

**Commission on Justice in Wales  
Oral Evidence Session  
22 March 2019**

<b>Present:</b>	<b>Commission members</b>	<b>Secretariat team</b>
Rebecca Hilsenrath (RH), CEO EHRC  Martyn Jones (MJ)  Andrew White (AW), CEO Stonewall Cymru	Lord Thomas of Cwmgiedd, Chair Simon Davies Juliet Lyon Professor Rick Rawlings	Chris James Katherine Thomas

**Question area:** Equality and diversity within justice.

- MJ: Before we start I want to say for the record that I am not representing the views of any agency, body or organisation in giving evidence today.
- RH: At a broad level in terms of women we've seen good news emerging from the statistics for the justice system in Wales. More women are involved in the justice system and at a senior level. Nearly 30% of police officers in Wales are women and there are higher numbers in the judiciary too at a more junior level. Across the piece compared to other countries in the UK Wales compares favourably. The position is less positive in terms of the BME communities. Only 1% of the judiciary come from BME communities and within the police force they are the most unrepresented part of the community at large. It's important that BME communities are represented given that the police should reflect the communities that they serve. As regards improvements, in relation to women it's about improving consistency. In relation to the BME communities it's about getting more people in. The course of actions will be the same but more acute in relation to the latter. It's about positive action, mentoring, opening channels of communication, opening pipelines, how adverts are worded and placed and so forth all to change the profile of candidates that apply for positions. It's important to recognise there may be conscious and unconscious bias at play, for example in terms of the composition of selection panels. Where there is such a lack of representation, the justice system needs to take a hard look at itself.

*Professor Rawlings asked about whether the position is worse in Wales compared to other countries in the UK.*

- RH: I'll write to you with this to see if there is a particular problem in Wales as regards BME representation in the police and so forth.
- AW: There are pockets best practise throughout Wales and we work with all police forces. There are some thriving LGBT staff networks and great role models in the Welsh justice sector. From a user perspective, the picture is bleaker and there is a lack of confidence in the LGBT community about the justice sector generally. Around 1 in 4 members of the LGBT community have been the victims of hate crime in the last year but the percentage that report it is lower and 4 in 5 victims do not report it. I'll supply you with details of these reported statistics. We have some way to go to bridge the confidence gap and hate crime seems to be the biggest area of concern.
- MJ: My starting point is the Lammy Review and it made strong noises about the lack of representation across the justice system. We have gone backwards in Wales in terms of diversity in the criminal justice system in Wales. The most senior position currently held by a person from the BME community in all four police forces is that of sergeant. A lot of the good work put in place following the Macpherson report has been lost as a reaction to 9/11 and the approach of engagement with minority communities being influenced by counter terrorism and growing islamophobia. Minority ethnic and religious groups are victims of hate crime and 75% of all hate crimes are targeted at those groups and we are not dealing with that as an issue. In some Welsh

police forces governance arrangements recommended by Macpherson have been lost following the dismantling of police authorities and there is no equality and diversity infrastructure in the force in which I am involved. Direct engagement with communities is not facilitated in the same way it was. I am aware that the PCC has tried to make South Wales Police more representative and the Force has targeted BME communities to influence its recruitment but these people are at the beginning of their careers and their impact as role models will take time to develop. Because of the nature of the career path it will take some time for them to reach positions of seniority. I believe you need more senior officers from the BME communities in an organisation to make diversity more visible and across the range of protected characteristics. Making policing graduate entry does not help BME communities. There are various reasons why BME communities do not see policing as a career option.

- RH: There is an education attainment gap for BME students. If entry is conditional on a degree qualification, this will impact the pool of potential BME candidates. There is lower BME representation at Russell Group universities, for example. The culture of police forces tends to be quite familial and often children follow their parents into a career into the police. That speaks to a culture that is quite difficult to shift and you therefore tend to see the profile of the police repeating itself.

*Lord Thomas referred to the lack of an apprenticeship scheme for the police in Wales.*

- MJ: I am aware that the Welsh Government does not support this in Wales but I'm not acquainted with the evidence about how effectively it works elsewhere. Picking up on the point about the familial culture and recruitment, this was identified by the Lammy Review.
- RH: We have done work on apprenticeship schemes elsewhere and we see it as an important means to establish a level playing field in terms of access to the labour market. That's not to say that they will not be segregated and it's just as true for apprenticeships as any other role. Simply offering an apprenticeship doesn't mean there will be more BME candidates.

