

**Commission on Justice in Wales
Oral Evidence Session
22 March 2019**

Present:	Commission members	Secretariat team
<p>Anne Curran (AC), Regional Tribunal Judge for Wales & SW England, Social Security and Child Support Tribunal Barry Clarke (BC), Regional Employment Judge for Wales, Employment Tribunal Carolyn Kirby OBE (CK), President, Mental Health Review Tribunal for Wales / Tribiwnlys Adolygu Iechyd Meddwl Cymru Dr Christopher McNall (CM), Chairperson, Agricultural Land Tribunal for Wales / Tribiwnlys Tir Amaethyddol Cymru</p>	<p>Lord Thomas of Cwmgiedd, Chair, Simon Davies, Dr Nerys Llewelyn Jones, Juliet Lyon CBE, Professor Rick Rawlings.</p>	<p>Chris James Katherine Thomas</p>

Question area: Improving public access and user experience of your tribunals

- AC: The Social Security and Child Support Tribunal is the largest tribunal in terms of volume of appeals and numbers of judges and members. Approximately 6 years ago, HMCTS received half a million appeals nationally. Currently, the figure is just over a quarter of a million appeals. At present, Wales receives about a thousand appeals a month. In terms of tribunal judges and members in Wales, there are 5 salaried judges, one salaried medical member, 46 fee-paid judges, 54 medical members, 37 disability members and one financial member. I am the leadership and management judge for those judges and members, together with 221 judges and members in the South West region. I am one of 7 Regional Tribunal Judges, the others being in Scotland, the North East, the North West, Midlands, London and the South East. The majority of appeals have a medical element, including claims relating to industrial diseases and accidents, Personal Independence Payments and Employment and Support Allowance. These cases are decided by panels including medical and disability members. In some cases, judges sit alone eg cases relating to overpayments of benefits as a result of fraud or entitlement to benefits based on the right to reside in the UK. Child Support appeals cover the payment of child maintenance for children under 18. Complex financial cases make use of a financial member who is an accountant.

Professor Rawlings clarified that the Tribunal has a UK responsibility without a devolved aspect in Wales and Lord Thomas asked about the position in Scotland.

- AC: There is a delay to devolution in Scotland. Tribunal Judges in Scotland are not clear on the position at present.
- AC: Now turning to answer the question, the Tribunal is using a variety of means to avoid delays in the system. Historically, the system relied entirely on face to face oral hearings or on paper based decisions. Delays in recruitment can cause backlogs. Video hearings have been used from a venue in Wales to venues elsewhere in Wales or the South West with better availability of judges. It is not perfect – there is a shortage of members in North Wales and attempts to use video to hearings from Prestatyn have not been successful to date. However, the system is working well in other areas eg Isle of Wight (which has no members) to Port Talbot and Exeter to Cwmbran.

Professor Rawlings asked whether details of hearing venues and link capacity could be provided

- AC: I can send further information on where we sit and where we can link to. Llangefni is an example of somewhere where the hearing venue has been lost but video link can be used. I can also provide details of equipment and capability. We have also increasingly been using telephone hearings too as appellants cannot always get to a hearing centre and it is better than deciding a case just on the papers. It is a good way of being able to ask questions of someone who is ill. We tried Skype hearings too but the equipment was not adequate. It has been updated and the intention is to use that to link to CAB offices in parts of Wales where there isn't the ability to hear a case locally.

Lord Thomas asked about the quality of Skype hearing, given information received by the Commission that HMCTS is well-equipped to link from court to court but that facilities to link to external venues are poor.

- AC: It depends on the connectivity of what the appellant is using at home. If it is not suitable or drops out then we continue the hearing by phone.

