

Making Justice work in Wales - Summary note of engagement

12 October 2020

Background

As part of the **Legislation, Justice and Constitution Committee's** inquiry into **Making Justice work in Wales**, the Welsh Parliament's Citizen Engagement Team has been gathering the views of legal practitioners across Wales.

Methodology and demographic

The Citizen Engagement Team arranged a series of virtual focus groups with solicitors and barristers from across Wales. These sessions took place between **16 September** and **30 September 2020**.

5 sessions were arranged involving **13 solicitors and barristers** from all **five Senedd regions**. Participants practiced in both contentious and non-contentious areas of law, including (but not exclusively), crime, employment, personal injury, wills, trusts and probate, property, administrative and public law. Private practice (small to medium sized firms and large firms), local authority and barristers' chambers were represented.

8 of the participants held Managing Partner/ Director, or equivalent roles.

Participants were sourced through a number of relevant organisations including the Law Society's Wales Office, the Chartered Institute of Legal Executives (CILEx) and barristers' chambers in Wales.

Format

A qualitative research approach delivered via a series of virtual focus groups on Microsoft Teams, allowed participants (some of whom had contributed to the Commission on Justice in Wales consultation), to share and elaborate on their views on justice in Wales.



Questions were shared with participants beforehand. Due to time constraints, the need to accommodate last minute absences and/or replacements, and participants' experience, not all questions were covered as part of each session.

Summary of key themes

Staff recruitment and retention

The challenges posed by staff recruitment and retention was an issue discussed at length by most participants from small to medium sized firms. In particular, firms who undertake legal aid work explained that the increasing dearth of duty solicitors is likely to exacerbate existing access to justice issues.

“One of the biggest challenges in Wales, particularly in north Wales, is the retention of lawyers in private practice. We have a young criminal lawyer who is leaving next year to join local government because she doesn't see the future in criminal legal aid. She's an excellent advocate but we do lose people to local government and the public sector.”

Focus group participant, North Wales.

“There are no duty solicitors about. You might think the answer is to increase wages, but we're constrained by legal aid.”

Focus group participant, South Wales West.

“In our area, we notice a lot of crime solicitors being recruited by the CPS (Crown Prosecution Service) because they're able to offer a bigger package. The amount of money we get for the job we do is dreadful. We've had no wage increase in twenty years. We're expected to deliver speedy justice. Even if they increased the fee half-fold, it would make a difference. For example, the fee we get in Ammanford is £177.94 a case. You could be working on a matter for quite a while for that. It's shocking.”

Focus group participant, Mid and West Wales.

Recruitment and retention were considered less of an issue amongst participants from larger firms. It was explained that the nature of their work and recruitment structures, meant that the impact on their business was considerably less. However, one participant cautioned that whilst remote working has clear benefits, it could potentially have a detrimental impact on the talent pool of candidates available to legal practices in Wales.

“We have a very new and live issue in light of the pandemic, which is probably on the commercial side of the fence. Now that everyone is working remotely, and will be for the foreseeable future, the constraints around taking a job in London, where you could potentially earn a third more, are no longer there. This will pose a threat to our market and retaining talent.”

We try and do all we can to ensure our work environment is positive - the thing we always had to offer is quality of life in Cardiff, but that's not going to be such a distinguishing factor going forward when you can arguably have that and work for a London firm."

Focus group participant, South Wales Central.

"We've engendered links with colleges and universities so that we have access to those graduates when they leave. That's a response all big, mature law firms have adopted because we're in an England and Wales market. We want to retain and attract the best staff."

Focus group participant, South Wales Central.

Participants from small to medium sized firms cited frequent issues with retaining junior lawyers. Recruiting and training junior lawyers was considered a substantial investment for many firms. Some suggested that the makeup of the solicitor profession in Wales, predominantly characterised by 2 – 4 partner firms, could mean that Wales is disproportionately affected by access to justice issues. Some participants gave examples of the investment made in staff training and the impact of their departure on the business so shortly thereafter.

