Devolution of youth justice and the youth court in Wales: report for Welsh Government

Authors:

Dame Vera Baird KC, Independent Expert Adviser to the Welsh Government on Justice Devolution
and
Professor Stewart Field, Cardiff University

Published by:

Welsh Centre for Crime and Social Justice

July 2024

Devolution of youth justice and the youth court in Wales: report for Welsh Government, July 2024

Dame Vera Baird KC, Independent Expert Adviser to the Welsh Government on Justice Devolution

Professor Stewart Field, Cardiff University

Background

The Welsh Government has actively sought the devolution of youth justice as the next step of a broader long-term project to deepen and widen the scope of its devolved powers and responsibilities in relation to justice.[1] The UK Labour Party's manifesto for the July 2024 election contained a commitment to working 'with the Welsh Labour Government to consider devolution of youth justice'.[2] The pursuit of these negotiations will require both a clear account of the benefits in devolving youth justice and concrete plans for the institutional shape that this might take. An informal review of the potential of devolution of youth justice was commissioned by the Welsh Government in November 2022 and reported in June 2023.[3] The account of 'value added' in those documents emphasized the opportunities that devolution might bring to strengthen and broaden the effects in Wales of 'Child First' principles.[4] But it may be that the devolution of youth justice will not immediately involve devolution of the youth court itself. This has the potential to create new 'jagged edges' between devolved and non-devolved responsibilities.[5] In August 2023, the then responsible Ministers within the Welsh Government[6] asked us to conduct an informal consultation of practitioners and academics which would consider specifically the implications for the youth court of any

[1] https://www.gov.wales/delivering-justice-for-wales
[2] https://labour.org.uk/wp-content/uploads/2024/06/Labour-Party-manifesto-2024.pdf at p. 112
[3] The review was conducted by the Wales Youth Justice Academic Advisory Group (WYJAAG) and chaired by Professor Jonathan Evans.
[4] This approach was established in 2004 by WG/YJB's All Wales Youth Offending Strategy (AWYOS) and has been reflected in subsequent versions and accompanying blueprints https://www.gov.wales/sites/default/files/publications/2019-05/youth-justice-blueprint_0.pdf. For a general account of how Children First principles should shape treatment of young people before criminal courts, see Kathryn Hollingsworth, *Child First in the Criminal Courts* in Stephen Case, Neal Hazel, (eds) Child First (Palgrave Macmillan, London, 2023) https://doi.org/10.1007/978-3-031-19272-2_8
[5] Robert Jones and Richard Wyn Jones, *The Welsh criminal justice system : on the jagged edge* (University of Wales Press, Cardiff, 2022))
[6] Jane Hutt, MS and Minister for Social Justice and Mick Antoniw MS and Counsel General and Minister for the Constitution

devolution of youth offending services. The underlying aim was to consider what current experience of the youth court suggested could be done to promote coherence and consistency in the overall system in the event of devolution. Were there points at which practice in the Youth Court could be developed, even without its devolution, that might better promote the consistent application of the Child First strategy?

It is very difficult to observe the operation of the Youth Courts, which are held in private to protect the young defendants. We therefore conducted three hybrid consultations of the experts who practice in these courts, in Aberystwyth, Bangor and Cardiff with opportunities for participation both in person and online.[7] There were around a dozen participants at each event with each lasting for two hours. Participants were mainly Youth Justice Service Team workers and academics with experience of the system but there were also lawyers and magistrates. We would have liked to have heard from more of these two groups and we did not speak to police or the CPS. We cannot claim that we have systematically canvassed representative views of practitioner groups across Wales but the discussions were detailed and wide-ranging. Similar themes recurred in each event (with some variations) and we feel that we have identified key areas of good practice and some areas where practice could be developed as part of a devolutionary process.

In Part 1 we present the key findings of our informal consultations noting positive practice but focusing on challenges and areas for development. We concentrate on the Youth Court but feel that it is important to explain the operation of that court in the context of the broader pre-trial processes that operate 'upstream' of it. Devolution of youth justice services may not immediately provide a direct solution to some of these issues. But it is important to see devolution of youth justice services in the context of the current challenges for the youth justice system as a whole. Furthermore, devolution may not just bring new formal powers and responsibilities for WG but also enhanced political authority to negotiate change in partnership with non-devolved authorities. It is therefore important to provide a broad overview of the key challenges.

The key issues identified are organized around the following themes:

[7] Our thanks to Professors Kate Williams (University of South Wales) and Martina Feilzer (Bangor University) for their help in the organisation of the consultations in Aberystwyth and Bangor. Our thanks also to Dr Huw Pritchard (Cardiff) for comments on our suggestions for how devolution of youth justice services might be organised. The views expressed are our own.

a) Working relationships around court
b) Broader relations with statutory partners
c) Young people and their families: participation and engagement in the Youth court

In Part 2, we explore some possible avenues for change focusing on the following:

a) Governance of youth justice
b) Development of legal expertise
c) Youth courts as potential problem-solving courts

While seeking to identify solutions, we recognize that this is a contribution to what is, and will continue to be, an ongoing dialogue. Accordingly, at certain points, we will identify further key questions that need to be addressed rather than provide detailed or definitive answers to those questions.

Part 1: The Youth Court in Wales: current practice and practitioner concerns

1(a) Working relations around Youth court

Perhaps the most encouraging conclusion to draw from our informal consultations is that there was a general feeling amongst practitioners that the recent trajectory of practice in the Youth Court had been very positive. All practitioner groups consulted supported both the development of the Child First approach and the shift to diverting the vast majority of cases for resolution in Bureau (or at least without conviction) rather than in the Youth Court. Although we were not able to canvas police or CPS views, it seems that there is the basis of a developing consensus in favour of constructive responses to youth offending.

This positive sense of consensus around the underlying approach to youth justice was reinforced by consistent testimony as to the relations of mutual trust and confidence in the core relationship between youth court magistrates and local Youth Justice Service (YJS) teams. We need to be careful in interpreting this: we were in contact with small numbers of practitioners who may turn out not to be fully representative and there are likely to be pockets of local variation. Indeed, significant local variation will be a theme that develops later in this Report. Key to the development of these positive core relations between magistrates and YJS

teams seemed to be the local efforts invested in good communications. Training provided by local YJS teams to magistrates (for example on Child First principles and the operation of out of court Bureau disposals) was seen as important in developing relationships and trust. This has become critical now Magistrates typically have less direct experience of sitting in the Youth court because of recent significant falls in the number of cases heard there.[8]

