



Llywodraeth Cymru
Welsh Government

Commission on Justice in Wales:

**Supplementary Paper from the
Welsh Government Cabinet Secretary
for Local Government and Communities**

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Introduction

The Commission on Justice in Wales has been invited to consider the outstanding questions about policing, the justice system and the legal jurisdiction in Wales not properly addressed by the Wales Act 2017.

Included within its remit – to review the operation of the justice system in Wales and set a long term vision for its future – is an expectation that this vision will promote “better outcomes in terms of access to justice, reducing crime and promoting rehabilitation”.

This evidence from the Minister for Local Government and Public Services, supplements the initial written evidence provided, with a specific focus on the Commission’s sixth principle of developing a vision that ensures “proper co-ordination 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 preventing offending and rehabilitating offenders”.

Poor outcomes for victims, offenders and communities

As identified in the initial written evidence, the delivery of justice services in Wales is inextricably linked to devolved services – most notably health and social care, education, learning and skills and housing – and the current devolution settlement is proving to be a significant barrier to reform. It impacts upon the policy approach that can be taken both by the Welsh Government and by the UK Government acting in relation to Wales. Our experience of operating the devolved settlement over nearly twenty years tells us that devolution works best where there are clear and understood areas of responsibility where the different governments will have the right and opportunity to set policy and deliver services. Notwithstanding this, it is clear also that even without the additional layers of complexity in Wales that create the ‘jagged edge’ of the current poor devolution settlement, the UK Government’s justice reform agenda is failing.

There is a growing body of evidence, increasing almost daily, that the UK Government’s ‘Transforming Rehabilitation’ approach to justice delivery in England and Wales has fallen well short of its ambitions and expectations; and at an unacceptable cost to the victims of crime, to offenders and to wider communities on both sides of the border. It is also apparent that the current UK Government justice reform agenda cannot be simply transposed on to the devolved landscape in Wales because of the complexities and interdependencies of the division of power.

As a result, the Welsh Government is collaborating with Her Majesty’s Prison and Probation Service (HMPPS) and the Youth Justice Board (YJB) to develop distinct justice delivery models for women offenders and young people who offend, and developing a new policy approach on justice services and offender management and support in Wales more generally that seeks to address these significant failings. The clear and unambiguous intent in taking forward this work is to ensure better outcomes for victims of crime, offenders

and communities – in line with our programme for government and *Prosperity for All* strategy. However, finding solutions is difficult and having to working on an inter-governmental basis is, of itself, particularly problematic. We are making a difficult situation more complex and as a consequence it is increasingly difficult for either government to deliver comprehensive and holistic solutions.

As outlined in the initial submission, and increasingly evidenced by successive research and reports, the delivery of effective justice outcomes requires a ‘whole system approach’. This is predicated on integrated service delivery involving both non-devolved justice agencies and devolved services including local government, health and third sector support providers. A whole system approach should incorporate the full spectrum of: prevention (tackling the causes of offending); early intervention (identifying and addressing unmet needs to divert people away from the justice system and justice services at the earliest opportunity); and rehabilitation (ensuring that sentences and offender support are effective in order to prevent future re-offending). Restorative practice is, arguably, also an integral aspect of a whole system approach – as this maximises the ability of the reformed offender to reintegrate within their respective community and provides a degree of reparation for victims and communities.

Although far from perfect, the multi-agency Youth Offending Teams established by the Crime & Disorder Act alongside statutory community safety partnerships have evidenced how whole system thinking can achieve better outcomes for victims, offenders and communities. This has led to sustained reductions in the number of under 18s entering the criminal justice system and also in the number of children receiving custodial sentences.

Since 2009 – when reducing reoffending became a statutory requirement for community safety partnership working, and probation services were

designated as a 'responsible authority' under the Crime & Disorder Act – devolved and non-devolved community safety partners have co-operated in the development of more integrated and holistic approaches to local offender management and support. However, with the notable exception of youth justice, these joint endeavours have met with limited success due to:

- the added layers of complexity posed by the present unsatisfactory devolution settlement
- the impacts of sustained public sector austerity since 2010
- the unsettling confusion of a never ending programme of UK Government justice reform.

And it is now apparent that these three factors are significant barriers to both the Welsh Government and the UK Government in achieving better outcomes for victims, offenders and communities in Wales. Instead we see:

- poor provision within some of the public prisons in Wales, particularly Cardiff which was the subject of a report on extensive drug use and Swansea where HMI Prisons recently published a second poor inspection report
- a lack of access to, and a postcode lottery for, appropriate community-based diversion interventions that would prevent people going into custody
- an increasing number of women who are being sent to prison for summary offences, often on ineffective short sentences with multiplier impacts on their families and children, e.g. children becoming looked after
- growing evidence of links between the youth justice system and those young people that are in the 'looked after' system
- an increasing risk of reoffending due to a lack of appropriate support (e.g. housing, skills, mental health and substance misuse services) for people

on their transition from custody to community provision.

