

Commission on Justice in Wales

Commissioners

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Visitor	Commissioners	Secretariat
Aled Roberts, Welsh Language Commissioner Rachel Thomas for Sally Holland, Children's Commissioner Steve Bartley for Helena Herklots, Older People's Commissioner Ruth Marks, CEO Wales Council for Voluntary Action	Lord Thomas Sarah Payne Simon Davies	David Slade Martin Wade

How does your work relate to and affect justice in Wales?

RT – The Children's Commissioner remit is set in legislation - Care Standards Act 2000 and Children's Commissioner for Wales Act 2001 and related Regulations. This was the first Children's Commissioner role in the UK and there are elements of the role and remit that you might now do differently given the benefit of experience.

Role in the broadest sense is linked to devolution. Can recommend and require action but generally only within the devolved areas.

Casework function allows the Commissioner and her office to assist individual children. In justice the terms are very much on the periphery. If another body has a justice role then the CC doesn't.

RM – Wales Council for Voluntary Action (WCVA) remit is to work with charities and community organisations across Wales. Aware that the Commission on Justice Wales have received evidence from a number of member charities.

WCVA acts as facilitator for the third sector partnership scheme and third sector partnership council which brings together charities with Officials and Ministers. Many members are registered across England and Wales and therefore members have interest beyond Wales.

SB – The Older Peoples Commissioner has powers enshrined in legislation. We help older people to navigate the justice system. We take forward a lot of casework. People will contact the commissioner for a variety of reasons and one of those related to justice is financial abuse. There have been a number of situations where complainants were told that an issue was a civil matter and the commissioner was able to intervene and it was then treated as a criminal matter. We work very closely with the CPS. Following a case with a person suffering dementia the Commissioner met the Chief Prosecutor and Chief Constable to discuss the case and to improve the future response of those organisations to these sorts of cases and improve justice outcomes.

A lot of issues around deprivation of liberty. Working with organisations to make sure people

are aware of their responsibilities

A proactive role working not just with victims but also with perpetrators of crime. Dementia can create the situation where people become violent to a carer for example and can then enter the criminal justice system. There is active engagement by Older Persons Commissioner in the system.

RT – The Childrens Commissioner does not have this role or ability. To some extent this is because they, being the first have been learned from, and the suites of functions available have changed as more commissioners have been created.

Lord Thomas raised the issue about the number of children being taken into care in Wales which is higher than in other parts of the UK.

RT – The Children’s Commissioners has a role in terms of LAs exercising their functions in this area but not in terms of individual care orders.

Can’t think of an occasion where they have intervened in a case where a child was on the way toward a care order. What they do is support the child through the process. Provide advocacy for the child in the lay sense of the word. Children’s Commissioner has looked at the work done by Prof Paul Bywater on the differential of care orders in different authorities and how the decision-making works. Concerned about the broader social context.

Age of criminal responsibility. Aware of moves in Scotland to change the age – looks like moving to 14 which the Commissioner would support. Commissioner hasn’t written anything about this but will be writing a report along with commissioner colleagues in rest of the UK.

LT asked if the commissioner could send us some evidence about this. RT agreed.

RT – The Children’s Commissioner gets a lot of calls from grandparents about care proceedings and the fact that they are not joined as automatic parties.

Also significant levels of casework related to Additional Learning Needs and Tribunal support. The Commissioner has about 550 cases overall a year and about a third of those cases are related to education. Also offers support on asylum cases. Reserved area so cannot give specific advice but we work with local providers in lone child cases.

RM – Independence of the office is important. Each commissioner is likely to have a slightly different priority area.

AR – Pointed out that he has only been in post a week and explained that a colleague, Lowri, was attending with him to ensure fuller evidence can be provided.

Role created by Welsh Language Measure 2011. In terms of the justice sphere, four police services and five tribunals are in scope. As far as any other operators in justice are concerned they need the consent of the Secretary of State to bring other organisations into scope so those organisations work with their own language schemes created under UK legislation.

LT asked if there are any concerns around the way the language is treated in the courts service.

Lowri – standards are set for different organisations via a process. Generally the standards are about organisations putting in place a suitably skilled workforce. HMCTS operates in line with its Welsh Language scheme that was revised very recently.

RM – WCVA has a range of members who are engaged across the range of justice functions. Young people, mental health, homelessness, refugees and asylum seekers.

LT – Explained evidence received about the voluntary sector and the amount of time charities have to spend seeking funding.

RM – The variance in commissioning practice is problematic. LAs all operate differently; as do health boards and there are differences with England too. So anyone operating on anything other than a very local footprint encounters difficulties because they need to work in so many different ways. One thing that would assist is that if there were standard impact and reporting procedures which would allow charities and commissioners to assess how they can best direct their efforts.