Despite this generally positive picture, there were places where opportunities were identified for constructive development in that core relationship. For example, the operation of out of court disposals was not always regarded as entirely transparent by magistrates because they felt they were making decisions not really knowing the full history of contacts between YP and youth justice system.[9] There may well be underlying differences between magistrates and YJS team members as to how far comprehensive records of contact with the youth justice system should be made available to magistrates at trial. But scrutiny panels were identified as an existing mechanism with, as yet, unfulfilled potential to overcome inter-agency anxieties and differences and to enable common practice to be agreed. Scrutiny panels are criminal justice forums in which key actors (magistrates, police, youth justice service teams) discuss samples of cases which have received out of court disposals and seek to come to shared views as whether the disposal had been appropriate. The potential of such panels was seen as being unfulfilled because local practice in Wales usually mixed adult and youth cases and practitioners together. Thus, there was not the opportunity for youth justice practitioners to come together regularly to focus on youth justice cases. Specialist youth justice scrutiny panels were consistently cited as having the potential to provide a more effective forum for building mutual understanding, trust and confidence between youth justice practitioners.[10]

---

[8] Only 16,600 children were proceeded against in court in England and Wales in the year ending March 2023. This was a decrease of 72% compared with ten years previously: Youth Justice Board, Youth Justice Statistics 2022-23, England and Wales (Jan 2024), Table 5.1

[9] This point has been made at a UK level in a recent (2023) Magistrates' Association paper on Out of Court disposals: https://www.magistrates-association.org.uk/publication/out-of-court-disposals-fit-for-purpose-or-in-need-of-reform/

[10] This was also the recommendation of the Carlile report for England and Wales as a whole: *Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court (Carlile Report 2014)*, p. 14, https://www.michaelsieff-foundation.org.uk/carlile-parliamentary-inquiry-youth-justice-system/

Another area cited for potential development related to the complexity and variation in the available forms of intervention and response. This came up first in relation to the structuring of out of court disposals. Different policies from different police forces and variable police/YJS relations led to a 'post-code lottery' where diversionary interventions were available in some places and not others. For example, Gwent has a bespoke intervention for low-level car crime called 'Road to learning' based on agreement with Gwent police. This was viewed as a positive development, but it is not generally available because other police forces have been reluctant to support it. Similarly, Outcome 22 remains a diversionary mechanism whose use varies across Wales. This involves deferring prosecution but agreeing an intervention programme with the young person (henceforth YP). Positive views were expressed about its potential in enabling 3 months' engagement by YJS teams with a YP without requiring an admission and without creating a criminal record. The absence of take up is partly police related in that Outcome 22 is not recognized in police performance indicators as a positive response to an offence. But there is also variability based on different approaches by YJS teams. Is this a geographical variation legitimately based on differing local needs or is it based on differences in organisational capacities, financing or personal views? Various reports have pointed out the advantages of development and this was felt to be an area where stronger coordination of strategy across Wales would be useful.[11]

In terms of sentencing in the Youth court itself, similar problems were raised about the geographical variability of programmes. Different kinds of interventions are available in some parts of Wales but not in others. This makes it more difficult for Magistrates to have a clear understanding of what is available where. Sometimes YPs appear in the same courtroom but fall under the responsibility of different YJS teams so that programmes available can differ from YP to YP in the same court. In part, this is thought to be a question of differential resources. If all were offering the same options that would be much easier to manage. These reservations about variability were not universally held by practitioners but they seemed to be supported by most.

[11] MSG Consultancy, *Developing Principles and Guidelines for Wales on Diversion and Out of Court Disposals,* presentation to Hwb Doeth Training day, March 2023, [Thomas, S with O'Grady, M and Henderson, G.], These reports and presentations highlight a much broader range of variation in practices in relation to the use of out of court disposals in Wales. Thus the variable use of Outcome 22 seems to be an example of a broader issue.

Saturday courts were also identified as a point where the established relationships around youth court were disrupted with negative consequences. In the absence of Saturday sittings of Youth Courts, YPs remanded in custody overnight were dealt with at Saturday sessions, combining youth and adult cases drawn from a wide geographical area. This means that JPs who do not sit in the Youth courts make decisions about YP and YJS teams have to work with YPs they don't know and cases they know little about. So, if Child First principles are to run through the youth justice system after devolution, this situation needs to be avoided: multi-agency discussion across Wales Court user groups would be an ideal forum for working this out but there were some indications these were not consistently supported across Wales. Making the most of court user groups is another point for coordination of multi-agency discussion[12]

So our conclusions, necessarily provisional in view of the limited and informal nature of the consultation, were that working relations between magistrates and YJS teams were generally effective, but that there are particular issues where positive reform is both possible and desirable. As we broadened the discussion to include relationships with lawyers and police officers, the picture became more variable, suggesting that a lot of work would be needed to build a youth justice system in which Child First informs the system from the point of arrest. We turn now to that front end of the system, focusing on the role of lawyers and police.

Pre-trial relations: lawyers and police

Two structural issues were identified by our discussants as impeding the operation of Child First strategies from point of arrest. First, there was the delay in getting the YP to court. The latest statistics suggest that the average time from offence to completion is more than 200 days.[13] Such delays were generally attributed to investigative delays, where the YP had been bailed and there was little drive for speedy resolution from overstretched police forces. The effect was that youth courts could not respond effectively to the issues that might be underpinning the incident. By the time YPs had come to court they had 'moved on' (either positively or negatively). A fully integrated Child First approach would need to drive

[12] See later for thoughts on how the WG might play such a coordinating role post devolution of youth justice services.
[13] For 22/23, it was 207 days which is 104% higher than ten years before: Youth Justice Board, Youth Justice Statistics 2022-23 England and Wales (Jan 2024), Table 5.2.

quicker police investigation of YP cases that might not otherwise seem to be high priority.

But discussion also turned at various points to the significant number of cases that get to court but would have been better dealt with by out of court disposals. Such cases usually ended in appropriate outcomes, because of the generally positive relationships between YJS and JPs as described above. This meant that YJS court officers were able to convince the court, where appropriate, to send cases back for out of court disposal.[14] But this raised the question of why these cases got to court at all and a number of pre-trial issues were identified. First, local police practice sometimes impede work that could potentially be done to resolve cases without charge or court appearance. Experience and Vicky Kemp's recent empirical study across England and Wales were cited as evidencing the twin problems of getting early specialist legal advice to YP in the police station and getting adequate appropriate adult (AA) support.[15] YPs without legal representation often refuse to make admissions where evidence is overwhelming, not wanting to face the situation or admit what has happened to parents. No comment interviews can lead to unnecessary remands. Police practice was seen as sometimes dissuading YPs from requesting legal advice. Furthermore, a lack of ethnic minority lawyers, combined with a suspicion by ethnic minority suspects of non-ethnic lawyers makes this a particular problem for those suspects. Problems were also identified with the use of parents and relatives as appropriate adults, when they do not have the experience to identify the child's best interests. One interesting solution emerging from Powys involves the YJS team itself providing AA cover for Newtown and Brecon: YPs get good advice at the front end from those with an effective practical experience of the system. Devolution would provide an opportunity to roll this promising local practice out nationally.[16]