**Question area:** Disproportionate rate of imprisonment

- MJ: The WGC has reported on the prison population in Wales. There is no reliable data on the prison population in Wales. There seems to be an indication that Wales is becoming a place for English prisoners. It's therefore hard to get a reliable picture. The Lammy Review recommendations are pertinent here. There seems to be a consistency with mental health and social care practices and if you are not using intelligence led policing for things like stop and search you will arrest more BME people and they tend to be treated more harshly in the criminal justice system. This looks like something more than unconscious bias and indicates more of a structural issue. It's a human rights issue that goes beyond equality and diversity issues and it seems it is accepted it is more acceptable to incarcerate BME people because the criminal justice system is predominantly white.
- AW: It is important to amplify BME voices and it should be key as part of this process. For me, the issue is about the intersection between race and other elements of identity. LGBT research shows racism in that community experienced by LGBT people. The other intersection is with the implementation of the socio economic duty in Wales. If recruitment is framed around graduate entry there is scope for there to be discrimination on socio economic grounds.
- RH: My understanding in terms of incarceration of people from the BME community, the proportion is twice that in term of the percentage of the non-white population in Wales. People from the BME community are more likely to be incarcerated and with longer sentences than the white population. The causes are complex and linked to the levels of poverty in the BME community, higher rates of school exclusions and so forth. Those gaps are bigger in Wales than elsewhere. We see that play out more in terms of representation in the criminal justice system. It may be a case of factors working together. In the BME communities there is a lack of confidence in the criminal justice system and that is a lower level than in other communities. How do you build that confidence is an issue. Another point of intersectionality is mental health and we see

proportions in the criminal justice system of people with learning disabilities and mental health issues. There are disproportionate numbers of people with these issues in the BME community too.

*Lord Thomas requested statistics that witnesses can provide about the position of the BME in Wales around poverty, school exclusion and health.*

- RH: Any system which is flawed will be more flawed for those that are the most vulnerable in society. We have to ask ourselves whether incarceration is the approach for people who across a range of factors are the most vulnerable. The Ministry of Justice is looking at moving to a system where there are no sentences of under 6 months in length. We welcome that as it is about an intelligent look at what sentencing should achieve.
- MJ: I agree with points made about intersectionality around race, mental health and socio economic inequality. I believe MENCAP have produced conservative figures on this and they estimate that 17% of the prison population has a learning disability of some sort and that's not been explored further.

*Professor Rawlings asked whether there were any issues from a lack of a Welsh perspective from an institutional standpoint.*

- RH: The EHRC is a GB body and our work is informed accordingly by different component parts. The Wales committee moves around Wales and feeds back a Welsh perspective. I say our work is more focused on Wales because Wales is a smaller country and the committee is active. We invest a lot in gaining the right perspective and maintaining an office in Wales. This is very important to us.

**Question area:** Groups not getting a fair deal in the justice system

- AW: The socio economic duty was devolved by the Wales Act 2017. How it is to be enacted in Wales is a source of some discussion. There are various options and you could, for example, treat poverty as a protected characteristic, or you could make the socio economic factor a consideration in each of the protected characteristics, or you could remove the requirement for reliance on one protected characteristic – so someone seeking justice on lower socio economic grounds could rely on a number of protected characteristics. Addressing socio economic issues are not easy. It therefore needs to be prioritised. Wales scrapped its child poverty target. Bringing this in as an equality duty could have an impact in Wales because Wales has embedded equality in its approach.
- MJ: This plays out across protected characteristics. Socio economic inequality means that certain communities come up against the justice system more than others. One of the issues is some of the origins are established quite early in peoples' lives and what we see in the criminal justice system starts out on pupil referral units in school. That pathway for some is established early. As a magistrate I see familial sequences coming to court.
- RH: We call for the socio-economic duty to be implemented and it's a case of levelling up across GB because Wales is leading in this area. This is an important space for us. In every protected characteristic, poverty drives issues deeper and very much acts to aggravate issues. The effect is that it causes greater vulnerability. The gender pay gap is an issue. There are instances of poverty and protected characteristics operating in a vicious cycle. Once you get into criminal justice and imprisonment there is cycle of reoffending. Court closures in Wales, over half have gone since 2010, have impacted on people in rural areas in particular. Transport connectivity means it is hard to get to court. The digitalisation agenda for courts impacts on older people and those with mental health issues. Legal aid cuts have impacted disproportionately on those with relative levels of poverty. In terms of mental health, it's notable that 4% of those detained in police cells under the Mental Health Act are detained as there is no capacity in the health sector thus taking people into the criminal justice system when they shouldn't be there.

