

Response of the Equality and Human Rights Commission to the Commission on Justice in Wales Call for Evidence:

Consultation details

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1. Further to our submission in January 2018, we welcome the opportunity to provide advice to inform the Commission on Justice in Wales Call for Evidence.

We would be happy to meet to discuss this with you.

2. Equality and Human Rights Commission's priorities for justice and personal security and restraint 2018/19

We all have a right to be free from torture and other cruel, inhuman and degrading treatment and punishment, live without fear of identity-based violence, and to be protected against harm when in care or detention.

Evidence shows disproportionate representation of certain groups in the criminal justice system and concerns about treatment of people when they are in the system, including people with mental health conditions and learning difficulties.

In 2018/19, we will seek to improve the protection of the rights of people with mental health conditions and/or learning disabilities in the criminal justice system. To this end, we will press for the increased use of reasonable adjustments for suspects and defendants with mental health conditions and learning disabilities, including through:

- Seeking to influence laws and policies in relation to the modernisation of the courts system, so that it does not impact negatively and disproportionately on people with certain protected characteristics in the criminal justice system.
- Identifying the reasonable adjustments that are currently made available in the criminal justice system across England and Wales, and the barriers to their use, and developing strategies to increase the ability of suspects and defendants to access them when required.
- Identifying gaps in current law and policy governing the provision of reasonable adjustments in the criminal justice system and developing strategies to address them.

Rights and legal protections are of no value unless people have access to justice when those rights are breached. We have found that changes to legal aid, the recently reversed imposition of tribunal fees, and reduction in the funding of the advice sector have reduced access to civil and family justice. In 2018/19, we will continue to seek to increase access to justice for individuals experiencing discrimination and human rights breaches by:

- Influencing the UK and Scottish governments to remove key barriers to justice in the courts and tribunals, including those resulting from legal aid reforms and the risks posed by the courts modernisation agenda.
- Conducting an inquiry into legal aid for individuals pursuing discrimination claims, focusing in particular on the mandatory 'telephone gateway' for individuals seeking civil legal advice.
- Continuing to provide high quality information and support to organisations offering advice and representation, through our pilot Adviser Support Service and online resources, so that they are better able to recognise discrimination or human rights breaches and support their clients.

- Promoting access to justice more directly, by funding cases relating to specific priority equality issues.

Identity-based violence is a serious human rights abuse affecting, among others, lesbian, gay, bisexual and transgender people and people of particular religions, as well as disabled people. In 2018/19, we will seek to influence governments to strengthen the legal and policy frameworks that protect people from identity-based violence by:

- Continuing to press for changes to the law and non-legislative measures to tackle violence against women and children and hate crime, including through participating in the Home Office hate crime action plan review and engaging with proposals for new legislation on domestic abuse.

We all have the right to be free from cruel, inhuman and degrading treatment, and to be protected when in care or detention. There are widespread concerns about the over-use of restraint in Wales and England in social care, hospitals (including for detained patients) and the criminal justice system, and in immigration detention. Research shows that it is being used disproportionately on groups such as disabled people and ethnic minorities, and inappropriately on children and young people.

In 2018/19, using our recently developed human rights framework for restraint, we will seek to influence a reduction in the use of restraint in healthcare, social care, special schools and detention settings. In England and Wales, we will:

- Identify gaps in knowledge of the human rights obligations relating to restraint among staff and individuals in NHS care settings, special schools, prison, police custody, young offender institutions or immigration and removal centres, and develop resources to address these.
- Support regulators to take an equality and human rights-based approach to their regulation of restraint.
- Challenge policies and guidance where we think they are not compliant with the human rights framework for restraint.
- Respond to national consultations and influence legislation, including the Mental Health Units (Use of Force) Bill, and support reforms in policy and practice which reflect the principles in our human rights framework for restraint.

We would recommend the Commission on Justice in Wales engages with the EHRC towards identifying Wales specific solutions to priorities for justice and personal security and restraint.

3. Public sector equality duty (PSED)

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. In 2018/19, we will continue to promote compliance with the duty across Wales, England and Scotland as a lever to tackle persistent discrimination and disadvantage.

We would recommend the Commission on Justice in Wales considers how the Public Sector Equality Duty can be better complied with and used as a lever for improvement within the Justice system in Wales.

PSED requires listed bodies to assess the likely impact of proposed policies and practices on protected groups.

We would recommend the Commission on Justice in Wales assesses the likely impact of proposals and recognises and responds to disproportionate impact on particular groups; and ensures that the system itself reflects the community it serves at all levels.

4. A strong evidence base

4.1 Is Wales Fairer?

The Equality and Human Rights Commission has conducted research and gathered evidence in a number of areas to inform our priorities. This evidence may be helpful in informing the Commission on Justice in Wales.

