



Rt Hon The Lord Thomas of Cwmgiedd  
Chair  
Commission on Justice in Wales

[JusticeCommission@gov.wales](mailto:JusticeCommission@gov.wales)

26 July 2019

Dear Lord Thomas

At my evidence session to the Commission on 19<sup>th</sup> June I undertook to provide further evidence on some of the issues we discussed. The points about the care system and the numbers of children taken into care have been set out by officials in the attached Annex. I have addressed the other points below.

### **Scottish Welfare Budget**

I mentioned the discrepancy between the cost of administering the Scottish welfare budget and the amount accompanying the transfer of responsibilities. The financial memorandum to the Social Security (Scotland) Bill (link:[https://www.parliament.scot/S5\\_Bills/Social%20Security%20\(Scotland\)%20Bill/SPBill18FMS052017.pdf](https://www.parliament.scot/S5_Bills/Social%20Security%20(Scotland)%20Bill/SPBill18FMS052017.pdf)) indicates a transfer of £66 million per annum plus a one-off amount of £200 million for implementation of the newly-devolved powers contrasting with an estimate of £308 million over four years for implementation and a figure of £144-156 million for running costs.

### **Incremental Devolution of Justice**

You asked for further information about the possibility of devolving justice on an incremental basis, and in particular whether this would reduce our flexibility to redeploy resources in line with our priorities. You raise an interesting point and this is something to which we will need to give further, detailed consideration.

It is essential that any devolution of justice functions must be accompanied by fair and equitable funding. However from our experience we have generally received less resource than we need to undertake the function. It is possible taking an incremental approach could reduce the financial risk, or spread the risk over a longer period, because each increment would be smaller scale than the whole function. However it is also possible and more likely to be the case the devolution of justice, whether incremental or as a complete package,

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

would likely mean the Welsh Government taking on a major new financial risk, particularly in the context of the current period of austerity. Additionally there would likely be differing implications depending on the order in which functions were devolved.

For these reasons it is difficult to provide any detailed analysis of the implications of an incremental approach in the time remaining for your deliberations. In general, however, we accept that there are limitations to taking an incremental approach and that wholesale reform to a progressive justice system would require us to be able to re-prioritise some of the large sums of expenditure currently spent, for example, on prisons. This is something we will need to consider carefully when we give our more practical response to your strategic consideration.

### **Funding to mitigate Legal Aid Cuts**

You asked for clarification of the figures for the funding we have provided for social welfare advice to help mitigate some of the problems arising from cuts to Legal Aid by the UK Government.

Our Financial Inclusion Unit currently provides annual funding of £5.97 million to five organisations who provide social welfare information and advice services within all 22 local authority areas and pan-Wales services.

The funded advice services are delivered through the following projects:

Better Advice, Better Lives - a generalist welfare benefit take-up campaign launched in 2001. The project operates in all twenty-two local authorities. Citizens Advice Cymru receive **£2.2 million pa** grant funding to deliver the project.

Community Focused Advice Services (*previously known as Communities First Outcome Funding*) - project was introduced in 2013 and aims to improve the financial capability and maximise the income of households within some of the most deprived communities in Wales. Citizens Advice Cymru receive **£1.5 million pa** grant funding to deliver the project.

Front Line Advice Services Grant – this project was introduced in 2014 as part of the Welsh Government's response to the UK Government's cuts to legal aid that reduced funding for social welfare cases in Wales. The project provides specialist advice on issues relating to welfare benefits; debt; housing and discrimination. Citizens Advice Cymru, Shelter Cymru, Age Cymru, Snap Cymru and Tenovus receive a total of **£2.2 million pa** grant funding to deliver this project.

### **Welsh Government Interaction with the Judiciary**

Finally you asked for information on the Welsh Government's relationship with the judiciary.

