

**Commission on Justice in Wales  
Oral Evidence Session  
1 February 2019**

<b>Present:</b>	<b>Commission members</b>	<b>Secretariat team</b>
<p>Albert Heaney, Director, Social Services and Integration, Welsh Government, and Chair of the Welsh Justice Family Network (AH)</p> <p>Nigel Brown, Chief Executive, Children and Family Court Advisory and Support Service (Cafcass Cymru) (NB)</p>	<p>Lord Thomas of Cwmgiedd, Chair Simon Davies Professor Elwen Evans QC Dr Nerys Llewelyn Jones Juliet Lyon CBE Professor Peter Vaughan Sir Wyn Williams</p>	<p>Andrew Felton, Secretary to the Commission Dave Gordon Chris James</p>

**Question area: How can the divergence of the laws of England and Wales and its impact on family law and justice be better understood and awareness of it promoted?**

- AH: The question comes down to the nature of devolution. Family justice is not devolved but some of the critical functions that relate to family justice are devolved, including social services and the work covered by Cafcass Cymru. The Welsh Government has responded to the phases of devolution in 2006 and 2011, the latter seeing greater legislative powers. In 2014, the Social Services and Well-Being (Wales) Act was passed. This frames partnership working and relationships in Wales with a focus on prevention and early intervention and delivery at a local level. Our reach and scope has therefore developed. As officials we interface with the Family Justice Board. The onus is on Wales and the Welsh Government to be on the front foot as conversations around family justice can be England centric. As an example, we have welcomed the targeted family justice review. It looked at data from English Family Justice Boards and we worked to get Wales in the scope by involving the South East Wales Family Justice Board in the pilot. But the actions emerging were again England centric. Over time there will be a point when family justice should be devolved as part of the development of devolution.
- NB: Cafcass Cymru is at the coal face in family courts across Wales. Differences in legislation are beginning to have an impact in some cases. For judiciary and legal professionals primarily working in Wales it's not an issue but there can be a tension where judiciary and counsel work cross border. There can be time in proceedings, as Ruth Henke QC set out in her evidence, where you have to stop and take stock to make sure all are on the same page and are aware of the differences. We invest a lot of time in building relationships with the President of the Family Division and with the judiciary and with the Ministry of Justice (MoJ) and we reinforce the different context that Wales has.

*Sir Wyn Williams asked about the potential for conflict where families and/or the organisations involved in cases are situated in England and Wales.*

- NB: It would not be an issue in private law work as applications tend to be made where a child is living. Parties can be from England or further afield but if a child is resident in Wales then Welsh legislation applies. In public law proceedings it can be more complex and issues tend to be addressed by professionals behind the scenes and should not impact on the families involved.
- AH: Taking a wider view there can be issues around non-devolved initiatives and tensions that arise about the allocation of funding between England and Wales, for example. We've seen good initiatives, but sometimes they are only piloted and funded in an English context. This can then get into the political context. In the Welsh context I'm concerned to ensure the court interface and the system is geared up to reduce the numbers of children especially in public law cases who have to be looked after by local authorities and so forth. Through the Family Justice Network in Wales we

try to share best practice and we try to keep a good interface with the judiciary and other professionals that add value and purpose. There have been times when there have been funding initiatives and the challenge is having two governments that are looking through a slightly different lens at an issue. We try to work cooperatively but if the lens is focused differently that can have an impact. We have tried to look at our devolved responsibilities and how we can use those to strengthen things. We have an initiative in Wales called "Reflect" where local authorities work with mothers who have had at least one child removed. It tries to get intervention to support them as a mother and as a person. Context works well at a local level and the Welsh Government has funded that to roll out across Wales.

*Sir Wyn Williams asked about the awareness of litigants in person (LIPs).*

- NB: It is unusual to have LIPs in public law cases. . It is usually in private law cases where there are LIPs, but the majority of these cases are not involved with the social services department or impacted by the Social Services and Well-being (Wales) Act.

*Lord Thomas referred to the impression from the evidence provided in the answers to the questions put to the witnesses that the whole system is working and nothing needs to be done.*

- AH: If you look at it on a case by case basis there is whole lot of good work at the interface but in terms of the context of the system and society wide and the root causes then I'm putting my case on a broader base. Looking at the history of devolution, for me it will be inevitable that the traditional model of England and Wales is shifting.