Evidence will be supplemented later in the year when we publish *Is Britain Fairer?* and *Is Wales Fairer?* (IWF?) 2018. This will set out the key equality and human rights challenges currently facing Wales that require action by public authorities and others in Wales. We will let you know when IWF? 2018 is published.

We would recommend the Commission on Justice in Wales considers adopting our key Is Wales Fairer? recommendations for justice.

4.2 Measurement framework and data gaps

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
- participation

The framework covers Wales, England and Scotland.

<https://www.equalityhumanrights.com/en/how-do-we-measure-equality-and-human-rights>

Our measurement framework and the evidence presented in this submission highlights both the importance of Wales specific data and that there are gaps in Wales specific data in a number of areas.

The Wales Governance Centre has recently reported that recent controversies over prison safety and capacity highlight the importance of disaggregated ‘Welsh-only’ data in understanding justice policy and practice. ‘Welsh-only’ imprisonment data has shown that the UK Government’s plans for additional prison places will eventually result in Wales becoming a net-importer of prisoners from England (Jones, 2013; Wales Governance Centre, 2017).

Imprisonment in Wales: a Fact file (Dr Robert Jones. Wales Governance Centre, 2018) states that these concerns are not unique to policy makers in Wales: a recent report by the Ministry of Justice acknowledged the need to improve the way in which ‘Welsh-only’ data is gathered and published. This included a pledge to ensure that ‘Welsh-only’ information is made more easily available to the public on the Ministry’s website (Ministry of Justice, 2017). Despite this commitment, access to ‘Welsh-only’ imprisonment data remains poor and, in a number of areas, disaggregated data held by the Ministry of Justice has only become available by means of requests for information under the Freedom of Information Act 2000.

We would recommend the Commission on Justice in Wales calls for identified data gaps for Wales to be filled.

5. Informing the Commission on Justice in Wales Call for Evidence.

The evidence included in this submission is provided under three of the five work streams set out in the Commission on Justice in Wales call for evidence:

- Criminal justice, including policing, probation and prisons
- Civil justice, family justice, administrative justice and tribunals
- Access to justice and other overarching issues reports.

5.1 Criminal Justice, including policing, probation and prisons

5.1.1 Policing

a) Restraint

The use of physical restraint has been flagged as a cause for concern in mental health settings (Mind, 2013), as has the use of chemical restraint (MWC, 2014). The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment demanded an 'absolute ban' on the use of restraint and seclusion (Human Rights Council, 2013).

In 2018 we responded to the JCHR Inquiry on solitary confinement and restraint in youth detention.

Our recommendations include:

The Commission recommends that in order to ensure that a human rights approach is applied across the youth estate, the UK Government should:

- Prohibit pain-inducing restraint, the use of Tasers and all forms of solitary confinement on children, in line with UN treaty body recommendations.
- Ensure that restraint is used against children exclusively to prevent harm to the child or others and only as a last resort.
- Review the use of spit hoods on children by the police, ensuring that psychological trauma, as well as physiological damage, is thoroughly considered, as well as the evidence for their purported necessity, in line with the right to physical and mental integrity.

- Ensure consistency between guidance, policy and practice for restraint and solitary confinement across detention settings, drawing on positive lessons from guidance relating to mental health detention.
- Ensure there is a uniform approach to recording, monitoring and evaluation across detention settings and use of data to develop strategies for tackling disproportionality.
- Improve training of frontline staff to ensure that the day-to-day use of restraint complies with the domestic human rights framework and reflects international human rights treaty standards.
- Improve provision of information on rights to detainees in the youth estate.

b) Deaths in police custody

In 2016/17 the IPCC investigated no deaths in or following police custody; one apparent suicide following police custody; and 12 other deaths following police contact in Wales (Independent Police Complaints Commission, 2017).

c) Police custody as a place of safety

In 2016/17 a police cell was used as a place of safety under section 136 of the MHA 117 times in Wales (Home Office, 2017 – police powers). This compares with 336 times in 2015/16 (National Police Chiefs' Council, 2016 use of police cells MHA). In 2016/17, there were no cases of a police cell being used as a place of safety for a person aged under 18 in Wales (Home Office, 2017 – police powers), as compared with eight times in 2015/16 (National Police Chiefs' Council, 2016 use of police cells MHA).

5.1.2 Offending

a) Hate crime

Between 2015-16 and 2016-17, there was a 22% increase in Wales in the number of offences recorded by the police as hate crimes and the number of offences recorded increased for all monitored strands over this period (see Table 1) (Home Office, 2016 – hate crime).¹

Table 1 Number of police recorded hate crimes in Wales (2015-16 to 2016-17)

2015-16	2016-17	Percentage change
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¹ Statistics based on police recorded data have been assessed against the Code of Practice for Official statistics and found not to meet the required standard for designation as National Statistics. This applies to all police recorded data presented in this report.