"The minimum training contract salary is £19,000. Small firms will increasingly choose to recruit a paralegal for a lower salary instead. Perhaps the Welsh Government could provide financial assistance to help pay for a paralegal to qualify as a solicitor. When you're recruiting or training a lawyer, you're reducing your own red lines. We have to consider whether we invest in technology or people. At the moment, it's technology because that's where we see our future."

Focus group participant, North Wales.

"We recently interviewed for a private client solicitor who has roots here but was working in the north of England. We offered her a small pay rise and as a reasonably newly qualified solicitor, we were ready to train her up. She then told us she wasn't ready to return to Wales. We'd spent thousand on advertisements for that post."

Focus group participant, Mid and West Wales.

"As a firm, we're taking a serious view – what's the point in training people? We can't compete with jobs in the civil service, CPS and Public Defender Service. It's a disaster waiting to happen. My view is that we won't offer any more training contracts as a firm. If we can't retain the two we have, we'll just offer paralegal jobs. We'll recruit bright graduates on £12,000 - £13,000 like some of the larger Cardiff firms"

Focus group participant, South Wales West.

Technology and its associated benefits, particularly in the context of virtual hearings, was a theme which was discussed at length by all focus group participants. The locality of physical courts has long posed an issue for many people in Wales.

There was unanimity amongst participants that virtual hearings, both the necessity and appetite for which was largely ascribed to the Covid-19 pandemic, contribute to greater access to justice for many in Wales. However, some participants cautioned against viewing virtual hearings as a 'silver bullet' for access to justice issues.

Accessibility issues still exist due to lack of digital skill and online access in parts of Wales. Others raised inconsistencies in the way in which virtual and hybrid hearings are currently administered.

"We had a meeting with someone involved in the decision-making around virtual hearings in the magistrates' courts – it was implied that fully virtual meetings are going ahead, but we've heard that crime practitioners are still having to physically attend court. The CPS and the judiciary are getting exemptions, but crime practitioners are still having to attend, so there's real inequality there. It's ironic that it's the most cash-strapped part of the profession that's being impacted. It's a huge issue in Newport and Cwmbran where the courts are bursting."

Focus group participant, North Wales.

"I have been going to county courts and dealing with cases where people can take part virtually. One of the challenges I've seen is with litigants in person without the technological access or skill to take part, or who would prefer to be there in person. I went to Llanelli County Court two weeks ago where two elderly people took part in person, whilst the defendant was on screen. We can service them better, quicker and at less cost than we were able to before."

Focus group participant, South West Wales.

"In my view, some of the most vulnerable people trying to access justice are from areas where there are no central courts, so it's probably incredibly frustrating to them having to come to Cardiff or Newport to have their say. I also think it probably deters some of the most vulnerable people from pursuing their case."

Focus group participant, South Wales Central.

The number of participants with experience of Welsh Tribunals was low, however they could see no argument in principle with the Justice Commission in Wales' recommendation that the Welsh Tribunals should be used for the resolution of disputes relating to future Welsh legislation.

"I've done a case in the residential property tribunal. It was a smooth hearing. I didn't know it existed before I was instructed to act. It was different in formality to usual tribunals, but I got the impression my client was very comfortable in that environment."

Focus group participant, South Wales Central.

“I support the recommendation in the Thomas Commission that Welsh Tribunals should be used for the resolution of disputes relating to citizens in Wales. However I do not understand the statement that tribunals are the proper forum relating to the “resolution of disputes relating to future Welsh legislation”. It seems to me that if there are constitutional law issues that arise out of Welsh legislation then those should be aired through the existing court system, i.e. the administration courts i.e. the High Court. I don’t at the moment think that Welsh Tribunals have the capacity, expertise or otherwise to deal with disputes relating to Welsh legislation. It may be however that with additional resources this is something that could be achieved.”

Focus group participant, South Wales West.

Technology

Participants had a broader discussion on the benefits of technology in streamlining the delivery of legal services, creating greater internal efficiencies and facilitating better access to justice. Some participants explained that in light of the pandemic, many firms are reviewing the necessity for physical offices in delivering access to justice.