*Lord Thomas asked if there are specific instances and problems because some services are run under the Welsh Government and some under the UK Government.*

- NB: In private law work I can't refer you to a case where a particular problem hasn't been surmountable. However, if and when the family justice system is redesigned by the MoJ, Welsh legislation and different models of early help and support services that exist for families in Wales would need to be considered. .

*Lord Thomas asked for detail as to what are the future problems.*

- NB: in respect of private law work we know that there are far too many families going to court and alternative service models are needed to provide early advice for families to help them resolve their issues outside of the court system. The system needs to change and for resources to be diverted from courts to early intervention to support families. The service models and structures in England are different to those in Wales and changes in legislation must reflect the Welsh context. We will provide evidence in writing about what the specific issues are.

**Question area: Practitioners have told us that local court closures have led to delays in proceedings and forced clients to travel much further to court, frequently arriving late for hearings. What resources are needed to make the court system work for family justice in Wales?**

- NB: Access to courts is a challenge for people and was so even before court closures because of the geography of Wales. The court closure programme has had an impact but the major challenge is the judicial sitting arrangements. Cases can move between courts with hearings in Aberystwyth, Swansea and so forth dependent upon where the judge is sitting. This creates logistical challenges and means families often travel long distances. The use of good technology presents an opportunity for us to think differently when it works well. It can mean young people can be part of proceedings without the need to travel. But we need a good infrastructure and a willingness on the part of professionals to use it.
- AH: The rural nature of Wales is significant in terms of access to justice. We are looking at the

impact of what's devolved and what isn't. If we have over 6,000 children in the care system in Wales, that's a significant figure. If we are looking to achieve the 26 week aspiration of the UK Government and the Family Justice Network, which we are doing through good partnership working in Wales, we need proper conversations about resourcing implications. As we service the whole system with rising care proceedings we have to fund in terms of the work of the social services departments and those decisions must be taken from the Welsh Government side. Technology allows us to be more efficient and using video conferencing links into the court system has a positive impact for users. It works in the criminal justice system too. In terms of court bundles and the transfer of information we support Her Majesty's Courts and Tribunals Service (HMCTS) in terms of what it is doing on development and roll-out. The local authority approach is based on the "Signs of Safety" initiative. On the digital front we support what HMCTS is doing but the challenge is about the system across different locations, Broadband speed is an issue for the connectivity agenda. It's something we need to look at and make sure the system can push and pull itself. It is advantageous for us that there are only three Family Justice Board areas. We have the Family Justice Network. Judge Sharpe in Swansea and West Wales has shared his experience with the judiciary about the digitisation of records and how this can be managed between the interface of local authorities and the court system.

**Question area: How can technology be used to improve people's access to family justice?**

- AH: I think there are platforms like Skype and FaceTime and how technology can be used for preparatory meetings with witnesses and so forth that is helpful, especially people in rural areas. How do we measure increased online applications in public and private law? This is something we need to think about. Young people tell us, and the Youth Justice Family Board has been very positive, about the types of court facilities there should be in the modern digital era.
- NB: Reliability is the main issue here. I shadow staff across Wales and I am assured that families have access to a service through the medium of Welsh. If documentation is published in Wales it has to be published in Welsh too.

**Question area: Family proceedings can be emotive and increasing numbers of litigants in person are absorbing disproportionate amounts of court time. Should the scope of legal aid be broadened to both assist people involved in family proceedings and improve the administration of family justice?**

- NB: We know that 90% of people who separate don't go to a family court to resolve child arrangements. Of those that do, with Cafcass Cymru intervention, 30% to 40% reach agreement and settlement. Of those families that then get into court, many of them can't get legal aid. There are support services, the Personal Support Unit (PSU) in Cardiff, and Cardiff University's pro bono scheme in the south Wales area provides advice and guidance to people. It is helpful but it's a real challenge for applicants in the court room. We are seeing cases take much longer and Judges are spending more time in helping people understand their rights and entitlements. All of this adds pressure in the system. The priority has to be about reshaping services to support families to reach agreement, where it is safe to do so, without resorting to the court and making sure those people who are vulnerable have access to legal aid. There has been progress in ensuring survivors of domestic abuse get access to legal aid. Future service models would benefit from a combination of free advice and guidance for applicants as well as legal aid for those who are vulnerable or when cases have particularly complex issues. The challenge is how those services are funded and all too often they are reliant on charitable funding which is not sustainable.