Race	1,747	2,080	19.1
Religion	119	123	3.4
Sexual orientation	372	461	23.9
Disability	244	338	38.5
Transgender	35	45	28.6
Total number of offences	2,405	2,941	22.3

Source: *Hate Crime, England and Wales, 2016 to 2017*, Home Office

Note: These figures exclude data from the British Transport Police as these could not be disaggregated by nation.

In 2016-17 the CPS completed 737 hate crime prosecutions in Wales – down by 11.5% from 822 in 2015-16. The conviction rate across all strands of hate crime decreased slightly from 85.8% in 2015-16 to 82.2% in 2016-17 (CPS, 2016 – annex B; 2017 – annex 1).²

The ONS has stated that action taken by police forces in Wales and England to improve their recording practices together with greater awareness of hate crime and improved willingness of victims to come forward is likely to be a factor in the increase in recorded hate crime offences in 2015-16 rather than an increase in offences per se (Home Office, 2016 – hate crime).

However, polling research for Stonewall Cymru found that in 2017, 20% of LGB people in Wales had experienced a hate crime or incident in the past 12 months – compared with 11% in 2013. Over half (52%) of Trans people reported experiencing a hate crime or incident in 2017.³ The majority of LGBT people who had experienced a hate crime or incident (82%) did not report it to the police (Bachmann and Gooch, 2017).

In 2016 we responded to the Home Affairs Select Committee inquiry into hate crime and its violent consequences.

Our full submission can be read here:

<https://www.equalityhumanrights.com/en/legal-responses/response-home-affairs-select-committee-inquiry-hate-crime-and-its-violent>

² The CPS collects data to assist in the effective management of its prosecution functions. The CPS does not collect data which constitute Official Statistics as defined in the Statistics and Registration Service Act 2007. This applies to all CPS recorded data presented in this report.

³ Earlier data not available.

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, the Commission would like to see greater efforts from public authorities to proactively tackle hate crime.

The UN has recently made recommendations to the UK Government on what it should do to tackle hate crime. The Commission is the regulator tasked by statute with promoting compliance by the UK with its obligations under international human rights law. The Home Affairs Committee plays a crucial role in holding the Government to account for implementation of the UN's recommendations. Given this, we have indicated here where the UN's recommendations can, in our view, be furthered in the Committee's inquiry.

Our recommendations include:

- 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

We would recommend the Commission on Justice in Wales considers Wales specific approaches to EHRC recommendations to the Home Affairs Select Committee inquiry into hate crime and its violent consequences

b) Domestic violence and abuse

In Wales, 27,972 domestic abuse related offences were recorded by the police in 2016-17, which is 24% higher than in 2015-16 (ONS, 2017 – abuse). The CPS recorded a decrease in the number of police referrals, prosecutions and convictions between 2015-16 and 2016-17 for domestic abuse in Wales and England. The volume of convictions fell from 75,235 in 2015-16 to 70,853 in 2016-17, a fall of almost 6%. However domestic abuse convictions have increased since 2010-11 when there were 59,101 convictions (CPS 2017 – DA).

It is widely recognised that domestic abuse continues to be under-reported; with many more offences committed than are reported to and recorded by the police (ONS, 2016 – abuse).

A survey of specialist domestic abuse services in Wales showed funding cuts in nearly half of specialist services for 2016-17, with a lack of adequate funding for specialist children and young people's domestic abuse support services being particular concerns (Welsh Women's Aid, 2016). Nearly all services who responded to the survey (22 of 23) said that funding and service continuation was their organisation's main challenge this year. Currently the government does not compel local areas to provide adequate refuge provision and data on the number of refuges are not collected or held centrally in Wales and England.

In 2018 we responded to the UK Government's consultation: into Transforming the response to domestic abuse.

Our full submission can be read here.

<https://www.equalityhumanrights.com/sites/default/files/consultation-response-transforming-response-to-domestic-abuse-may-2018.pdf>

In summary our recommendations include:

Statutory definition: We agree that the statutory definition of domestic abuse should apply to both sexes, but urge the UK Government to highlight the disproportionate impact of domestic violence on women and girls within the text of the bill and in the statutory guidance. We recommend that the statutory definition defines the different types of

domestic abuse, as well as coercive control over a person's immigration status. A communications strategy should be delivered, to raise awareness about the new definition, and any relevant statutory guidance should be updated. Public sector staff should receive training, including those working for police, healthcare, social services, prisons and probation agencies.

Age limit: We agree that the current age limit of 16 should be maintained. Separate specific action should, however, be taken to prevent intimate partner or family violence affecting those under 16, in line with the requirements of the UN Convention on the Rights of the Child.

Role of schools: We welcome the efforts that the UK Government is making to promote relationship education in schools. A rights-based approach should be built into the school environment, by ensuring respect for individuals' human rights within the curriculum, policy and practice. To enable young people to understand what behaviours will not be tolerated, more should be done to tackle sexual harassment in schools.