The latest round of UK Government justice reform proposals – particularly on youth justice, women offenders and the provision of health and social care service to adult prisoners – are likely to exacerbate matters and increase pressure on devolved budgets and services. For example, the UK Government has repeatedly highlighted the need for increased mental health support for those people in the adult criminal justice system, the need for increased access to substance misuse support and the need for more appropriate accommodation on release from prison. There is an expectation that the Welsh Government should provide the additional resources required to achieve this.

The confusion and lack of clarity on who is responsible for prisoner support is typified by the issue of ensuring prisoners receive appropriate opportunities for learning and skills development while in prison estate. This is covered in more detail in a separate submission from the Minister for Welsh Language and Lifelong Learning which highlights the lack of Wales specific data and prisoner journey tracking that makes it impossible to measure whether or not provision in Welsh prisons is successful and leads to reductions in offending.

The situation is further complicated by the fact that, despite a steady increase in prison capacity within Wales, nearly 40% of Welsh prisoners are held in English prisons. While in 2017, the population of English prisoners being held in Welsh prisons more than doubled such that, by the end of March this year, more than 25% of prisoners in Wales were from England. All Welsh women offenders sentenced to prison must serve their terms in English prisons, giving the Welsh Government virtually no opportunity to influence the learning and skills building they receive in custody.

Additionally, while a male prisoner may receive a comparatively high quality of learning and skills provision in the prison they serve the majority of their sentence, they may later be transferred to a 'resettlement' prison closer to home where provision is minimal or non-existent. The transfer can in consequence be counter-productive. In Wales, more modern prisons such as HMP Parc and HMP Berwyn benefit from up-to-date facilities, while Victorian prisons such as HMP Cardiff and HMP Swansea do not. HMP Berwyn in Wrexham was developed on the principle that men should have access to good health support, are offered good opportunities to develop their education and skills and have technology to support their continued contact with their families – all important to support reintegration and rehabilitation.

Recent highly critical inspection reports on HMP Cardiff and HMP Swansea would suggest an environment that is far from supporting men to improve their health and wellbeing (especially a reduction in substance misuse) or to develop skills and employability that would enable them to improve their chances of gaining employment upon release. Given the conditions within these establishments it is questionable whether there is any valuable work taking place to support rehabilitation.

The same lack of clarity applies to the provision of substance misuse treatment within Welsh prisons. Speaking to the House of Commons Welsh Affairs Committee in May, Chief Inspector of Prisons Peter Clarke singled out HMP Swansea in particular and reported that, due to overcrowding and staff shortages, inmates were being locked up for 22 hours and had little else to do to pass the time except for using illegal drugs that appeared to be readily available.

Research conducted by the prisons inspectorate suggested that 40% of Swansea's prisoners found it relatively easy to obtain drugs and 17% claimed to have acquired their drug habit since being in prison.

Giving evidence to the same committee, Acting Prisons and Probation Ombudsman Elizabeth Moody stated: "Unlike English prisons, Welsh prisons do not offer an integrated drug treatment system (IDTS) for prisoners who arrive dependent on substances, and they do not routinely offer opiate medication for maintenance or detoxification." While Welsh health services do provide substance misuse treatment for prisoners, the arrangements around the commissioning and funding of such services are far from clear.

Research has repeatedly underlined that distance from home impacts on the frequency of prison visits by family, particularly children of offenders, with those prisoners receiving fewer or no visits suffering poorer outcomes in terms of post-release resettlement and rehabilitation. Distance from home while incarcerated has also been shown to negatively impact prospects for housing and education, training and employment on release and increase the chances of recidivism.

The situation is particularly stark for Welsh women prisoners, given there is no facility in Wales and the nearest institution – HMP Eastwood Park in Gloucester, which houses the largest number of Welsh women – has failed to reopen its mother and baby unit following a "temporary closure" so far lasting around two years. The separation of women from children is often the issue most likely to affect the health and well being of female prisoners the Corston Report 2007 identified that women in prison face particular vulnerabilities such as experience of violence, abuse, mental illness, substance misuse and childcare issues that are all exacerbated by distance from home.