#### *Ministerial interaction*

Meetings have been held periodically between my predecessor and myself and the Lord Chief Justice, with the Counsel General usually attending. Annual meetings have also recently been established between the First Minister and the President of the Welsh Tribunals. However, most interaction between the Welsh Government and judiciary at ministerial level is with the Counsel General. Regular meetings have been established with one of the Supreme Court justices, most recently Lord Lloyd Jones, to discuss issues of

mutual interest. Attendance by the Counsel General at ad hoc events and conferences at which the judiciary are present has also enabled more informal, but no less important, interaction. The annual Legal Wales Conference is worth noting in particular since it involves speakers and discussions around legal issues and developments particularly relevant to Wales and the Welsh Government.

Meetings have also been held between the previous Cabinet Secretary for Local Government and Public Services, who had responsibility for justice matters, and the Lord Chief Justice and also the previous Minister for Children, Older People and Mr Justice Nicholas Francis.

### *Official interaction*

As with the First Minister, regular meetings are held between the Permanent Secretary and Lord Chief Justice.

Whilst the Director of Legal Services, Jeff Godfrey, does not meet members of the judiciary on a regular basis in his own right he often attends meetings between Ministers, the Counsel General and the Permanent Secretary and senior judges. Additionally, as with the Counsel General, informal contacts are also made at events and conferences involving wider legal groups such as the Legal Wales Conference.

The most regular formal interaction with the judiciary at official level involves those parts of the organisation with responsibilities around children and families.

Nigel Brown, Chief Executive of CAF/CASS Cymru has met Sir Andrew Macfarlane, President of the Family Division. He is invited to attend his annual conference with all the Designated Family Judges in England and Wales. He also attends meetings chaired by the Judge on matters relating to the Family Justice System, including attendance at the Family Justice Board.

Mr Brown also meets Mr Justice Francis, Senior Liaison Judge for the Family Court in Wales, three to four times a year to discuss matters relating to the Family Court in Wales. This includes operational matters as well as strategic issues. Mr Justice Francis also makes himself available to attend Cafcass Cymru staff conferences and deliver training to family court advisers.

Meetings are also held between Mr Brown and the three Designated Family Judges in Wales. However the main interface with the judiciary at this level is with Cafcass Cymru Heads of Operation (at Grade 7 level). The focus of these meetings is more related to local practice and procedure.

Finally Mr Brown also attends the Welsh Family Justice Network, chaired by Albert Heaney, Director Social Services and Integration, which includes attendance by Mr Justice Francis and the three Welsh DFJs. The Network meets three times a year and provides a forum for the key partners involved in the Family Justice System in Wales to share information, discuss how effectively the system is working and monitor performance.

As well as chairing meetings of the Family Justice Network, Albert Heaney has also met Sir Andrew MacFarlane to discuss family justice issues shortly after his appointment.

Other instances include current contact between officials in Care Inspectorate Wales (CIW) and Sir Andrew MacFarlane regarding judicial guidance Ofsted is helping the Family Division to develop for placements of children in unregistered settings. CIW is working to ensure the guidance would be applicable in both England and Wales, Following

engagement with the Ministry of Justice and HMCTS regarding the Renting Homes (Wales) Bill, and subsequent Act, officials from Housing and Regeneration also met Circuit Judge Seys-Llewellyn and District Judges North, Regan and Godwin. As the Act requires a number of changes to the Civil Procedure Rules, officials have also been involved with a sub-group of the Civil Procedure Rules Committee, including Judge Milwyn Jarman who was appointed by the Ministry of Justice to advise the group.

*General observations*

It is worth noting that the most regular interaction between the Welsh Government and the judiciary is where there are matters of devolved responsibility for specific Welsh Government policy or operational delivery and designated judges with interests within that area. The devolution of justice and the creation of permanent Welsh judicial leadership could be expected to lead to more regular Welsh Government interaction with the judiciary across other Ministerial portfolios and areas of government. Indeed the Counsel General has observed the benefits of local judicial leadership in both Scotland and Northern Ireland in relation to both government and the wider justice sector.

