

Senedd Cymru
Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r
Cyfansoddiad
Gwneud i Gyfiawnder weithio yng Nghymru
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Ymateb gan: Comisiwn Cydraddoldeb a Hawliau
Dynol

Welsh Parliament
Legislation, Justice and Constitution Committee
Making Justice work in Wales
Response from: Equality and Human Rights
Commission

1. We have consistently recommended that both the UK Government and Welsh Government ensure that the UK and Welsh equality and human rights legal framework is strengthened by improved access to justice because legal rights are of little value unless we are able to seek justice when they are breached.
2. One of our Priority Aims in our strategic plan for 2019 – 2022 is that people can access redress when they are wronged and have a fair trial in the criminal justice system. Our 'Is Britain Fairer?' 2018 report concludes that it has been increasingly difficult to access representation and redress in British courts. The opening statement from the Commission on Justice in Wales accords with our own inquiries and research in relation to access to justice:

"We have unanimously concluded that the people of Wales are being let down by the system in its current state."

3. When transforming the justice system in Wales, we recommend tht Welsh Government ensures that:
 - Mechanisms for seeking redress for breaches of the Equality Act 2010 and Human Rights Act 1998 are made more accessible and effective
 - More people in Wales are able to access high quality advice in relation to discrimination and human rights.
 - Barriers to justice for women and girls who have survived violence are exposed and reduced,
 - The needs of the people of Wales are considered by the UK Government when changes are made to the legal aid system, and rules governing access to legal aid for discrimination cases are amended in line with our recommendations.
 - Practice and procedures in the criminal justice system are improved by the UK Government to ensure a fair trial for disabled people.
4. We acknowledge Welsh Government's commitment to funding the provision of discrimination advice in Wales via the Single Advice Fund.

Public Sector Equality Duty

5. Public authorities and those carrying out public functions are subject to the Public Sector Equality Duty under the Equality Act 2010. Organisations subject to the public sector equality duty must have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not. We have produced [guidance](#) to support organisations to comply with the Public Sector Equality Duty,

6. Welsh Government must consider how the Public Sector Equality Duty can be better complied with and used as a lever for improvement within the Justice system in Wales. Welsh Government must also assess the likely impact of proposals and recognise and respond to disproportionate impact on particular groups; and ensure that the system itself reflects the community it serves at all levels.
7. Chapter 12 of the Commission on Justice's report which relates to governance, the law of Wales and the judiciary highlights the need for alignment and a whole system approach. We recommend that all public authorities involved in the Justice system in Wales and associated services consider how the Public Sector Equality Duty can be better complied with and used to guide this alignment.

Data Gaps

8. The Commission on Justice identify a number of data gaps within their report. This aligns with our Strategic Plan, where we have identified that to improve equality and human rights outcomes, we must have access to relevant data that enables us, Government, regulators and inspectorates, service providers and civil society organisations to understand the different experiences and outcomes for certain groups, and the underlying reasons behind them.
9. Our [measurement framework](#) is the tool we use to monitor progress on equality and human rights across a range of areas of life in Great Britain. There are six areas in the framework; education, work, living standards, health, justice and personal security and participation. We emphasise the importance of Wales specific data and that there are gaps in Wales specific data in a number of areas.
10. We have identified limited data on certain protected characteristics in the makeup of court and tribunal users. We are taking action to engage with the Ministry of Justice and Her Majesty's Courts and Tribunals Service to make sure that information on protected characteristics is effectively included in data on the makeup of court users.

Key findings in Wales for Justice and Personal Security

11. We have conducted research and gathered evidence in a number of areas to inform our priorities. This evidence may be helpful in informing Welsh Government's proposals for transform justice in Wales. Evidence within our [Is Wales Fairer? 2018 report](#) sets out the key equality and human rights challenges currently facing Wales. The key findings in Wales in relation to Justice and Personal security are:
 - a. There have been a number of court and tribunal closures in Wales in recent years. There are concerns that these closures have created geographical barriers to people's access to justice, especially among people living in rural areas and those with mobility-related conditions.
 - b. Reduced financial support through legal aid and the use of tribunal fees have created a negative effect on people's access to civil and criminal justice.