Even when lawyers arrived at the station, YPs were often charged with little interaction between lawyer and police. This meant that solicitors struggled to get the police to engage, at an early stage, with the

[14] Sometimes a case might be adjourned to see whether YP was engaging with the YJS team before making a decision.
[15] Vicky Kemp and others, *Examining the impact of PACE on the detention and questioning of child suspects* (Nuffield Foundation, 2023) https://www.nuffieldfoundation.org/project/impact-of-pace-on-the-detention-and-questioning-of-young-suspects
[16] It also has the potential to to improve take-up of legal advice in that YJS AAs would help YP to make a more informed decision about accessing legal advice.

desirability of early release with a view to out of court disposals. In some police stations, even getting access to the Custody Officer (rather than the investigating officer) was difficult. Once charged, it was often impossible to get the CPS to engage with the case before the trial date. It was reported that CPS sometimes did not provide early disclosure to defence lawyers that would enable early representations to be made about diversion. This made it difficult for defence lawyers to engage in early discussions with the police or CPS. Similarly, lack of consistent transparency about police record keeping and timely disclosure to YJS teams sometimes meant they did not know exactly what had happened in time to make representations to keep the YP out of court.

A number of possible solutions to these problems were identified. Access to legal advice could be made a presumption unless a different decision has been made following a discussion with a trained AA.[17] Another proposal was to reduce detention periods under PACE to 6 hours for YPs.[18] Gwent was cited as an area that had reviewed night-time detentions in police station and found that only 2% of YP were interviewed in 6 hours and many took much longer. These long delays rarely involved waiting for solicitors: more often it was waiting for AAs or police taking a long time to investigate the matters to be put in interview. The reduction of detention periods would force the police to speed up investigations, hold interviews earlier and thus prompt earlier arrival of the lawyer to the police station.[19]

Legal expertise

Youth court work is very different from adult court work. Not only does it have a very different legal framework but YPs also have distinct (and often more challenging) needs in terms of support and child-appropriate communication. The work will sometimes involve solicitors doing rape and robbery cases that would be done by barristers in the Crown Court in adult cases. Hence the importance of specialist legal expertise. But variability in the competence of lawyers practising youth justice (both

[17] It was reported that the Quality of Advocacy Working Group had prompted the piloting of this in particular areas of England with positive results. The Group is currently coordinated by the YJB and involves representatives of Ministry of Justice, the professional bodies, magistrates and third sector groups such as the Youth Justice Legal Centre. It seeks to promote improved standards of advocacy in the Youth Court.
[18] This was a recommendation also made in Charlie Taylors' *Review of the Youth Justice System in England and Wales* (MoJ 2016), para. 62.
[19] Similar proposals were made in Vicky Kemp's Nuffield Foundation report on young people in youth custody explicitly as part of an attempt to introduce a 'Child First' approach there, *op.cit.* p. 99.

defence and CPS) was a theme that ran through all the consultation events.[20] Much of the work (for both defence and prosecution) is being done by non-specialists and indeed, it was suggested that the youth court is still being used as a training ground for young barristers.[21] Lack of experience in the youth court was strongly associated with poor performance. Not surprisingly, those who do a lot of youth court work are seen as much more effective than those who have never done so or who appear occasionally. Yet, for many of those appearing in the youth court, this work is a small percentage of their practice and done without adequate youth court training. This problem that has been aggravated by the very significant reduction in the volume of cases being heard in the youth court, which is now insufficient to enable the development of a full-time specialism, particularly in rural areas. [22] Specific issues were raised about the poor quality of police station work, even less of which is being done by specialists because of the geographical and temporal diffusion of the work. It is currently very difficult to access advice from specialist youth justice lawyer across the police stations of Wales at any time of day or night.

The underlying issue was seen as the absence of a system of required accreditation for youth justice work even for duty solicitors or CPS lawyers (or agents acting for the CPS). All that exists is a system of registration for barristers working in youth proceedings but this is essentially based on self-accreditation. The Bar Standards Board has set out a list of expected competencies and identified some potential training providers but leaves it to individual barristers to self-certify that they have the specified competencies. There is no required training and no assessment to ensure

[20] It is also a theme that has emerged from several reports and studies covering England and Wales over the past decade: Carlile Report (2014), *op.cit.,* chapter 5, https://www.michaelsieff-foundation.org.uk/carlile-parliamentary-inquiry-youth-justice-system/, Ali Wigzell and others, *Youth Proceedings Advocacy Review: Final Report* (Bar Standards Board 2015), https://www.barstandardsboard.org.uk/static/8ce6f0eb-5583-4e4a-8f24f1d530eef1d7/yparfinalreportfinal.pdf, Charlie Taylor, *Review of the Youth Justice System in England and Wales* (MoJ 2016), paras. 92 and 104, Ali Wigzell and Chris Stanley, *The Youth Court: Time for Reform* in M Wasik and S Santatzoglou, *Who knows best? The management of change in criminal justice,* (Palgrave Macmillan, London) 241-258 and Youth Justice Legal Centre (2023) *It's a lottery: legal representation of children in the criminal justice system,* https://yjlc.uk/sites/default/files/YJLC_Briefing_Its%20a%20lottery_R2%20-%20LC%20-%20FINAL.pdf

[21] A practice also evidenced by the reviews cited above.

[22] A reduction of over 70% in a decade: Youth Justice Board, Youth Justice Statistics 2022-23 England and Wales (Jan 2024), Table 5.1

minimum levels of competence.[23] The Law Society merely provides guidance to solicitors on working in the youth court: again, there is no system of required training and accreditation.[24]

The variability of specialist expertise was regarded not just as an issue affecting defence lawyers but amongst the prosecution too. The CPS has its own specialist youth justice prosecutors but much of it is nonetheless contracted out to the private sector (and the problems of lack of specialist expertise there have been described). At its worst, YJS team members commented that prosecution lawyers attend youth court with little or no relevant experience or expertise and might end up asking YJS staff for advice. The problems of variable specialist competence were aggravated by broader institutional functioning problems for the CPS (at least in some parts of Wales) with difficulties in accessing computer systems and records being a particular problem cited. Lastly, there was a lack both of Welsh-speaking specialist youth justice prosecutors and specialist defence lawyers: this makes a significant difference in the parts of Wales where there are a high proportion of first language Welsh speakers.