Yours sincerely

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

**MARK DRAKEFORD**

**Annex**

**Paper on the care system, numbers of children taken into care, the inter-relationship with the judiciary and data on judges who do not follow recommendations and make care orders.**

The family justice system in England and Wales performs a vital role in protecting vulnerable children. It is clear the system – despite the best efforts of those who work within it – is struggling to cope with the demands placed on it. It is clear also from the reviews that have taken place that a lack of co-ordination and co-operation at times between the numerous parties involved can often make the process dysfunctional. Much of the focus of the reviews has been on encouraging joined up thinking and working and better communication. A lack of accountability is also clearly a problem.

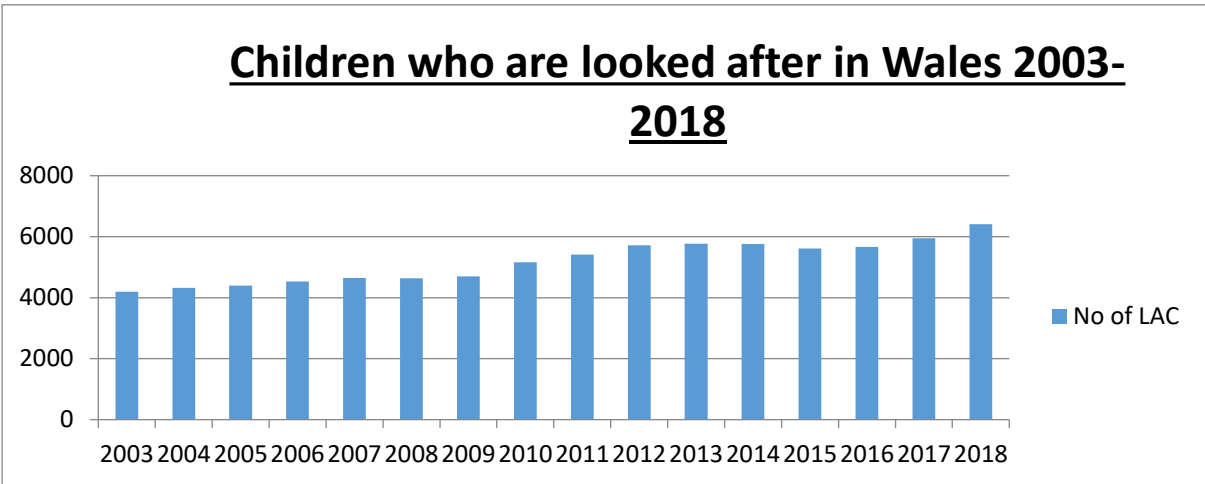
The artificial and arbitrary division between what is devolved and what is not exacerbates these problems. Firstly the family justice system itself sits on the jagged edge of the devolution settlement. And secondly, modern society and government dictates that the justice system does not work in isolation.

In reforming the family justice system it is clear a wide range of public services need to assist the process, services that are almost all devolved. This means that public bodies accountable to different political masters have to work together, something that is already difficult without accounting for differences in policy and political philosophy.

This is not the way we should be looking to improve the lives of children in Wales. There must be accountability, transparency and clear and effective decision making. That is not possible in the hybrid and anomalous “system” that we have. Rather, family justice must be devolved to Wales and the Welsh Government should become fully responsible for the children of Wales and accountable in this respect to the people of Wales.

**Numbers of children taken into care**

As at March 2018, there were 6,407 looked after children in Wales. This was an 8% increase on the previous year. Over the past 15 years, the number of looked after children has increased by 34%.



The First Minister has highlighted the increasing numbers of looked after children in Wales as a priority area for action in Wales. He is clear that too many children are taken away from their families into the care system in Wales.

The First Minister recognises that systems require re-engineering so that resources can be freed up to provide the right support to families at the edge of care, thereby preventing the

need for children to be taken away from their families. A systems-wide approach to this issue is important so that a 'children first' policy is embedded across sectors.

The First Minister has set out the following priority areas for reduction:

- The number of children in care
- The number of children placed out of county
- The number of children placed out of Wales
- The number of children removed from parents with a learning disability.

Officials are working collaboratively with individual local authorities to co-produce bespoke reduction expectation plans tailored to their populations and demography. It is anticipated that reduction expectations will span the course of 3 years, with expectations to meet at 12 months, 24 months and 36 months.