Distance from home is also compounded by a prevalence of short term-sentences. The Justice Committee has previously found that the majority of women in prison have committed offences of "lesser seriousness" than men and 83% of sentenced women entering custody across England

and Wales in 2017 had committed non-violent offences (compared to 69% for men). Due to the generally less serious nature of women's offending, females are more likely to serve shorter prison sentences (in 2016, 62% of women entering prison in England and Wales were serving sentences of six months or less, compared to 45% for men). In Wales in particular, evidence suggests there has been a 43% increase in the use of sentences of less than six months for women between 2011 and 2016.

The ineffectiveness of short-term prison sentences is well documented and these figures suggest that the judiciary therefore has a lack of confidence in alternative community-based sentences. The current devolution settlement mitigates against the development of Welsh sentencing guidelines that could support better rehabilitation. As stated in the initial written evidence, the Wales Women's Pathfinder Project found that an 87% of women offenders who engaged with the project were successfully diverted from further offending behaviour. However, figures obtained for 2016 show 20% of female offenders in Wales receiving an immediate custodial sentence were appearing in court for summary non motoring offences (e.g. non-payment of TV licence fine) and would not have had any opportunity for diversion.

The Ministry of Justice has recently abandoned its plans to establish five new women's prisons and, instead, will trial five new residential centres to help offenders with issues such as finding work and drug rehabilitation. It is also proposing to significantly reduce or end the use of ineffective short-term prison sentences for women who have not committed serious offences. While this change of direction is broadly welcomed by the Welsh Government, the use of non-custodial community-based sentences is entirely dependent on devolved services. Any new UK Government approach would need to involve close working with the Welsh Governments to ensure that the

development and implementation of alternatives to custody are appropriate to Wales and therefore as effective as they can be.

It is difficult to argue that the nature and distribution of the secure estate in Wales has been planned with the needs of Wales and Welsh people in mind. It is difficult not to draw the conclusion that it has been developed over many years to serve the differing needs of departments of state rather than to provide Wales with the secure estate that is required to meet its own demands.

Alternatives to custody are central to the Wales Women's Pathfinder approach, particularly given the recognition that in addition to being generally ineffective, short term sentences for women often create significant additional costs to both devolved and non-devolved public services as well as wider family and community harm and trauma. MoJ and DWP figures suggest that up to a third of women prisoners in England and Wales have dependent children and a third of mothers in prison are lone parents, with only 9% of children affected by maternal imprisonment being cared for by their fathers. An unknown, but significant number of children are therefore taken into local authority care as a result of maternal imprisonment.

Case study evidence provided in the Wales Women's Pathfinder business case submitted to the Welsh Government indicate potential savings to the public purse can be made. This could be up to 80% in many instances by adopting non-custodial community based support designed to intervene early and prevent further offending by correctly identifying the needs of women offenders. There are numerous examples of women who are sent to prison for a matter of weeks for non payment of court fines. Often they are single parents of children or carers for elderly relatives, which leads to dramatically escalating costs to devolved services arising from the need to:

- take the children into care, disrupting their schooling and creating childhood trauma that leads them into substance misuse, self harm and juvenile offending requiring further criminal justice interventions
- provide social care and housing for the elderly relatives who experience further stress and trauma leading to more serious and complex medical conditions
- re-house and re-train the mother on release as a result of the loss of her tenancy and employment
- provide social care for the mother and her dependents as a result of the impact of imprisonment and its consequences on their mental health and emotional well being.

The additional costs to public services, ignoring the wider individual and societal costs, can very quickly run into the tens and hundreds of thousands of pounds and in worst case scenarios – where parental imprisonment becomes a causal factor in suicide, a drug-related death or a very serious further offence – more than £1m. In many cases, the original unpaid fines relate to issues such as TV licence evasion, often connected to family poverty or the mother being in a coercive, controlling relationship. Even where women, and indeed children, are given custodial sentences for more serious levels of offending, the effectiveness of the current prison regime in achieving rehabilitation is highly questionable.

Despite the successes of the joint approach by the Welsh Government and YJB Cymru to youth justice – first established with a shared strategy in 2004 – and the fact that a record low of only 32 Welsh children were in custody in 2017 compared to 116 in 2010, the Welsh Government is concerned that current custodial arrangements are entirely inappropriate for children. For instance, the young persons unit at HMP Parc can hold up to 60 boys

under 18, while the Hillside Secure Children's Home has six spaces. There are no facilities in North Wales.