1(b) Broader partnership relations

One of the questions we asked in consultation events flowed from the observation that the WG's youth justice strategy was to develop a holistic approach to youth offending through partnership working amongst a range of agencies supporting young people. We asked how far that was a reality observable in the Youth Court. Are there any impediments to partnership and what, if anything, could be done to remove or mitigate them? In terms of these broader relations with partner agencies - health, education, housing, social services but also the probation service - discussions suggested significant variability across Wales in engagement and quality of these relationships. This was explicitly linked to the variability of broader governance patterns. Where youth justice sits within local authorities and how it is funded are not matters set out in the legislative structure for youth justice.[25] That this leads to a wide variety of governance arrangements across Wales was something identified in the

[23] Bar Standards Board (2017) *Youth Proceedings Competencies,* *https://www.barstandardsboard.org.uk/static/197b7604-ac56-4175-b09476ec43ef188c/bsbyouthcompetencies2017forwebsite.pdf*
[24] https://www.lawsociety.org.uk/topics/advocacy/advocacy-in-the-youth-court
[25] Crime and Disorder Act Act 1998, Part 3

Morgan Report back in 2009.[26] Our practitioners felt that this was problematic because it meant that youth justice gets variable amounts of managerial attention and financial support in different places. For example, where youth justice services were combined in local authorities with responsibilities such as youth services, although there might be some advantages, it was suggested that this could lead to a 'dilution of attention' paid specifically to youth justice issues. Similarly in terms of resourcing, some YJS teams reported feeling very well able to draw on broader supports because within their team they had their own community mental health officer, speech and language therapist and education worker. But they knew that other YJS teams were not in the same position. Similarly, membership of YJS team management boards was variable (for example with HMCTS representatives on some Boards and not others). It was noted that this variation in Management Boards has been commented upon negatively in during HMIP inspections of Welsh YJS teams.

That partnership relations were defined in variable local ways may make it difficult to address structural issues, common across Wales and in need of a coordinated national response. For example, long term exclusion of children from school or the use of pupil referral units was seen as contributing to some YPs getting drawn into crime. There was a view that increased autonomy of schools had led to decision-making based on the interests of the school in enhancing its place in league tables. That meant that insufficient account was taken of the interests of the community in re-integrating marginalised young people. Arguably, this is the kind of issue that requires a national policy response to encourage schools in the direction of avoiding exclusions and prioritising reintegration of children.

Housing accommodation and remand provision were other issues where coordinated national levers might be useful in the event of devolution. Residence requirements are often specified as a condition of bail or a requirement under a youth rehabilitation order.[27] Sometimes the problem seemed to be lack of timely information for the court (and therefore a problem of relationships). In the absence of realistic options for housing, YPs end up being remanded. Again, there is geographical variation: in some places (Conwy was cited) there were good relations between YJS and housing and youth services. But even where relationships were good,

[26] Rod Morgan (2009) *Report to the Welsh Assembly Government on the question of Devolution of Youth Justice Responsibilities.* Cardiff: Welsh Assembly Government
[27] Bail Act 1976 s 3(6), Sentencing Act 2020, Schedule 6, Parts 9-10

the broader problem of severe resource pressures remained, with accommodation was just not available. In particular, a lack of regulated housing placements meant that many YPs ended up in short-term unregulated placements requiring the YP to be moved during the course of a statutory order. Clearly, this looks like a whole Wales issue.

Issues were also identified around the availability of suitable remand provision within viable distance of the YP's home, which creates discontinuity of support from services such as health and education. Currently this is not a large-scale problem, because only around a dozen YPs are on remand at any one time. If prison service functions are not going to be devolved with youth justice, it was felt that it might be possible to negotiate agreements whereby, with the agreement of HMPPS, WG created suitable secure accommodation in Wales for remanded YPs with a financial contribution from Prison Service who hold the legal and therefore financial responsibility.

1(c) Participation and engagement of YP and their families

There was consensus amongst contributors that magistrates were now generally seeking to engage actively with YPs in youth courts: tone and language had been adapted to try to ensure that the YP understands what is happening. But some major challenges were identified in going beyond that to enable active participation by YP themselves and/or their families. The language of the law is inherently difficult for them particularly given that many have speech, language and learning difficulties. The prospect of punishment brings fear and the drama of a court setting reinforces a sense of anxiety. So YP generally can only manage yes or no answers in the courtroom itself.

Practitioners emphasized that quality of dialogue at court is highly dependent on quality of pre-court dialogue. First, it was regarded as critical that there was good pre-hearing engagement between magistrates and YJS team members who knew the individual YP. The latter can then advise on their particular language and learning difficulties and as to how engagement could best be pursued. Secondly, both the YJS team and defence lawyers needed to prepare carefully the YP and their parents before the hearing, providing information and explaining to them the process and their part in it. Examples of very good local practice were cited. One YJS team had created its own animated video describing the process in child accessible terms. Some teams were systematically

sharing pre-sentence reports (PSRs) in advance with the YP and their parents and going through the document with them before it is presented in court. Thus, they knew what it contained and could identify aspects with which they disagreed. Consequently, PSRs become not just a key means of communication but also a potential site of pre-hearing dialogue and a means of engaging YPs and family. These were indications of good practice from particular YJTs but this does not yet seem to be part of a unified Welsh practice. While there are already mechanisms for sharing best practice between YJS teams[28] devolution might provide stronger levers for national coordination of that best practice.

The importance of the quality of PSRs was stressed because they are vital to the effectiveness of defence lawyers (not least because defence lawyers often get late notice of hearings and have little chance to engage with the YP directly) The quality of the PSRs was generally regarded as much improved. Magistrates felt this was a product of being asked for their feedback on contents and being able to engage directly with authors. This also looked like good local practice: a devolutionary settlement which affords greater coordination may be able to roll this out more widely.

Architecture and place

It was observed earlier that YPs are rarely able to communicate with any fluency in the Youth Court and many still struggle to understand the detail of what is going on. Practitioners felt that many youth courtrooms in Wales still posed fundamental challenges to any attempt to enable YP to understand and communicate effectively. The architecture and organisation of space varies depending on local provision and some courts are a long way from ideal. In parts of Wales, youth court magistrates are still looking down on YPs from a great height rather than having discussion at an equal level around a table or tables.[29] In part, this may be a a question of finance and space but a devolved youth justice ought to be able to make available suitable meeting rooms across Wales (with participants around a table).

Waiting times and listing practices

The importance was stressed of YPs being heard in a court environment which encourages a psychological state conducive to active participation.

[28] YOT Managers Cymru and Hwb Doeth are both existing fora for sharing best practice.
[29] Cwmbran was identified as one example of a Youth Court with inappropriate architecture.

One issue identified was long and traumatic waits. This was a particular issue for those who suffer from ADHD. If they are kept waiting for hours, they are not in a fit state to interact constructively with magistrates at the end of it. But more generally stress and intimidation around court appearance can affect participation: in some courts, YPs are waiting in the same space as others from whom they should be kept separate (adults and YPs with whom there are hostile relations). Various reasons for this were identified. Block listing was identified as one: 7-8 youth court cases might all be listed for 10 a.m. Properly individualized staggered listings would make a difference. Another posited explanation was that fewer cases mean Youth court lists become shorter and the court listing support team may be seeking to make best use of magistrate and court time by squeezing in adult cases without any time allocated for a 'buffer zone' between adult and youth cases. This creates overlapping adult and youth court lists (an adult morning court overruns into a youth afternoon court or vice versa). This is particularly problematic when the child is kept waiting as any delay might negatively impact on their ability to interact appropriately with the court processes. This is something that in theory presiding magistrates might address but the extent of the issue suggests the need to pursue further dialogue between YJS teams and Presiding Magistrates, and to involve court user groups and the Wales HMCTS listing support team.