Education is devolved to Wales. We welcome the Welsh Government's commitment to relationship education. Sex education is currently only compulsory in secondary schools in Wales but from 2022 all children aged from five to 16 will be taught Relationships and Sexuality Education (RSE).

Role of statutory agencies: While all of the agencies identified in the consultation document have a crucial role to play, it is our view that the Welsh Government and UK Government should focus their efforts on helping healthcare staff; judges/magistrates and the police to better identify domestic abuse.

Further public support: We urge Welsh Government and the UK Government to undertake awareness-raising campaigns in colleges, universities and work places. Work with employers is vital, as many people spend much of their life in work, and survivors can be subject to disciplinary action. Welsh and UK Government departments and agencies should develop workplace domestic abuse policies, and promote this as good practice amongst those with whom they do business.

Central Government funding: We consider that the provision of accommodation (including refuges) and advice and advocacy services are high priorities for central government funding, with appropriate consequential for Welsh Government to implement devolved aspects. Therapeutic support to help survivors begin to recover is also vital.

Despite compelling evidence published by domestic abuse service providers about the impact of funding changes on support services, the consultation paper contains very little on this critical issue. There is a need for a comprehensive review of the funding mechanisms across all aspects of support for survivors.

Multi-agency working: We consider that the most effective ways for the Welsh and UK Governments to promote multi-agency working are by providing incentives through funding, and by sharing best practice. The VAWG strategy should be fully implemented, and it should be the focus of Government efforts to promote partnership working between different agencies. To prevent and address domestic abuse faced by men and boys, the Government should identify any national priorities for relevant departments and agencies.

Funding for specialist provision: To support those who face multiple barriers, advice bodies, support services and refuges should receive sufficient and secure funding for specialist provision, including for ethnic minorities, disabled people, LGBT people, and individuals with complex needs.

Female offenders: We welcome the UK Government's intention to improve the identification of women offenders experiencing domestic abuse. We recommend that routine enquiries about domestic abuse; the use of pre-sentence reports and providing support to women in prison (who have survived domestic abuse) should be priority areas. There should be clear mechanism for support for female prisoners from Wales, who have to serve their sentences in England, this should include support through the medium of Welsh.

Women-specific services: While all of the proposals highlighted in the consultation paper represent important ways to deliver women-only services, we consider that the provision of Independent Domestic Violence Advisers (IDVAs), health interventions and advice services are particularly critical.

Online abuse: It is important that online abuse is taken as seriously as 'real world' offences, as the impact on survivors is significant. We recommend that online abuse is included in the statutory definition of domestic abuse, and highlighted in the statutory guidance.

Improvements in policing: Once the new statutory definition is finalised, the police will need to be trained about what it includes, which should help them to better identify and respond to domestic abuse. The police should take further action to protect women with insecure immigration status from domestic abuse and they should collect and use a range of evidence to charge and prosecute perpetrators, rather than

relying on evidence from survivors.

Eligibility for assistance: We welcome the UK Government's proposal for a legislative assumption that all domestic abuse victims should be treated as eligible for assistance on the grounds of fear and distress. This is an important step in promoting access to justice and providing better support for survivors.

Protection in family court: There is widespread evidence that more needs to be done to protect survivors within our family courts. The UK Government should create a statutory ban, to prevent the cross-examination of domestic violence victims by their perpetrators in the family courts.

Data collection: There is limited information available about the experiences of survivors with protected characteristics, especially disabled survivors, LGBT survivors and survivors from ethnic minorities. This has important implications for the location of, and resourcing of specialist service provision.

We would recommend the Commission on Justice in Wales considers Wales specific approaches to EHRC recommendations on domestic violence and abuse for example, the role of schools, the role of statutory agencies, further public support, funding, multi-agency working and data collection.

c) Sexual violence and rape

In 2016-17 the highest ever number of sexual offences were recorded by the police in Wales: 6,344 sexual offences, an increase of 21% from 2015-16. It has been suggested that these increases have been driven by both improved police recording processes and increased willingness of victims and survivors to report crimes (ONS, 2016 – violent).

The Home Office and police have been working together to produce more detailed data from force crime recording systems in Wales and England including the relation between victim and offender, sex and age of victim and alcohol related offences. Experimental statistics on victims of police-recorded violent and sexual offences have recently been published, but are not fully representative (ONS, 2017 – experi).

d) Child abuse and sexual abuse

The NSPCC's report on child protection showed that Wales saw an increase in the number of sexual offences against children recorded by the police in 2015-16: 2,329 sexual offences against under 16s were

recorded, representing a 25% increase on the previous year. It is likely that improved recording of sexual offences by the police and increased willingness of victims and survivors to come forward have contributed to this rise. There was also an increase in the number of cruelty and neglect by parent or carer offences, from a rate of 7.5 per 10,000 in 2014-15 to 10.5 per 10,000 in 2015-16 (NSPCC, 2017).

