

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

Present:	Commission members	Secretariat team
<p>Sophie Howe (SH), Future Generations Commissioner</p> <p>Janine Roderick (JR), Public Health Wales</p> <p>Alun Thomas (AT), Hafal</p>	<p>Lord Thomas of Cwmgiedd, Chair</p> <p>Simon Davies</p> <p>Professor Elwen Evans QC</p> <p>Dr Nerys Llewelyn Jones</p> <p>Juliet Lyon CBE</p> <p>Sarah Payne</p> <p>Professor Rick Rawlings</p> <p>Sir Wyn Williams</p>	<p>Chris James</p> <p>Martin Wade</p>
<p>Question area: How does the Well-being of Future Generations (Wales) Act facilitate different and innovative approaches to justice in Wales? What impact has it had on (1) the development of the law and (2) access to justice?</p>		
<ul style="list-style-type: none"> • SH: The Well-being of Future Generations (Wales) Act 2015 (“WFG”) provides an overarching piece of legislation that provides a framework for a vision for the Wales we want through the seven inter connected well-being goals and the tools to work differently, namely the five ways of working, to achieve them. The five ways of working are a good starting point for any justice system. In the long-term WFG can change the way we can do business in Wales. It’s a process of cultural change and it will take time to embed. It’s something we are not used to in the public sector where the infrastructure such as budgets and electoral cycle are short-term focused. We think about a generation as being 25 years, and if you are thinking about constructing a justice system today that is fit for future generations there are some significant issues that need to be considered and addressed, including developments in technology and AI. There are long-term trends in respect of people too, including mental health and increasing vulnerability, for example of an ageing population and how it adapts to increasing digitisation. Implementation of the legislation is a challenge and prevention should be a key tenet. The system has to be collaborative and integrated across policy areas and where the different levers to take preventative action and to work together across a range of organisations. The police not covered by WFG by reason of the devolution settlement but nevertheless they are key partners at Public Service Boards (“PSBs”) and they are involved in setting Well-being Plans. They are at the acute end and they know they need to work with devolved partners. This is the point around collaboration and integration. If the Commission was to establish its work around the principles of the WFG it will be a good starting point for you. In terms of access to justice, if we apply the five ways of working and the overall objective is to achieve the seven well-being goals, not having access to justice will impede progress towards the goals. A more equal Wales, for example, is relevant to access to justice and non-discrimination in Wales. I haven’t done any work on this in particular as WFG covers all policy areas and my resources are stretched, I have an annual budget of £1.4m to monitor 345 well-being objectives set by 44 public bodies. I have set 6 priority areas around skills, adverse childhood experiences (“ACEs”), alternative models of health and social care, housing, planning and transport. I am therefore quite specific in terms of what I do. • JR: WFG has, for ACEs, policing and access to justice, given us a robust foundation to base our work on and to operationalise the WFG principles. The way the justice system is built can re-traumatise people and frustrate efforts to prevent the generational cycle of criminalisation. I’ve talked recently to the Magistrates’ Association about the ACEs agenda and there was a sense of frustration in the way the current system often stops them addressing issues. A trauma informed approach is about protecting our future generations. The evidence is strong that children will follow their parents into the criminal justice system. • AT: We work with people with serious mental illness across Wales and we deliver appropriate adult services to the four Welsh police forces. The WFG and the ACEs agenda is something of a 		

black hole in terms of communication with us in relation to health and social care services. Access to justice is a real issue for our client group. We ran an access to justice scheme funded by Comic Relief for people with serious mental illness engaged at different points in the criminal justice system. We find that local authorities and local health boards are making poor decisions that go unchallenged and they therefore act with some degree of impunity. Local authorities are, for example, making decisions not to fund youth services. Young people want youth workers that they can talk to about the issues of growing-up. Teachers are dealing with children using mental health language such as “stress” and “depression”. We have created a monster because we haven’t got youth workers who are capable of working with young people to deal with the challenges they face. When decommissioning services in Wales we must look at the implications for future generations. We don’t have strong access to public law for individuals and public bodies get away with poor decision making. People need to know what their rights are and they are often ignorant of the possibility that they can challenge decisions of public bodies. People can be in vulnerable positions and therefore less likely to be able to challenge poor decisions.

Juliet Lyon asked about youth services and austerity.