Participation in the Crown Court

Strong views were expressed across practitioner groups that the Crown court is even more unsuitable than the Youth Court for youth justice cases because of the greater difficulties of effective participation. It was noted that longer delays in bringing cases to trial meant that there was an increasing likelihood that YPs would reach 18 between first appearance and the resolution of case (and thus be dealt with at the Crown Court). An idea was canvassed that the Welsh Government, after any devolution of youth justice services, should propose a Crown Court pilot study aiming for more child friendly court practice. The judges' inherent jurisdiction to control the court can be used to allow for this and so it would have to be negotiated with Crown Court and circuit judges in Wales.

Part 2: Developing the 'value added' of devolution: some possible strategies and next steps

Part 1 has summarized some key concerns expressed by practitioners and engaged academics around practice in the Youth Court in Wales. Some

particular suggestions have already been made as to where devolution might provide an opportunity to address these issues even where they are not purely matters of the delivery of youth justice services (the part of the youth system that is likely to be devolved). In Part 2, we will further develop our thinking about how devolution might be used to integrate more fully a distinctively 'Child First' approach into youth justice in Wales. We are not in a position to provide fully thought through blueprints but hope to provide a valuable further step in what must be an ongoing dialogue between policy-makers, practitioners, court-users and academics.

Three areas looked to us to be worth highlighting for further discussion. First, the general question of the governance of youth justice. A number of issues emerged about the very localized nature of practice and the existence of identified good practice which was not yet national practice. Could devolution provide opportunities to construct stronger levers of national influence? What would be the challenges and opportunities associated with such steps (Part 2a)? Secondly, the variability of legal expertise displayed by those practising youth justice was a significant theme in the concerns expressed. In what ways might a more specialist youth justice practice be developed in Wales? (Part 2b). Finally, we will discuss a specific idea for youth court innovation after devolution that was mooted in the WYJAAG review documents presented to the WG: the possibility of piloting youth courts as problem solving courts (Part 2c).

2a. Reforming governance of youth justice in Wales

A striking feature of youth justice in Wales (and the UK more generally) is that its governance is both highly localized and coordinate. By coordinate we mean that the key actors (especially the police, YJS teams and magistrates) all have their own autonomous spheres of power. They are not in a clearly hierarchical relationship in institutional terms so that each has very limited legal powers to require the others to do something.[30] This autonomy is partly (in relation to police and magistrates) an

[30] Coordinate powers have been seen as a key characteristic of Anglo-American modes of organisation of justice: Mirjan Damaska *The Faces of Justice and State Authority* (Yale University Press, New Haven 1986, pp 24 *et seq. and passim*). For an account of the coordinate features of the governance of youth justice in Wales, see Stewart Field 'Developing Local Cultures in Criminal Justice Policy-Making: The Case of Youth Justice in Wales' (2015) in M Wasik and S Santatzoglou, *Who knows best? The management of change in criminal justice,* (Palgrave Macmillan, London) 170-185

established feature of constitutional assumptions in the UK.[31] But this is reinforced by the particular legal structures of youth justice as set out in the Crime and Disorder Act 1998 (CDA 1998). This leaves much detail of finance and governance arrangements for Youth Justice Service teams to the discretion of individual local authorities. In relation to England and Wales, the Youth Justice Board has a range of statutory powers and duties - setting standards, giving advice, disseminating and promoting good practice - but these are mainly monitoring and advisory and not directive powers. One of the notable features of Rod Morgan's 2009 report on youth justice in Wales - based on widespread interviews with key actors - was his emphasis on the significant variation in funding and in where YJS teams sit within local authorities.[32] It has been obvious for a while – and this was reinforced by the consultations – that this has both positive and negative effects. Responding to the negative effects would require some rethinking of governance arrangements.

The fact that existing arrangements require key players to accommodate with each other to get anything done has positive effects. It has encouraged a culture of cooperation that at its best looks a bit like a form of 'coproduction' in which the expertise, values and cultures of each agency and institution have to be respected by the others.[33] But this also means that it is very hard to argue that there is anything like a common national youth justice practice in Wales. At various points in the consultation events, this was clearly regarded as problematic, with some variations seen as based on happenstance and contingency. This certainly makes the system less efficient than it could be but also less effective. If the Welsh Government wants to demonstrate the value added of devolution of youth justice to Wales, then one way to do that would be to use the levers of powers generated by devolution to achieve a more coordinated national practice. This would produce the apparent paradox that the devolution of youth justice might lead to a less localized youth justice.

Nevertheless, any reform to the governance of youth justice needs to retain the strengths of the existing culture with its strong elements of

[31] On the development of constabulary independence, see Laurence Lustgarten (1986) *The Governance of Police* (Sweet and Maxwell, London). On the local independence of the magistracy see Thomas Skyrme (1983), *The Changing Image of the Magistracy* (Macmillan, London).
[32] Morgan, R. 2009. *Report to the Welsh Assembly Government on the question of Devolution of Youth Justice Responsibilities.* Cardiff: Welsh Assembly Government
[33] A feature remarked upon in WYJAAG's original briefing papers for WG on youth justice

localized practitioner accommodation and cooperation. Indeed, if neither policing nor the youth court is to be immediately devolved then accommodation and cooperation will continue to be essential to the smoothing of the new 'jagged edges' between devolved and non-devolved power. The WYJAAG papers emphasized the need to show respect for the knowledge of practitioners on the ground and to preserve the autonomy necessary to the exercise of professional judgement. Furthermore, the WYJAAG papers argued for retaining the delivery of youth justice as a responsibility of local authorities rather than any new national agency that might be created after devolution. A devolved youth justice must push even further towards an emphasis on Child First and on positive outcomes for young people rather than merely crime prevention. Given that all the public services that shape young people's lives – housing, (youth) social services, health, education – are all delivered by local authorities, the case for retaining delivery of youth justice with local authorities seems a strong one.

How then are we to achieve value added for devolution through greater coordination at a national level if delivery must – for good reasons – remain local? What are the levers of influence that the national centre might use to 'steer' but not 'row' youth justice in a way that promotes more coordinated practice? One possibility is for a new devolutionary framework that enables the Welsh Government (directly or indirectly) to put flesh on the skeleton of the statutory relationships set out in the CDA 1998. For example, national principles could be set out governing the financing by local authorities of YJS teams and where those teams should sit within a local authority institutional structure. More detail could be added to the responsibilities of the broader statutory partners and the constitution and operation of YJS management boards.

