

# Children first, offenders second: youth justice in a devolved Wales

Mark Drakeford explores a social policy approach to youth justice.

*The policies and practices of the youth justice system in a devolved Wales are of interest for two main reasons. On the one hand, they represent one of the major fault-lines in the current constitutional settlement between Wales and England. On the other, they offer an opportunity to assess the extent to which a distinctive approach can be developed in Wales, within the constraints of present arrangements.*

Constitutionally, youth justice services were not included within the responsibilities of the National Assembly at its foundation. They remained firmly with the Home Office, to be operated through the Youth Justice Board. Yet, the practical discharge of those responsibilities has always depended on services which are wholly devolved. The Assembly Government is entirely responsible for health, housing, education, and social services in Wales. Different calculations are possible, but quite certainly over half and up to 70 per cent of the total budgets of Youth Offender Teams in Wales are provided through services which are entirely outside the direct control of the Ministry of Justice and the Board.

All this means that the development of youth justice in Wales, since 1999, has had to proceed on a negotiated basis, in which joint arrangements and carefully crafted policy positions have to bridge between the approach adopted by the Board, and the preferences of the Assembly Government. The practical means for doing so has been an All Wales Youth Offending Strategy (AWYOS), agreed between the two parties. While the

Strategy has been a success in many ways, it necessarily masks some enduring tensions.

Kevin Haines (2009) recently captured this in an analysis of three successive sentences in the AWYOS, quoted below:

*A balance between the interests of the child or young person and the interests of the wider community and potential victims can be maintained through early intervention, restorative justice measures, appropriate punishment and supported rehabilitation.*

*Promoting the welfare of children and young people reduces the risk of offending and re-offending and in doing so protects the public.*

*The strategy therefore promotes the principle that young people should be treated as children first and offenders second.*

As Haines suggests, the first sentence is directly derived from the YJB; the second contains sentiments which both the YJB and the Welsh Assembly Government could have written; the third is distinctive to Wales.

## **A Welsh approach to youth justice as part of social policy-making**

The distinctively Welsh version of youth justice is one rooted in a determination to respond to those caught up in it as children first, with offending only one element in a much wider and more complex identity. When things go wrong in the lives of children and young people, the Welsh focus has been on trying to put right flaws in the systems on which they depend,

rather than on focusing on the flaws in young people themselves. Deploying the tried and tested tenets of minimum formal intervention, maximum diversion, and systems management, a 2009 refreshed version of the original Offending Strategy has imbedded these principles even more firmly in its practical operation. Thus, two of the three key purposes of the Strategy are a reduction in the number of first time entrants to the youth justice system in Wales and a reduction in the proportion of young people sentenced to custody. Together, these outcomes will underpin the Strategy's third, overarching, objective, a reduction in the rate of proven re-offending for young people.

If these are the ends which the Strategy endorses, the means it identifies lie firmly in strengthened social action. Youth justice services in Wales over the next three years have new priorities in increased engagement in education and training for young people caught up in the youth justice system; an increase in access to suitable accommodation for such young people and an increase in timely access to specialist assessment and treatment services for those with an identified substance misuse need.

All this demonstrates that, as far as the Assembly Government is concerned, social justice is a precondition for youth justice. Unsurprisingly, perhaps, this is simply a specific application of a more general policy approach which has been developed in Wales, since devolution. That approach is rooted in the distinctive history, economic circumstances and social structure which are characteristic of Wales, and the particular left-of-centre political disposition produced by them. While every Assembly Government since 1999 has been led by the Labour Party, a more general consensus underpins the approach outlined here, both in general political principle, and in relation to youth justice in particular. The content of what First Minister, Rhodri Morgan, has called the 'clear red water' (Morgan, 2002) agenda has been explored more fully elsewhere (see, for example, Chaney and

Drakeford, 2005; Drakeford, 2007; Davies and Williams, 2009). Here, five specific fault lines in British social policy-making are worth highlighting, as emblematic of the wider Assembly Government effort.

The first is the notion that, in contra-distinction to the 'small government' nostrums of the Thatcher/Reagan era, good government remains the most effective vehicle through which collective solutions can be applied to common problems. The second is a belief in the advantages of universal, rather than means-tested services, provided with a progressive twist through additional provision for those who need help the most. A conceptualisation of the relationship between the individual and the state as one based on citizenship, not consumerism is the third fault-line. The fourth resides in a belief that equality of outcome, not simply equality of opportunity, should be the unifying objective of public policy. Lastly, the Assembly Government has aimed to capture and extend the new pluralism in policy-making which devolution itself represents. For young people, in particular, the record of engagement and participation has been very actively pursued, through the creation of the first office of Children's Commissioner in the UK and other measures, drawing particular praise in successive reports from UN Commissioners, assessing compliance with the Convention on the Rights of the Child.

### The practical record

If these are the principles which shape a Welsh approach to youth justice, the practical policies derived from them, some of which were outlined briefly in an earlier section, have to be tested against the difference they make in terms of outcomes. The evidence is not, by any means, uni-linear. Welsh custodial sentencing rates, for example, remain too high, and above those in parts of England (Prison Reform Trust, 2009). However, overall, there are some reasons for greater optimism. Between 2005 and 2007, there has been a 14.14 per cent fall in the number of first time

entrants to the youth justice system in Wales, comparing favourably with the 7 per cent increase across England and Wales as a whole. It meant that the total number of first time entrants to the youth justice system in Wales was appreciably lower than any other region providing figures to the YJB and amounted to 767 fewer children and young people becoming caught up in the formal criminal justice system. There is, too, an in-coming tide, in which the number of young people sentenced to custody in Wales has fallen from 185 in April 2004, to 143 in February 2009. These achievements have contributed, to some extent, to a fall of 12 per cent, between 2002 and 2007, in recorded youth offending in Wales, and a fall in re-offending rates of 3.9 per cent, out-stripping reductions in England. Frequency of re-offending among children and young people within three months of conviction, has fallen from 44 per 100 in 2005, to 30 per 100 in 2008.

### Looking ahead

Youth justice policy remains under very active development in Wales. Since the last Assembly elections, in May 2007, the Assembly Government has been formed through a coalition of Labour and Plaid Cymru, the Welsh Nationalist party. This has provided a new impetus to exploring the case for greater formal devolution of youth justice responsibilities to the National Assembly. From inside the Assembly Government, in June 2009, the responsible Minister, Edwina Hart, has appointed Professor Rod Morgan, previous Chair of the Youth Justice Board, and a native of the Swansea Valley, to provide a Report on the benefits and risks involved in devolving youth justice to Wales. On the parliamentary side, the National Assembly's Communities and Culture Committee is currently undertaking an Inquiry into Youth Justice in Wales. Early emerging findings include potential recommendations in the areas of first time entrants, children with particular needs (especially accommodation) and youngest children, aged 14 and under, who represented 8 per cent

of young people who entered custody in Wales in 2007/08. Recommendations are also likely to call for the standardisation and systematic institutionalisation of custody panels, in each Youth Offending Team area, to review the plans for children and young people most at risk of custodial sentencing, and to review each case where a custodial sentence is imposed.

Further issues under consideration include the possible transfer of budgets to local authorities for the costs of court ordered secured remands (as proposed in the UK government's 2008 Youth Crime Action Plan) and custodial places and the need to agree far stronger safeguards against the imprisonment of children and young people for breach of supervision requirements, where no other fresh offence has been committed and the abolition of custody for breach-only infringements for those aged under 15.

It all amounts to an agenda which suggests that, in both policy terms and practical outcomes the Welsh experiment in youth justice is one which will continue to be worth watching. ■

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### References

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