



JUSTICE, POLICING AND THE THIRD SECTOR IN WALES

Introduction

Third sector organisations in Wales who work in the field of criminal justice have had to understand the considerable changes to policy in recent years, but they have also had to navigate the added complexity of working to devolved and non-devolved policy areas.

While many elements of the Criminal Justice System remain the responsibility of the UK Government (largely through the Home Office and Ministry of Justice), there are significant overlaps with areas of Welsh Government responsibility including health, education, housing and social care support.

In addition to this Police and Crime Commissioners, as directly elected individuals, have their own priorities.

This briefing paper, produced in partnership between Wales Council for Voluntary Action (WCVA) and Clinks, provides

an overview of the legal responsibilities, structures, and potential changes to the Criminal Justice System in a Welsh context.

This paper considers the implications for third sector organisations, and how they can operate in this environment to deliver the best possible services for their service users, whilst understanding the policy context and responding to the considerable developments in the Criminal Justice System.



1. Welsh Government responsibilities

The history of political devolution in Wales extends back well over a hundred years, with a campaign for 'home rule', and the first Welsh Acts of the UK Parliament. The recent devolution story however starts in 1997.

Following the commitment in the Labour manifesto to hold a referendum on the creation of a Welsh Assembly, a referendum was held in September 1997. The result was a narrow majority (50.3%) in favour of devolution.

The UK Parliament consequently passed the Government of Wales Act 1998. The Act established the National Assembly and the first elections were held in May 1999.

The Act limited the National Assembly to the making of secondary legislation only when authorised by the UK Parliament.

The current devolution settlement and the powers of the National Assembly for Wales are set out in the Government of Wales Act 2006.

This Act came into force in May 2007 and marked a significant shift for the National Assembly in terms of both its powers and its processes.



The Act officially split the National Assembly for Wales and the Welsh Government (referred to in the Act as the Welsh Assembly Government: a term since amended for clarity). This created a clear distinction between the legislature – the National Assembly, the law-making body – and the executive – the Welsh Government, the body that makes decisions and implements policies.

The Act also gave the National Assembly primary law-making powers for the first time.

Initially, between 2007 – 2011, the Assembly had the potential to make legislation in the 20 devolved areas but only if Westminster gave them permission to do so, on a case by case basis. However, the Act also contained provision for a referendum on this issue. The referendum was held and won in March 2011 and the National Assembly now has the power to make Wales-specific primary legislation in the 20 devolved areas.

The 20 devolved policy areas are:

Agriculture, fisheries, forestry, and rural development	Housing
Ancient monuments and historic buildings	Local government
Culture	National Assembly for Wales
Economic development	Public administration
Education and training	Social welfare
Environment	Sport and recreation
Fire and rescue services and promotion of fire safety	Tourism
Food	Town and country planning
Health and health services	Water and flood defences
Highways and transport	Welsh language

It will be clear that many of these areas overlap and interact with the Criminal Justice System, and a number of Bills in the Welsh legislative programme will, likewise, impact on criminal justice. The Social Services and Well-being (Wales) Act 2014¹, for example, includes provision for the care and support needs for adults and children in prison, youth detention accommodation or bail accommodation.

In addition to policing and criminal law, the UK Parliament at Westminster retains responsibility as the sole legislator for areas including defence, foreign affairs, fiscal, monetary and economic policy, broadcasting, social security, immigration and employment law.

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2. Policing

Policing remains a non-devolved area. There are four police areas in Wales: North Wales, Dyfed Powys, Gwent and South Wales.



Following the Police Reform and Social Responsibility Act 2011² and the subsequent elections in November 2012, each police force area now has a directly elected Police and Crime Commissioner, who replaced the former Police Authorities. The Police and Crime Commissioners are accountable for the way crime is tackled in their police force area and are responsible for community safety budgets.

In terms of overall responsibilities for policing, the Home Secretary retains responsibility for the legislative framework, for overall funding and for setting the strategic policy framework.