*Simon Davies asked about how best to target limited funding.*

- NB: Cuts to legal aid for public law means that the quality of early legal advice families are getting at the pre proceedings stage in public law cases is variable. The care crisis review recently published identified this as a key issue. In private law cases I think a mixed economy is needed. I

don't think rates of legal aid are such an issue here as they are in public law cases. But funding for services that provide support for applicants needs to be sustainable. There is a danger in saying more legal aid will make things better but what is needed is a reshaping of the service so families that need advice and guidance get it and don't need to turn to the court and those where there is a high level of vulnerability and safeguarding issues get the legal aid support they need.

- AH: From the Welsh Government's perspective we would be thinking about where we could de-escalate and how we can put support in place to ensure less people end up in the court arena. If family justice was devolved and funding was devolved we could look at family mediation and advice services in a different way. We would want to get into a space where there would be support in a less adversarial system to seek resolution at the lowest possible level.

*Wyn Williams asked about legal aid rates.*

- NB: I'm talking specifically about the very early stages of a public law case, where the local authority is considering going into court. The family is entitled to legal advice at that point but the rate is so low some solicitors will not provide the service or they tend to send junior members of staff who only have a listening brief. This is an issue across England and Wales. In terms of the number of applications in court and the outcomes, we have our own figures in Wales. But not as regards legal aid and advice, but HMCTS might be able to provide it.

*Lord Thomas said this was why specificity is needed for Wales as figures are disaggregated.*

**Question area: Can alternative dispute resolution (ADR) be used to alleviate the pressures on the court system?**

- NB: In terms of ADR, Cafcass Cymru doesn't provide a service until a court application is made. This is the same position as in England. Mediation services are offered as a pre court stepping stone that people should look at before they make the application in court. There has been a significant decline in the take-up of those services in England and in Wales. There is no incentive for parties to participate and it also requires both parties to engage in the process. For many parties by the time it comes to making an application to the court, they have gone beyond the point where mediation could help resolve the issue. There is very little evidence that the current mediation services are reducing the number of court applications. Figures for take up of medication services are available from the MoJ. Funding for the services comes from the MoJ and the service sits outside of court processes. The MoJ has tenders with third party providers. It only relates to private law disputes.
- AH: The challenge is when that service kicks in. Can we get engaged at an early stage before cases escalate at a time when people are vulnerable?

*Lord Thomas asked for detail and costing about what the Welsh Government wants to do.*

- AH: I'll do my best as we are dealing with Brexit and so forth at the moment. We have ideas around finance. We are talking about the interface with the UK Government and we will give you the answers we can in relation to how we could do things differently in Wales. We'll submit all further information that we can.

**Question area: In the absence of legal aid what other funding mechanisms can be promoted to ensure parties in family law proceedings are properly represented?**

- NB: In terms of services it's the PSU and services delivered by universities. The issue is how those services can be funded in a way that makes them more sustainable and accessible. There is an absence of a strategy for the provision of these support services across England and Wales who access the Family Court.
- AH: There's the issue of a fair funding settlement for legal aid. From the feedback we have had

the changes have impacted on vulnerable groups. How funding is distributed across family justice is part of our case for change. The Welsh Government is doing work around mitigating the impact of poverty. We know that hardships can lead to proceedings involving children. In terms of alternative funding we are using our devolved powers to do things in different ways to support children and families in their communities. I referred to “Reflect” earlier on. We are investing in care leavers and all of these initiatives are at the heart of the system and society moving vulnerable groups away from using the courts and to help them too in terms of better outcomes. We like to see legal aid become less significant by using early intervention advice services to get better outcomes.

**Question area: Do advice services in Wales provide specialist family advice and do they reach people in need of that advice?**

- AH: We look at need for families to have specialist legal advice, as recommended by the care crisis review. We see a strong role for the voluntary third sector in this too. I strongly advocate financial support for it. Again I highlight “Reflect” which is a good example of Wales using its devolved powers.
- NB: There are family information services in local authority areas which are free and accessible to all and give advice on what’s available to families in their area. I can put you in contact with colleagues to provide information to you about this. Part of it is giving early information to families and those that are separating how they can better manage the situation for the benefit of their children. In respect of advice specifically for parents looking to instigate family proceedings, there is an England and Wales divide. An example is that the MoJ, through the Department for Work and Pensions and the Department for Education, have made resources available for early online help and support but in the English context only and they do not reflect the position in Wales. So advice services in Wales are disadvantaged at that point.
- AH: “Dewis” is a project under the umbrella of the Social Care and Well-being (Wales) Act to help individuals find the right places for advice and guidance.