- c. The number of recorded hate crimes has increased across all recorded protected characteristics in Wales, particularly for disability hate crimes.
 - d. There has been a sharp increase in the number of sexual and domestic violence offences reported to, and recorded by, the police since 2015. This include sexual abuse offences against children. This could be due to improved reporting or recording, or due to an increase in incidents.
 - e. Three of the five prisons in Wales are overcrowded, posing potential risks for prisoner safety. There has been a considerable increase in self-harm and assault incidents in prisons in Wales.
 - f. The inappropriate use of police stations as a 'place of safety' for people with mental health conditions has decreased considerably, but there has been a slight increase in detentions.
12. All of these issues have been exacerbated by the recent Coronavirus crisis, for example Dr Robert Jones of the Wales Governance Centre recently [reported](#) that the number people held in Welsh prisons climbed to its highest ever level by 27th March 2020, 17 days after the World Health Organisation declared the outbreak of Covid-19 a global pandemic, and HMP Swansea was the most overcrowded prison in England and Wales at the end of March 2020.
13. In a [letter](#) to the Prime Minister on 19th March 2020, David Isaac, Chair of the Equality and Human Rights Commission, highlighted the following:

"We know that during periods of confinement domestic abuse (a crime mostly impacting women and girls) tends to increase, and that the healthcare and educational settings that offer a way of identifying this issue will be under unprecedented pressure."

Court Closures, Video Hearings and digital technology

14. Chapter 8 of the Commission on Justice's report is about delivering justice locality and structure and gives a lot of detail about the numbers of courts, their locations and court closures. The chapter gives time, distances, and geographical locations of courts, explaining that some places are two hours by public transport from a Magistrates' Court. The report concludes with this: "Given the geography and demography of Wales, the dearth of public transport and the state of the digital network, there is after the extensive court closures little alignment between the justice system and communities and people in Wales." (Page 361)
15. In March 2018, we submitted [evidence](#) to the consultation on the strategy for the courts and tribunals estate, including the approach to court closures, improvements to court buildings, and the modernisation of some court administration. We acknowledged that modernising the courts may provide a number of opportunities to improve access to justice, for example by improving accessibility for disabled court users. However, our key concerns about the proposals, in relation to both the closure of existing courts and the introduction of digital justice alternatives, are:
- the lack of comprehensive evidence and impact assessment to underpin decision-making and ensure the courts modernisation programme does not disproportionately disadvantage

people with certain protected characteristics, in particular disability, age, pregnancy and maternity, and sex;

- the closure of courts on the basis of increased use in the future of digital processes, which will necessarily exclude people with certain protected characteristics who have lower levels of digital literacy, before the impact of digital processes has been thoroughly assessed; and
- the potentially detrimental implications of virtual processes (including virtual hearings and online court processes) on access to justice and fair trial rights.

16. In light of our concerns, and the requirement for HM Courts & Tribunals Service (HMCTS) to comply with the public sector equality duty, we recommend that HMCTS:

- does not proceed with any court closures until it has collected the evidence about court users necessary to conduct a meaningful equality impact assessment, and has conducted that assessment;
- conducts a thorough assessment of the digital literacy of court users in order to determine the nature and content of the support required to ensure access to justice in the context of increased digitalisation; and
- establishes a clear evidence base setting out the impacts of virtual processes (including virtual hearings and online court processes) and the equality and human rights issues that need to be addressed before any new measures are introduced or existing pilots are extended.