The police in Wales receive funding from three sources: the UK Government (through the Home Office), the Welsh Government, and the police precept part of council tax. Funding from the two Governments is provided to the Police and Crime Commissioners, who then fund police forces.

Police forces in Wales interact with a number of devolved services, including the emergency fire and ambulance services. Health, housing, education, social services and highways also have a significant relationship with police work.

Police participate in Welsh Government public service initiatives such as Local Service Boards, which are partnerships of statutory bodies within Local Authority areas with the remit to make decisions in relation to cross-cutting priorities.

The Local Service Boards currently exist on a voluntary basis for each of the 22 Local Authority areas in Wales, but are likely to be set on a statutory footing as Public Service Boards as part of the provisions in the Well-being of Future Generations (Wales) Bill³. This Bill was laid before the Assembly in July 2014. The stated aims of the Bill are to set "a framework within which specified Welsh public authorities will seek to ensure the needs of the present

are met without compromising the ability of future generations to meet their own needs".

Within the Well-being of Future Generations (Wales) Bill, the relevant Chief Constable and Police and Crime Commissioner are statutory invitees to Public Service Boards, and as such contribute to the aim of improving the economic, social and environmental well-being of the area and the development of local well-being plans. The Bill also includes provision to invite "a person required by arrangements under section 3(2) of the Offender Management Act 2007 (c.21) to provide probation services."

The police, and Police and Crime Commissioners, are signatories in some areas in Wales to local third sector compacts, which outline codes of conduct between the third sector and statutory sector partners.

¹ <http://wales.gov.uk/legislation/programme/assemblybills/social-services/?lang=en>

² <http://www.legislation.gov.uk/ukpga/2011/13/contents/enacted>

³ <http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?Ild=010103>

3. Criminal justice

With the exception of devolved tribunals, justice is mainly non-devolved, remaining the responsibility of the UK Government.



The justice system includes the judiciary, courts, criminal prosecution, prisons, probation services, youth justice, sentencing guidelines, legal aid and criminal and civil law.

The Ministry of Justice is responsible for the administration and operation of most aspects of the justice system, though the Crown Prosecution Service is answerable to the Attorney General. The judiciary is independent from Government.

The National Assembly for Wales currently holds no legislative competence in terms of justice, although Acts of the National Assembly can create offences. Welsh Ministers have executive powers in relation to devolved tribunals. Criminal justice involves determination of what is a crime; the deterrence and prevention of crime; the prosecution of offenders; the determination of guilt; the imposition of penalties; the system of appeals; and the

treatment and rehabilitation of offenders.

Civil justice is the system under which disputes between people, businesses and other organisations are determined. It is governed by common law and statute. There is also public law and administrative justice, governing the operation of public bodies.

4. Youth Justice

For offenders between 10 and 17 years old, youth justice in England and Wales is overseen by the Youth Justice Board (YJB), a non-departmental public body accountable to the Ministry of Justice. YJB Cymru is the YJB's division for Wales.

While the UK Government retains responsibility for youth justice, the majority of services for children and young people in Wales have been devolved to the Welsh Government. Factors related to youth offending are largely devolved responsibilities (e.g.

education and training, social services and health), but young offenders are dealt with through the non-devolved police, Youth Offending Teams and youth courts. In practice therefore, leadership for youth justice in Wales is delivered as a partnership

between devolved and non-devolved organisations with dual lines of accountability.

5. Prisons and probation

Adult offenders who receive community or custodial sentences are the responsibility of the National Offender Management Service (NOMS).

The provision of probation services in Wales is currently contracted to Working Links by NOMS on behalf of the Secretary of State for Justice. This makes Working Links the owner of Wales Community Rehabilitation Company⁴.

The provision of probation services across England and Wales are currently the subject of the considerable change driven by the Ministry of Justice's Transforming Rehabilitation programme.

One CRC covers the whole of Wales, and will be delivered by Working Links⁶.

