

# Supplementary evidence of the Welsh Government to the Commission on Justice in Wales

## Access to justice and human rights

### *Introduction*

This paper is supplementary to the Welsh Government's submission of 4 June 2018. It focusses specifically on the equality and human rights related aspects of justice in Wales and is predominantly framed in response to Question 4 of the Call for Evidence:

*Q4. Does the justice system in Wales currently provide access to all who require its services, including advice? How would you improve access to justice in Wales?*

### *Background*

The Welsh Government is committed to creating a fair and equitable Wales. However, equal opportunities is, subject to certain exceptions, a reserved matter and is not, therefore, generally a matter upon which the National Assembly for Wales may legislate.

Nevertheless the Welsh Government does exercise certain functions under the Equality Act 2010. Section 149(1) of the Act provides that a public authority listed in Schedule 19 to the Act must in exercising its functions have regard to the need to:

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

For the purpose of enabling the better performance of section 149(1), the Welsh Ministers may by Regulations impose duties on relevant Welsh authorities who are specified in the Act. The duties are set out in the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 and came into force in April 2011. The Welsh Government was the first government to bring in specific equality duties designed to ensure that public bodies better perform their obligations.

The Regulations contain obligations concerning equality impact assessments, publishing and reviewing Strategic Equality Plans, engagement, pay differences, procurement, reporting arrangements and equality and employment information.

The Welsh Government is, however, concerned also about how the administration of justice impacts upon equalities and this paper considers certain issues that significantly hinder equality and the international context.

Amongst other international treaty commitments, the United Kingdom has signed and ratified 7 United Nations Conventions and Covenants:

- International Covenant on Economic, Social and Cultural Rights (**ICESCR**)
- International Covenant on Civil and Political Rights (**ICCPR**)
- Convention on the Elimination of All Forms of Racial Discrimination (**CERD**)

- Convention on the Rights of Disabled People (**CRDP**)
- Convention on the Elimination of All Forms Discrimination Against Women (**CEDAW**)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**CAT**)
- Convention on the Rights of the Child (**CRC**)

All states who have ratified the UN Conventions and Covenants are required to report periodically to the relevant treaty body on how they are implementing the rights protected by each instrument. As a constituent part of the UK, the Welsh Government contributes to this process.

Various UN Human Rights Committees oversee and advise states on the implementation of these treaties. Any concerns raised are communicated via recommendations, or Concluding Observations, which are published at the end of each UN reporting cycle.

Since 2013, the UK has been examined on all 7 UN Conventions and Covenants. The UK Government and the Devolved Administrations have received a number of UN recommendations which relate to access to justice in the UK, although it should be noted that none of these recommendations are Welsh specific.

### *Access to justice*

In June 2016, the UN Committee on Economic, Social and Cultural Rights recommended that the UK 'review the impact of the reforms to the legal aid system with a view to ensuring access to justice and the provision of free legal aid services, in particular for disadvantaged and marginalized individuals and groups'.<sup>1</sup> The UN Human Rights Committee expressed similar concerns in 2015.<sup>2</sup>

In 2016, the UN Committee on the Rights of a Child expressed concern about the impact of cuts in legal aid has on children in the UK, stating that 'the reforms concerning the reduction of legal aid in all four jurisdictions appear to have a negative impact on the right of children to be heard in judicial and administrative proceedings affecting them.'<sup>3</sup>

There is a consistent narrative in the UN recommendations which suggests that the justice system in the UK does not currently provide equal access to all who require its services, in particular people with protected characteristics as listed in the Equality Act 2010.

UN Committees have consistently recorded that cuts to legal aid in the UK has had a negative impact on the capacity of people with protected characteristics to access justice.