Another possibility is that of creating an independent Welsh Youth Justice Board to exercise the current powers of selective grant-giving, monitoring and standard setting held by the Youth Justice Board (YJB) of England and Wales.[34] It seems inconceivable that WG would want to see the devolution of youth justice services and then leave these key steering powers with a YJB for England and Wales. A new national institution for Wales was certainly part of the WYJAAG recommendations. But Wales could choose to create stronger national levers of influence by giving any new body additional powers to those currently exercised by YJB at England and Wales level. Possibilities include giving the new institution powers to train

[34] An important function would be to gather data on practice and outcomes across Wales.

and accredit youth justice practitioners, to develop national education and training packages that local YJS teams could adapt for local stakeholders, to define (in cooperation with WG and the Welsh Youth Justice Advisory Panel) a basic suite of intervention programmes that should be available across Wales. One could add powers of inspection: a specifically Welsh inspection system would have greater knowledge of Welsh statutory frameworks and local social contexts than Her Majesty's Inspectorate of Probation (henceforth HMIP). This might give it an enhanced capacity to call out failings in interrelations between agencies.

Introducing these changes as part of the devolutionary framework would facilitate the development of more coordinated practice across Wales while allowing delivery to stay at a local level. The precise configuration of these central levers (the particular definition of statutory responsibilities under CDA, the precise powers of a new Welsh Youth Justice Board) would need to be defined through dialogue and consultation with stakeholders and practitioner groups: we need to get the balance right between effective coordinating central levers and a strong local sense of agency.

Finally, a lot of the issues raised in Part 1 of this report are shared challenges that no single agency will have the power or resource to resolve on their own even after devolution of youth justice. The relations between key institutions delivering youth justice in Wales would remain substantially coordinate. Neither the WG nor any new Welsh Youth Justice Board would have the power to impose solutions in relation to shared youth court challenges like improving the effectiveness of scrutiny panels or listing practices. However, there is potential for WG, after the devolution of youth justice services, to use the political authority derived from its democratic mandate to bring together the various coordinate groups (HMCTS, magistrates, YJS teams, PCCs and police, local authorities, defence lawyers and the CPS) to negotiate agreed common approaches (perhaps through formal Memoranda of Understanding in some cases.) The encouraging indications from our admittedly limited and informal consultation is that, if the project aims to deepen and widen the purchase of Child First principles on youth justice practice, then several of these coordinate groups would share at least the overall objective.

2b Developing legal expertise in youth justice

The evidence both from our consultations and from broader UK literature is that the quality of expertise displayed by lawyers working in the youth justice system (both solicitors and barristers) is highly variable. There is no compulsory training required for solicitors to do the work and the required training for barristers is based on self-certification. So whether and how rigorously training is undertaken is a matter for individual lawyers and there are currently severe financial pressures on those doing all criminal work to limit the amount of time spent on non-fee generating work like training. This suggests that significant progress could be made a) by ensuring that all lawyers working in youth justice are properly trained for its specific challenges and b) concentrating the available work in a smaller number of specialist lawyers. The most direct and radical way of pursuing this objective would be for WG to respond to the devolution of youth justice by setting up and funding a salaried youth justice defence lawyer service operating across Wales.[35] WG could seek an agreement with the UK government that the service would be compensated for the work done and the training through the legal aid fund. This would give WG the opportunity to develop high quality training and accreditation requirements as part of the institutional practice of the service. It would also enable WG to ensure that lawyers' training embraced the core principles of Child First youth justice.

This is the most direct and effective way for WG to influence the quality of legal advice and support in youth justice. If this solution was not considered acceptable, then the next best alternative would be to work with the relevant professional bodies to develop training and accreditation for youth justice. But if the problem is that too much of this work is being done by those who are not specifically trained or specialized in youth court work, then the most effective way to improve standards would be to make the training mandatory for those working in the youth court as part of a required accreditation with competency tests. But that is not something that WG could itself require: rights of audience are determined by the Law Society and the General Council of the Bar.[36] Recommendations of mandatory accreditation have been made on several occasions over a number of years but the professional bodies have not so

[35] This service could conceivably have distinct teams organized along YJS boundaries. But that would depend on whether there was enough work in each YJS area to justify a viable sized team.
[36] Legal Services Act 2007, Schedule 4.

far been persuaded to go anywhere near this far.[37] No doubt, the difficulty is that any strategy specifically aimed at creating a body of specialists by concentrating youth justice work creates losers as well as winners amongst the legal professions. Some would feel confident in securing accreditation and be prepared to incur certain costs in doing so to develop the volume of their youth justice work. But the necessary corollary is that other practitioners currently doing such work would lose access. One can imagine that this is a sensitive matter for practitioner bodies. No doubt a less challenging financial climate for criminal justice lawyers in the UK might help.[38] But could the WG do anything to promote change in Wales? Devolution might provide a democratic mandate to raise these questions as part of promoting a fully Child First youth justice system. More practically, WG might provide financial support or arrange for YJS teams or any new Welsh Youth Justice Board to provide training for lawyers in Child First approaches. But the process would have to be thought through (and negotiated) carefully because there would be a danger – depending on how high the accreditation standards were and how costly the training might be to the lawyers themselves - that it would drive too many lawyers out of youth court work altogether. That might make it more difficult to access a youth court lawyer.

Any process of concentrating work would be taking place within a context of rapid decline in youth court work: busy Youth Courts that used to have two court sittings a day are now holding one court for half a day per week and others are down to fortnightly courts. How could specialization be developed in such a context? One response might be to try to concentrate pre-trial youth justice work (including out of court diversion work) as well as trial work in the same hands. That itself would have positive consequences in that it would promote continuity of representation which is very important in terms of establishing good relations with clients and their families and promoting timely lawyer case-preparation. That would certainly be possible if the decision was made to create a Welsh youth justice defence service.

---

[37] Wigzell and others, *Youth Proceedings Advocacy Review: Final Report,* op.cit., p. 64 Carlile Report, *op.cit.,* p. 61, The Law Society did apparently suggest some form of accreditation by experience or qualification to the Carlile inquiry, *ibid.,* pp. 35-6

[38] For discussion of recent proposals to raise youth court rates: https://www.gov.uk/government/news/criminal-legal-aid-lawyers-to-receive-pay-boost https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/consultation-launched-on-police-station-and-youth-court-fees

2c. Problem-solving courts

One of the few points in the consultation events at which we invited discussion of a particular reform related to problem-solving courts. We asked participants what they thought of the proposal in the WYJAAG's reports that the WG should seek MoJ support to pilot problem-solving approaches in youth courts in Wales.[39] We did not define what we meant by the term, leaving participants to develop their own interpretations. But in general terms, we were envisaging a process that shifts sentencing from an event to a process in which the same YP and same magistrate(s) meet periodically after the initial sentencing hearing to review progress and calibrate state response. Reactions were mixed but there were a number of very interesting contributions. We will deal first with the positive arguments and then deal with reservations.

