

Evidence for the Commission on Justice in Wales

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Submissions

1) Welsh mental health care, policing, and mental health-related inquests:

The following submission falls under two distinct Commission Work Streams:

- *Criminal Justice (including policing, probation and prisons)*
- *Access to Justice and other overarching issues*

There are numerous case examples in Wales where those known to mental health care services have subsequently died in sudden or unexpected out-of-hospital circumstances, resulting in inquests into their deaths. While there are many possible reasons for this, there are steps which could be taken to mitigate the likelihood of its occurrence, insofar as is possible to do so.

Though NHS healthcare services are the main providers of mental health care services (in addition to the often uncredited degree of support and care provided by families and friends), when the individual is unable, for any reason, to effectively engage with their usual form of mental health care provision, if an acute mental health crisis occurs, it frequently falls to the police to provide an emergency response. It is submitted that, while sometimes necessary in acute cases, this is neither an optimal situation for the individual (for whom a police response, in its traditional form, may not be the most suitable form of care), nor for the police (whose capacity to respond to and investigate criminal allegations may then be reduced by the time spent responding to community-based acute mental health crises).

While the involvement of emergency services across the board will remain necessary and valuable in responding to community-based acute mental health crises, it is submitted that there may be a better way of organising and co-coordinating the same, so as to make the most effective use of resources to provide the individual with more suitable support.

- a) Further consideration should be made of suitable responses to out-of-hours acute mental health crises, especially during holiday periods (e.g. Easter, Bank Holidays, New Year, and other public holidays). These are times when acute mental health crises may be a higher risk, but the emergency services are under immense pressure. Out-of-hours contact numbers for those known to mental health care services are not always 100% effective during such times, especially if there is only one number (or designated person) and several individuals needing to make use of it. One can only imagine the feeling of helplessness that could be felt by an acutely unwell person trying to seek out-of-hours assistance during a public holiday, only to have to wait, or reach an answerphone, due to the number being in use, or the sole individual manning it being unable to be beside the phone 24/7. Staff support for service users (in terms of Community Psychiatric Nurses) is generally very good – and so it would be beneficial to ensure out-of-hours provision during holiday periods is equally so – as an equally strong service provision during such periods could assist to prevent fatal outcomes.

- b) There is a scheme (piloted in England, and now run in some areas), known as the “Street Triage Scheme” for responding to acute mental health incidents. Although the format and approach of regional Schemes varies, it frequently involves an on-call Psychiatric Nurse assisting Police and Ambulance staff called to acute mental health crises in the community (sometimes advising the emergency response staff by phone, but more usually by being dispatched as part of the response team). The individual is then triaged *in situ*, in the out-of-hospital environment, with appropriate support or referrals being provided. This avoids the need for unnecessary police detention in some cases (see Final Report below), and also avoids an unnecessary wait for triage in A&E – an often busy and stressful environment, where waiting may even intensify the person’s acute event. A Street Triage Scheme would go some way to prevent this.

References for (b):

- <https://www.bsmhft.nhs.uk/our-services/urgent-care/street-triage/>
- <https://thepsychologist.bps.org.uk/volume-28/august-2015/street-triage-what-why-and-how>
- <https://s16878.pcdn.co/wp-content/uploads/2016/09/Street-Triage-Evaluation-Final-Report.pdf>
- <https://www.cnwl.nhs.uk/wp-content/uploads/street-triage.pdf>

There may be some connections between Submission (2) and Submission (5) – although they are distinct issues, under distinct, but overlapping, Work Schemes.

2) **Bail and Welsh Criminal Justice:**

The following submission falls under two distinct Commission Work Streams:

- *Criminal Justice (including policing, probation and prisons)*
- *Access to Justice and other overarching issues*

The current situation regarding the geography and working hours of courts in Wales (particularly in the North, and especially with Crown Courts) are placing those on bail in a very difficult position. Many defendants are released on bail, but live a considerable distance from the relevant court. Most courts require defendants to attend at 10am for hearings. Many such geographically isolated defendants are reliant on public transport – which often cannot reach the court (or even its town) by 10am. As a result, many simply cannot reach court on time. However, failure to do so could even result in a criminal conviction under s.7 of the Bail Act 1976, if the failure to attend is not acceptable to the court. Nevertheless, to remand a defendant to custody by virtue of their being unable to surrender to custody on time, due to residing on an irregular bus route, would be unjust. It is submitted these issues should be a key consideration for the Work Streams on both Criminal Justice and Access to Justice.