SB – The main issues include a low percentage of prosecutions when the victim is an older person. Also, 1% of cases are prosecuted as opposed to 19% for people under 60. We are looking at research into how and why that is the case and to understand and seek to do better. There is a presumption that older people don't make reliable witnesses. There is a need to test that presumption. Also there is a lot of misunderstanding around mental capacity.

Need for professional advocacy and even when advocacy is available it isn't tailored to the needs of older people.

LT asked about the different prosecuting authorities. WG for care standards in homes, CPS for cruelty to residents. Do the prosecutors talk to each other? Answer – suspect that they don't. And there are different inspectorates too, which is an added complexity.

What powers do you each have in relation to justice? Can they be improved?

RM – WCVA has no powers as such. But would emphasise the vital role the sector can play as an independent voice and as a source of research and information.

SB – The Older People's Commissioner has legal powers. Can undertake a review; a good example is the review of quality of life in care homes – sample of 100 care homes. Made recommendations and then reviewed how they were actioned. The review led to changes in legislation.

Commissioner has the power to enter any care home or hospital and speak to any resident. Can require people to attend and provide evidence. Has not used those powers as yet.

SP asked if the Older People's Commissioner has any involvement in prisons as we know that the prison population is ageing.

SB – The commissioner’s office is aware of issues but powers don’t extend to prison estate.

SB – The Older People’s Commissioner has done research into whether people know their rights and found 250,000 people didn’t know their rights. We published an information booklet as a result.

In terms of actions, sometimes they need to provide information to someone who can advocate for themselves or have a family member who can do it; or alternatively to provide a route to an advocacy service.

AR – There are two different systems for bodies that come under the scope of the 2011 measure and those that don’t. Under the 2011 measure there are four police forces and five tribunals abiding by Welsh Language Standards. Standards are written by WG and adopted by Assembly. People can complain to the Commissioner about lack of compliance who will then investigate. Ultimately the Commissioner has the power to issue a fine although that hasn’t yet happened.

Those not covered by the 2011 Welsh Language Measure still operate Welsh Language Schemes under the Welsh Language Act 1993. There is a section of the commissioner’s office tasked with monitoring those plans. Variable engagement. HMCTS – generally very good. WL team and lead officer based in Caernarfon. Significant increase in cases heard in Welsh. Key issue is for them to ensure that sufficient staff able to cope with demand.

In December 2018 published a report on Welsh language provision in prisons. There were 17 recommendations made to HM Prison Service following the review. Confident that those recommendations will feature in the service’s next scheme. There is a difficult issue though when Welsh-speaking prisoners are located in English institutions; and as there are no facilities for female prisoners in Wales and very limited provision for young offenders then Welsh-speaking prisoners will be in those institutions in England.

RT – The Commissioner has some legal powers. Review of functions of WG or public bodies linked to devolution in Wales; but has no enforcement powers. Complaints / advocacy provision - Missing Voices report. Can give financial assistance to a particular child, but only if that child isn’t receiving assistance from elsewhere.

Can review arrangements in Wales in place for whistle blowing, advocacy.

Examination of individual cases can be done. Clwyd inquiry being the only example. Can assume high court powers to require witnesses to attend. Thereafter power to publish a report and name and shame but no enforcement powers.

What should be done to improve the way people (1) have access to justice to enforce their rights or to resolve disputes and (2) are treated in the justice system in Wales?

SB – Providing information in a way that people can easily understand. Language / terminology used is often a barrier as is the format information is provided in. The Commissioner is careful to ensure their information is available in the whole range of formats.

Availability of independent professional advocacy is important. People who can give the individual a voice and also who can properly explain things to the individual – advocacy can work both ways.

AR – The system should respect the rights of individuals to use the language of their choice and although there is a statutory framework which provides for that there are still challenges. There is not yet a proper picture of the linguistic skills of their staff in the various agencies engaged in the justice system. The Police now have quite a good understanding of the linguistic skills of their staff. UK wide agencies don't have that information.

The Prison service for example does not have an understanding of the needs of the prison population.

Language of law. Changes in the HE sector have not made their way into the professional skills arena. Referred to SRA and the discussion with them about the availability of the forthcoming SQE though Welsh.

The lack of a linguistic audit and understanding prevents organisation from being able to address capacity issues going forward.

RT – Accessible information in a useable format tailored to the audience is vital but is difficult to produce. Even as professionals it is difficult to navigate the law so it is important to assist people in doing that.

UNCRC. Adopted into domestic law in Wales which is good but applies to Welsh Ministers only – doesn't apply to local authorities. LAs need to be brought into scope by subject specific legislation.

Legal aid. In the broader, family justice sense, the lack of legal aid is a big issue.

RM – Overarching lack of equity. Real missing of legal aid. Lack of consistency across ombudsman roles. Some have the ability to investigate issues in an in depth way and others don't.

Are there sufficient advice and advocacy services to meet legal needs in Wales? Do people know where to access the help they need?