Lord Thomas clarified whether difficulties were caused by the HMCTS set-up or by the broadband network in Wales

- AC: Connectivity in hearing rooms is now much improved but there is poor connectivity for appellants in parts of the country. A clerk tests the connectivity in advance. Seeing home circumstances during a Skype hearing using a mobile phone has sometimes been very helpful.
- CK: I can provide a note afterwards about background to the Mental Health Review Tribunal for Wales. Anyone detained under the Mental Health Act has the right to appeal when detained and at intervals thereafter. There is a statutory right to advice for all detained patients so no one should be ignorant of their rights to appeal. Under certain circumstances the authority responsible for the patient's section or order, or in the case of a restricted patient (a convicted offender) has a legal duty to make a referral to the Tribunal. This is usually if the patient has been detained for a long period and has not chosen to appeal themselves. In certain circumstances, Welsh Ministers can also make a referral. Mental Health Act Advocates are based in hospitals and remind patients of their rights to appeal and assist them to do so, so there isn't really a need to widen access. We go to the patient for hearings. By definition, detained patients cannot travel to us. The quality of facilities made available to us in hospitals varies hugely, from a dedicated hearing room to a small kitchen, and they are not always fit for purpose. We make the best of what we have got and the patient experience therefore varies accordingly. We visit about 50 different venues a year, visiting the bigger hospitals daily.

Juliet Lyon asked whether the Tribunal monitors patient experience of using the Tribunal

- CK: This is a sensitive issue without an easy solution. We discharge around 12% of patients, so 88% are potentially disappointed with the outcome and their perceptions of the experience may be affected by their mental disorder. Many are not well enough to clearly express views on their experience in any case. I know that the Tribunal in England has trialled user groups but I believe they have been discontinued as they were not helpful. Whilst it is an important question to ask, it is not easy to do.
- BC: The Commission has already received my written submission on the history, work and constitution of the Employment Tribunal. The Employment Tribunal is a reserved party to party tribunal but there is quite a lot of Welsh law to rule on. It is the role of the State to ensure citizens have access to justice and the role of the judiciary to apply those rights. As judges we seek to offer a prompt, courteous and fair system. In Wales the Employment Tribunal has collaborated with other organisations, including the EHRC, the Employment Lawyers Association, LawWorks,

Advocate and ACAS to set up initiatives to assist tribunal users. This includes a bilingual leaflet (1 for North Wales and 1 for South Wales) which signposts tribunal users to organisations who can provide advice and support, and an internal guide for staff and judges on the support that organisations can include (eg discrimination and modern slavery) to ensure that, although the Tribunal cannot appropriately advise, we do say more than “we cannot advise”. Every 3rd Friday in Cardiff, the Tribunal hosts a pro bono clinic for litigants in person; “ELIPS” as it is known, is a collaboration between the Employment Lawyers Association, Advocate (formerly the Bar Pro Bono Unit) and LawWorks . It is used by 20-30 people a day and supports unrepresented parties – mostly unrepresented claimants but occasionally unrepresented respondents – in complex case management hearings. The final initiative is Streetlaw where law students, acting under legal supervision, speak to members of the public about the process of bringing an employment law claim (although not about individual cases). BPP Law School, Cardiff University, Swansea University and the University of South Wales participate. A working group which meets several times a year ensures that these arrangements work well. We also publish our venue and listing policies – I can provide that to the Commission. Judges and members receive training on the social, behavioural and linguistic aspects of judging to ensure the best experience for users. User experience is about a prompt hearing, understanding what is happening, feeling listened to and understanding why the case was won or lost.

Professor Rawlings said that the Commission would like to see leaflets etc associated with these examples of good practice

- CM: The Agricultural Land Tribunal is a devolved ‘party-to-party’ tribunal, with a much lower volume of cases than the other tribunals here today. I can provide a note on its composition and work. Accessibility of its previous decisions is important so that parties understand the decision making process and the sort of evidence which is required. We publish decisions on the website, although are behind in doing so at present. I have tried to persuade BAILII (the British and Irish Legal Information Institute) to mount our cases on its website but so far without success - it is a charity and its resources are scarce.

Question area - Do tribunals have advantages over courts in dealing with litigants in person (LiP)?