- Women

In its 2013 Concluding Observations to the UK, the Committee on the Elimination of Discrimination against Women expressed concern 'that the Legal Aid, Sentencing and Punishment of Offenders Act of 2012 unduly restricts women's access to legal aid because it

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<sup>1</sup> [Committee on Economic, Social and Cultural Rights: Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland](#) Page 4

<sup>2</sup> [UN Human Rights Committee: Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland](#) Page 9

<sup>3</sup> [Committee on the Rights of Children: Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland](#) Page 6

removes access to legal aid for litigation concerning, among others, divorce, property disputes, housing and immigration matters'.<sup>4</sup>

In the same report the Committee was concerned at reports of persistent discrimination against pregnant women in employment and their access to justice, and it called upon the UK to 'ensure access by women to justice in employment-related cases, including those pertaining to discrimination on the grounds of pregnancy and motherhood.' The Committee was also concerned about reports that the number of women in prison was increasing, owing partly to changes in sentencing. This view was echoed by the Committee against Torture in its Concluding Observations, also published in 2013.<sup>5</sup>

At a meeting with the Head of the Equality and Human Rights Commission (EHRC) in Wales, on 14 December 2017, Welsh Government Ministers raised the issue of inequality in relation to the criminal justice system, noting with concern, in particular, the high and disproportionate number of women in prison because of debt problems.

Concerns were also raised about the duration of sentences, which are long enough for an individual to lose a job and have their family life disrupted, but not long enough for any meaningful rehabilitation or retraining<sup>6</sup>. This is exacerbated by the trend towards building fewer, larger prisons which result in inmates losing touch with families who are unable to travel greater distances to visit them regularly. This is an issue which the Welsh Government wishes to tackle and is doing so where it can, for example by announcing recently its intention to amend regulations on the enforcement of non-payment of council tax to exclude the potential for custodial sentences. The devolution settlement, however, severely limits what can be done in this respect.

In March 2018, the First Minister announced his intention to "conduct a Rapid Review of our gender and equality policies and bring new impetus to our work". The review is being led by the Leader of the House and Chief Whip, supported by the women's equality charity Chwarae Teg and the Wales Centre for Public Policy.

The Welsh Government has set out its intention to put considerations of gender equality at the forefront of all its decision making, ways of working and conduct. Phase one of the review considered what the Welsh Government already does well, identified what it could improve, and looked at examples from Governments around the world to learn from their models and practices. The Welsh Government is, however, unable to take action to deal with the numerous problems that are currently commonplace within the criminal justice system.

- Race

The UN Committee on the Elimination of Racial Discrimination stated in its 2016 Concluding Observations that 'the reforms to the legal aid system and the introduction of employment tribunal fees have restricted access to justice for individuals belonging to ethnic minorities in areas such as employment, housing, education and social welfare benefits'. It also noted a

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<sup>4</sup> [Committee on the Elimination of Discrimination against Women: Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland](#) Page 4

<sup>5</sup> [Committee Against Torture: Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session](#) Page 12

<sup>6</sup> See also in this respect the supplementary evidence paper from the Cabinet Secretary for Local Government and Communities.

significant reduction in the number of cases concerning racial discrimination in employment since the introduction of fees in employment tribunals.

The Committee called on the UK to ensure that black and minority ethnic people have fair and effective access to legal aid to seek justice. It recommended that the UK undertake a thorough assessment of the impact of the reforms to the legal aid system to ensure that individuals belonging to ethnic minorities are not affected disproportionately.<sup>7</sup> In the same report, the Committee also expressed concern 'at reports that persons of African descent face institutional racism in their enjoyment of rights...including the criminal justice system.'<sup>8</sup>

The Committee on the Elimination of Discrimination against Women noted with concern in its 2013 Concluding Observations that legal aid reform 'may push women, in particular those from ethnic minorities, into informal community arbitration systems, including faith-based tribunals, which are often not in conformity with the CEDAW.'<sup>9</sup> In the same report, the Committee was also concerned at the overrepresentation of black and ethnic minority women in prison.<sup>10</sup>

These are issues that the Welsh Government is unable to address or is able to address only in limited circumstances.