“We have an office with a secretary in Haverfordwest, but we’re beginning to consider whether it’s costing us too much in terms of staffing and rent. I wouldn’t be surprised if some of the larger firms begin to service that area remotely. They’ll just have a serviced office there which will be by appointment-only. Very slowly, legal services with a physical presence will start withdrawing from these rural areas. Haverfordwest will be the start – but we should not be in 2020 talking about the high street in Haverfordwest and Carmarthen not having a visible legal service presence.”

Focus group participant, South Wales West.

“Do I want an expensive office or a Regus style office and work as remotely as much as I possibly can. I wouldn’t like to think we’d get to a stage where we’re like the banks pulling out of the high street, and I’m not convinced that all areas of work lend themselves to remote working. For example, our office in Torfaen is like a swinging door. The community there tends to want to deal with their solicitor in person. That has an impact on the local economy.”

Focus group participant, South Wales East.

Despite its innumerable advantages, participants were keen to stress the need for the legal sector to carefully consider any investment it makes in technology. Some participants explained that the pandemic has forced many legal practices to act quickly by investing in digital tools to allow staff to work from home and thus, ensure business continuity. This carries the risk that decision-making may not have been as robust as they would have liked.

“What standard of technology are we using? We need to step back and seriously give more thought to it, otherwise we’ll be creating an electronic environment that won’t allow us to speak to each other”

Focus group participant, South Wales Central.

“The infrastructure has got to be in place if we’re really going to make it work. I think a lot of firms have made quick advances in using technology to their benefit in light of Covid. But a lot of it had to be done quickly, so it feels a bit like a sticking plaster.”

Focus group participant, South Wales East.

Co-ordinating devolved justice functions in Wales

Most participants did not believe there was a clear figurehead for justice in Wales and a minister with sole responsibility for justice would be welcomed. Some participants explained that a collaborative approach with key stakeholders across the sector, with input from the wider sector, is imperative. It was also suggested that a more structured and visible justice department will need to be established by the Welsh Government with the responsibility for the organisation of the administration of justice in Wales.

“In the meantime I think under the direction of the Minister Jeremy Miles, he should invite those who have a contribution to make towards such behind the scenes work as is necessary in the lead up to any partial or full transfer of justice responsibilities from Westminster to Wales, set up groups to advise him on the four main areas which will be; criminal justice, civil justice, family law and tribunals. Each of these areas have their own specialist judges and practitioners and there are many of those practicing within Wales dealing exclusively and not exclusively with cases within Wales. In addition there are practitioners from outside Wales who deal with cases in the above areas in Wales.

All of the above have invaluable contributions to make to assist the Minister and the government of Wales to prepare and pave the way forward for what will at some point in the future occur, namely the delegation of powers affecting some/all of the above areas of legal administration to Cardiff Bay.”

Focus group participant, South Wales East.

“I’m just thinking about the cost of all this. If you were to ask me who had responsibility for justice, I couldn’t tell you. It would be great to have someone identifiable that we could engage with, but it all comes at a cost and currently, times are hard. I’d put it, perhaps brutally, in the “nice to have” category.”

Focus group participant, South Wales Central.

Welsh Government support

Participants discussed at length, the support the Welsh Government could provide in order to ensure that the legal sector is prepared for any potential justice devolution. The majority of participants shared the

view that adequate financial investment in Wales' IT infrastructure is crucial in order to build upon the progress made by practitioners in digitising legal services during the pandemic.

“Technology is the great leveller in all this. We were able to work from home on the first day of lockdown, but I suspect that’s not the case with all firms. The nature of our business means we have to make the investment in compliance and back offices to ensure they’re built to survive. We spend millions every year to keep up to speed, so I think some sort of leveller would be a technology fund to which firms could have access to invest in digital tools.”

Focus group participant, South Wales Central.

Some participants also stressed the importance of ensuring that justice is accessible to all. Some may not have access to, or the digital skill, to pursue their matter through digital means. It was suggested that community hubs could be made available to people to meet with their solicitor and/or attend hearings virtually.