- AC: We had a lot of LiPs from the start but the numbers who are unrepresented have increased. We train our members and focus on the enabling role of the tribunal. It is an inquisitorial tribunal, asking a lot of questions, although this has to be managed carefully due to the sensitive nature of the questions being asked. We have training from the Judicial College. The informality of the venue and hearing room is important, using a meeting room set up, rather than an obvious court environment where possible; appellants cope better with this. Third sector support has dwindled as a result of cuts to welfare rights funding from government and local authorities, which has an impact on the success of appellants as statistics demonstrate that those who are represented have the best chance of success. In Scotland most appellants are represented. There is no difference between Wales and England in terms of representation. Where there is 3rd sector representation, they are funded to assist with submissions and appeals to the Upper Tribunal , not to represent at hearings before the First-tier Tribunal.
- CK: Our patients can’t go to court – we go to them. They are familiar with their surroundings. We are flexible about who accompanies them. They are all entitled to legal aid. Most take that up. Some choose not to be represented but in these cases we will encourage representation on the day and will adjourn so that can be arranged. Patients are in a familiar environment, often with a family member, and certainly with named nurses and an independent Mental Health advocate. Some constraints can apply, due to size of the room or where a patient wishes to bring someone who is themselves mentally unwell.
- BC: I refer you to my note on the history. LiPs are in all courts and judges need to have the right skills to work with them. LiPs are sometimes wrongly perceived to be a problem but many are careful, moderate, concise and present their cases well. But some can struggle, such as those

who are uninformed, inarticulate and vulnerable. The Equal Treatment Bench Book (reissued in 2018) has a dedicated chapter on LiPs. In the Employment Tribunal, our rules of procedure are relatively simple, not as complex as some. Our judges are not robed and we seek to avoid unnecessary formality. But employment tribunals are adversarial and the law we apply is complex. The real issue is creating a level playing field if one side is represented and one not. It is a daily challenge. As regards venue, there is no longer a bespoke single-use Employment Tribunal venue or hearing centre in Wales so we sit in various venues, where we are co-located with other jurisdictions and these include criminal venues. A windowless, formal criminal court setting does not tend to help LiPs. Many Employment Tribunal hearings can be heavyweight 5-10 day trials with Silk representation (especially reputationally damaging whistle blowing or discrimination claims). There are active solicitors in Wales and a reasonably active bar in Cardiff but most of the Counsel appearing in the Employment Tribunal in Wales are from London, Bristol and Manchester. Local counsel do appear but it would be wrong to imply that local barristers appear in large numbers of cases in Wales. By contrast, there is a very active group of employment law specialist solicitors in Wales, especially South Wales.

Lord Thomas asked for statistics

- BC: I have no statistics as the data is not collected; this is anecdotal experience. I would estimate up to 20% of counsel are local, 20% from Bristol and most of the rest from London. All Silks come from London, there are no employment law Silks in Wales.

LT said that there is a question of justice to consider. He asked, if an unrepresented party is up against a represented party, what guidance is given to judges to create a level playing field

- BC: There is effective judicial training. I am the lead judge for training in the Employment Tribunal in England and Wales and our training seeks to address this specifically. The Equal Treatment Bench Book is valuable. The Advocates Gateway website – is also very useful in terms of setting out ground rules for hearings with more vulnerable parties. The key thing is to intervene neither more nor less than is fair or necessary. Sensible counsel will be cognisant and will assist.

Lord Thomas asked what you do if a LiP doesn't have vital evidence

- BC: The role of the judge can be to assist the party to identify the factual and legal issues in their claim and to help the respondent understand the case that needs to be met. There are some cases where there is a grey area around the extent to which it may or may not be appropriate to assist a claimant in setting out the matters they are complaining about. That is a matter for judicial discretion.

Lord Thomas asked whether the Employment Tribunal takes the view that you shouldn't "descend into the arena" even if it necessary for justice? Are tribunals more just than the courts or are things much the same?

- BC: It is certainly true that our work is more closely aligned to the civil jurisdiction and we have become more formal over time. All tribunals are not alike. The only commonality is the word "tribunal". There are limits to what you can appropriately do as a judge.
- CM: I am also a fee paid judge of the County Court and the First-tier Tribunal. ALTW is a quasi-court but it is certainly more accessible to LiPs than the County Court. There is an identified Tribunal officer, a civil servant, who is easily contacted by email and phone. We case manage intensively and are discursive in the directions which we give. We hold hearings locally and we have panels of three (including farming, landowner and drainage members as appropriate). Our procedure is rules based but we have avoided the intricate procedural jurisprudence that has built up around the Civil Procedure Rules.

Question area: Judicial independence

Professor Rawlings noted the useful presence of both reserved and devolved tribunals and asked for experiences of judicial independence

- CM: Whilst the arrangement of a Welsh Tribunals Unit (WTU) which sits within the Welsh Government is unusual, there is no interference with my judicial decisions. I work with civil servants who understand that my role is judicial and theirs is administrative. The WTU has good experience in working with judges.