*Lord Thomas asked if there is any research reflecting on rural Wales and the use of technology facilitating access to justice for vulnerable people.*

- RH: I can look to see what reports we can forward. As a starting point, we do not resist technology as an enabler. But it's about taking a more in depth understanding of the impact digitalisation. We are concerned that the HMCTs modernisation programme as a whole doesn't fully consider the issues. We are concerned that if a person is remote from court will they be able to use IT to access court liaison officers who are there to offer support? Will a person's impairment be evident over a video link? Will a person be able to file a plea via IT or will they be pushed more towards compliance? The court needs to carry out appropriate impact assessments. We are producing a report on reasonable adjustments in the criminal justice system and we will let you know when we publish it.
- MJ: I feel that there are advice deserts and they exist because there is not sufficient infrastructure in Wales to provide remote access advice services. In terms of court disposals, HMCTs needs to address the modernisation agenda questions. There is an absence of support and advice services for people and I don't know of an IT solution that is in place in Wales.

**Question area:** Resolving disputes.

- RH: The Welsh Government announced a £5.9m grant to the advice sector last year. I'd like an update on that. Capacity building in the third sector is important. The Welsh Government should look at expanding eligibility for legal aid and reinstate legal aid for initial advice and for family and housing where early intervention is important. We are reporting on the impact of legal aid changes on discrimination advice. In terms of alternative systems, it is helpful to consider how the adversarial system continues to be helpful and works vis-à-vis an inquisitorial approach in this area. In the long-term, codification of the law needs to be kept on the agenda.
- AW: The third sector is important for communities of identity and culture and they may want to relate to groups that understand them in a broader sense. A LGBT person may call Stonewall Cymru with a matter relating to a hate crime and ask to be signposted to different services. Often people want to talk to someone that gets it from their perspective. The importance of the third sector is that it can sign post in the criminal justice system. Austerity is a risk to the sustainability of third sector services.
- MJ: I support these comments but with the proviso that there is a connection with the need for independent advice and advocacy services but these must be adequately resourced.
- AW: In the context of the greater use of IT, some forms of AI can be used to screen out certain things such as hate crime but it can have unintended consequences. An example is LGBT access where AI can get in the way by Stonewalls site being blocked because of the word lesbian. AI needs to understand nuances and be developed accordingly. Young LGBT people are versed in the use of IT and go to the internet for information on LGBT issues. But they also experience bullying through the internet, the very place they go to for information and advice. I can provide you with statistics I have in this area.
- RH: We support mediation. It very much depends on the availability of services. We provide expert advice to ombudsmen to build capacity on equality and human rights in that system.
- MJ: On community courts, there has been discussion around this. It has been taken forward at a pilot level and no further. I think we should concentrate on getting things right in the system we have and ensuring that matters that shouldn't be in a court setting don't get there. Restorative justice is something we should pursue. It's important to deal with the causes and we have good examples in the devolved context, see for example the ACEs agenda. There hasn't been an equality and diversity lens applied on that. In terms of out of court disposals, the Home Office has been pushing police forces to use on the spot fines but the danger is that we've seen some cases that should have been be in the court system dealt with in that way, including serious assaults and sexual offences.
- AW: Whilst we welcome alternative routes such as restorative justice, and the recent Gareth Thomas assault has raised the profile of this, I would not want to see it come the default and

minimise the victims' experience of justice. There needs to be a range of options and that victims can make avail themselves of a formal process.

**Question area: Children**

- MJ: I'm not involved in youth justice. We have a fairly robust rights based approach around children in Wales. Moving forward, I think better use of the criminal justice system in Wales would be achieved by youth justice being devolved into the Welsh context. The driver must always be to ensure that early intervention is in place to prevent criminal careers emerging.

*Professor Rawlings referred to the cliff edge between youth and adult criminal justice systems.*

- MJ: There is an arbitrary marker that puts someone in an environment different by reason of age alone. We need to expand good practice to manage young people, not just those aged under 18 years, and attached to the early intervention agenda to really change lives before they go badly wrong.
- AW: I chair the LGBT sub-group of Youth Homelessness Cymru. We know about their experiences in this context more than we know about their experiences in the justice system. We can extrapolate the vulnerability of young people in the system but we can't pinpoint precisely the experience of young LGBT people in the justice system. There is a need for resource to be directed to research in this area.
- RH: In terms of numbers of children being detained, numbers in Wales are not high but if those that are 50% of them are detained in England and the statistics indicate that distance from home impacts on a child's access to his or her family – every 25 miles there is a drop in a visit from family and friends impacting on connectivity issues. This gives rise to increasing isolation. All these things go to issues about what we are trying to achieve in terms of the cycle of criminalisation. It's outside of legislative competence in Wales, but the UK has one of the lowest ages of criminal responsibility in Europe. There is a correlation between a low age of criminal responsibility and high levels of child detention. The UN is likely to recommend raising it to 14 years. There has been work in Scotland to look at child justice by way of a welfare rather than criminal justice emphasis.
- MJ: There has been work in Wales to take on board the community of practice around positive behavioural support and spreading best practice. Many things can start in pupil referral units and carry through to courts. I will give you contacts – it is being led by Public Health Wales.