3) **Prisoners from Wales:**

The following submission falls under two distinct Commission Work Streams:

- *Criminal Justice (including policing, probation and prisons)*
- *Access to Justice and other overarching issues*

There remain a number of issues with prison provision for those prisoners from Wales (both those born in, and residing in, Wales). Placement in Welsh prisons for those from Wales is a factor for consideration – especially regarding access for visitors – and for resettlement. It is submitted that further consideration should be made of the following:

- Providing women's prison facilities in Wales (see Reference 1 below);
- Placing prisoners from Wales in Welsh prisons, where possible to do so;
- Resettlement of Welsh prisoners in Wales, where possible;
- Improving provision for, and support of, the Welsh language.

References:

- <https://publications.parliament.uk/pa/cm201415/cmselect/cmwelaf/113/11306.htm>
- <https://www.dailypost.co.uk/news/north-wales-news/hmp-berwyn-more-english-welsh-13644690>

4) **Care Homes for Older People in Wales: Regulation, Governance, and Law:**

The following submission falls under two distinct Commission Work Streams:

- *Criminal Justice (including policing, probation and prisons)*
- *Access to Justice and other overarching issues*

It is submitted that further steps need to be taken to ensure that lessons learned from the Flynn Report into Operation Jasmine are implemented, and that the Regulation and Inspection of Social Care (Wales) Act 2016 (RISCA 2016), and its associated Regulations, are adhered to consistently across Wales, in the provision of care for older people in Wales.

References:

- <https://gov.wales/topics/health/publications/socialcare/reports/accountability/?lang=en>
- <https://gov.wales/docs/dhss/publications/150714ojreporten.pdf>
- <https://gov.wales/topics/health/socialcare/regulation/?lang=en>
- <https://socialcare.wales/hub/riscact-regulations>

5) Access to Justice for families involved in Inquests in Wales:

The following submission falls the Commission Work Stream:

- *Access to Justice and other overarching issues*

It is submitted that consideration could be made at a national level for improving access to justice for families involved in inquests in Wales.

It is difficult to provide public evidence in support of this submission, as most cases resulting in awareness of this issue have been dealt with on a pro bono basis, and so are legally privileged, with their details thus needing to be kept confidential. However, access to justice at inquests is a broad and general issue for many families across Wales.

Issues which could be examined are broad, and include (but are not limited to):

- Decisions over whether an inquest is to be held, or is required to be held;
- Decisions over the scope of issues examined at inquest, within statutory constraints;
- Ensuring families and/or Next of Kin are aware of the processes involved at inquest;
- Ensuring families and/or Next of Kin of the Deceased can participate effectively;
- Ensuring families and/or Next of Kin of the Deceased are suitably represented at inquest, if they so wish (by solicitors, counsel, or suitable pro bono assistance).

Examples of cases where families have been involved with inquest processes, with varying degrees of efficacy, are prominent in Welsh local press reports – with many newspapers providing coverage of inquest cases. An example can be seen in the *Daily Post*'s coverage of *Re: Bonds (Siaron Lowis)* – a case where an inquest is to be held more than two decades on. Public reports on this case, from the *Daily Post*, can be read here:

<https://www.dailypost.co.uk/news/north-wales-news/inquest-ysbyty-gwynedd-cancer-who-12690450>

<https://www.dailypost.co.uk/news/north-wales-news/probe-launched-death-ysbyty-gwynedd-12357148>

It is submitted that it may be useful for the Commission to consider the present situation regarding access to justice for families involved in inquests in Wales at a national level.

There may be some connections between Submission (2) and Submission (5) – although they are distinct issues, under distinct, but overlapping, Work Schemes.

6) **Criminal Evidence and Legal Education in Wales:**

The following submission falls under the Commission Work Stream:

- *Legal and Vocational Education and Training*

It is submitted that improved awareness and understanding of forensic and expert evidence (including its flaws and risks of error) is needed in CPD for the legal profession in Wales.

References:

- G. Davies and E. Piasecki, “No more laissez faire: Expert evidence, rule changes and reliability: Can more effective training for the Bar and Judiciary prevent miscarriages of justice?” [2016] J Crim Law 327
- http://www.lawcom.gov.uk/app/uploads/2015/03/lc325_Expert_Evidence_Report.pdf
- <https://www.walesonline.co.uk/news/politics/criminal-justice-system-crisis-says-14276069>

END OF SUBMISSIONS