Professor Rawlings asked whether the situation needed to be formalised

- CM: I am not sure whether 'formalisation' is called-for. There is already a well-understood separation of roles, reflecting the separation of powers between the judiciary and the executive. I safeguard my judicial independence and have never felt it under threat.
- CK: The WTU understands and respects judicial independence. I operate with judicial independence. There is no problem with custom and practice. I am less confident that the independent nature of tribunals is well-understood higher up in the Welsh Government. An equivalent of HMCTS in Wales would clarify the point. Outside WTU there is less understanding of the role of judges as officers of the court or indeed a full understanding of the roles of our caseworkers whom Welsh Government employs, which differ significantly from other roles in the organisation. I'm not aware of any circumstances where my judicial independence is compromised but there may be a question of perception.

Professor Rawlings asked about the issues of perception

- CK: There is no problem with the general public. We explain that we are judicial and independent. There is a greater issue with regard to the WTU competing for resources with other (government) activities which, for purposes of Welsh Government budgeting are grouped with us. There is no budget for justice in Wales as such. That would require a difference mindset.
- AC: I'm not aware of there being an issue. Appointments are made by the Judicial Appointments Commission. HMCTS keep statistics, adjournments are monitored etc, but that doesn't change the judicial function. We have tribunal case workers who are supervised by the judiciary but line managed by HMCTS. There could be the potential for tension but as long as it is managed correctly then it works.
- BC: I am never under any pressure with regard to the content of judicial decisions but there may be pressures such as HMCTS listing targets. But we have courteous discussions with HMCTS about such matters and they don't result in any personal pressure. Statistics are the servant of justice, not its master. But I also recognise that judges must be efficient, which is entirely reasonable. We work together. It is not a threat.
- CK: There has been pressure to standardise complaints procedures across the devolved Welsh tribunals, based on the procedure developed by the President of the Welsh Language Tribunal, which involves an initial triage by WTU. I have resisted that. Our complaints system works for MHRTW and, from a perspective of judicial independence, I think our procedure is more appropriate.

Dr Nerys Llewelyn Jones asked about interaction between WTU and HMCTS

- The majority of witnesses said they were unaware of engagement that was taking place.
- CK: WTU staff who support MHRTW have visited HMCTS counterparts in England to see their administrative systems but generally there is limited cross over. If a patient is transferred from England to Wales then there is some contact to effect the transfer without delays for the patient.

Juliet Lyon asked whether a patient who has been unsuccessful in appealing against their detention

can reapply

- CK: Yes. The precise details of right to apply relate to the section of the Mental Health Act (or the basis on which the patient has been detained). There are regular points at which patients can reapply. For example, an assessment section (section 2) lasts up to 28 days and an appeal can be made. The initial treatment section (section 3) lasts up to 6 months and can be appealed. It can be renewed for a further 6 months which can be appealed again. It can then be renewed annually with an annual appeal right. There is 1 opportunity to apply to the Tribunal in each assessment period.

Question area: Potential for devolved tribunals under the leadership of the President of Welsh Tribunals to form the basis of a justice system for Wales

- CK: If you have a child on a skateboard, they are quite a long way from becoming an Olympic downhill skier. The current infrastructure is not sufficient to support a much larger justice system. There is good support from the Welsh Tribunals Unit but the resource and training available falls a long way behind that which is available in to counterparts in England. So, if you were talking about a potential devolution of justice to Wales, there would be a very large step up from the current position to the necessary infrastructure.
- CM: To adopt and develop the metaphor, you don't become an Olympic downhill skier without first mastering something like a skateboard. If Wales is to be ambitious in terms of a justice system it has to start somewhere. I do see the devolved tribunals as forming that start, especially now we have a President of Welsh Tribunals. We constitute an identifiable body of Welsh judges, hearing Welsh cases and applying Welsh law.

Lord Thomas asked about the extent to which the non-devolved tribunals deal with Welsh law and how this relates to training and any comparison with practice in Scotland.