- AT: Welsh Government gets a lot of policy issues right. The issue arises in the translation of policy. As a country we are of equivalent population to Greater Manchester that has a single commissioning body for health and social care yet we have numerous local authorities and local health boards. There are too many public bodies involved in commissioning care. We need whole systems approaches. Local authorities make local decisions and they don’t intentionally get things wrong. Youth services and third sector funding are often not a priority. Years ago the boys and girls clubs in the Rhondda, for example, provided lots of activity and something for children to do, offering peer support. We now don’t provide a youth service opportunity for young people to engage with each other outside school. As a result we are not building resilience in children for their future.
- SH: Where we are now is paying the price of our predecessors not having a long-term view. Some 50% of the Welsh Government’s budget goes into the NHS and we know only 15% or 20% of the population are accessing those services. My view is additional funding to the NHS should be ring-fenced for partnership working and preventative action. The WFG provides a chance to do things differently. There are innovative approaches. In Flintshire, the closure of leisure centres has been replaced by them being run as social enterprises. There are therefore solutions if people chose to look for them. Because of austerity, public bodies are focused on meeting immediate demand and long-term approaches are going by the by.

Lord Thomas asked about the alternatives to public law challenge.

- AT: The WFG Commissioner lacks powers. Welsh Government is managing 22 local authorities. Perhaps there needs to be a little more by way of direction. The ombudsmen service could work if it had teeth and could sanction local authorities. We have tried to work with Value Wales but it’s still working with 22 local authorities and there needs to be a slicker system, for example the WFG Commissioner having to agree to certain things before they can proceed.
- SH: I have powers under section 20 of the WFG to review public bodies. I can make recommendations and bodies need to respond and follow those unless they have good reason not to. Essentially they are “name and shame” powers. I’ve threatened to use them and bodies concerned have complied. I’m intending to use them this year in two areas around procurement and commissioning and Government’s interaction with NHS and how that is driving WFG principles. The powers are a lever, nothing more.

Professor Rawlings asked about the Welsh Government’s commitment to enact the socio economic duty in the Equalities Act 2010 and how that interrelates with the WFG.

- SH: This is an issue across a range of proposed legislation. WFG does extend to the socio economic duty through the well-being goal of a more equal Wales. All 44 public bodies have a duty to set objectives to deliver the well-being goals. WFG doesn’t provide for specific steps that

need to happen to deliver on objectives. If there is a way to show the socio economic duty fits in with the WFG, they need to be aligned. One of the challenges with WFG is the layering of new things on top all of the time, such as equality impact assessments, WFG impact assessments, UNCRC assessments and so forth. It's a big area of work for me to find out what the different plans are and to try and corral them under the WFG for duties to be met in a holistic way. The Welsh Government legislated for the WFG in this overarching way and it should ensure that everything now aligns with it.

- AT: Instead of following the spirit of the legislation there is a tendency to approach it as a tick-box exercise. Services have to be commissioned on the basis of the objectives that we want delivered.

Sir Wyn Williams asked whether there has been the start of a cultural shift.

- SH: There has been the start of a shift. I think there are frustrated champions out there in the public sector. WFG provides the opportunity and permission to challenge the system by requiring a long-term approach and use of resources on prevention. Some people are not in that mind set and they see it as a box ticking exercise. I'm interested in the thought processes and that is difficult to measure.
- JR: We are starting to see a culture change on the ground and at a strategic level too. What works in terms of ACEs is perceived financial security. There is evidence to show that this is critical so much so that adults with current mental illness are three times less likely have that illness is they have perceived financial security of 5 years or more compared to someone who has perceived financial security of a month or less. We can enhance those perceived protective factors.

Question area: What impact is the Adverse Childhood Experiences programme having on the criminal justice system in Wales?

- JR: The ACEs agenda in terms of prison, probation and policing is attuned across those services. We are training those services to be trauma informed in the way that deal with service users. By way of background, this is about universal proportionalism and taking a public health approach across criminal justice and policing. In that there are particular risk groups that require more, and this is important when resources are under great pressure. We have engaged with Parc Prison to do the first ACE prevalence study in a prison setting. We have the results of that study and I'll send them to you. In our original study, in the general population if you had 4 or more ACEs you were 20 times more likely to be imprisoned at some point in your life, and around 14% of the general population had 4 or more ACEs. At least 50% of the general population have one ACE. Of the prison population 50% have 4 or more ACEs and 80% have at least one ACE. There is a strong correlation between ACEs and violence victimisation or perpetration and that experienced within the last year, so generally when they were within the criminal justice system. The amount of ACEs also correlate to the length of time a person has been in the criminal justice system. There is a strong correlation to being in a youth offending institution and repeat recidivism. The study quantifies the matter and shows the points in the system where we could do targeted intervention. A number in our sample were parents and we already know where our future generation will be coming from. The reality is we have third sector partners scrabbling for resources and there is no real statutory effort to intervene to stop people entering the justice system. This evidence gives us the chance to build a case as to where we should focus our efforts. The ACEs programme is therefore having a huge impact and gives us a shared language.
- SH: Of the 19 PSB, 16 have ACEs objectives in their well-being plans. I see challenge in terms of the infrastructure around this and I have a concern that whilst being trauma informed, services aren't informed in an ACE way that will meet users' needs.