17. The Commission on Justice also comments on the use of video hearings and digital technology. On 27th April 2020, we published an [interim report](#) for our inquiry: Does the criminal justice system treat disabled people fairly? This inquiry looked at whether the needs of disabled defendants are properly identified and whether adjustments are put in place to meet their needs, so they are able to take part fully in court processes. Existing evidence tells us that people with cognitive impairments, mental health conditions and neuro-diverse conditions are significantly overrepresented in the criminal justice system.

18. The interim report highlights the use of video hearings in England and Wales which can significantly hinder communication and understanding for people with learning disabilities, autism spectrum disorders and mental health conditions. Defendants' needs must be identified from the outset so that adjustments can be put in place. We warn that if this does not happen, then disabled people are at risk of not understanding the charges they face, the advice they receive or the legal process, so cannot participate effectively in legal proceedings against them. Adjustments can include the use of intermediaries, allowing extra time for breaks, or providing information using visual aids.

19. While we have not called for video and audio hearings to be halted, we expressed concerns about the lack of data currently available on the use of remote hearings, and encouraged Governments to begin collecting this data now to inform its use in the future.

20. We agree with the Commission on Justice's 39th recommendation that a strategy for Wales for provision of proper physical and digital access to justice before the courts, tribunals and other

forms of dispute resolution should be drawn up and determined in Wales based on the needs of the people of Wales. This reflects our own recommendations, but we would add that this strategy should also reflect the

Public Sector Equality Duty. We also agree with the Commission on Justice's 20th recommendation that digital court services and other dispute resolution services that are being developed and introduced must be fully accessible to people throughout Wales and free assistance must be available to help individuals use them. This reflects the recommendations in our own interim report. Our final report will be published later this year.

Access to Justice - Information, Advice and Assistance

21. In Chapter 2 of the Commission on Justice Report, resources for the justice system in Wales are considered. Page 78 of the report details the legal aid spend differences between England and Wales.

"The criminal legal aid expenditure of £36 million in Wales in 2018-19 equates to £11.50 per head of population; the equivalent figure in England was £15 per head."

22. In paragraph 3.50, it is highlighted that 93% of Welsh households have access to the internet but Wales has around 10% lower network capability than England. The report goes on to give details about lack of awareness about rights and that those who need advice are least likely to be able to access it, including disabled people, people with mental health issues, people with learning difficulties, people in crisis and people whose first language is not English or Welsh. Within the conclusions at paragraph 3.53, it states that of additional concern is disabled people's access to legal advice and assistance with benefits cases has been diminished – this is based on evidence from Disability Wales.
23. Chapter 9 of the Commission on Justice's report on the legal sector refers to and is complemented by the Welsh Government review of the legal sector in Wales, which was undertaken by Jomati Consultants LLP. Both highlight the difficulties for firms and solicitors in Wales and lack of legal aid practitioners in Wales.
24. We highlighted in our [briefing](#) in 2017 that changes to civil law justice are adversely impacting children, disabled people, ethnic minorities and women. These changes included: substantial reductions to the scope of civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO); proposals for further reforms to legal aid (including a residence test); reforms to judicial review; and the introduction of fees in employment tribunals. Cuts to legal aid, as well as the imposition of Employment Tribunal fees until the Supreme Court's judgment in July 2017, damaged access to justice for ordinary people, with disproportionate impacts on some groups. Reduced access to justice risks allowing employers, service providers and public authorities to breach people's rights with impunity, bringing down standards in the workplace and impeding fair access to goods, facilities and services for everyone.
25. Our own research [report](#) looked at the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) since it came into force in 2013.

LASPO introduced funding cuts to legal aid and resulted in fewer people being able to access legal advice and representation. Using case studies, this report looks at how LASPO has negatively affected people's lives and access to justice in three areas of law: family law, employment law, welfare benefits law. When the UK Government carried out a review of LASPO, we made a submission to the review setting out recommendations to address the issues that we identified. We are pleased that some of these have been adopted as part of the UK Government's action plan following the review. For example, the UK Government agreed to remove the mandatory telephone gateway for debt, discrimination and special educational needs and it was removed on 15th May 2020. The UK Government also agreed to seek to improve the available data so that they can consider the equality implications and put in place better systems and a communication campaign. We are monitoring their progress.