- BC: The Judicial College sends out e-letters which cover relevant law in Wales but the Welsh law is not well-known generally. It is my responsibility to ensure that judges and members in the Employment Tribunal are up to date with their knowledge. When recently appointing new judges for the Employment Tribunal in Wales, candidates were expected to answer questions about divergence of law. Examples of such divergence include the maintenance, under Welsh legislation, of an agricultural minimum wage, which was abolished in England, the Trade Union (Wales) Act 2017, and the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 which enhances certain employment rights for those who work in domiciliary care in Wales. I have picked up on new Welsh legislation impacting on employment in Wales as it has evolved, but that is because I make it my business to follow what is going on. Neither I nor the Employment Tribunal President for England and Wales has been formally informed or consulted on such matters by Welsh Government. An example is the Regulated Services Regulations, which were in fact only brought to my attention by one of the non-legal members in Wales – they contain the first example of a right of a domiciliary care worker to request a contract of employment after a certain period of time has elapsed, but no information on how, if at all, that right is to be enforced. Another example is the agricultural minimum wage. While the Supreme Court case was widely read, the subsequent regulations in Wales contained no enforcement mechanism. I therefore wrote to the Welsh Government to enquire whether it was their intention that the agricultural minimum wage should be enforced through the Employment Tribunal in Wales. They confirmed that it was, and I publicised that exchange in user group minutes, which are available online and which I can forward to the Commission. We have had only the one case, which settled before certain jurisdictional issues could be judicially determined. A better success story is where I liaised with Welsh Government and the Employment Tribunal President in Scotland to ensure that proper guidance was available for those employers who wished to appeal a notice of underpayment of the agricultural minimum wage, where the right of appeal to the Employment Tribunal is not controversial but there needed to be clarity about how

Welsh Government should be named and served with papers.

- AC: The Social Security and Child Support Tribunal is a UK jurisdiction and there is little or no impact of Welsh law. I have had no involvement in the Scottish experience. I simply know that it is subject to delay.

Question area: Welsh language provision

- CM: We can manage and hear any case in Welsh. Appeals are to the Land Chamber of the Upper Tribunal which sits in England and that can only be done in English. So you could have a case managed and heard and decided entirely in Welsh in ALTW which nonetheless has to be appealed in English.
- BC: We are an HMCTS supported tribunal. The HMCTS Welsh Language Scheme was revised in 2018. Welsh can be used in documents and in court. Cases are listed before a Welsh-speaking panel wherever practicable. We have bilingual documentation and the ET1 claim form and ET3 response form can be completed on-line bilingually. I do have to remind people of the Welsh angle – for example, when piloting recordings of hearings in Cardiff, it was necessary to point out that we would need 2 channels to record simultaneous translation.
- CK: We provide a fully bilingual service in terms of information, administrative staff and the ability to provide Welsh-speaking panels. Take-up is small even amongst patients who have Welsh as their first language. We have never had a case which we have heard in Welsh go to appeal, so I'm not sure what the arrangements would be then in the Upper Tribunal. The statute (Mental Health Act) is not Welsh legislation but the Code is Welsh and available in both Welsh and English.
- AC: We can provide a Welsh panel or simultaneous translation, though it is asked for less often than you might imagine. All paper work is available in Welsh. The Upper Tribunal do sit in Cardiff sometimes, - they could use simultaneous translation there.

Question area: Use of technology

- AC: Part of the Reform project for SSCS concerns on-line resolution. All papers are provided in electronic form. The tribunal can then dispose of a case in a number of ways prior to it ultimately being listed if needs be. A live test will run shortly. There are some operating problems between our IT and that used by HMCTS..
- CK: Our IT use is limited to communication between panels members and with the administrative staff. We have not long had access to e judiciary. Papers are sent electronically but then need to be printed by members. Hospitals typically have poor or non-existent wifi but, in any case, many patients are paranoid to some degree about electronic devices and in most hospitals we are simply not allowed to take in laptops or phones. VC is not appropriate. We need to see the patient.
- BC: The HMCTS reform project is on-going. The "Track my case" system is not yet available in the Employment Tribunal. There are opportunities to develop new ways of working as well as to digitise existing ways of working but there is a need to be mindful of digital exclusion in parts of Wales due to poor signal, digital literacy or availability of equipment.
- CM: We scan papers. Case management is mainly done remotely. Telephone hearings work satisfactorily for appropriate cases. Video Conferencing wouldn't work in most cases as there is a need to visit and inspect the land.

