



Mick Antoniw MS
Chair
Legislation, Justice and Constitution Committee

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Dear Chair

Thank you for your letter of 22 October seeking further information for the Making Justice Work Inquiry.

Before responding to your request, I must highlight that all of the information provided below and in the Annex to this letter is subject to some very real operational constraints. As you will appreciate, the current devolution settlement does not fund us to have a justice function. This was problematic even before we had to respond to the pandemic. Preparations for the end of the transition period as well as new areas of emergency work are creating unprecedented demands on our staff. I therefore hope that you find the following information useful in benchmarking where we are today.

As you have highlighted, we agreed during the evidence session to provide some further information to the Committee.

The Annex to this letter contains the Work Programme and provides further information on the individual five streams to implement those recommendations of the Commission on Justice in Wales which we are able to progress.

In terms of data and the courts, there does not appear to be any readily available comparative information on the performance of the courts in Wales compared to England. Our new dashboard on justice will be a source of invaluable information in this area and we will of course advise the Committee as soon as it is ready for publication.

Turning to the further questions, and using the numbering set out in your letter, I can respond as follows: -

1. Representations made to the UK Government on the impact of COVID-19 on the delivery of justice in Wales.

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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.

During the pandemic, we have been in close contact with the Lord Chancellor and his officials, the Lord Chief Justice and Her Majesty's Courts and Tribunals Service on a range of issues including the operation of the courts during lockdown and the firebreak, safe working practices, the courts backlog and proposals for ways of working to address it. We have secured confirmation that the guidelines of Public Health Wales are embedded in the operational procedures of the court, and that any new ways of working will be evaluated. We received confirmation that civil enforcement involving house visits will be suspended during the firebreak as it was during lockdown. I have also recently highlighted the need for public openness and transparency in court trials associated with the enforcement of Welsh Covid-19 related regulations.

The Deputy Minister and Chief Whip met the UK Government's Minister for Justice on a number of occasions during the crisis and has discussed recovery across Prison and Probation services.

Our close work with the police forces of Wales and the Police and Crime Commissioners has also been vital to the proper functioning of the Welsh response to the Covid emergency and I am extremely grateful to the police forces for their engagement.

2. How will the Welsh Government keep the Senedd informed of cooperation with the UK Government on managing the recovery of the justice system from the pandemic?

4. How will the Welsh Government keep the Senedd informed of its engagement with UK Government Ministers, departments and non-devolved justice bodies on improving the delivery of justice in Wales?

We will continue to keep the Senedd informed through regular statements, debates, questions and of course its own committee inquiries.

3. In light of the comments made by justice stakeholders in the Wales Governance Centre report, Justice at the Jagged Edge in Wales, that 'you can't scrutinise what you don't know is happening', how will the Welsh Government ensure the public and the Senedd are aware of the Welsh Government's work in the justice space?

This is a challenge that flows from the current division of responsibility between Wales and Westminster and the complexity of the current devolution settlement. We still face the "jagged edge" that the Commission on Justice describes. Bodies providing public services in Wales – for example the police, courts, prison and probation – are accountable to UK Ministers and are set up with systems not designed to provide information on any other basis.

This situation is compounded by what I believe is an increasingly complex and artificial England and Wales jurisdiction.

Perhaps one of the most fundamental impacts of the pandemic has been the way in which for the first time the public have experienced Welsh law made in Wales that touch the ordinary day-to-day lives of all of us. Laws that create these criminal offences are made in Wales but policed and enforced in Wales by organisations which may be accountable only to the UK Government. The pandemic has raised expectations that decisions about the people of Wales and their lives in Wales should be made, policed and enforced, in the widest sense, in Wales.

5. What discussions has the Welsh Government had with the UK Government on improving transparency on overall spending on the justice system in Wales?

Because justice is not devolved, we understand that it is not possible to disaggregate all budget figures, or indeed to easily disaggregate any other data, which relates solely to Wales from a combined England and Wales justice function which was never designed to operate with two distinct bodies of law. This relates not only to direct expenditure on justice related matters in Wales but also to indirect expenditure, such as administrative support, computer systems and so forth.

It is of course widely accepted that the entire justice system is underfunded, so even if it were possible to discern how much is spent in Wales at the moment, that wouldn't indicate how much would be needed to fund properly a Welsh justice system of the type the Welsh Government would aspire to create.

A further consideration is that spend *in* Wales does not necessarily reflect spend *on* Wales as Welsh prisoners are not all accommodated in Wales, for example. And not all Welsh court cases are heard in Wales.

6. How will the Welsh Government report on its own spending on justice to enable the Senedd to consider this expenditure as part of budget scrutiny?

Spending on justice related activity is not separately disaggregated in either our budget or annual accounts. As part of the on-going justice transformation programme we will explore if there are any ways in which we can improve the level of information we provide about justice expenditure.

7. How does the Welsh Government respond to the view of the President of Welsh Tribunals that the Welsh Tribunals Unit should have a similar status to HMCTS and that this should not wait for the work of the Law Commission to be completed?

This topic was discussed at my first meeting with Sir Wyn Williams in 2019 and we have discussed this again since then. I agree with the principle of independence for the Welsh Tribunals Unit. An executive agency model like HMCTS is one possible solution but there are others. For example the Scottish Courts and Tribunals Service (SCTS) is an independent body corporate established by statute. In Wales we also have the model of the Welsh Revenue Authority. We will continue to explore these options, but I think we should also not pre-empt the findings of the Law Commission.

8. How does the Welsh Tribunals Unit monitor the accessibility of the Welsh Tribunals, including equalities, the use of the Welsh language and the experience of litigants in person?

