

# Access to justice

## Summary of engagement

June 2022

### Background

As part of the Legislation, Justice and Constitution Committee's work on access to justice in Wales, the Citizen Engagement Team proposed a qualitative approach to engagement, comprising a series of focus groups and one-to-one interviews with legal practitioners and litigants in person from across Wales.

A series of four focus groups and two one-to-one interviews took place between December 2021 – January 2022, involving 18 participants. Additional contributions were received from participants who took part in focus groups as part of the predecessor Committee's inquiry into *'Making justice work in Wales'* in Autumn 2020. The findings from that programme of engagement are available [here](#). In total, 31 participants across all Senedd regions, in both urban and rural areas, shared their views on justice issues in Wales.

### Participants

Participant composition varied and included participants with expertise in both contentious and/or non-contentious practice areas, including (but not exclusively), corporate and commercial, debt, employment, family law, housing, medical negligence, personal injury, property and planning, public and administrative law, residential conveyancing, welfare benefits and wills and probate. Litigants in person who shared their views had personal experience of housing, debt and family law matters.

Private practice (small to medium sized firms and large firms), third sector advice agencies, a law centre and a legal academic were represented in the discussions.



## Format

Four focus groups were held on Microsoft Teams with two one-to-one interviews with litigants in person taking place by telephone.

The format of engagement was largely comparable between sessions, but varied slightly to meet the needs of participants and to accommodate late absences. Questions were shared with contributors beforehand.

The following themes emerged from the discussions.

## Summary of key themes

### Attracting and retaining talent

---

Many contributors to the focus groups discussed the challenges of recruiting and retaining specialist staff, which were in part, attributed to the impact of the pandemic on working practices and the inherent need to adapt. This theme emerged during discussions involving contributors spanning the breadth of the legal sector in Wales, and identified as a key barrier to the operation of justice in Wales.

These concerns reinforced views shared by participants during focus groups as part of the Fifth Senedd's predecessor Committee's inquiry into *'Making justice work in Wales'*.

*"The advance of remote working during the pandemic has meant that the choice offered to those looking for a role change has increased dramatically. We are aware that candidates, particularly junior and mid-range solicitors, are being contacted much more often by recruitment agencies, sometimes on a daily basis. Job offers now come from further afield, but predominantly London and Bristol. These options would previously have been unattractive if the candidate wanted to remain living in Wales; now, with the requirement to attend the London or Bristol firm once or twice a month, the position has changed. These roles can attract up to a 60% salary increase. The impact of this will inevitably drive up Cardiff salaries/reduce profitability, which in turn will threaten our ability to provide excellent work at a more competitive rate than London."*

*Written response from a contributor to the predecessor Committee's inquiry into Making justice work in Wales.*

Some contributors explained that whilst the impact of the pandemic has meant that the challenges associated with recruiting and retaining staff have become more acute, a number of other factors have long contributed to these challenges.

*"We've seen a big jump in staff turnover in the last quarter, common to lots of businesses. Whether it's people re-evaluating their careers or the greater opportunities for remote working. Retraining staff is an issue, in addition to recruiting. Staff wellbeing is also an issue, not only the stresses and strains of the pandemic, but the nature of the work and the fact there's a view that the needs of clients have become more complex, ten years of austerity, and the slight withdrawal of public services . . . Although it's the legal sector effectively, we are doing welfare work that the care sector would do, and some of those practices around therapeutic support are equally important in the legal advice sector."*

#### *Focus group 1*

### **Impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012**

---

The significant deterioration of private practice legal aid provision in the years following the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO hereafter), was discussed at length during most focus groups.

The fundamental lack of specialist legal advice in social welfare law across Wales, delivered by those with legal training, was largely ascribed to the wide-ranging impact of LASPO on the advice sector.

*"Since LASPO, there's been a huge loss of capacity in social welfare law, particularly in community care, which is the worst in Wales as there are hardly any providers at all. Employment law is a real problem, especially compared with several years ago. There are very few sources of free or cheap employment law advice. It's also the same in welfare benefits, debt and housing.*

*With welfare benefits, there are a number of Citizens Advice agencies that can provide good help for standard appeal claims, but there are a number of more complex areas where the legal training makes a huge difference, and it goes beyond what Citizens Advice can realistically do without that."*

#### *Focus group 2*

Some contributors explained that the dearth of organisations providing legal aid advice in Wales has often meant that when issues of capacity arise, organisations who do provide legal aid will face difficulty referring an individual to an alternative provider with the requisite expertise. One contributor based in north Wales explained that her only option will often be to refer to a provider in Liverpool. However, participants were mindful that for many private practice firms, it was not financially viable to continue with legal aid work.