According to CPS figures, there were record numbers of convictions in Wales and England completed in 2016-17 for both child abuse (8,999) and child sexual abuse (5,374) (CPS, 2017 – DA).

A review of existing evidence has shown that being a victim or survivor of child sexual abuse is associated with an increased risk of adverse outcomes in many areas of victims and survivors' lives, including physical health, internalising and externalising factors, relationships and socio-economic outcomes. In some cases these adverse outcomes can endure over a lifetime (Fisher et al, 2017).

The NSPCC has highlighted the fact that we still do not know the true extent of how many children are being abused in the UK⁴ and are calling on the UK Government to launch a new survey to assess the extent of child abuse and neglect in the UK (NSPCC, 2017).⁵

5.1.3 Prisons

a) Prison facilities

Overcrowding in Prisons

Overcrowding continues to pose a significant problem in Great Britain. Crowding can have a negative impact on the physical and mental health of prisoners (Joint Committee on Human Rights 2004). In addition, overcrowded conditions have 'implications for prisoner safety, as well as their dignity, especially when combined with staff shortages' (HM Inspectorate of Prisons 2017 – annual).

An average of 3,549 men were held in prisons in Wales in 2016/17, of which 1,405 were held in crowded conditions (NOMS – supplementary tables). Three of the four public prisons in Wales are experiencing some of the highest levels of overcrowding in Great Britain: HMP Swansea (79.3%), HMP Cardiff (64.5%) and HMP Usk / Prescoed (55.4%).

⁴ As many crimes go unreported police statistics do not represent the total number of offences committed.

⁵ The last survey was conducted in 2009 by NSPCC, but since then there have been significant changes in children's lives including the growth of digital and online and changes in reporting behaviour.

Imprisonment in Wales: a Fact file (Dr Robert Jones. Wales Governance Centre, 2018) states that:

Prison capacity for men in Wales has steadily increased since 2010; the prison population in Wales was 4,291 at the end of April 2018.

In January 2018, the House of Commons Welsh Affairs Committee announced its second inquiry in four years into imprisonment in Wales. The Committee's recent interest lies in growing concerns over prison safety as well as the UK Government's decisions to build new prisons in Wales. Recent concerns have focused particularly on the rising levels of violence in prisons in Wales (e.g. HMIP, 2018a), and, just 23 days after the opening of HMP Berwyn, the Ministry of Justice's announcement in March 2017 that it is seeking to build a second 'super prison' in Wales at a site in Port Talbot.

These recent controversies over prison safety and capacity highlight the importance of disaggregated 'Welsh-only' data in understanding justice policy and practice. 'Welsh-only' imprisonment data has shown that the UK Government's plans for additional prison places will eventually result in Wales becoming a net-importer of prisoners from England (Jones, 2013; Wales Governance Centre, 2017).

In April 2018 the Welsh Affairs Select Committee's Prison provision in Wales inquiry, received evidence of overcrowding in prisons in Wales. Wales Online reported, that the President of the Prison Governors Association and a former Governor of HMP Swansea, said the transfer of English prisoners to facilities in Wales was "a cause of problems."... "This does cause stability issues for the Welsh persons... They are overcrowded with people who are not from Wales who don't want to be in Wales and are disaffected, really." (Wales Online 2018)

Despite an increase in prison capacity in Wales, 39% of all prisoners from Wales were being held in English prisons in 2017. In a large number of cases, prisoners from Wales are placed in establishments far away from home; prisoners from Wales were held in 108 different prisons in 2017. The recent opening of HMP Berwyn has resulted in a significant rise in the number of prisoners from England held in Wales. The prison population from England in Wales more than doubled in 2017. More than a quarter of all prisoners held in Wales were from England at the end of March 2018. (Imprisonment in Wales: a Fact file, Dr Robert Jones. Wales Governance Centre, 2018).

We welcome Welsh Government's announcement of the intention to end prison sentences for Council Tax debt (Mark Drakeford, Cabinet Secretary for Finance, June 2018).

Women prisoners

Wales has no prisons for either women offenders or high risk offenders, who must be housed in jails in England (Welsh Affairs Committee, 2015). There were calls for the recently opened HMP Berwyn to include a female wing, but the prison has been listed as a Category C male establishment on the MOJ website

In April 2018 the Welsh Affairs Select Committee Wales Online reported evidence from the former governor of Eastwood Park women's prison in Gloucestershire. She described the particular difficulties facing women from Wales in the facility. "About a third of the women in there were from Wales. It wasn't good"... "Women from Fishguard, were about 150 miles from home and with the best will in the world resettlement isn't going to be easy and family ties aren't going to be easy". (Wales Online 2018)

The number of women in Wales handed immediate custodial sentences has increased by almost a fifth since 2011. Due to the fact that there are no female prisons in Wales, all women from Wales in prison are held in prisons in England. The distances from home facing these women are often considerably higher than those facing adult males from Wales and female prisoners from England.