26. In June 2019, we published the final [report](#) for our inquiry which looked at whether legal aid enables people who raise a discrimination complaint in Wales and England to get justice. We found that very few people are getting the representation they need in courts or tribunals. Between 2013/14 and 2017/18 no workplace discrimination cases received legal aid funding for representation in the employment tribunal, and only 1 in 200 cases taken on by discrimination specialists received funding for representation in court. We identified a number of barriers to representation, including rules which effectively limit funding to cases with high compensation awards. This requirement misses the point when it comes to discrimination cases, which are often more about challenging unacceptable behaviour and upholding rights than obtaining financial awards.
27. Recent [research](#) in April 2020 has identified barristers who may be at greater financial risk due to Covid-19 interrupting their fee incomes. In broad terms, these barristers supply up to 50% of legal aid defence work and, hence, their loss would constitute a severe obstacle to restarting criminal trials. In all cases, the practitioners in the most vulnerable situations are more likely to be predominantly female, BAME, young or with newer practices. Their loss from the profession would impact substantially on the diversity of those supplying legal services.

Criminal Justice

Black, Asian and Minority Ethnic people

28. Part 3 of Chapter 4 of the Commission on Justice's report focuses on the evidence that those who are charged, tried and punished are disproportionately likely to come from Black, Asian and Minority Ethnic (BAME) communities. [Evidence](#) published very recently on 15th May 2020 by the National Police Chief's Council shows that even during the current Coronavirus crisis, BAME people are more likely to receive fines under the emergency legislation.
29. In December 2018, we held a roundtable discussion in Cardiff about [The Lammy Review](#), an independent review of the treatment of, and outcomes for, BAME individualsⁱ in the Criminal Justice System in England and Wales. The Review published its final report, which included a range of recommendations, in September 2017. Stakeholders reflected that there has been a lack of engagement and discussion on the Lammy Review in Wales since its publication. It was acknowledged that, arguably, some of the problems the Review responds to are less acute in

Wales than in England's big urban areas. However, all participants agreed that significant problems exist and improvements are needed.

30. It is clear that the Criminal Justice System cannot be seen in isolation. Efforts to improve the treatment of, and outcomes for, BAME individuals in the Criminal Justice System in Wales touch on all areas of life. For example, improved education services and access to health and social services is vital if we are to reduce re-offending, especially among BAME individuals, who often face significant obstacles into accessing high quality public services. Many of the relevant levers for this are devolved to the Welsh Government.

31. The Lammy Review identified three central principles for the taking forward of its recommendations. These principles were fully supported by individuals we spoke to. In summary, these are:

- There must be robust systems in place to ensure fair treatment in every part of the criminal justice system. The key lesson is that bringing decision-making out into the open and exposing it to scrutiny is the best way of delivering fair treatment.
- Trust is low not just among defendants and offenders, but among the BAME population as a whole. The answer to this is to remove one of the biggest symbols of an 'us and them' culture – the lack of diversity among those making important decisions in the criminal justice system.
- The criminal justice system must have a stronger analysis about where responsibility lies beyond its own boundaries. Statutory services are essential and irreplaceable, but they cannot do everything on their own. The system must do more to work with local communities to hold offenders to account and demand that they take responsibility for their own lives.

32. During our project, five practical steps emerged to take forward the Lammy Review's principles and recommendations in Wales. The five steps are:

- To build further on multi-agency working, utilising the close relationships that can be built in Wales.
- To improve scrutiny and accountability mechanisms at all levels in order to improve service delivery and ensure transparency.
- To invest in better mentoring, support, and training.
- To actively engage with local communities through a range of projects and approaches.
- To collect and share data on ethnicity throughout services and procedures.