“Solicitor practices have almost disappeared in Cardiganshire. When I started, there were county courts in Aberystwyth, Lampeter, Cardigan and Aberaeron. Now there’s only one and yet there is still a need for legal services in those towns. I see no reason why the local authority, which has a presence in all those places, can’t ensure that appropriate IT is available to allow people to access justice. Welsh Government can do a lot to help make the services people need to communicate with their lawyers, work.”

Focus group participant, South Wales West.

“I think investment in technology for rural firms is important. The pandemic has also meant their clients have become more tech savvy from necessity. Whilst you’ll never be able to accommodate for 100% for the population, I can see there being a lot of consolidation in the sector where you’ll see smaller rural businesses coming together which is more sustainable as they’ll have a bigger catchment area. Clients will also be able to access their solicitor by laptop. That would have been inconceivable last year. That investment would therefore help access to justice considerably. “

Focus group participant 2, South Wales Central.

Engagement

Most participants shared the view that the level of engagement by the Welsh Government and Welsh Parliament with the legal sector is insufficient.

“The main local law societies in London – the City of London, Westminster and Holborn Law Societies – have consistently contributed to the development of bills that pass through Westminster, because there’s been a desire for that engagement which has been reciprocated by Westminster. I’m not convinced that

the Senedd, through such committees as it has, encourages or welcomes views from Wales-based practitioners.

Focus group participant, South West Wales

“I would have said there was very little engagement before I joined the Law Society’s Wales Committee. I do get the impression they actively seek their views from the Committee. However, I don’t see any engagement with my counterparts who are not involved in committees.”

Focus group participant, South Wales West

“Do they engage at all? That would be my question.”

Focus group participant, Mid and West Wales

However, some participants had positive experience of engaging with the Welsh Government and hoped it would continue with any potential justice devolution.

“The last couple of years have seen a real improvement and statement of intent, and I think it’s to the Counsel General’s credit that he’s pushing those issues. There seems to have been a step change in terms of trying to use Welsh chambers for Welsh Government work, which is a good thing. If the Welsh Government want to drive the change, then it’s incumbent on it to use local expertise where it can.”

Focus group participant, South Wales Central.

One participant explained that the Law Society’s Wales Office has been arranging weekly ‘Covid calls’ with the solicitor profession in Wales, which has involved the managing partners (or equivalent) of firms and a representative from the Welsh Government.

“There’s been close dialogue. I feel as though they’ve really cared and I’ve found the call valuable. It’s just a half hour call at 8:30am, where we’re updated on the current situation and we have the opportunity to ask questions.”

Focus group participant, South Wales East.

Participants also discussed the method of engagement, explaining that more informal engagement, via focus groups for example, has its advantages. Time pressures, resource and capacity were all cited as reasons for favouring more informal engagement methods, which they considered to be as valuable as more formal evidence-gathering.

“What you’re doing this evening is inviting us to make contributions. It doesn’t have to be formal. It can simply be a case of holding a focus group for an hour one evening. There are some people that spend a

lot of time writing a consultation response. I don't have the time to respond in that way, but I might be prepared to contribute in this way (through a virtual focus group)."

Focus group participant, South Wales West.

Accessibility of Welsh law

Some participants explained that the accessibility and awareness of Welsh law needs to improve. As an example, one participant explained that during the early stages of the restrictions imposed in light of the pandemic, he dealt with a claim involving a cancelled wedding. He explained that picking through the relevant legislation and attempting to make sense of the guidance and the law was not easy, even as an experienced barrister.

"There's been almost an unusual speed to the way in which Covid legislation has been drafted, and I think it's actually meant that more attention has been given to the differences (in law), certainly more so than day-to-day devolved legislation. There's an irony to that, because there's been real criticism of the process in Westminster. I'm not convinced that the process of legislating is necessarily more transparent in Cardiff Bay, but it's certainly brought into sharp focus that health is devolved for example."

Focus group participant, South Wales Central

"I've been involved in cases, usually housing cases, where opponents from England are citing the wrong regulations or relying on stuff that does not apply. For example, there are claim farming firms that deal with housing disrepair matters, and they have no idea that things are different in Wales. It's less likely that mistakes are made at trial, but it has happened. The accessibility of the law is a big barrier to access to justice in my view."

Focus group participant, South Wales Central.