In 2017, 45% of all Welsh children in custody were held outside of Wales, with less than a third of HMYOI Parc's places taken by Welsh children. There is anecdotal evidence to suggest that an increasing number of Parc's under 18 prisoners are connected to organised crime gangs and 'county lines' issues from southern and central England. The age old saying that 'prisons are the universities of crime' is now providing to be all too real for Welsh boys receiving their first contact and influence from OCGs within Parc's walls. In addition, an inspection at HMYOI Parc in December 2016 found that a third of all boys felt 'unsafe' and outcomes for children were "not sufficiently good" with concerns about levels of self harm. Peter Clark concluded following an unannounced inspection in October 2017 that "we were disappointed to see some deterioration, with the institution becoming less safe and less respectful".

Criticism of the UK Government approach extends beyond the prison walls. The House of Commons Justice Committee has recently published a highly critical report following its inquiry into the Transforming Rehabilitation programme. This involves the merger of individual probation trusts, a split in the delivery of probation services between the new National Probation Service (offenders at high risk of harm) and privatised Community Rehabilitation Companies (low and medium risk offenders), and the introduction of a 'payment by results' profit-driven philosophy. The Committee's report concluded the probation service was "in a mess", the morale of probation and CRC staff was at an "all-time low" and that there were "serious concerns" about performance, effectiveness and the management and financing of CRC contracts. The report states:

“On the longer-term future of the TR reforms we conclude that we are unconvinced that the TR model can ever deliver an effective or viable probation service. We recommend that the Ministry of Justice initiate a review into the long-term future and sustainability of delivering probation services under the models introduced by the TR reforms, including how performance under the TR system might compare to an alternative system for delivering probation.”

On the issue of short-term sentences, the report concludes:

“We find it extremely worrying that sentencer confidence in community alternatives to short custodial sentences is so low, particularly as the latter have worse outcomes in terms of reoffending. We recommend that the Government should introduce a presumption against short custodial sentences, as the Scottish Government have indicated they will do. Under the TR reforms compulsory 12-month post-sentence supervision was extended to short custodial offenders. We find that this one-size fits all approach lacks the flexibility to meet the varying needs of offenders. We call on the Government to consider getting rid of this requirement.”

The Committee also concluded that the ‘Through The Gate’ element of Transforming Rehabilitation – a nod toward a ‘whole system approach’ – had failed to provide the holistic support intended for prisoners on release, with the ‘continuous support from custody into the community’ appearing to be largely just ‘signposting’ offenders to potential support organisations. In recognising the failure of the UK Government programme to adequately meet the needs of offenders, it stated:

“The issues facing offenders on probation are not all within the gift of probation services to resolve, and therefore a cross-Government approach is needed and organisations need to work together.”

Clearly the challenge is even greater given the ‘jagged edge’ created by the current confused and complicated division of responsibilities between two governments with often conflicting policy approaches to justice issues.

Conclusion: Removing the ‘jagged edge’ and establishing a whole system approach that achieves better outcomes and prosperity for all

As highlighted above the Welsh Government firmly believes that the current system is not fit for purpose and we remain concerned about:

- The barriers to establishing a ‘whole system approach’ to crime prevention, reduction and offender support and rehabilitation posed by an unnecessarily complicated division of responsibilities and governance.
- The failings of the UK Government’s ‘Transforming Rehabilitation’ programme that has not delivered the anticipated results and, worse, resulted in chaos within justice services.
- A prisons policy that appears to be focused on ensuring economies of scale and reducing short-term costs rather than on providing the most effective offender support, rehabilitation and resettlement and ending the costly ‘revolving door’ of justice services.
- A non-devolved model of justice provision in Wales that is not based on equality – particularly for women – or social justice and which results in even greater harms to individuals, their families and the communities they live in.

In the absence of full devolution we are working collaboratively with HMPPS and the MoJ to develop a more distinct approach to the delivery of justice services. However, this can only go so far.

We have worked hard to develop better working level arrangements with the MoJ, Home Office and other UK Government departments who have an interest in the criminal justice system. Whilst this has improved communications it has not removed the complexities of the system where there are significant overlaps between devolved and non-devolved services. It also has not prevented UK Government announcements on policy that can potentially have an impact on devolved services, where there is little or no prior communication. Whilst responsibilities across the criminal justice sector remain fragmented and complex it is people in the system and those affected by it that are not being served in the way they should be.

In conclusion, the Welsh Government is not an advocate of further devolution for devolution’s sake. But coherence, clarity and stability in our system of policing and justice is essential, and governance and accountability is currently lacking as a direct result of the current devolution settlement and the ‘jagged edge’ between Welsh and UK Government responsibilities. In this way the current settlement is not only not fit for purpose but is a serious and significant barrier to the delivery of services to people in Wales. Only when there is a clear devolution of the whole system can we achieve better outcomes for victims, offenders and communities in Wales.