33. Finally, participants echoed the Lammy Review's statement that criminal justice agencies should adopt a principle of 'explain or reform': if they cannot provide an evidence based explanation for disparities between ethnic groups then reforms should be introduced.

34. We recommend that Welsh Government consider these points when considering the Commission on Justice's 6th recommendation that each of the police, Crown Prosecution Service, the judiciary and HM Prison and Probation Service should publish a strategy in respect of BAME people in Wales and report annually on the strategy to the Senedd.

Children and Young people

35. In Wales and England, the age of criminal responsibility is 10 years old. Any child below the age of 10 is not considered to have the capacity to infringe the criminal law. Scottish Government is giving consideration to raising the age. We recommends the age raised in line with Committee on the Rights of the Child (CRC) Article 40 recommendations. More details can be found in our [response](#) to the Justice Committee inquiry on children and young people in custody in October 2019. We therefore agree with the Commission on Justice's 11th recommendation that the age of criminal responsibility should be raised to at least 12 years old.

36. In February 2019, we published our [report](#) on Women's rights and Gender Equality which was our formal submission to the UN Committee on the Elimination of All Forms of Discrimination Against Women. In June 2018, the UK Government published its female offender strategy. The strategy sets out the measures it will take to enhance mental health services for women in prisons, promote alternative sentencing and ensure that treatment of women in the criminal justice system takes account of gender and gender-based violence. It also includes a shift away from building new community prisons for women to encouraging the greater use of non-custodial sentences by increasing community-based support. While the general direction of the policy has been praised, several organisations, including the Association of Police and Crime Commissioners and members of the female offender strategy advisory board, have expressed concerns about how effective the strategy is likely to be in practice.

37. We recommend that the UK and Welsh governments, where relevant, should:

- provide an increased and longer-term funding commitment for a network of women's centres to support liaison and diversion from the criminal justice system and enable rehabilitation, particularly for ethnic minority women;
- implement the [Corston Report](#) recommendation relating to interdepartmental coordination and transfer of responsibility;
- improve the provision and availability of mental health services for women in prison, recognising the different issues women, including trans women, experience in prison, to prevent suicide and self-harm, and facilitate resettlement;
- monitor and collect data on the use of community sentences for women, and;
- evaluate the community treatment sentence requirements to ensure that women are not unduly pressured to receive mental health treatment in order to avoid detention, and provide valid consent to treatment.

38. We agree with the Commission on Justice's 13th recommendation that the comprehensive network of services and centres as alternatives to custody for women in Wales must be established rapidly and sustained over time.

Hate Crime

39. In 2016 we [responded](#) to the Home Affairs Select Committee inquiry into hate crime and its violent consequences. In summary we said: There is extensive knowledge, expertise and experience in tackling hate crime across Britain. However, pockets of knowledge and good

practice often exist in silos, with organisations across Britain developing their own practices in isolation from one another. We recommend a review of the most effective strategies in tackling hate crime and leadership at government level to share leading work in this area. Public authorities and those carrying out public functions are subject to the Public Sector Equality Duty under the Equality Act 2010, which requires them to have due regard to the need to tackle prejudice and promote understanding. In this context, we would like to see greater efforts from public authorities to proactively tackle hate crime.

40. Although criminal justice is not devolved, Welsh Government has taken - and could take further - legislative and policy opportunities with the aim of reducing hate crime and to help heal divisions in society. The Welsh Government's Hate Crime Delivery Plan and the Public Sector Equality Duty offer mechanisms for doing this. Our monitoring of the PSED showed that many public authorities have set equality objectives that relate to tackling hate crime.

41. In 2016, we undertook research into [LGBT hate crime reporting](#) and [disability-related harassment](#), and [causes and motivations of hate crime](#). Welsh Government should consider the evidence and recommendations in these reports to support further improvements to reduce hate crime.