As of April 2014, NOMS have a Director for Wales, who has responsibility for probation services in Wales, including direct responsibility for the management of offenders posing a high risk of harm, and for the four existing prisons in Wales (Usk, Cardiff, Swansea and Bridgend).

Three of the Welsh prisons are managed within the public sector, with HMP Parc in Bridgend being run by the private sector company G4S. Usk has a satellite prison site in Prescoed: a men's Category D open prison. There is no female prison in Wales, with the majority of female offenders receiving custodial sentences housed in Eastwood Park prison in Gloucestershire. In addition, in September 2013, the Secretary of State for Justice announced that a North Wales Prison would be constructed on Wrexham Industrial Estate, the first prison for the region.

In summary, the Transforming Rehabilitation programme across England and Wales introduces the following changes⁵:

- 1 Creating a new public sector National Probation Service to work with offenders who are assessed as high-risk of harm to the public
- 2 Forming 21 new Community Rehabilitation Companies (CRCs) to work with medium and low-risk offenders
- 3 Giving statutory supervision and rehabilitation in the community to every offender released from custody, including approximately 45,000 offenders who are given prison sentences of less than 12 months.
- 4 Establishing a nationwide 'through the prison gate' resettlement service to provide better continuity of support from custody into the community
- 5 Opening up the market to a range of new rehabilitation providers from the private, public and third sector, who have been awarded contracts to deliver CRCs across England and Wales.

⁴ Wales Community Rehabilitation Company, www.walescrc.co.uk

⁵ For up-to-date information about the Transforming Rehabilitation programme, please see www.clinks.org/criminal-justice/transforming-rehabilitation

⁶ Working Links: <http://www.workinglinks.co.uk/justice.aspx>

6. Further devolution in Wales

The Commission on Devolution in Wales⁷ (the 'Silk Commission') was an independent commission established by Welsh Secretary Cheryl Gillan on 11 October 2011, and chaired by Paul Silk.

The commission reviewed the case for the devolution of fiscal powers to the National Assembly for Wales and considered the case for increasing the powers of the Assembly.

The Commission published its findings in two parts:

- Part 1, which looked at fiscal powers, published in November 2012
- Part 2, on the wider powers of the National Assembly including policing and justice, published in March 2014.

The Welsh Government published its response to the second Silk Commission report in July 2014, and welcomed the Commission's recommendations for the devolution of policing and youth justice, a staged review of probation and policing, and further elements of criminal justice in time, subject to a sufficient transfer of resources. A possible timescale is starting to emerge for the devolution of these and other areas, with a White Paper in 2016; a Bill introduced in 2017 and enacted in 2018.

It is important to note that the further devolution of powers to Wales is seen as part of Welsh Government's vision for the future of public services in Wales. The implications of the recent result of the Scottish referendum on independence and the constitutional make up of the United Kingdom will no doubt continue to influence the debate on devolution of further powers to Wales.

The recommendations of the Silk Commission on policing included:

- 1 Policing and related areas of community safety and crime prevention should be devolved
- 2 Existing levels of cross-border police co-operation should be maintained
- 3 Powers in respect of arrest, interrogation, charging of subjects and the general powers of constables should not be devolved unless and until criminal law is devolved
- 4 The National Crime Agency should not be devolved

The recommendations of the Silk Commission on justice included:

- 1 The treatment and rehabilitation of young offenders should be devolved
- 2 The UK and Welsh Governments should commission a feasibility study of implementing a devolved probation and prison service
- 3 A formal mechanism should be established for Welsh Ministers to contribute to policy development on adult offender management
- 4 Further administrative devolution of the court system

7. The Welsh third sector working in criminal justice

Third sector organisations have a number of important roles that make a considerable contribution to community justice work in Wales...

... through empowering and supporting victims; working alongside offenders and their families to support rehabilitation; involving service users; providing expertise in particular areas and communities; delivering value-based public services and working to provide a safer community for all.