---

Whilst many contributors shared the view that clients will often seek advice when they are already at crisis point, one contributor was keen to emphasise that some will seek early advice but are often left in a state of limbo if the organisation delivering the advice is at capacity.

*"... there are a number of parts where we're the sole provider; north Wales being the obvious one. But even in the big cities, operations are very small now. It's very difficult to find one once we're swamped, to refer out to pick up the capacity – it's extremely hard to find other organisations to do legal aid work."*

#### **Focus group 1**

*"We would love to do more legal aid work. We used to have five solicitors, now we have two. So the change in eligibility rules, the change in scope, the requirements of proof of means, the remuneration rates, simply make it uneconomical. We would struggle to operate if we didn't have the charitable grant funding... so we totally understand why private practice have pulled out. It isn't an income-generating area by any means."*

#### **Focus group 1**

## **Courts and Tribunals**

---

The location of courts in Wales was identified by contributors as a barrier for people wishing to access justice. Significant travel times in parts of Wales, and inadequate public transportation infrastructure meant that arriving at a hearing on time was challenging for many. Some contributors explained that these issues had a disproportionate impact on those on low income.

*"If you need to be in Caernarfon by 10:00am and you live on the top of Anglesey or the end of the Llŷn Peninsula and you have no car, it's difficult."*

#### **Focus group 4**

*"The Wrexham court covers Flintshire, Wrexham and north Powys, so for someone who is just north of Llandrindod Wells who has a possession hearing, they'd have to go to Wrexham. If they are further south than Llandrindod Wells they have to go to Merthyr Tydfil, and that's hell of a journey not only in cost, but in time."*

#### **Focus group 1**

One participant was also eager to emphasise the challenges associated with Welsh language advice provision.

---

*"I haven't issued a case in Welsh for a long time, with Welsh pleadings and Welsh claim forms, because I'm almost too petrified to do so. The court staff will not know how to deal with it, it won't be translated because there's no obligation to provide a translation of the document. The same with matrimonial proceedings. They're all at Bury St Edmunds so I haven't issued a divorce petition in Welsh for some time. It used to be fine under the old system where you had local county courts dealing with all types of cases, so I can't really say if things have changed in the last 12 – 18 months, because I haven't issued anything. I am about to issue a financial relief claim in Welsh so we'll see how that goes."*

*Focus group 4*

## **Technology**

---

The greater use of online tools to overcome the challenges associated with engaging clients face-to-face during a pandemic, was largely seen as positive by focus group contributors. Harnessing online technology has allowed many organisations to create greater internal efficiencies, streamline the delivery of legal advice services, and engage groups and/or demographics that may otherwise have experienced difficulties in accessing advice.

Conversely, some participants explained that despite the benefits of using online tools, accessibility issues including broadband coverage and lack of digital literacy may disenfranchise some people from accessing legal advice. One participant gave an example of a client she advises who is not currently permitted to have a smartphone due to the terms of his licence.

*"...we are very aware there will be people that remote working doesn't work for and we probably won't know who those are. We've had an aspiration to get a number of surgeries up and running again just to get some face-to-face engagement."*

*Focus group 1*

One participant explained that in his view, the issues are broader than digital accessibility alone.

*"There are concerns about non-engagement with people not attending hearings, and concerns about court paperwork being complex and not clear. So a combination of digital exclusion, travel, complex court documents, aside from factors of people being in chaos and not feeling able to get involved in that support."*

*Focus group 1*

## Accessibility of Welsh law

---

Contributors discussed the challenges faced by people seeking to understand their legal rights and access redress, particularly in the devolved context in Wales. One participant shared an example of an online Q & A tool on a housing related topic, created by the Ministry of Justice, which asks the user whether they reside in England or Wales, but only applies the law as it relates to England, thereafter. No reference is made to Welsh law. A litigant in person with a housing issue also explained that she had been completely unaware that housing was devolved to Wales.

*"The people of Wales seem less aware of their legal rights than in England. This is backed up by Bangor (University) who have done some work on this . . . which shows that the amount of cases, particularly in my sphere, which is judicial review, so public law - the knowledge of your public law rights to challenge local authority, government . . . There's far lesser take up in Wales than the equivalent in England, and that's even adjusting the population. If someone doesn't even know they have legal rights, they would never even begin to worry about whether they can access it or not."*

### Focus group 3

*"At the moment we're seeing an enormous amount of Section 21 notices being served, more than double the normal amount. The law is different in England and in Wales. There is an enormous amount of confusion on the part of landlords. We're finding a majority of those notices are invalid. There's clearly confusion about English and Welsh law; a lack of appreciation of the difference. The media doesn't help by not distinguishing."*

### Focus group 1

Many were keen to emphasise that these challenges are not unique to those seeking advice – they also extend to those providing advice, with contributors highlighting issues around a lack of available training and practitioner texts on Welsh law.