42. The UN made recommendations to the UK Government on what it should do to tackle hate crime. As the body tasked by statute with promoting compliance by the UK with its obligations under international human rights law, we recommended:

- a full-scale review of aggravated offences and sentencing provision in Wales and England without further delay, as recommended by the Law Commission;
- monitoring use of the sentencing guideline for hate crime in Wales and England to assess consistency of sentencing;
- consistent data collection methods across countries, the criminal justice system and within individual agencies to allow comparative and chronological analysis;
- evaluation by the police and other statutory agencies of their reporting and recording processes, in consultation with people from local communities, and steps taken to simplify them;
- a review of the provision of third-party reporting, to evaluate their impact and sustainability, highlight geographical and thematic gaps and ensure they are consistent with police recording systems;
- police should refer all victims of hate crimes and incidents to relevant support services. Such services should be adequately funded. All victims should be told whether their case will be investigated and/or prosecuted, including regular updates on the progress of any investigation or prosecution.

43. Welsh Government should consider these recommendations when considering the Commission on Justice's report and their statement (Page 151):

“Although much has been done, the evidence leads us to conclude that much more needs to be done in ensuring that support is provided immediately to all victims of crime.”

Domestic Abuse

44. In Part 2 of Chapter 4 the Commission on Justice considers victims of crime and refers to the Welsh Government's work in domestic violence, including reference to the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015.
45. Domestic abuse is an abuse of human rights. Both domestic and international equality and human rights law impose positive obligations on the UK and Welsh Government to prevent and protect women from domestic abuse. These obligations are heightened where there is a predictable increased risk. Under the UN Convention on the Elimination of Discrimination against Women (CEDAW), which is binding in international law, the UK and Welsh Governments have committed to take all appropriate measures to eliminate all forms of discrimination against women, including gender-based violence. The CEDAW Committee's general recommendation 35 emphasises that genderbased violence in the form of domestic violence constitutes discrimination against women, and may amount to torture or cruel, inhuman or degrading treatment. There is a due diligence obligation to prevent, investigate, prosecute and punish such acts.
46. The key rights engaged by domestic abuse under the European Convention on Human Rights (ECHR), given domestic effect by the Human Rights Act 1998, are: the right to life (article 2), the prohibition on torture (article 3), the right to respect for private and family life (article 8) and the right to non-discrimination (article 14). The ECHR imposes positive obligations on the Government to protect individuals against abuse or harm caused by other individuals, including a duty to put in place necessary law enforcement. Specifically with respect to domestic abuse, the European Court of Human Rights has made clear that a state's "failure to protect women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional."
47. There is clear evidence that sexual violence and domestic abuse increase during epidemics and other times of crisis. UK helplines are reporting a sharp rise in calls, and reports that domestic homicides have more than doubled since social distancing restrictions were implemented. The increased risk to women at this time is therefore a predictable major 'secondary' impact of the Covid-19 pandemic. Calls for services are likely to increase as the lockdown is lifted in Wales and women are able to flee their abusers.
48. Our 'Is Britain Fairer?' 2018 report highlighted that domestic abuse and sexual violence are gender based crimes that disproportionately affect women, and we know that disabled, LGBT and some ethnic minority women are at particular risk. Further, it is clear that ethnic minority, migrant, disabled, LGBT and older women face particular barriers to accessing non-specialist support, and that specialist organisations supporting these groups already faced funding difficulties even prior to the pandemic. We know that specialist provision in Wales has reduced due to changes in procurement processes by Local Authorities.
49. Welsh Government has a duty to provide appropriate protective and support services to all women who are victims of or at risk of violence - including provision of refuges, specially trained health workers, rehabilitation and counselling. In its policies on gender-based

violence Welsh Government is expected to place “particular emphasis on the groups of women who are most marginalized and who may suffer from various forms of intersectional discrimination.”