The Welsh Tribunals Unit collects limited data in terms of equality and experiences around litigants in person. Each application is treated on its merit and reasonable adjustments are made when required to ensure that every tribunal user is given the same opportunity to participate and contribute.

The President of Welsh Tribunals outlines in his annual report that all the tribunals continue to offer a full Welsh language service to their users in accordance with the duties imposed by the compliance notices issued by the Welsh Language Commissioner.

9. How are the Welsh Tribunals Unit monitoring the impact of the COVID-19 pandemic on the performance and accessibility of the Welsh Tribunals? Will data be published on the use of remote hearings?

The Welsh Tribunals are monitoring case numbers for the period and that information will be fed into the President's annual report. I understand that the President intends to have a significant section within his third annual report on the effect of COVID 19 on the tribunals.

10. What is the Welsh Government doing to prepare the Welsh Tribunals for recovery from the COVID-19 pandemic?

The tribunals of course operate independently of Government.

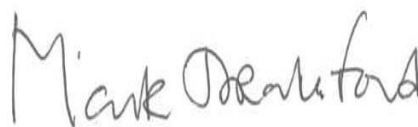
The Welsh Government's policy divisions have a close working relationship with the Welsh Tribunals Unit staff and should the President of Welsh Tribunals or indeed the Head of the Welsh Tribunals Unit ask for support, we would of course give reasonable support wherever possible.

In March, the Welsh Tribunals Unit supported the Welsh tribunals to move quickly to remote hearings, either through telephone or video conferencing, as a result of this they have been able to maintain and continue with the majority of hearings as planned. The President, tribunal members and the Wales Tribunals Unit are reflecting on best practice to ensure that this can be carried forward.

We are firmly of the view that the arguments in favour of constitutional change and the devolution of justice that were comprehensively set out by the Commission on Justice in Wales, and underpinned by the wealth of evidence in its report, have been strengthened by the on-going exceptional circumstances we find ourselves in.

I trust that the further information that I have set out is of assistance to the Committee and to its inquiry.

Best wishes

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

MARK DRAKEFORD

Justice Transformation Work Programme

Workstream	Current Priorities:
Access to justice	<p>Commitments within the Welsh Government's five-year <i>Information and Advice Action Plan for Wales</i> (published in December 2016) to:</p> <ul style="list-style-type: none">• ensure Welsh Government is grant funding strategically planned and integrated social welfare advice services across Wales;• implement the Welsh Government's Information and Advice Quality Framework providing more people with access to quality assured advice services; and• promote public legal education as a means of helping people to attain a better understanding of their individual rights.
Civil and administrative justice	<p>Operational reform of the devolved tribunals, including establishing a system of complaints and discipline for judges.</p> <p>Reviewing (through Law Commission project) the legislative framework for the devolved tribunals, the system of appeals from tribunals, and the case for moving to a single first tier tribunal – in anticipation of a Sixth Senedd Bill.</p> <p>Preparing for the impact of Mental Health Act reforms on the caseload of the Mental Health Review Tribunal.</p> <p>Proposals for giving effect to the recommendation that the Welsh Tribunals Unit should have greater structural independence.</p>

<p>Criminal justice</p>	<p>Blueprint on Female Offenders (including pursuing a residential centre and Approved Premises provision).</p> <p>Blueprint on Youth Justice.</p> <p>Partnership Agreement on Prisoner Health: includes WG-led work streams on mental health, substance misuse in prisons and medicines management. This relates to our work with HMPPS on the partnership agreement covering substance misuse mental health and medicines management.</p> <p>Framework to support positive change for those at risk of offending in Wales, 2018-2023.</p> <p>Removal of the defence of “reasonable chastisement”.</p> <p>Delivery of recommendations from David Hanson’s review of offender learning.</p> <p>Leading the strategic direction and implementation of the Violence Against Women, Domestic Abuse & Sexual Violence (Wales) Act 2015, which includes an objective to “hold perpetrators to account and provide them with opportunities to change their behaviour based around victim safety.”</p> <p>The collaborative strategic framework – Accommodating Welsh Offenders. WG and HMPPS in Wales have committed to taking a collaborative strategic approach to prevent and address homelessness for all Welsh offenders.</p>
<p>Family justice</p>	<p>Reducing the number of children in care. The Improving Outcomes for Children programme is supporting local authorities to meet their reduction expectation plans.</p> <p>Developing a common outcome framework for all Reflect services across Wales. This framework will be used to feedback national data to Welsh Government which will enable trends to be analysed.</p>

	<p>Analysis of the Social Services and Wellbeing (Wales) Act 2015, being undertaken by University of South Wales.</p> <p>The Family Justice Network is in place.</p>
<p>Legal sector: economy, education and skills</p>	<p>Business support to law firms and chambers, including in response to the impacts of the Covid-19 through the Economic Resilience Fund.</p> <p>The development of a new NPS Solicitors' Framework for the procurement of legal services in the Welsh public service, anticipated to be awarded and available to use by 1 December 2020.</p> <p>Deepening relationships with the key players in the legal sector – including law firms, the Law Society, the Bar, CILEx, law schools – to work collaboratively to explore: the likely lasting impact of Covid-19 on the legal sector; the changing needs and sustainability of legal practice in Wales; and setting a vision for the future of legal practice in Wales.</p> <p>Building on the £5.6 million investment by Swansea University and the Welsh Government in LawTech at the Hillary Rodham Clinton School of Law, to work with key players to utilise new technologies, IT infrastructure and connectivity in practitioners' business, particularly in rural and post-industrial areas of Wales.</p> <p>The setting up of a Law Council of Wales has been much slower than anticipated, owing to competing priorities both for Welsh Government and for potential participants.</p>