Lord Thomas asked the emphasis on ACEs had changed prison policy.

- JR: A person who has grown up with trauma can respond to stimulus as if it is a threat and this can be the reaction in a prison setting. We are look at the way in which interaction can happen in

prison in a more trauma informed way. I will let you have details about the work on-going around trauma informed approaches in prisons.

- AT: We have been working on a scheme for the past 7 years with children with an “at risk” mental state. We work with them from a transactional development perspective. We have previously had lottery funding for a Criminal Justice link Service and we have reduced reoffending by 19% in that group. The major impact has been getting people in need access to the services that really help them. But we need to use language about ACEs in a way that does not simply then just label a person as such.

Question area: What can be done differently in Wales to stop people entering the criminal justice system?

- JR: I want to explain a little more about the public health approach. We often misunderstand what it is and it is essentially common sense based on really strong evidence. It’s also about understanding what our risk and protective factors are. In the criminal justice system we have focused in ACEs as a risk factor and the associated protective factors and where they can be brought to bare. It’s important to understand what is being measured and monitored to ensure that what is being done is making a difference. It’s also about testing small to start with and using improvement science methodologies to ensure continuous improvement and then scaling that up. There is a huge graveyard of projects behind and when something works we should scale it up. We want to do this with our criminal justice system. You can apply that to any part of the justice system.

Sarah Payne asked if there were specific things that were being missed now.

- JR: 40% of police work on a daily basis is related to domestic violence. South Wales Police have over 60,000 public protection notifications they submit every year. Of those over 40% are related to domestic violence and abuse. Few of these cases enter the criminal justice system and when they do there is frustration of magistrates that they can’t change the behaviours for perpetrators. Children in that situation are not protected and this feeds the cycle of domestic violence and there will always be other ACEs present, like mental health and substance misuse. Our systems are not yet working properly to address these issues in areas of standard and medium risk. Funding of the third sector in this area is not sustainable. Given the size of Wales we can do things better, for example around an evidence based perpetrator programme for cases of standard and medium risk, but it lacks coordination.
- SH: The Drive Project was piloted in South Wales and there does need to be an alternative to the criminal justice system as often victims do not want to go through that route. The current system tends to focus more on process than people. What is needed is an early multi agency approach where the outcome measure is ensuring the safety of persons and the prevention of on-going ACEs. A good example is Gwent where a missing persons’ hub has adopted a multi agency approach to tackle repeat incidents of missing children. The approach is all about solving the problem at a strategic level and that’s how our system should be structured. Funding needs to shift towards prevention looking at early intervention and long-term measures. There are also issues about looking for opportunities across the board, for example programmes for apprenticeships that can be used to target those on the edge of the criminal justice system, and corralling resources across public bodies to maximise impact rather than each acting in a silo.
- AT: We have been working with other partners on a project called “Adferiad Recovery” to look at the range of challenges people face in a holistic way. At the moment the system looks at a service specific approach, for example the resettlement of offenders, we still look at them as an offender rather than the reason they have gone into that environment. We don’t educate well enough those people who are already in the system. We are waiting on a funding application to work at Hillside Secure Centre to work with young people around their discharge and release. One of our team members has been through life in care and that process and understands how criminal behaviours come to the fore. Despite all of the good work that has been done on mental health we are now seeing a growing negative approach around psychoactive substances and public order rather than

public health responses being used to respond to issues. Addiction can be a response to earlier trauma and if the response is to stigmatise it then it can fuel the cycle and can have a massive impact on the children of those suffering with addiction. In Wrexham there were efforts to clean up the street by removing people to elsewhere but this causes more challenges. We see nimbyism and people don't want substance misuse services near them. But substance misuse issues are widespread. We need to support families and children using a joined up approach that ensures children can have normal childhood experiences. We need to deal with addiction in a public health way not in a way that criminalises it. Women in particular who commit low level offences such as shoplifting to feed their families and who can't pay fines end up in prison aren't served by this approach which fixes nothing.

- JR: Those with 4 or more ACEs in prison, the commonest reason for incarceration was theft to fuel addiction.

Lord Thomas asked about the role of problem solving courts.

- SH: The majority of domestic abuse cases don't go anywhere near the criminal justice system for a variety of reasons. By saying the only response is a criminal justice one means that perpetrators are not dealt with. Having a different response therefore deals with the reality of the situation that only a small percentage of domestic abuse cases enter the criminal justice system. I mean that many women will not report or help prosecute domestic abuse so nothing is done about it.
- JR: There needs to be enforcement and positive policing to protect victims. We need to think about rehabilitation – many perpetrators will never be rehabilitated but others have grown up with domestic violence and you can help them to break the cycle of domestic violence. Evidence based preventative rehabilitation programmes are important. We know domestic violence escalates and we need to intervene early to stop that.
- AT: There is no real clarity and understanding of what options there are to deal with domestic violence for those people who may need to report this.
- JR: Most victims of domestic abuse don't want anything to happen to the perpetrator, they just want to make things better. There are programmes being tested that work but again the funding to the third sector to support those programmes is not sustainable. We should take a whole family approach to these issues. At that standard and medium risk levels, we know intervention works but you must invest to stop the escalation of violence.