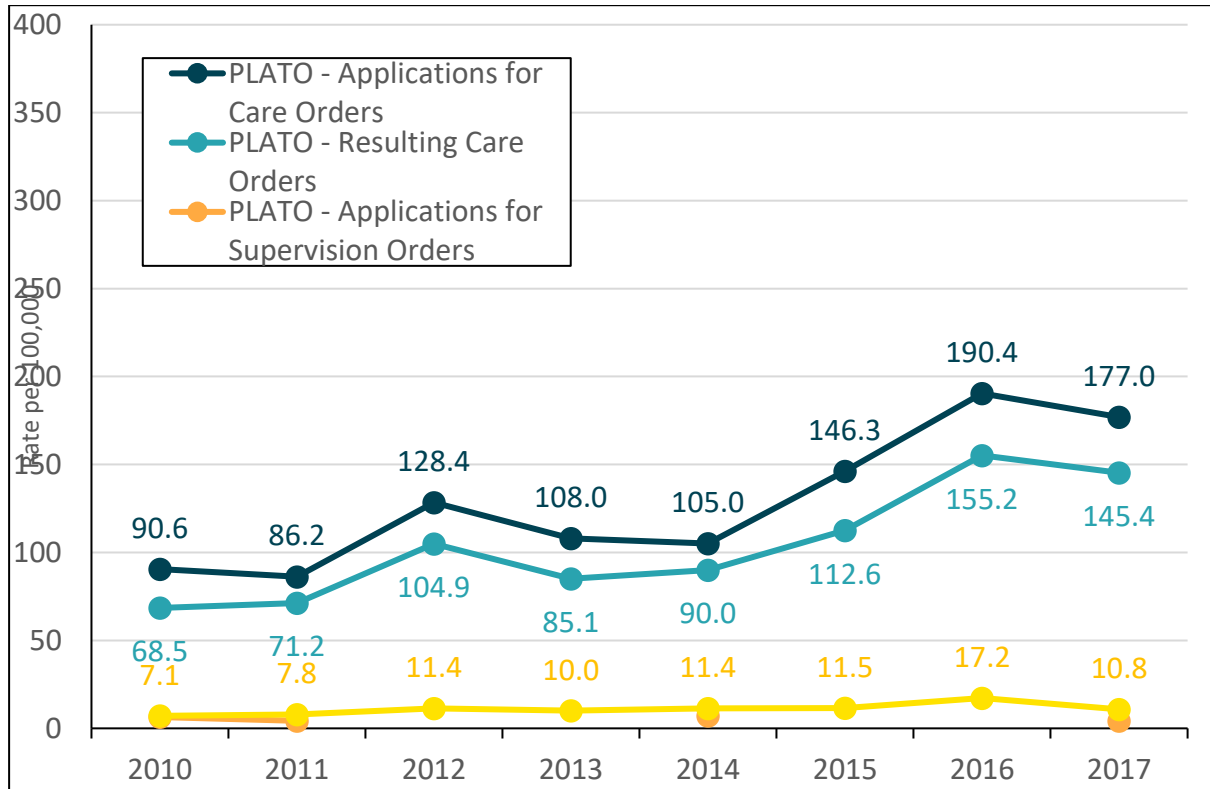
Discussions with local authorities to date have been well received. Local authorities consistently highlighted the key role of partners including the Judiciary and Cafcass Cymru, as an area of focus to support local authorities in achieving reduction expectations.

Initial feedback and evidence received from local authorities has shown for example the number of children placed with parents under a Care Order has increased significantly over the past 3 years (from 580 in 2015 to 840 in 2018). Further work will be undertaken with the Judiciary and Cafcass Cymru to understand a perceived reluctance in the use of supervision orders, Section 76 and the application of the No Order principle.