- Refugees, migrants and asylum seekers

In 2013, the UN's Human Rights Committee requested that the UK Government 'ensure that reforms to the detained fast track system are fully compliant with the State party's obligations under the CCPR. It should also ensure that the system protects vulnerable persons, and provides for effective safeguards against arbitrariness and for effective access to justice, including to legal aid.'<sup>11</sup>

In its 2016 Concluding Observations, the Committee on the Elimination of Racial Discrimination expressed concern at the use of immigration detention with no statutory time limit, and that children continue to be held in immigration detention facilities'. The Committee recommended that the UK should ensure that individuals who are held in immigration detention facilities have effective access to justice, including legal aid.<sup>12</sup>

In 2013, the Committee on the Elimination of Discrimination against Women called on the UK to 'provide access to justice and health care to all women with insecure immigration status, including asylum seekers, until their return to their countries of origin.'<sup>13</sup>

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<sup>7</sup> [Committee on the Elimination of Racial Discrimination: Concluding observations on the combined twenty-first to twenty-third periodic reports of the United Kingdom of Great Britain and Northern Ireland](#) Page 5 and 6

<sup>8</sup> [Committee on the Elimination of Racial Discrimination: Concluding observations on the combined twenty-first to twenty-third periodic reports of the United Kingdom of Great Britain and Northern Ireland](#) Page 6

<sup>9</sup> [Committee on the Elimination of Discrimination against Women: Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland](#) Page 4

<sup>10</sup> [Committee on the Elimination of Discrimination against Women: Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland](#) Page 10

<sup>11</sup> [UN Human Rights Committee: Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland](#) Page 9

<sup>12</sup> [Committee on the Elimination of Racial Discrimination: Concluding observations on the combined twenty-first to twenty-third periodic reports of the United Kingdom of Great Britain and Northern Ireland](#) Page 9

<sup>13</sup> [Committee on the Elimination of Discrimination against Women: Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland](#) Page 11

Again these are issues that the Welsh Government is unable to address or is able to address only in very limited circumstances.

- Disabled people

Following a 2017 examination, the UN Committee on the Rights of Disabled People expressed a number of concerns about access to justice for disabled people in the UK.<sup>14</sup> These included:

- a low level of awareness among the judiciary and law enforcement officials about the human rights of disabled people;
- reports of persons with psychosocial and/or intellectual disabilities who do not receive appropriate support in exercising their legal capacity and access to justice;
- barriers faced by disabled people in accessing civil legal aid as a consequence of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 in England and Wales and the introduction of fees for employment tribunals;
- regulations excluding persons with hearing impairments from participating in jury proceedings, and that personal assistants or interpreters are not allowed.

The Committee provided a list of recommendations to the UK to help tackle these issues. These include:

- developing and implementing capacity-building programmes among the judiciary and law enforcement personnel about the rights of disabled people;
- designing and implementing a decision-making regime with guidelines and appropriate resources, focusing on respecting the will and preferences of disabled people in court proceedings;
- providing free or affordable legal aid for disabled people in all areas of law and remove fees to access courts and employment tribunals.
- ensuring that all disabled people are provided with adequate procedural accommodation within the justice system, and enable in particular deaf persons through the use of sign language interpreters, to fully and equally participate as jurors in court proceedings;
- taking measures to empower disabled people to work in the justice system as judges, prosecutors or in other positions, with the provision of all necessary support.

The Equality and Human Rights Commission's 2017 publication 'Being Disabled in Britain: A Journey Less Equal' also explores some of the experiences of the criminal justice system of disabled people in Wales<sup>15</sup> and the effects of changes to Legal Aid in England and Wales.<sup>16</sup>

Access to justice is also hindered by the inaccessibility of the law itself. This is a UK wide problem caused by the proliferation of the statute book, poor publication arrangements and the unavailability of advice services. In Wales there are added dimensions caused by the complexity of the devolution settlement and the impact of a single legal jurisdiction for England and Wales. This issue is considered in more detail in the paper on "Law and the constitution" submitted by the Counsel General.

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<sup>14</sup> [Committee on the Rights of Persons with Disabilities: Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland](#) Page 6 and 7

<sup>15</sup> [EHRC 2017 'Being Disabled in Britain: A Journey Less Equal'](#) Page 110

<sup>16</sup> [EHRC 2017 'Being Disabled in Britain: A Journey Less Equal'](#) Page 115

## *Hate crimes and incidents*

The Welsh Government's 2014 publication 'Tackling Hate Crimes and Incidents: A Framework for Action' highlighted some of the barriers which influenced victims of hate crimes to choose not to report incidents.<sup>17</sup>

These included:

- perceptions that their case was too trivial and that the police were not able to do anything about the crime or incident;
- the fear of retaliation;
- a lack of understanding of the term or the criminal nature of 'hate crime';
- cultural reasons and a perceived lack of evidence.