Positive potential of problem-solving courts

The arguments for a pilot started with the potential impact of problem-solving approaches on the quality of dialogue. Some argued that, despite improvement in engagement and communication in the youth court, there remained a need to develop richer relationships and dialogue between magistrates and YP. In that regard, there were perceived benefits in the same magistrates seeing the same YP several times over a period, particularly if magistrates with empathy, skill, commitment and charisma were involved. This might enable a richer dialogue to take place as to what is going on in a YP's life, to deal not just with their criminal offending but broader welfare, family and community issues and indeed to engage YPs themselves in the definition of their problems and how to solve them. Furthermore, in terms of the emotional engagement and participation of YPs, it was suggested that returning to meet the same magistrates might

[39] The Welsh Government has supported the development of pilots for problem-solving courts in Wales: https://www.gov.wales/delivering-justice-for-wales, para 8.2. In this they were following the broad recommendations of the Thomas Commission on the devolution of justice in Wales, https://www.gov.wales/commission-justice-wales, (Chapter 4, Part 3). Proposals for piloting youth courts in England and Wales as problem-solving courts have also been made: in the Carlile Report, *op.cit.* p. 63, Gillian Hunter and Jessica Jacobson, *Exploring procedural justice and problem-solving practice in the Youth Court* (HMIP, Academic Insights 2021/05) and Gillian Hunter, Ely, C. and Robin-D'Cruz, C. and Whitehead, S. (2020) *Time to get it right: enhancing problem-solving practice in the Youth Court*, Centre for Justice Innovation, London, UK. The Taylor Report recommended the development of Children's Panels based on problem-solving approaches, *Review of the Youth Justice System in England and Wales* (MoJ 2016, para 108 *et seq*.

lead YPs to feel that they were involved with a supportive justice community, that they mattered and they were valued (not just judged and blamed). Furthermore, magistrates themselves would develop knowledge of the effects of particular decisions or general approaches. It was noted that there was a danger that returning to court might create further trauma for the YP. But the response was that it should be possible for review panels/periodic reviews to take place out of court (for example in retiring rooms around a table or even YJS team offices).

Some participants commented on positive practical experience elsewhere in the criminal justice system but the importance of engagement from partner institutions was stressed.[40] That raised discussions as to whether problem-solving approaches might increase the influence of magistrates on the support made available by other agencies. The image was evoked of periodic reviews giving magistrates the opportunity to call YJS management boards, other partner agencies and even parents (including corporate parents) to account for the support they were or were not giving to young people. It was envisaged that they might be required to attend and explain absence of provision or support. This clearly goes beyond the existing powers of magistrates to require YJS teams to come back and explain the failure to provide support programmes that they had previously indicated were available. The broader comments were made in the context of discussions in which the precise powers of the problem-solving courts were not set out. So the legal levers to do this were being assumed. But if WG or a devolved Welsh YJB had the power to determine what programmes or what support should be made available nationally as well as a set of standards to which agencies could be held accountable and for which funding has been agreed, then one might imagine magistrates in problem-solving courts as an effective form of local scrutiny of that provision.

Practical and principled reservations

[40] Positive feedback was given both on recent moves in relation to youth justice referral panels to ensure the YP always goes back to the same panel and periodic reviews of adult community orders with drug rehabilitation requirements. On the other hand, suggestions were made that periodic reviews of youth rehabilitation orders with requirements such as drug testing had sometimes not worked well because of insufficient engagement from partner institutions (like health). The relevant provision enabling periodic reviews of rehabilitation orders has not yet been brought into force but judicial guidance now permits local non-statutory reviews: Gillian Hunter and Jessica Jacobson, *Exploring procedural justice and problem-solving practice in the Youth Court* (HMIP, Academic Insights 2021/05)

Reservations ranged from questions of principle to narrower and more practical considerations. In terms of more fundamental objections, it was pointed out that problem-solving courts work on the basis of admissions and convictions and thus only provide a solution for a small number of the most persistent and serious offenders that make it to court. Furthermore, it was said that a problem-solving Youth Court was not needed because youth justice services themselves constitute multi-disciplinary teams who see themselves as problem solving (in the sense of addressing the problems thought to underpin offending). Underlying this, though perhaps not directly expressed, seemed to be a fear that the concept of 'problem-solving' courts might move the focus of problem-solving back to post conviction interventions. The background assumptions here may be that it is easier to solve 'problems' without the stigma of conviction, that YJS teams are better suited to lead problem solving than youth court magistrates, and that working with YPs may be more difficult in the stressful adversarial environment of a court. The perceived danger may be that the introduction of problem-solving courts might undermine current emphasis on out of court settlement and diversion and move the balance of the system and its allocation of resources back towards post-conviction intervention. There may be two ways of looking at this. Are we talking about a zero-sum game in which resources can either go to pre-court diversionary interventions or post-conviction sentences? Or do we want to think of the whole of the youth justice system as essentially problem-solving with a recognition that the most significant problems are often those of YPs convicted in Youth court? And can some of the challenges of using courts as problem-solving fora be addressed by appropriate reform and redesign?

There were also practical questions raised as to how to secure additional magistrate and possibly lawyer time. Representatives of Magistrates' Association expressed preparedness to consider problem-solving courts with review panels but emphasized that they would need to be consulted to see whether there was a willingness to put in the greater commitment involved. That looked like a problem capable of resolution given the falling volume of cases and magistrates' desire to maintain experience and expertise in youth justice. But similar questions were raised about lawyer involvement: if the process involved more appearances requiring lawyer intervention then the question would need to be addressed as to how that additional time could be financed. Once again, a salaried youth justice defence service might provide the answer to this conundrum.

Recognizing that there are practical problems to be resolved, we nevertheless believe that the trialing of problem-solving youth courts in Wales would be a positive development in developing a Child First approach that runs throughout the system.

Final thoughts: levers of change

A fairly coherent picture emerged from the three consultation events. There was a broad commitment to Child First principles across practitioner groups. But there was also a widespread recognition that practice needed development if those principles were to run consistently throughout the youth justice system right across Wales. We have set out in Part 1 those areas where development and reform were seen as needed. An underlying issue that emerged (as with previous reviews) was variability of practice and delivery. In Part 2 we have suggested some ways that devolution might provide levers for the WG to promote more consistent system–wide Welsh practice.

How might such change be effected? Section L11 of Schedule 7A Government of Wales Act 2006 currently reserves competence to Westminster in relation to a range of matters around prisons, probation and offender management. Amongst those matters, paragraph 175(3)b of the Schedule explicitly reserves competence in relation to the 'subject matter of sections 37-42 Crime and Disorder Act 1998 (youth justice)'. Those are the sections of the CDA that set out the general framework for the governance of youth justice in England and Wales and include in s 38(4) a detailed definition of 'youth justice services'. There are then exceptions to these reservations stipulated for providing secure accommodation for young people and various forms of social support.[41] So, these matters are not reserved to the UK Parliament and fall within the competence of the Senedd. To achieve the necessary legislative competence, Para 175(3)b could either be removed from the list of reserved matters under Schedule 7A of the 2006 Act or that paragraph could be presented as part of an expanded list of exceptions. The latter might well be clearer. This would transfer to the Senedd legislative competence only in relation to the matters dealt with in ss 37-42 CDA 1998 with s 38(4) providing a useful definition of what is meant by youth justice services. The Senedd could then produce a

[41] 'Accommodation provided by or on behalf of a local authority for the purpose of restricting the liberty of children or young persons' and 'The provision of health care, social care, education, training or libraries'.