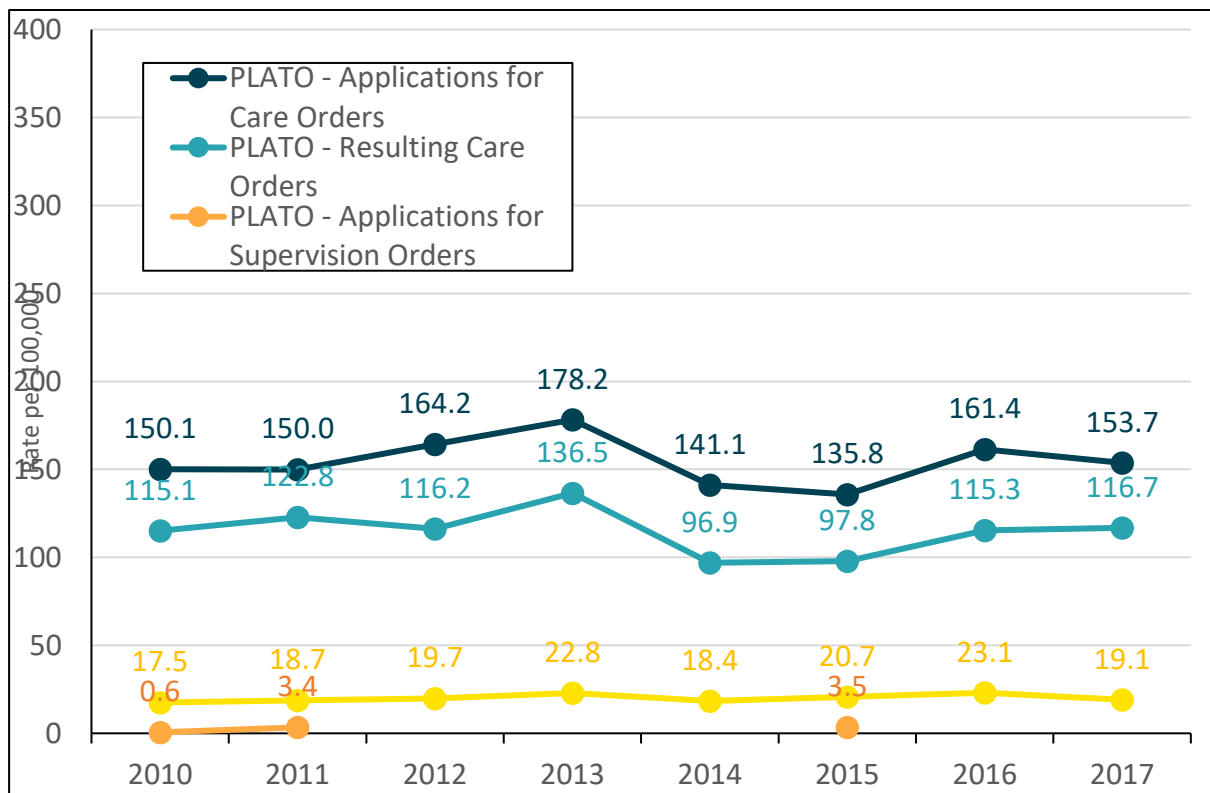
The Public Law Outline process has been experienced as have an unintentional consequence of accelerating the number of children in the judicial system and statutory intervention. This particularly relates to the timeframe of 26 weeks. The use of Section 76 has reduced considerably, preventing local authorities from managing risk safely prior to bringing cases into the court arena. In such cases local authorities have felt they are not provided with sufficient time to undertake transformational work with families before bringing cases back to court. Conversely, local authorities are also aware of criticism from the Judiciary about the quality of reports and evidence in care proceedings.

Tables provided below show the variation across the 3 District Family Judge areas in the numbers of cases by child involving applications for care orders per 100,000 of the local child population.