**Question area: Women**

- AW: Chwarae Teg is doing excellent work on gender equality in Wales. We have a lack of evidence on the experience of LGBT women in the justice system. There is a need to look at alternatives to prison.
- RH: There are a lack of facilities for women in Wales. They are imprisoned in England with all the connectivity issues with family that arise as a result. There is a transport gap too. What happens on release? There are not enough state sponsored hostels or family support services. All of this gives rise to reoffending and recall to prison has gone up by over 200% recently, a rate that is far higher than for men. We have noted a failure of rehabilitation programmes. High numbers have been in abusive relationships and have addiction problems. Legal aid cuts have impacted on women too. There's a lot that can be explored and alternatives such as community centres, residential women's centres in Wales and adequacy of mental health support for women.
- MJ: The issues are well known in terms of the familial impacts of putting women in custody. The absence of prison in Wales should lead to a discussion about where smaller centres can be put around Wales. There is an intersectional element here in terms of protective characteristics and the impact of imprisonment on women's lives.

*Professor Rawlings asked about the equality and diversity perspective in terms of the jagged edge of devolved and non-devolved services.*

- RH: We are a GB wide organisation. We see different frameworks across the UK and take the view that it's important to have a coherent rather than a uniform approach. In Whitehall, there is not sufficient joined up thinking and lack of joined up strategy around health, housing, criminal justice and so forth. It stands to reason in a semi devolved context the issue is magnified as there is not policy competency to deal with matters holistically.
- AW: I ask what is the impact on the end user? One example is the Welsh language in prisons. In days not long gone Welsh speakers were sent to English prisons and were unable to use their language. Given the legal status of the Welsh language in Wales, not being able to use it in facilities is an issue. I say where things will have a practical impact then the Commission should make recommendations that competency should be devolved. The jagged edge could be smoothed by means other than devolution. See employment law, for example, and this has a huge impact on people and equalities across Wales and there is a joined-up approach working now that doesn't need devolution at its centre.
- MJ: Government operates in a disjointed way in Westminster and in Cardiff too. Even in a small nation there is an issue around the lack of connections that are necessary. There is significant devolved legislation and policy, namely the Well-being of Future Generations Act and the Social Services and Well-being Act, that provide a framework for dealing with lots of these issues. We have at a local level Public Services Boards, Regional Partnership Boards that commission services and a resurgence in community safety partnerships being driven by the PCC, so there are ways of taking this forward without the need for further devolution. But you cannot take things forward unless you understand the connectivity between issues.

**Question area:** Protected characteristics.

- AW: The treatment of transgender people in the justice system is variable. They are a hidden population in prison often faced with difficulty in accessing health care and placed in vulnerable prisoner wings or in segregation because of the systems concerns rather than that being suitable for them. I'll send you the Inside Agenda Identity report which will provide further information. What can change: training; monitoring the placement of transgender prisoners; NOMS should set up an advisory group to monitor the new guidance. Stonewall has published guidance for judges and other legal professionals – and I will share this with you – that refers to the room there is for developing the understanding of justice agencies in how to deal with transgender people. The family courts are in a unique position to focus on safeguarding young people and the rights of transgender parents not to have that issue becoming the influencing factor in cases.
- MJ: The Lammy Review recommendations are about making the criminal justice system more representative. The Review praises the CPS and their community panels. There is a strong case for sentence uplift for homophobic hate crime but this needs to be in conjunction with managing victims' expectations here too. Hate crime is policy speak in a sense, rather it tends to be an aggravating factor in other crimes.
- RH: Our current enquiry on reasonable adjustments is on-going. We'll want to share with you the recommendations that come out of that. I'd like to refer to the public sector equality duty that should not be a tick-box exercise. It goes to looking at a proper lever in terms of the issues facing justice in Wales. More work needs to be done on equality impact assessments of LASPO and the HMCTS modernisation programme.