

Commission on Justice in Wales: Contribution by ADSS Cymru

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General Comment

The Association of Directors of Social Services (ADSS Cymru) is the professional and strategic leadership organisation for social services in Wales and is composed of statutory Directors of Social Services and the Heads of Service who support them in delivering social services responsibilities and accountabilities; a group of more than 80 social services leaders across the 22 local authorities in Wales.

As the national leadership organisation for social services in Wales, the role of ADSS Cymru is to represent the collective, authoritative voice of Directors of Social Services, Heads of Adult Services, Children's Services and Business Services, together with professionals who support vulnerable children and adults, their families and communities, on a range of national and regional issues of social care policy, practice and resourcing. It is the only national body that can articulate the view of those professionals who lead our social care services.

As a member-led organisation, it is uniquely placed as the professional and strategic leadership organisation for social services in Wales, to lead on national service development initiatives to ensure a consistent efficient and high standard of delivery for people who access care services across Wales.

ADSS Cymru is committed to using the wealth of its members' experience and expertise, working in partnership with other agencies, to influence important decisions around social care to the benefit of the people it supports and the people who work within care services.

ADSS Cymru welcomes the opportunity to respond to the call for evidence made by The Commission on Justice in Wales', which will allow the Commission to thoroughly review the operation of the justice system in Wales and set a long-term vision for its future.

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?

ADSS Cymru believes that due to the relatively small geographical size of Wales, good working partnerships and relationships have been enabled to exist between many organisations within and with ties to the justice system in Wales. As lead social care professionals within local government, we have seen local authorities work closely with police, youth justice agencies and probation services through Youth Offending Teams and other partnership and working structures and practices.

Devolution has caused some tangible difficulties for the justice system in Wales, due to the fact that policy development at a UK national level does not always consider or fully take into account, the policy matters that have been devolved to the National Assembly for Wales. This has resulted in confusion and uncertainty for both devolved and non-devolved bodies operating in a devolved context.

An example of where some areas of confusion have emerged is following the implementation of the Social Services and Wellbeing (Wales) Act 2014, specifically Part 7, in respect of safeguarding. The expectations of the Regional Safeguarding Boards in Wales are closely merging with that of the community safety agenda, particularly in respect of exploitation, including Child Sexual Exploitation, Prevent, Modern Slavery etc. Therefore, there is potential for confusion between crime prevention and safeguarding. A clear function of Safeguarding Boards is to undertake Child and Adult Practice Reviews (APRs), which are in contrast, very different to the requirement to conduct Domestic Homicide Reviews (DHR), with the latter being accountable to Home Offices processes that can be counterintuitive to the principles of delay, family involvement and practitioner learning etc. Therefore, a more streamlined process of review adopting the Welsh Guidance would be more appropriate going forward.

There is work currently being piloted in the Gwent region whereby DHR's are being run on APR guidelines, so progress is being made.

Other areas of good practice in Wales is the focus on early intervention and prevention and the inevitable tension that can play out within the family justice system. This is being reviewed separately.

There is at times a dissonance in terms of where CAF/CASS Cymru sits as opposed to CAF/CASS England. How they then mesh with the key policy drivers in both countries when there are differences can be challenging.

The roles of the Local Family Justice Boards and the Family Justice Network are still very enmeshed in the Children Act 1989. The differences and challenges arise around perhaps relatively small but vital areas of family law, for example, Secure Welfare Orders, Section 76 and the nuanced differences from Section 20, regulations in fostering and some elements of adoption. Elements of the Social Services and Well-being (Wales) Act and how we use them, for example, care and support for kinship arrangements and accommodation as support, are still to be tested and could well produce something of an interesting set of legal quandaries.

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

No comment.

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?

There are significant challenges for those in the family courts because of pressure on court times and the rise of litigants in person, due to cuts in civil legal aid.

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 in the response to Q.3, there is a significant challenge that has been created from the rise of litigants in person, which is most acutely felt in the family courts. It has become evidently clear that the drive to save made by not having lawyers in the court is not being counter-balanced by the increase in court time that is being generated.

The rise in workload is also seeing mounting delays in cases involving the future of children at risk of abuse who may be taken into care.

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

The paper produced by Cardiff University's Wales Governance Centre entitled *Justice in Wales: Principles, Progress and Next Steps*, highlighted that with two legislatures in the legal system and the law in Wales and the law in England continuing to diverge, there is a growing danger of a fragmented and piecemeal justice system for Wales, where "gaps, overlaps and problems of democratic accountability" are "classically associated" with such sprawling types of administrative arrangement. It states that:

*"Trying to adapt a highly centralised system to accommodate a legislature and a growing body of Welsh law inevitably raises many challenges and inconsistencies."*¹

While the report serves as a reminder that devolution is a challenging and evolving process. Yet, it also points out that the challenges are not insurmountable.

However, what is important at this time is the ability of the Law Commission to continue to adapt to fulfil its statutory functions of keeping the law of England and Wales under review. Due to this, the response of the Law Commission to devolution makes an important case study as it highlights how institutions can change their arrangements to accommodate the law-making powers of the National Assembly. As the paper by the Wales Governance Centre rightly points out, the reports the Law Commission produced on Adult Social Care and Housing Tenancy Reform heavily influenced the Social Services and Well-being (Wales) Act 2014 and the Renting Homes (Wales) Act 2016 respectively.

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?

Inevitable tensions arise when children and families move from Wales to England and vice versa where different judicial or criminal systems are deployed. There is a concern that agencies can avail themselves of responsibilities for vulnerable adults placed out of area and tied up in different Mental Health Legislation or Continuing Health Care Guidance.

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?

ADSS Cymru's view is very much aligned to that of the Welsh Local Government Association on this particular point, in that we too would argue that in order to increase community safety, well-being, social cohesion and reduce crime, organisations need to work far more seamlessly together, in a holistic manner, and adopt an increased preventative approach. We believe better joined up governance should also be considered, for example the role of Crown Prosecution Service vs Safeguarding Boards.

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?

¹ Wales Governance Centre, *Justice in Wales: Principles, Progress and Next Steps*, Cardiff University, 2016, Pg.35.

At this particular point in time, ADSS Cymru believes that the divergence between Welsh and English law has not had a great deal of impact on sentencing. However, there is scope for divergence in the future, for example the removal of the defence of reasonable chastisement. Differences in the law between England and Wales is also likely to have an increased impact on the people who work within the justice system as they will need to be aware of the differing legislation.

However, what should be noted is that Welsh public services are increasing adopting a more preventative and/or early intervention approach to tackle issues at an early stage, addressing issues of well-being and to help manage and reduce future demand on services. The ACEs work being undertaken in Wales by the police, in partnership with local authorities and others, is a good example of working differently to address issues through a different lens. We have therefore consequentially seen lower rates of children in custody in Wales.

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

No comment.

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

In the short-term, there needs to be better understanding of the devolution settlement and its implications by UK Government departments and increased communication at an early stage of policy development to better align delivery within a devolved context.

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?

No 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?

No 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?

No comment.

14. Is access to Welsh law properly available?

No comment.



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