50. We have expressed concerns about a serious lack of funding and shortage of services for domestic abuse survivors, prior to the pandemic and in the context of the UK Domestic Abuse Bill. Sufficient crisis funding must be urgently provided to charities and organisations providing refuge and/or support services for survivors, including advice and advocacy. We welcome the Welsh Government’s commitment to provide £24 million for charities overall, as well as £200,000 specifically for refuges and support services. However, it is not yet clear what proportion of the £24 million will be allocated to domestic abuse and sexual violence charities, or how funds will be distributed. Whilst it’s noted that UK Government has announced £25million towards helping victims of domestic abuse and sexual violence to be distributed via Police and Crime Commissioners, it is unclear what proportion of this fund will reach Wales.
51. We consider that a proportion of the £24 million funding for charities in Wales should be ring fenced for domestic abuse and sexual violence charities. Funding should be unrestricted crisis funding to cover the additional costs to domestic abuse and sexual violence charities resulting from Covid-19, including staff shortages and moving to remote service provision. In particular, it must include clear ring-fenced funding for smaller organisations led by and for groups sharing protected characteristics, including ethnic minority, disabled and LGBT women, to ensure continued provision of vital support to these groups. Consideration should be given to ensuring sufficient accessible safe accommodation and support for disabled and deaf survivors. In addition to immediate crisis funding, further funding will be required to respond to increased demand, including the likely spike in the numbers of survivors seeking help (and consequent pressure on services) in the coming months when social distancing restrictions are eased.
52. The UK and Welsh Governments must ensure that police retain capacity to respond to all forms of violence against women and girls during the pandemic, and that local police leaders communicate clearly to the public that responding to these crimes remains a priority. Prior to the pandemic, there were already significant concerns about the low rates of prosecution of rape and sexual offences, and this issue is currently the subject of a Home Office review. The significant delays to the progress of these offences through the criminal justice system, often taking years to be charged, is one reason for the high levels of victim withdrawal. With all new jury trials suspended from the end of March until last week, these delays look set to increase and long-term attention should be given to how to reduce delays once normal service resumes.
53. Crimes of violence against women and girls, including domestic abuse, must continue to be addressed by police as a high priority. Community Cohesion Coordinators have a key role in working with devolved and non-devolved organisations to help tackle hate crime and heal divisions in society. Police and Crime Commissioners and Chief Constables should give public assurances of this at a local level. If and when remote jury trials take place, careful

consideration should be given as to how to ensure fair proceedings, in consultation with survivor groups and experts on the effects of trauma on survivors, including migrant and child survivors.

Prisons

54. The Commission on Justice consider prisons in detail in Part 4 of Chapter 4 in their report and highlight that Wales has one of the highest imprisonment rates in Western Europe. Prisoners are particularly vulnerable to human rights breaches as all aspects of their lives are controlled by the state.

55. Families can provide valuable support for prisoners, who are all in a vulnerable situation, but particularly for those with mental health conditions. Our [inquiry](#) in 2015 into non-natural deaths of adults with mental health conditions reported that families can also play an important role in helping to develop a treatment plan for prisoners with such conditions. In order to comply with their obligations under the right to life, institutions should provide appropriate social support which will include the opportunity for regular family contact.

56. Our *Is Wales Fairer?* Report 2018 gives details about prisons and overcrowding. Welsh Government has reiterated the problems caused by the lack of prisons for either women offenders or high-risk offenders, who currently have to be housed in jails in England, especially the impact it has on maintaining family connections (Welsh Affairs Committee, 2015). There are also limited facilities for young offenders in Wales. As stated above, Dr Robert Jones of the Wales Governance Centre recently [reported](#) that the number people held in Welsh prisons climbed to its highest ever level by 27th March 2020. We highlight the difficulties that this is causing in our [submission](#) to the UK Parliament Women and Equalities Committee inquiry into the impact of COVID19.