Lord Thomas asked about the system of accountability around decision-making in problem solving courts.

- SH: There are a range of players that need to be involved. A multi agency approach is required. The criminal justice system is only dealing with a small percentage of domestic abuse cases – only 16 police forces in England and Wales have an arrest rate of over 50% for incidents. There needs to be a fundamental look at preventing what's now and for the future generation.
- AT: In family drug and alcohol courts there for every £1 spent £2.30 is saved from elsewhere. I have information about them and I will pass this on. They could be tested in Wales.

Lord Thomas asked for any further views about accountability and decision-making to be sent through.

Juliet Lyon asked about diverting people from criminal justice into treatment and care.

- AT: The Police and Crime Act will make it cheaper to arrest people for public order offences rather than using powers under the Mental Health Act to detain for assessments (section 136). We need to look at the services people require to keep them well in the community. The failure to share budgets and disinvestment by local authorities has made the situation worse. The police are the only agency guaranteed to respond. As a society we fail to support the carers who are often managing services at home. We are not addressing challenges with homelessness. People can lose a tenancy but there may be better solutions and responses. I will send through information on this. As regards decision-making, I feel there is a role for mental health courts who decide whether matters are best dealt with in the health or criminal justice systems.

- SH: Is there a role for a multi agency decision-making board that could instruct services to be engaged where appropriate and then monitor them and hold them to account. The system is not working and is it's self failing.
- JR: We've given evidence to the Health, Social Care and Sports Committee about mental health and policing and I'll share that with you. There is a real lack of clinical governance quality in custody nursing and the nurses don't have the depth of knowledge to tackle mental health issues. The All Wales Criminal Justice Board has asked Public Health Wales to coordinate discussion with statutory mental health services about what they are doing. We have done a quick landscape review share of where we are in terms of the coordination of mental health and well-being across Wales and the picture is not good because there is no real co-ordinated approach or strategic vision of where people want to get to.
- AT: We had a lottery funded project called "Out of the Blue" run in South Wales with wide engagement with magistrates, probation and so forth. We were going to pilot a version of a mental health treatment order that would have provided a sentencing option for a six or eight week programme with us but because it couldn't be offered by magistrates pan Wales it couldn't be run. We are not giving our selves a chance to test new approaches and we are not allocating proper resources.

Question area: What should be done to improve the way people are treated in the justice system in Wales? Should there be alternatives to traditional courts such as ombudsmen, or alternative dispute resolution (such as mediation)?

- JR: As a universal approach all our courts should be trauma informed. We have an opportunity to test this across our justice system in Wales. We then need to think about what areas should have a targeted approach and partners should work this out collectively.
- SH: There should be alternative provision.
- AT: People who are disadvantaged should be able to access professional advice services. Does, for example, the pressure on legal aid contradict the principles of the WFG.

Question area: How can public bodies, including Public Service Boards, engage more effectively with communities to deliver better outcomes for the people of Wales?

- AT: There is a simplistic approach to consultation and engagement in Wales. Unfortunately, consultation does not tackle the difficult questions in Wales or engage properly with communities. There is insufficient representation on PSBs for organisations in the third sector with often a representative from the local county voluntary service who cannot represent membership organisations such as Hafal.
- SH: PSBs have a range of approaches, including delivery groups that facilitate wider engagement. We should not over focus on the Boards. There should be fewer of them. The culture of staff in public bodies is important in developing fit for purpose policies and services. It's not something we are holding the public sector workforce to account on at the moment and we should be. I'm about to publish a "journey checker" on involvement to better engage with citizens. I may do a review on involvement next year. All of the policy and legislation is in place in Wales and we need more of cultural change in engagement and involvement to do things better.
- JR: "Lived experience" – how we bring those people in but we are risk averse in bringing people in and learning. We often hide behind process. As leaders we need to give permission to people to empower them to do things differently. Leadership is important.

Lord Thomas asked whether the duty under the WFG should be made justiciable as opposed to there being reliance on judicial review.

- SH: It would be helpful and if the Commissioner had more powers and resources.
- AT: I know that we are looking in Wales at the development of a Welsh statute book and Welsh law. We need to avoid legislation that is more of a policy document, it must have teeth. WFG is

aspirational but enforcement of it is missing.