The publication noted that the number of people reporting hate crime on grounds of disability, sexual orientation and gender identity was low. Research at the time identified that communities such as migrants, refugees, asylum seekers and gypsies and travellers were far less likely to report incidents or crimes.

Although the Welsh Government has only very limited powers and responsibilities in this area, it set a target to increase hate crime reporting and to increase confidence in victims to report.

2,941 hate crimes were reported in Wales during 2016-17, up 22% on 2015-16:

- 2,080 (71%) were race hate crimes, up 19% on 2015-16;
- 461 (16%) were sexual orientation hate crimes, up 24% on 2015-16;
- 123 (4%) were religion hate crimes, up 3% on 2015-16;
- 338 (11%) were disability hate crimes, up 39% on 2015-16; and
- 45 (2%) were transgender hate crimes, up 29% on 2015-16.

Since 2014, the Welsh Government has provided funding to Victim Support Cymru to operate the National Hate Crime Report and Support Centre (for this financial year the funding was £220,000). This funding will continue to at least 2020. This service provides emotional, practical, and advocacy support, and has high user satisfaction rates.

## *The European Convention on Human Rights and the Human Rights Act 1998*

The United Kingdom has been a signatory to the Convention since 1950. The Human Rights Act 1998 'gives further effect' to rights and freedoms guaranteed under the European Convention. It means that:

- judges must read and give effect to other laws in a way which is compatible with Convention rights;
- it is unlawful for a public authority to act in a way which is incompatible with a Convention right.

The Welsh Government is fundamentally opposed to any plans to withdraw from the European Convention on Human Rights or to any repeal of the Human Rights Act 1998. In November 2015, for example, the Welsh Government provided written evidence to an EU Justice Sub-Committee Inquiry into the Impact of Repealing the Human Rights Act 1998 upon EU Law stating that:

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<sup>17</sup> [Tackling Hate Crimes and Incidents: A Framework for Action](#) Page 12

“the Welsh Government is opposed to the repeal of the Human Rights Act 1998 and similarly to any withdrawal from the European Convention on Human Rights. It believes that the mechanisms contained within the Human Rights Act are an important and appropriate means for the people of Wales to challenge inequality and injustice and the “Convention rights” enshrined within that Act rightly continue to influence its policies, legislation and decisions.”

The Committee on Economic, Social and Cultural Rights<sup>18</sup> and UN Human Rights Committee<sup>19</sup> have both likewise expressed concerns that the UK Government’s plans to replace the Human Rights Act 1998 with a new British bill of rights as any new legislation may lower the status of international and regional human rights standards.

The UK Government’s plans proposals to change the law on human rights are currently on hold until the UK’s withdrawal from the EU is finalised. Most recently, this was confirmed by the UK Government in its White Paper, ‘The Future Relationship between the United Kingdom and the European Union’ on 12 July 2018 which noted that ‘the UK is committed to membership of the European Convention on Human Rights’.<sup>20</sup>

### *Conclusion*

Equality and Human Rights are matters of great importance to the Welsh Government. The Welsh Government believes that Welsh society is built on a deep-rooted commitment to equality and fairness, and is fundamental to our identity. Equalities are, however, clearly under threat within the UK, most markedly within the justice system – an issue that is evidenced by detrimental international comparison and concerns raised by the United Nations.

The Welsh Government is committed to do what it can to protect equal opportunities but is very conscious that it can only do so effectively within devolved areas. It cannot, therefore, address the widespread impact of dysfunction within the justice system of England and Wales and the problems caused by cuts in legal aid. The Welsh Government’s inability to tackle these issues is a matter of deep frustration.

**Julie James AM, Leader of the House  
Welsh Government**

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<sup>18</sup> [Committee on Economic, Social and Cultural Rights: Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland](#) Page 2

<sup>19</sup> [UN Human Rights Committee: Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland](#) Page 2

<sup>20</sup> [The Future Relationship between the United Kingdom and the European Union](#) – 12.07.2018, Page 52