**Question area: We have heard there are inadequate facilities in Wales for children requiring secure accommodation or for specialist care for eating disorders. How do public services, such as health, impact on family justice and could the interface between those services and family justice be improved?**

- AH: We agree that the coordination between health, local authorities and public services generally has to be strengthened. We have a ten year strategy for health and social care in Wales, “A Healthier Wales”. Within that we have strengthened our relationship with regional partnership boards for planning at a regional level. We’ve allocated funding for integrated care, an additional £15 million, for prevention and early intervention. There are 6,000 children looked after by local authorities and we are focusing funding on helping them with bespoke initiatives. We are allocating funds for therapeutic smaller residential units. There are three in the west Wales area. With secure accommodation there is a gap between basic care and a more interventionist therapeutic care below secure accommodation. Very much in a partnership space to deliver better outcomes. In the current year we have 19 applications for welfare secure child borders. One unit provides secure provision, Hillside in Neath. It has 22 beds, 18 are welfare, and four are justice secure. We need to improve the flow of children as this doesn’t work well. Children from Wales can be placed in distant locations, as far away as Scotland. We have a policy to keep children in a Welsh context close to home. Specialist care may be needed. But the big issue is lack of spaces. English children come to Wales too, so the flow is not right. We need to invest in the provision so only those in secure accommodation are those that should be there after all early interventions. I’m not aware of disputes between governments as to who is responsible but sometimes there are disputes between partner organisations, e.g. whether a child has a health need or a secure need.
- NB: I am aware of issues sometimes issues about who is responsible for commissioning and funding placements. In Wales it’s the responsibility of local authorities and local health boards.
- AH: There have been issues about all relevant information following children to ensure they are in

the right environment but we have worked hard to ensure intelligence is shared with relevant agencies.

*Lord Thomas referred to the Cardiff University Wales Governance Centre's report on imprisonment in Wales and asked about the higher number of looked after children in Wales compared to England.*

- AH: There is a Ministerial Advisory Group looking at this issue and the ebb and flow of the figures. There is a difference in the rate of children taken into care in Wales compared to England. The judiciary are clear when I've met with them in saying that no children that have come through public law proceedings are below the threshold, they should all be in care. That's why I've talked about the work we are doing around early intervention and prevention. There can be all sorts of reasons as to why children come into care from certain communities compared to others. The First Minister had a manifesto commitment to prioritise reducing the number of looked after children in Wales. I will be chairing a group of stakeholders to agree bespoke targets for reducing numbers safely. Evidence highlights issues around how social work interfaces in deprived communities, with risks in certain countries, and some cases in Wales have had dramatic impacts because we are a small country. We will look at the whole system and the Welsh Ministers expect to see a reduction in numbers. We will share the figures we have with you, together with the evidence and trends. Some local authority areas are doing better than others in dealing with challenging circumstances.
- NB: All of the information you've asked for is published annually by the Welsh Government and is available. The rate in Wales is higher than in England. However, it is not a fair comparison to look at the headline rates for England and Wales so if you compare the North East region of England, which has a similar demography and economy to Wales, the gap is smaller but a gap none the less and figures are still higher in Wales.
- AH: Reported statistics for 2017/18 for Wales for children starting to be looked after are 2,162, abuse and neglect 1,386, family in acute distress or dysfunction 519, parental illness, disability or absence 143, socially unacceptable behaviour 79. We will send all the information we can to you.
- NB: We can't correlate these figures to the number of applications made as some may be voluntary arrangements. The question has been asked by Ministers in England and Wales over the last three years. I can provide you with the report of the targeted family review which identifies the key issue driving the increase in public law work.
- AH: The Ministerial Advisory Group will report to the Minister at regular intervals. There is a work plan in place and we can share that with you.

*Lord Thomas asked for information on why there is a difference between England and Wales and whether that will show if there are matters that must be dealt with in Wales.*

- NB: A lot of work has been undertaken across England and Wales to try and understand why the rates of children becoming looked after are increasing. All this work shows that the issues are complex and there is no one answer to the issue. The key drivers for the increase identified in the work include: poverty; poor housing; access to employment.

*Lord Thomas asked for this to be thought about and for there to be a further session where someone could answer the questions.*

AH: We'll be pleased to summarise the information and report back on the work of the Ministerial Advisory Group and the proactive work that is being done to identify best practice.