WCVA and Clinks both hold data about the extent and nature of third sector activity within the areas of criminal justice and community safety.

It is estimated that there are over 33,000 third sector organisations operating in Wales. WCVA's All Wales Database contains 32,700 contact points, ranging from local community groups to national and UK charities with income over £100 million. The *Third sector statistical resource 2014*⁸ estimates that just under one percent of these organisations – around 300 –

work exclusively in the criminal justice sector: including work with victims, offenders, prison visiting schemes, and neighbourhood watch schemes. In addition to this, a larger number of other organisations will work with the same client groups, in matters related to housing, education and training, debt and finance, as well as health and social care.

The recent Clinks publication *A snapshot from Wales*⁹, written by the University of South Wales and the Welsh Centre for Crime and Social Justice (March 2014) provides an overview of the criminal justice third sector in Wales and its relations with statutory partners.

Since 2000, WCVA has supported Community Justice Cymru, a network of third sector organisations in Wales who work in the field of community justice¹⁰. Community Justice Cymru



represents part of the formal mechanisms for the third sector in Wales to engage directly with Welsh Ministers, as a member of the 'Third Sector Partnership Council'.

The Network recently produced a Manifesto¹¹ which prioritised action in the following areas: children and families of offenders; victims, witnesses and survivors; women; youth justice; rehabilitation and reducing offending. The Network also identified the emergent issues of human trafficking and mate crime (the targeting, exploitation and abuse of people with learning disabilities and mental health issues) as matters that need addressing by Welsh Government, UK Government, and Police and Crime Commissioners.

⁷ <http://wales.gov.uk/legislation/programme/assemblybills/social-services/?lang=en>

⁸ Third sector statistical resource, WCVA, July 2014, www.wcva.org.uk

⁹ A snapshot from Wales: The voluntary sector working in criminal justice, Clinks, March 2014, www.clinks.org

¹⁰ WCVA, Community Justice Cymru Network: <http://www.wcva.org.uk/members-partners/networks/community-justice-cymru-network>

¹¹ Available on the WCVA website: www.wcva.org.uk

8. Implications for the third sector

In practice, there are many instances in which different public bodies, although variously responsible to Westminster or Cardiff Bay, work in partnership in a range of ways.

Youth Justice, discussed above, is an example of a subject area where partners across devolved and non-devolved areas work together. Across Wales substance misuse services are commissioned by regional Area Planning Boards, consisting of Local Authorities, Local Health Boards, the police, Police and Crime Commissioner, the probation service as well as representatives from the third sector, service users and carers.

But the operating environment for third sector organisations in Wales working in the broad area of criminal justice is complex and changing at a considerable rate. At the time of writing the Transforming Rehabilitation agenda is being implemented across England and Wales, and a number of Bills in the Welsh legislative programme will have implications for services for offenders and victims of crime. The forthcoming UK Government elections in May 2015 and National Assembly for Wales elections in 2016 will yield further developments – as will the next Police and Crime Commissioner elections also due to be held next year (2016).

Although networks and engagement structures for the third sector are strong in Wales, and government departments engage with English third sector organisations, there seems to be a lack of clarity in areas like the extent of non-devolved functions and the limits of devolved responsibility.

Within this context of dramatic change, different geographical boundaries, shifting devolved differences, increased unemployment and changes to welfare, as well as considerable funding cuts, it is vital that third sector organisations in Wales are supported to engage in this complex environment, for the benefit of the citizens and communities they serve.

The complexity of the issues faced by individuals in or affected by the criminal justice system, means that the organisations seeking to support them face additional challenges in navigating the various institutions, responsibilities and legislative frameworks involved.

It has been said that people's lives don't fit neatly into devolved and non-devolved boundaries. In the often strident debates about devolution, many third sector organisations in Wales have called for clarity, fairness and consistency of approach, within charged political discussions. Whatever future administrations decide about criminal justice policy and legislation, it is vital that decisions about services are driven by considerations about the person, the service user, not just by amending existing systems or structures.

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