Question area: Use of alternative dispute resolution (ADR) and ombudsmen before cases reach tribunals

- CM: As a party to party tribunal we could adopt ADR techniques. It works in the Business and Property Court for example. Early Neutral Evaluation ('ENE') or judge-led mediation (of the kind routinely used in the Property Chamber of the First-tier Tribunal could be appropriate. It isn't contrary to our Rules. Maybe I shall try to adopt it. I have no views on ombudsmen.

- BC: We encourage the use of ACAS. Judicial-led mediation also seems especially effective in Wales - there is lots of public sector employment and devolved public sector bodies such as NHS health boards do not need Treasury approval to reach a mediated outcome. A hearing produces a binary outcome – a party wins or it loses - but in mediation both parties leave with something. ACAS has some fee-based services but the conciliation role provided in respect of Employment Tribunal cases is free of charge. I meet ACAS 1/4ly and I talk at ACAS events. Conciliators attend the training we do for our non legal members.
- CK: There is no scope for this in the Mental Health Review Tribunal which manages health and risk. Either someone is well enough for discharge from section or they are not.
- AC: We don't have ADR. There was a pilot of early neutral evaluation 10 years ago but, whilst effective, it was slow and therefore didn't deliver benefits. We do triage cases for obvious winners that can be allowed fully without a hearing. People can't appeal without first having a mandatory consideration but it is not as meaningful as it might be.

Question area: Appropriateness of facilities

- AC: The distinctive nature of a tribunal should be recognised. Tribunals are not courts. We should be co-located with civil and family courts but it doesn't always happen. If co-located with criminal courts then there should be the right facilities and a separate entrance.
- CK: We work in small rooms without security and often without a clerk, although we are usually based within a hospital environment.
BC: HMCTS colleagues do the best they can with the available facilities. I agree with AC that tribunals should be co-located with civil and family, and there is a particularly pressing need for improved accommodation in Cardiff. It is not desirable for the Employment Tribunal to be co-located with crime, as we are in Cardiff and numerous other venues in Wales where we sit.

Question area: Scope for collaboration

- BC: Between reserved tribunals, there has been a development in cross-ticketing, with Employment Judges deployed to sit in different chambers of the First-tier and indeed in the County Court. As a regional judge, I can also be deployed to sit in the Upper Tribunal. s63 of the Wales Act allows for cross deployment between devolved and reserved tribunals, subject to the consent of the respective Senior Presidents, so the principle is there if not yet exercised.
- CK: We can borrow members on an ad-hoc basis from England but they can't borrow from us. The President of Welsh Tribunals is in discussions with the Senior President. We are not currently looking at cross-ticketing with the Health, Education and Social Care Chamber (HESCC) as they also have pressure on their legal members, limiting our scope to use them, especially as England tend to block book their members' availability before we can book them for hearings. A number of my members have taken the opportunity to be cross ticketed to other devolved tribunals but there is limited scope for me to use members from the other devolved tribunals as they are significantly smaller in size and members
- BC: Reserved tribunals meet to collaborate on reform work. Leadership tribunal judges in Wales, for the Employment Tribunal, the Social Entitlement Chamber and the Immigration and Asylum Chamber meet regularly in a Local Leadership Group. This is an effective method of collaborative working as it enables us to identify and pursue areas of common concern. The head of Civil, Family and Tribunals for HMCTS Wales participates in these meetings, which ensures a proper flow of information between the judiciary and the administration. We are holding a training event for all salaried judges of the reserved tribunals judiciary on 22 May. I am also the Regional Tribunal Liaison Judge for Wales, a role I recently inherited from my colleague Judge Curran. In this position I am effectively a single point of contact on reform issues for all judges of reserved tribunals in Wales. I attend meetings with the Wales presiders to offer a tribunals' perspective. There used to be a Welsh Tribunals Contact Group to meet with devolved colleagues but that has not met for a considerable period.
- AC: Working together works better in Wales than in the South West because of geographical

proximity..

- CK: I work closely together with English counterparts in HESCC to ensure close alignment, given the human rights issues we deal with. We are sometimes able to develop things together through shared resources.

Lord Thomas asked about increase of caseload in MHRT and whether some of the patients are from England

CK: Numbers of patients from England are not readily established but WTU is seeking to establish the scale of cross-border patients. It is difficult to work out where people have come from oftentimes. Our case load increases 10 to 15 % per annum. It may increase 100% if proposals from the review of the Mental Health Act are taken forwards.