*"In terms of people being able to understand their legal rights, it's very difficult in Wales with laws that have been devolved like housing law, children law. We don't have that many texts, academic books or practitioner books that can help us practitioners interpret the law and apply the law, so it is difficult."*

### Focus group 4

## Welsh Government support

---

Some participants were keen to acknowledge the investment made by the Welsh Government in social welfare advice following the introduction of LASPO, and its positive impact. However, contributors explained that further support is needed to meet demand. In particular, some participants explained that whilst early advice is funded relatively well, access to justice is more challenging for those who may progress to the court or tribunal stage.

*"We are very aware, in comparison to England and Scotland, we get very positive support from the Welsh Government. The categories of housing, debt, welfare benefits, employment law, at the advice and assistance level, is supported comparatively well financially. But I'm conscious it's not the same for all categories – things like immigration and some family law."*

### Focus group 1

A number of contributors were keen to stress that whilst Welsh Government funding was welcome, it predominantly benefitted a small number of organisations. Some contributors shared the view that funding should benefit a wider number of organisations, with the benefits associated with a diverse advice sector being cited as the main benefit.

*". . . since LASPO, private practice high street and not for profit agencies with solicitors have shrunk. In that time, Welsh Government, to its credit, had recognised that LASPO would impact Shelter Cymru, Citizens Advice and others, and it has really supported them financially, which is good on one hand. But the rest of the sector has been starved and it has meant we've become overly reliant on Citizens Advice. For instance, the Single Advice Fund, which is more than £8 million - more than 98% goes to Citizens Advice and Shelter Cymru. If nearly all the money is channelled in one direction that weakens the sector as a whole."*

### Focus group 2

*"I'd say the main criticism is the funding available for smaller organisations, community based organisations . . . and overall the fact that many services are in over-demand. If the overall cake was larger we could help more people. It's a continued argument that it's an area we can justify more funding."*

### Focus group 1

## Commission on Justice in Wales

---

Some participants discussed the recommendations of the Commission on Justice in Wales. In particular, some shared concerns regarding the recommendation that there should be a strategy on funding for legal aid and third sector advice provision led by an independent body to ensure there is no gap in provision.

*"Two alarm bells would ring. Where is the money coming from for this? Will it come out of the advice funding budget, in which case it would be better to give the money to the organisations to provide the advice. Secondly, would it tend to channel money in one direction? One of the issues is that if more funding comes under the responsibility of one organisation, whether it's independent or not, it means that there are fewer options for others. If you don't get through this gateway, it means there's less money elsewhere. . . One of the other issues that I have often raised with the Welsh Government is their insistence on a quality standard/mark . . . It often is a barrier for smaller organisations that do a great job in meeting local need . . . But if you have to increasingly jump through hoops, a quality mark is difficult because it's time-intensive and expensive. It makes it harder for smaller organisations and creates a mono culture."*

### Focus group 2

*"This is the problem with us not having a devolved legal system . . . the trouble is, legal aid is controlled by the Ministry of Justice in London and they don't care about what goes on in Wales frankly . . . and in actual fact, sometimes legal aid is refused on grounds which are not relevant to Wales, but relevant to England, and you have to say, "No, you're got the wrong law there." But what it also means is that, if we're trying to introduce social law, and Wales has at times introduced quite distinct social law, very ambitious law...well, you can introduce as much law as you like, but if you can't have people exercising their rights under the law with legal aid, it's pointless."*

### Focus group 3

## Hybrid working

---

The need to remodel working practices to allow organisations to continue advising clients during a pandemic, was a theme which emerged during most discussions. A contributor from a Top 100 UK law firm gave an insight into their future plans, whilst a third sector advice organisation reported that the changes were largely positive.

*"We don't yet know where this will settle but the assumption is that in a post pandemic world, our work pattern will certainly be hybrid, with say a 2/3 day presence in the office, including Team*

---



*Days to ensure regular face to face engagement. This will inevitably impact the size of office required, and the structure of it – increased "touch down" and interaction space, rather than just work stations."*

*Written response from a contributor to the predecessor Committee's inquiry into Making justice work in Wales.*

*"The transition to home working has worked fairly positively – we've made changes around telephony and server capacity for people to work from home. We've adopted a more regional team basis so that we could share work around when previously, we were heavily face-to-face . . . currently we're almost entirely a remote deliverer."*

*Focus group 1*