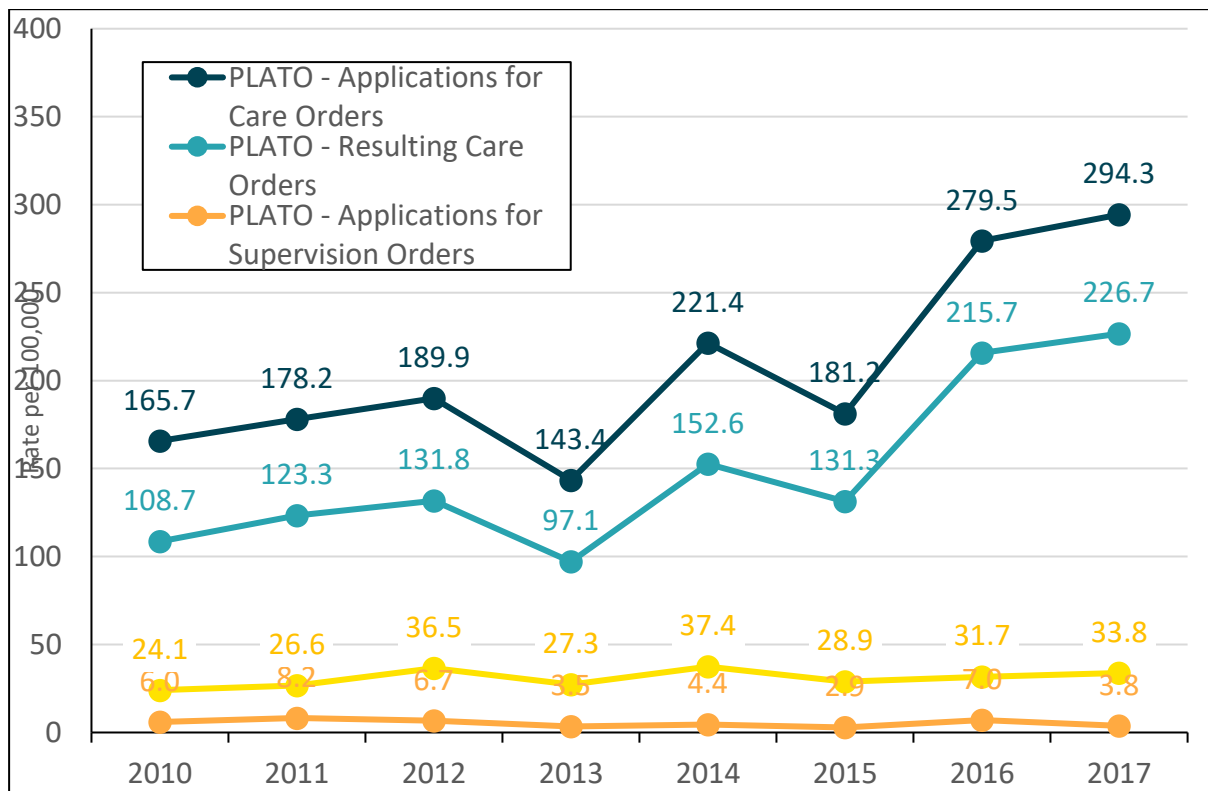
### North Wales DFJ area



### Swansea and West Wales DFJ



## Cardiff and South East Wales DFJ



### Inter-relationship with the Judiciary

Our inter-relationship with the Judiciary is formally undertaken under the auspices of the Family Justice Network. The Network brings together the key players within the family justice system to monitor the performance and practice of the family justice system in Wales and provides a forum for engagement with Cafcass Cymru and local authority partners at a strategic level. The Judiciary sit as observers on the Network and its work complements, supports and informs the work of the Family Justice Board, which is managed by the Ministry of Justice at an England and Wales level.

Whilst Wales has representation on the Family Justice Board, it is co-chaired by Ministers from the Ministry of Justice and the Department for Education. The agenda is predominantly dominated by the UK Government and by policy initiatives developed in England. Wales' role is therefore as a junior partner with minimal influence on a process that is being designed for England with perhaps a supplementary hope that it could be made to work for Wales by the Welsh Government and devolved bodies.

### Time scales for the FM's targets regarding looked after children.

Local authorities have been asked to prepare reduction expectations plans for the number of looked after children over the course of three years with expectations to meet at 12 months, 24 months and 36 months. These will cover the reporting periods for 2019/20, 2020/21 & 2021/22.

Monitoring arrangements are currently being developed and will commence in October. It is anticipated reporting arrangements will be on a quarterly basis and at the end of each year.