57. We are concerned about unlawful use of restraint against children and young people in custody, as well as the disproportionate use of restraint on certain groups sharing protected characteristics. Our [human rights framework](#) for restraint is a tool for policy makers and has already been used to inform policy and legal developments in Wales and England. We use the framework to inform our own work on restraint. It provides useful examples explaining the key principles of the following articles of the European Convention on Human Rights:

- Article 3 (prohibition on torture, inhuman and degrading treatment)
- Article 8 (respect for autonomy, physical and psychological integrity)
- Article 14 (non-discrimination)

58. The development of the framework was informed by discussion with government departments; regulators; inspectorates and ombudspersons; and the third sector. In 2016 a [follow-up report](#) examined the steps taken to act on our recommendations. We identified that changes are being made in some areas where we had concerns, but some key areas still need to be addressed.

59. We recommend that when implementing the Commission on Justice's recommendations, Welsh Government considers how our recommendations on preventing non-natural deaths of adults with mental health conditions in prisons, police custody and psychiatric hospitals can be adopted in the Welsh context and in particular our Human Rights Framework can be embedded in institutions in Wales.

People with Mental Health Conditions

60. The Commission on Justice highlight in their executive summary on page 11 of the report that the evidence that they received showed that the approach to those with mental health issues is not properly addressed within the criminal justice system. At page 178 of the report, they detail that police forces are also seeing a high level of demand from those experiencing mental health issues and that the four Welsh forces are working in partnership with their local health boards to provide support to those who are experiencing mental health issues, whether that is through a triage process in the control room or through mental health staff working alongside response officers.

61. This accords with the evidence in our *Is Wales Fairer? 2018* report. We will be publishing the results of our criminal justice inquiry, which looks at this issue in more detail with associated recommendations, shortly.

Conclusion

62. In conclusion, we would ask that the Legislation, Justice and Constitution Committee consider the following relevant recommendations from our *Is Wales Fairer? 2018* report, as follows:

- a. To ensure access to justice in Wales, Welsh Government should:
 - i. implement any recommendations of the Commission on Justice in Wales that address the key findings and recommendations in '*Is Wales Fairer? 2018*', including on the mitigation of UK legislation and policy on access to justice and legal aid, and conditions of detention;
 - ii. improve the availability of transport for accessing courts, particularly for rural households;
 - iii. continue to review the provision of both general advice services and specialist discrimination advice in Wales, to ensure adequate access to good quality services across Wales.
- b. To increase confidence in the criminal justice system and improve the response to hate crime, the Welsh Government, police forces and other relevant bodies in Wales should improve support for victims and witnesses to report online and offline hostility and intimidation, and develop effective mechanisms for tackling it.
- c. To address violence against women, domestic abuse and sexual violence, Welsh Government should:
 - i. ensure the full implementation of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 and deliver the national violence against women, domestic abuse and sexual violence strategy by November 2021, ensuring that appropriate prevention programmes are developed and implemented, and survivors of violence against women, sexual or domestic abuse, receive appropriate and timely

- support, including specialist support for women from ethnic minorities, disabled women, women with complex needs, and children and young people;
- ii. raise awareness of the issue, including by implementing all outstanding actions from the National Assembly for Wales Equality, Local Government and Communities Committee post-legislative scrutiny of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015;
 - iii. collect and monitor data about the number of spaces needed in refuges, and develop a sustainable funding model for refuges and domestic abuse services, including those that provide specialist services.
- d. To improve conditions in detention settings and reduce overcrowding across Wales:
- i. Welsh Government should work with the UK Government to invest in appropriate alternatives to prisons, including community sentencing, rehabilitation centres and diversion.
 - ii. Police forces in Wales should keep accurate and detailed reports on the use of police cells as a 'place of safety' under the Mental Health Act.

<https://www.equalityhumanrights.com/sites/default/files/is-britain-fairer-2018-is-wales-fairer.pdf>