainability of the legal sector in Wales be promoted? How could its contribution to the prosperity of Wales be optimised?

This question does not fall within the remit of the MA and therefore we do not offer comment.

12. To what extent do current university curriculum and vocational and professional development courses reflect the law in Wales and the need to deal with the digital revolution and how should they be further developed?

This question does not fall within the remit of the MA and therefore we do not offer comment.

13. What is the current provision for the Welsh language within the justice system and legal education in Wales? How should Welsh language provision within the justice system and legal education in Wales be improved?

With regard to the Welsh language, both the Ministry of Justice and Her Majesty's Courts and Tribunal Service are developing and improving positive policies on the use of Welsh under the influence and guidance of the Welsh Language Commissioner. However, our members consider that more needs to be done to ensure that there are sufficient Welsh speaking magistrates and sufficient Welsh speaking legal advisers in all parts of Wales.

14. Is access to Welsh law properly available?

This question does not fall within the remit of the MA and therefore we do not offer comment.