Welsh Act that sets out the responsibility for the provision and governance of such services in Wales. It could take the existing structure of ss 37-42 CDA, adding and modifying as thought useful.[42] Thus it might create and define the powers and responsibilities of a distinct Youth Justice Board for Wales, set out in greater detail the youth justice responsibilities of Local Authorities and other stakeholders and define the governance roles of Welsh Government, Welsh Youth Justice Advisory Panel etc. But if it sticks to the definition of youth justice services as set out in s 38(4) CDA this should minimize the chance of creating new jagged edges. It might be useful to give executive powers to WG to add to or modify the powers and responsibilities defined to enable it to reshape further the relationship between local and national powers and responsibilities in the light of experience.

This would provide a set of constitutional-legal levers for the WG to shape the development of youth justice services in Wales. But, as envisaged above, it would not involve WG in directly delivering those services: that would – for reasons set out above - remain the responsibility of local authorities. We envisage a reformulated triumvirate of key agencies to agree and implement strategy for youth justice in Wales. This would involve the WG, working with the Wales Youth Justice Advisory Panel (WYJAP)[43] and the newly instituted YJB (Wales/Cymru). The YJB (Wales/Cymru) would exercise indirect influence on delivery. This would work in part through the advisory and monitoring functions currently held by the current YJB UK: standard setting and provision of expert advice to promote best practice supported by the 'carrot' of selective grant giving subject to application and monitoring of implementation. But we also envisage that these indirect levers could be strengthened by enhanced powers and responsibilities of inspection, accreditation and training in relation to YJS teams which do not currently sit with the YJB UK.

This provides a broad outline of a possible governance framework covering the core relationships around the provision of youth justice services: WG, local authorities, YJB (Wales/Cymru), WYJAP and other

[42] Certain amendments would be unavoidable because ss 37-42 currently make specific references to the different composition of YOTs in England and Wales. Note also that s 38 places duties and responsibilities on police chief officers. If a Welsh Act were to do that it would require the consent of UK ministers.

[43] WYJAP is a stakeholder group comprising senior representatives in Wales of key services involved in dealing with young people involved in or at risk of offending. For an outline of its role see Stewart Field, Developing Local Cultures in Criminal Justice Policy-Making (2015) op.cit., pp. 173-4.

statutory partners. But as pointed out above, the broader youth justice system – and especially the youth court – is a system dominated by coordinate relationships with and between players who are autonomous in both hierarchical and constitutional/legal terms (for example police, Police and Crime Commissioners, magistrates, HMCTS, CPS and defence lawyers). There are no direct constitutional/legal or hierarchical levers that the WG could use even after the devolution of youth justice services to require change of these bodies. Yet it is these interrelationships that shape many of the practices that we have identified as needing development: (for example) the operation of scrutiny panels, Saturday courts, court user groups, court listing practices, practice in police custody and youth court architecture. Addressing many of these issues will require not just a continuation but also the broader development of established cultures of inter-agency co-operation (and, at its best, co-production). It would be useful to use the moment of devolution to review the operation and membership of WYJAP to ensure this is a forum in which all key stakeholders will be able to come together in constructive discussion and set a collaborative tone at the top of the system.[44] But post-devolution, the WG may well have greater capacity in practice to use more indirect levers of influence to shape collective discussions throughout the system. Potentially it will be able to finance particular initiatives, to collect and provide information and expertise but crucially to draw on the political authority derived from its national democratic mandate and new devolved responsibilities to promote collaborative discussions.[45]

At a recent conference, the former First Minister Mark Drakeford made the case for a gradualist approach to devolution of criminal justice in Wales.[46] He used the analogy of the train going over the top of the hill: the downward momentum of the front carriages pulls the later carriages up over the summit. Of course, the pull of gravity is rooted in the laws of physics whereas the development of political momentum is dependent on perceived legitimacy. It is critical to the future direction of any devolution of justice in Wales that the devolution of youth justice services be seen as providing value added. On the basis of our admittedly limited and informal

[44] Clearly representatives from the new YJB (Wales/Cymru) would need to replace the existing YJB (UK) representatives. But youth justice defence lawyers do not appear to be currently represented: yet they are major players in the system.
[45] See for further discussion of levers of influence in youth justice in Wales, Stewart Field, *Developing Local Cultures in Criminal Justice Policy-Making*, *op.cit,* pp 177-181.
[46] Mark Drakeford, Jonathan Evans & Peter Raynor**:** What Can Probation in Wales Learn from Youth Justice? Plenary presentation to Annual Conference Welsh Centre for Crime and Social Justice, 30 April 2024, Gregynog Hall, Powys.

consultations, we would conclude that it can indeed provide significant benefits in deepening and broadening the impact of Child First principles. This report is another contribution to what must be a developing dialogue on how the devolution of youth justice services can be constructed so as to demonstrate that value added.

Published by the Welsh Centre for Crime and social Justice, University of South Wales, Pontypridd. ISBN: 978-1-909838-76-5

Copyright © Welsh Centre for Crime and Social Justice, University of South Wales, 2024

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means without written permission from the publishers.

Dame Vera Baird and Stewart Field have asserted their right to be identified as the authors of this work in accordance with the Copyright, Designs and Patents Act 1988.

****

Cyhoeddwyd gan Canolfan Troesedd a Cyfiawnder Chymdeithasol Cymru, Prifysgol De Cymru, Pontyridd. ISBN: 978-1-909838-76-5

Hawlfraint © Canolfan Troesedd a Cyfiawnder Chymdeithasol Cymru, Prifysgol De Cymru, 2024

Cedwir pob hawl. Ni chaniateir atgynhyrchu unrhyw ran o'r cyhoeddiad hwn, ei storio mewn system adfer, na'i drosglwyddo ar unrhyw ffurf neu mewn unrhyw fodd heb ganiatâd ysgrifenedig gan y cyhoeddwyr.

Mae Dame Vera Baird and Stewart Field wedi hawlio eu hawl nhw I gael eu hadnabod fel awduron y 29waith hwn yn unol â Deddf Hawlfraint, Dyluniadau a Phatentau 1988.

****

Published by the Welsh Centre for Crime and social Justice, 2024 / Cyhoeddwyd gan Canolfan Troesedd a Cyfiawnder Chymdeithasol Cymru. ISBN: 978-1-909838-76-5