The majority of women from Wales sentenced to immediate custody have been convicted of nonviolent offences. Three quarters of all women from Wales receiving immediate custodial sentences in 2016 were given sentences of less than 6 months; this rate is higher than the England and Wales total. (Imprisonment in Wales: a Fact file, Dr Robert Jones. Wales Governance Centre, 2018).

Young Offender Institutions and other detention settings for children and young people

Very few children and young people under the age of 18 are held in custody in Wales. In the year ending March 2016, there were 55 under-18s detained in youth custody in Wales, of which 42 originated from Wales (MOJ, 2017 – YJS).

There are limited facilities for young offenders in Wales, with very few places available in YOI's, Secure Training Centres and Secure

Children's Homes, meaning that offenders from Wales may be housed in England (Welsh Affairs Committee, 2015).

The number of children from Wales in custody has fallen by 72% since 2010. 109 custodial sentences were handed to children in Wales in 2017, a rate that was marginally higher than the level in England. 45% of all children from Wales in custody were being held in establishments in England during 2017.

The distances facing children in prison have been shown to reduce the number of family visits, hinder 'through the gate' support services, and increase the sense of alienation and isolation that children experience in prison. (Imprisonment in Wales: a Fact file, Dr Robert Jones. Wales Governance Centre, 2018).

Racial disparities in prisons

Over 20,000 adults in prisons across England and Wales are from ethnic minorities, representing around a quarter of the overall prison population. If ethnicity of the prison population reflected that of the general population, there would be 9,000 fewer people from ethnic minorities in prison (Lammy Review, 2017).

The Commission on Justice in Wales may wish to consider the recommendations of the Lammy review and their implications in the Welsh context.

b) Safety

Self-harm

Prisons in Wales are performing less well than prisons in England on a range of prison safety measures. The number of recorded self-harm incidents and prison assaults in Wales has increased at a higher rate than prisons in England since 2010. There were more prison disturbances at HMP Parc in 2016 and 2017 than at any other prison in Wales and England. (Imprisonment in Wales: a Fact file, Dr Robert Jones. Wales Governance Centre, 2018).

A report from the HM Inspectorate of Prisons has revealed HMP Swansea failed to respond effectively to high levels of self-harm and suicides of new prisoners.

HM Chief Inspector of Prisons said in 2014, inspectors had warned the prison needed "to be energised, rejuvenated and refocused on delivering better outcomes", but labelled findings from their inspection in August

2017 as “very disappointing”, stating it was “clear complacency warned about after the last inspection had been allowed to take hold”.

Inspectors described how there had been “four self-inflicted deaths” since the last inspection in 2014, when there was also four recorded, all of which took place “within the first seven days of arrival at Swansea”, along with 134 incidents of self-harm.

In April it was reported that some of the problems are shared by Cardiff and Parc in Bridgend. All three have problems with prisoner-on-prisoner assaults, prisoners taking their own lives, overcrowding and drugs. (Wales Online 2018).

Preventing deaths in detention of adults with mental health conditions

In 2015, the Commission published a report of our inquiry into non-natural deaths of adults with mental health conditions in prisons, police custody and psychiatric hospitals in the years 2010 to 2013.

Our analysis of the evidence showed that basic errors were being repeatedly made, and we developed a series of recommendations for relevant agencies in order to improve the situation.

Recommendations were addressed at government, regulators and inspectorates and the leaders and managers of individual institutions.

Recommendation 1: Structured approaches for learning lessons in all three settings should be established for implementing improvements from previous deaths and near misses, as well as experiences in other institutions. As part of this, there should be a statutory obligation on institutions to respond to recommendations from inspectorate bodies and to publish these responses.

Recommendation 2: Individual institutions in the three settings should have a stronger focus on meeting their basic responsibilities to keep detainees safe including implementing recommendations, improving staff training and ensuring more joined up working. Where this is not currently the situation this should explicitly be part of the inspection regimes.

Recommendation 3: In all three settings there needs to be increased transparency to ensure adequate scrutiny, holding to account and the involvement of families. A new lever to help achieve this may be the introduction from April 2015 of a statutory duty of candour which applies to NHS bodies in England. If it proves to be effective this duty should be

extended to the other settings too, particularly in investigations and inquiries into non-natural deaths.

Recommendation 4: The Equality and Human Rights Commission's Human Rights Framework should be adopted and used as a practical tool in all three settings. Adopting it as an overall approach as well as ensuring compliance with each individual element will reduce non-natural deaths and should help to inform and shape policy decisions.

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.

The inquiry report, progress review and Human Rights Framework can be found here:

<https://www.equalityhumanrights.com/en/preventing-deaths-detention-adults-mental-health-conditions>

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

5.2. Civil Justice, family justice, administrative justice and tribunals

a) Court and tribunal closures

Following a consultation, in February 2016 the Ministry of Justice (MOJ) announced the closure of ten court and tribunal buildings in Wales (MOJ, 2016 – close W).