AR – An issue with regard to the areas where Welsh is spoken most. Welsh tends to be spoken in rural areas and those are areas where there is a significant access to justice concern already. Court closures. Greater reliance on technology – Welsh Language hasn't featured as strongly as it should in development of IT solutions for the courts service.

Problem recruiting registered intermediaries with Welsh Language capacity.

RT – advocacy for children and young people. Strong position for children in care. Children in care have a statutory right to an independent advocacy service. And now there is an active offer of that advocacy it has shown a big increase in uptake of the advocacy service.

RM – No. Services are probably insufficient and where they exist they need to be better funded.

SB – Raised digital exclusion. People often digitally excluded so putting it on website isn't necessarily good enough.

What alternatives do you see to courts and tribunals for resolving disputes? Is sufficient use made of alternative dispute resolution such as ombudsmen and problem solving courts?

AR – Welsh Language Tribunal (WLT)– people have a right of recourse to WLT if they are dissatisfied with the commissioner's decision.

Commissioner would like to use early dispute resolution but cannot as that wasn't included in the measure.

Role is to be as balanced and reasoned in judgements as possible so as to ensure as few cases go to WLT as possible.

SB – Early intervention is important but can be problematic. Sometimes that early resolution can feel like not being listened to. Related example of elderly lady who wanted to speak to the police and once she had she was content that she had been listened to and had received justice. She hadn't wanted anyone to be prosecuted. She wanted to be listened to.

Restorative justice can be very effective for older people. A community approach.

Timely resolution. In discussions with chief prosecutor they identified the need to speed things up significantly for older people.

RM – ADR can be effective. Partnership approaches too. Stressed the importance of ombudsmen being able to undertake systemic reviews. They must be able to do that.

RT – Common argument against the further incorporation of UN conventions into law is that it would fill up the courts and people would rush to exercise rights through the courts. Believe that such incorporation would see culture and practice changes with earlier resolution through ombudsmen. Sees increase in knowledge of rights not a concern of "filling up the courts" – doesn't think that people will automatically be exercising rights in the way people assume.

Lord Thomas asked if there was evidence of a reluctance to create rights for fear that they will fill up the courts.

RT – When the Social Services and Wellbeing Wales Act was going through its Assembly scrutiny stages there was a strong lobby to put children's rights and older people's rights into the bill but it was rejected by government for that reason; although in this case it eventually passed as an amendment. The same arguments were made in the passage additional Learning Needs and Education Tribunal Wales Bill with the argument that concentrating on rights would serve only to fill up the courts and wouldn't actually change behaviour.

In terms of youth justice, will add information in problem solving, triage etc... to briefing paper already offered on age of criminal responsibility.

Problem solving courts have a lot of potential. Important that people are a part of the system and a part of the processes. Families report that it is done to them and not with them.

Early evidence from children – with the right to cross examine as appropriate. Enables them to embark on counselling and healing much more quickly.

Is enough being done in terms of public education to teach people about law and the justice system?

RT – There are pockets where good efforts are being made. Streetlaw; Children's legal centre; Pro bono public support units in courts; but those aren't available everywhere.

Role of media. Referred to foster case reported incorrectly with press coverage about adoption with Muslim / Christian cultural issues. The case was nothing to do with that. This has a negative impact with those reading such stories believing that this is how the system works. Suggests journalism training should include legal elements.

RM – Probably not enough being done. A part of a wider rights agenda. If people don't know their rights they can't access them. Third sector has always caught people who fall through cracks in the system but that is not why they should be there.

The sector can do a lot but cannot be expected to catch every situation. The state needs to step in and do what it should. The voluntary sector shouldn't be expected to pick up the slack.

SB – Not enough being done. Abuse of older people is a hidden problem. Shame, embarrassment, not wanting to create a fuss. Need to break this cycle to stop people thinking in this way. Older people are often not aware of their rights. Digital exclusion means that you have to raise awareness in a thoughtful way. Cannot assume an online solution will reach all.

AR – Under the Welsh Language Standards rights are recognised in law. The key for them is to apply standards appropriately recognising that people are starting from a different point. Keen to support where they can.

Where organisations are using Welsh-language plans it is more difficult. DWP example where there is a 12-month wait for a benefits assessment if you request it in Welsh.

Also learned behaviour for Welsh-speakers. They have been told for many, many years that if they are engaging with officialdom they must do it in English. Also fear that people will be perceived as being awkward if they seek to engage in Welsh.

Lowri – referred to the WL act and the equal status of the language. That fact should be given more prominence going forward.

SD asked about SRA issue raised earlier and if that lack of understanding / reluctance is reflected in other regulators.

AR – yes there is a widespread ignorance of the linguistic demography of Wales.

In better news SRA are now willing to come back with reasonable proposals. Writing to Commissioner as soon as they have a clear view.

RM – Will provide a short note offering views on Public Legal Education.