



June 2018

CJC response to the call for evidence: COMMISSION ON JUSTICE IN WALES

Opening remarks

The Civil Justice Council (CJC) is a statutory public body whose role is to advise on the civil justice system in England and Wales. The CJC is currently recruiting a member to represent Welsh civil justice interests. This move follows a growing acceptance that the divergence of English and Welsh civil law and the impact of devolution have not been addressed in the CJC in the systematic manner that they should have been.

The CJC is therefore less well equipped than it will be to respond to this call for evidence, but nonetheless wishes to respond with some general comments which we hope will assist the Commission in its work.

We do not feel qualified to respond on a number of the issues raised in the call for evidence, and will confine ourselves to the following areas.

Access to Justice/legal advice

In the civil sphere the **legal aid** reforms enacted in 2013 have resulted in far fewer people (60,000 from 276,000) receiving publicly funded advice and representation in England and Wales¹. There are no figures readily available showing the scale of the impact on Wales in isolation. Given that the Welsh population has a lower gross disposable household income than any other part of the UK² it seems safe to assume that it is significant.

This has also had an impact on the number of legal aid **providers**. In three Welsh regions (North West, Central and South West) the Law Society found³ there was only a single provider of housing advice.

The **advice and pro bono** sectors work hard to facilitate access to justice. LawWorks Cymru plays a co-ordinating role for pro bono activities. There are few advice centres outside the South Wales metropolitan areas, although a number of Welsh University law departments offer valuable voluntary clinics.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/706467/legal-aid-statistics-tables-oct-dec-2017.xlsx

² <https://www.ons.gov.uk/economy/regionalaccounts/grossdisposablehouseholdincome/bulletins/regionalgrossdisposablehouseholdincomegdhi/1997to2016>

³ <https://www.lawsociety.org.uk/policy-campaigns/campaigns/access-to-justice/end-legal-aid-deserts/>

The Commission would be well placed to advise the Welsh Government and Welsh local authorities on how these vital activities can be funded and supported in other ways (e.g. through providing accommodation in public buildings for clinics).

Another aspect of access to justice is in relation to **access to court buildings**. The CJC recently responded to the HMCTS consultation paper on the court estate - <https://www.judiciary.gov.uk/wp-content/uploads/2018/05/cjc-response-to-hmcts-estate-consultation-29-03-18.pdf>.

Many of the points made would be relevant to courts in Wales. Issues about travel to court times are of particular importance in Wales, given public transport availability in parts of rural Wales. The CJC opposed the proposal for a new benchmark of “*nearly all users should be able to attend a hearing on time and return within a day, by public transport if necessary*”.

An area with potential to increase access to justice for many people is the **digitisation of court services**, such as online civil money claims. This may well be welcomed, especially in areas with less ready access to court buildings or advice services, with online advice to assist users, and in due course online mediation.

The flip side of this is the need for **Assisted Digital** services. The CJC is shortly to publish a research report on factors to be addressed in ensuring that those without access or confidence in using online services are not disadvantaged and are offered appropriate support. This is a particular concern in a Welsh context, with ONS research showing Welsh households have a lower proportion of internet access than the UK average (84% v 90% in 2017). That said, the increase from 52% Welsh household access in 2006 illustrates the potential of online services to increase access to services.

Divergence in English and Welsh law

The coming into effect of the Wales Act 2018 devolves further powers to the Welsh government which will increase Welsh-specific legislation and the potential for differences in statutes and case law between England and Wales.

The CJC has encountered this in its current work examining the introduction of fixed recoverable costs in lower value clinical negligence cases. The Welsh NHS Redress scheme provides a different process and system for handling NHS complaints and claims.

The divergence underlines the importance of Welsh law being fully accessible to those using and working in the courts and advice sector. The Commission is well placed to address this issue, explored in depth by Lord Lloyd-Jones in a recent speech⁴, in which he advocated **codification** – as also recommended by the Law Commission⁵.

The other unique characteristic of Welsh law is the use of the **Welsh language**, and Current legislation provides for its equal footing in Welsh courts. Around 500-600 hearings are conducted wholly or partly in Welsh each year and processes are in place to facilitate this.

⁴<https://www.supremecourt.uk/docs/speech-180308.pdf>

⁵ https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2016/10/lc366_form_accessibility_wales_English.pdf (Recommendation 16.1).

The Commission will want to ensure that equal attention is being paid to the use of Welsh in the growing number of digitised processes and information resources.