We recently 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.

Our full submission can be read here.

https://www.equalityhumanrights.com/sites/default/files/reponse_to_the_consultation_on_the_strategy_to_transform_the_courts_and_tribunal_estate.pdf

In summary we said:

The courts modernisation programme and the specific changes proposed in the consultation exist against a backdrop of recent reforms to the justice system, particularly cuts to legal aid, that challenge access to justice. It is important to consider changes to the justice system in the round to ensure the fundamental right of access to justice is not compromised. The courts have established that access to justice must be a practical reality; as such, as the recent Supreme Court judgment in *Unison v the Lord Chancellor* emphasised, in the assessment of a policy's impact on access to justice, it is important to focus on its impact on behaviour in the real world rather than in theory⁶. The Commission's strategic plan for the 2018/19 financial year includes priorities to improve access to justice for individuals who have experienced discrimination or breaches of their human rights, and to improve protection of the rights of people with mental health conditions and/or learning disabilities in the criminal justice system.

We recognise that modernising the courts may provide a number of opportunities to improve access to justice, for example by improving accessibility for disabled court users. 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 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.

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:

⁶ R (Unison) v Lord Chancellor [2017], UKSC 51.

- 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 digitisation; 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.

We would recommend the Commission on Justice in Wales considers how these concerns can be addressed within in the Welsh context.

5.3 Access to Justice and other overarching issues

5.3.1 Access to justice, through practical and effective legal mechanisms, is an essential human right. However, there is evidence that recent changes (such as reforms to legal aid, the introduction of employment tribunal fees, and the courts modernisation programme) have negatively affected access to justice, in particular for women, disabled people, ethnic minorities and victims of domestic violence. We are concerned that reduced funding of advice services has left substantial gaps in access to justice.

a) Legal aid

We welcome the review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).

In Wales and England, the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 excluded many areas of law from the scope of civil legal aid and tightened the qualifying criteria for civil legal aid. Research has raised concerns on the impact of LASPO in respect to legal aid and access to justice:

- Legal aid is no longer available for many who need it and there is a disproportionate impact on some specific and vulnerable groups including women, children, migrants and refugees, disabled people, those with mental health issues, those with low levels of literacy and numeracy and women (Anthony & Crilly, 2015; Amnesty International, 2016; TUC, 2016; The Law Society, 2017).

- Legal aid ‘deserts’ have emerged in some areas of the country, particularly for housing issues (The Law Society, 2017).
- Evidence requirements for domestic violence cases can be difficult to fulfil (The Law Society, 2017).
- The Mandatory Telephone Gateway is underused and has imposed a barrier for those for whom telephone advice is not appropriate (The Law Society, 2016) (Anthony & Crilly, 2015).

The Commission on Justice in Wales may wish to consider the findings from our inquiry into legal aid for individuals pursuing discrimination claims when concluded.

b) Employment tribunal fees

Fees for employment tribunals (ET) were introduced in July 2013 with discrimination claims attracting higher fees (House of Commons Library, 2017).⁷ According to Her Majesty’s Courts & Tribunals Service data (HMCTS), between 2012-13 and 2016-17 the number of ETs for discrimination⁸ decreased from 1,966 to 499 in Wales. There were decreases across all categories of discrimination with the exception of age discrimination (MOJ, 2017 – trib).⁹

We welcome the recent Supreme Court ruling on employment tribunal fees, and steps taken to abolish fees.

c) Provision and Funding of advice services

The provision of employment advice in Wales has been described as an advice desert (Snakes and Ladders Advice and Support for Discrimination Cases in Wales, Williams et al, 2003). At an EHRC convened round table on advice services in 2015 it was noted that a key difficulty in accessing justice in Wales is being able to get relevant advice. Even before getting to the question of whether they are eligible for legal aid, people often do not know where to go for advice.

Participants confirmed that advice provision can be piecemeal in Wales.

The picture of funding for advice services across Wales is not clear. We understand that the Welsh Government currently provides some funding

⁷ Employment tribunal fees were declared unlawful by the Supreme Court in July 2017.

⁸ Defined for this report as employment tribunals for the reasons of: sex, disability, age, race, pregnancy and maternity, religion or belief or sexual orientation discrimination or for reasons of equal pay. Note this does not include trans discrimination.

⁹ These statistics are drawn from HMCTS Management Information Systems and not classified as Official Statistics. They may be subject to later revisions and statistics can vary depending on when the data was extracted.

to Citizens Advice Bureau Cymru, Shelter Cymru and SNAP Cymru to advise on a range of education, employment, housing and social welfare issues and that other advice services including Lawworks Cymru are funded by occasional grants made available by the Big Lottery Fund.

We would recommend the Commission on Justice in Wales examines provision and funding of specialist discrimination advice in Wales to ensure sustained adequate provision across Wales including provision in BSL and Welsh.

d) Interpretation services

In Wales and England the success rate for language interpreter and translation service requests increased from 97% in Q1 2017 to 98% in Q2 2017. However, this varied by different service types from 99% for specialist services, 98% for standard language requests to 88% for rare languages (MOJ, 2017 – language). For the purposes of these statistics, Welsh is classified as a rare language, but no statistics for the number of Welsh language interpreter and translation service requests is available (MOJ, 2017 – lang guide).

Recent evidence suggests that prisons across England and Wales are failing to meet the needs of Welsh-speaking prisoners. Despite recent signs of improvement in Wales, concerns remain about the state of Welsh language provision in establishments in England and in Wales. (Imprisonment in Wales: a Fact file, Dr Robert Jones. Wales Governance Centre, 2018).

The number of complaints for completed service requests decreased to 450 in Q2 2017 from 730 in Q1 2017 and during this period the complaint rate decreased from 2% to 1%. In Q2 2017 the complaint rate was highest in tribunals (2%), followed by civil and family courts (1%) and criminal courts (less than 1%). The most common complaints in Q2 were: interpreter was late (30%), interpreter did not attend (25%), no interpreter available (11%), interpreter conduct (9%) and interpreter quality (8%) (MOJ, 2017 – language).

More quarters and years of data on the operation of language interpreter and translation services under the new services provider is needed before we can make an informed assessment. Other than data on the number and type of complaints, currently there is no publicly available data on independent quality assurance of these services in Wales and England.

e) Liaison and diversion services

In Wales the Criminal Justice Liaison Service (CJLS) previously

functioned at a local level with no central delivery model (NHS Wales, 2013) but it is moving towards a more coherent and consistent model, based on national standards (Welsh Government, undated liaison).

There is no publicly available data relating to the provision of the CJLS in Wales.

5.3.2 EHRC work on improving access to justice in Wales

a) Advice for Advisors helpline

The Commission has put in place a one year pilot Advice for Advisors helpline in Wales and England (such a service already exists in Scotland) to provide advice to advisors on alleged breaches of equality and human rights legislation. This has helped build momentum amongst the legal community in Wales. The pilot is now being evaluated.

b) Identifying and Tackling Discrimination in the workplace

Over recent years, the EHRC in Wales has delivered *Identifying and Tackling Discrimination in the workplace* courses in North and South Wales. A transfer of expertise programme aimed at addressing the employment advice desert in Wales. The course is aimed at front line advisers - and provides a foundation of knowledge on the Equality Act to enable advisers from across Wales to identify potential discrimination cases, provide accurate, time critical advice, and signpost onto further sources of advice and support.

The course is highly valued by stakeholders and has recently been independently evaluated. The evaluation report concludes:

“The course is meeting its aim of ensuring provide participants with the knowledge and skills to provide specific, accurate and time-critical advice to individuals who believe they have experienced discrimination in employment and supporting individual clients to access justice. It is achieving positive outcomes for participants, their clients, and their organisations.”

There is no guarantee that provision the *Identifying and Tackling Discrimination in the workplace* course will be able to continue.

We would recommend the Commission on Justice in Wales considers how training for front line advisers in Wales can be provided on a sustained basis.

6. About the Equality and Human Rights Commission

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. It contributes to making and keeping Britain a fair society in which everyone, regardless of background, has an equal opportunity to fulfil their potential. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited by the UN as an 'A status' National Human Rights Institution. Find out more about the Commission's work at: www.equalityhumanrights.com

7. Summary of recommendations

We would recommend the Commission on Justice in Wales:

- engages with the EHRC towards identifying Wales specific solutions to priorities for justice and personal security and restraint;
- considers how the Public Sector Equality Duty can be better complied with and used as a lever for improvement within the Justice system in Wales;
- assesses the likely impact of proposals and recognises and responds to disproportionate impact on particular groups; and ensures that the system itself reflects the community it serves at all levels;
- considers adopting our key Is Wales Fairer? recommendations for justice;
- calls for identified data gaps for Wales to be filled;
- considers Wales specific approaches to EHRC recommendations to the Home Affairs Select Committee inquiry into hate crime and its violent consequences;

- considers Wales specific approaches to EHRC recommendations on domestic violence and abuse for example, the role of schools, the role of statutory agencies, further public support, funding, multi-agency working and data collection;
- considers the recommendations of the Lammy review and their implications in the Welsh context;
- considers how the EHRC recommendations on preventing non-natural deaths of adults with mental health conditions in prisons, police custody and psychiatric hospitals can be adopted within in the Welsh context and in particular how the Commission's Human Rights Framework can be embedded in institutions in Wales;
- considers the findings from our inquiry into legal aid for individuals pursuing discrimination claims when concluded;
- examines provision and funding of specialist discrimination advice in Wales to ensure sustained adequate provision across Wales including provision in BSL and Welsh;
- considers how training for front line advisers in Wales can be provided on a sustained basis.