



Huw Irranca-Davies MS  
Legislation, Justice and Constitution Committee

5 September 2022

Dear Huw

Thank you for your letter of 12 July enclosing the report on Access to Justice by the Senedd's Citizen Engagement Team, which highlights important issues relating to justice and the law in Wales.

I welcome the Committee's decision to commission this work, and appreciate the opportunity to provide my own observations below.

#### Attracting and retaining talent

These are very significant issues that are impacting the legal sector, and the current and future provision of legal advice, in Wales. The Welsh Government has similar concerns to those raised by contributors to this report about the challenges the legal sector faces. As set out in our Delivering Justice for Wales publication, we have therefore been seeking to bring forward a range of measures including:

- in April this year, we issued a framework for two new legal apprenticeship qualifications, paralegal at level 3 and advanced paralegal at level 5, with the aim of attracting local talent into the legal professions and improving social mobility and diversity of the workforce. Employers and providers are gearing up for the first intakes of students in the 2022-2023 academic year
- we are about to launch a tender for a 'needs analysis' for solicitor apprenticeships which we expect to provide valuable evidence in understanding how we can help legal practices in Wales attract, develop and retain talent
- working with Business Wales to deliver a package of tailored business support to legal practices in Wales, and
- establishing a working group with the Wales and Chester Circuit of the Bar to develop the public law bar in Wales.

The Law Council of Wales has the potential to play a valuable role in supporting talent management in the legal sector in Wales. Its legal services working group is seeking to develop a strategy for supporting the viability of the legal professions in Wales, and has also established a sub-group to support the expansion of apprenticeships.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## Impact of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012

I concur with your panel's grave concern about the effects of LASPO. In the criminal law sector, a decade of stagnant fees has seen a collapse in legal aid practitioners and a two-tier justice system. Even the UK Government acknowledged this damage when it appointed Sir Christopher (now Lord) Bellamy to examine how to repair the damage. We have made it very clear to ministers in Westminster that Lord Bellamy's recommendations must be implemented in full.

We have also formally responded to the UK Government's recent consultations on the Legal Aid Means Test Review and Immigration Legal Aid fees setting out our concerns in relation to the cost-of-living crisis and advice deserts in Wales.

The effects outside the criminal sector have been profound. The complete removal of legal aid from cases involving housing, welfare, medical negligence, employment, debt and immigration, together with the removal of support for most private family law cases, has prevented access to justice for all but the extremely wealthy. The Welsh Government has stepped in to help fill this void via the Single Advice fund,<sup>1</sup> but we should not have to be making up for the deficiencies of the Westminster government and we cannot help all those who are now unable to afford the legal advice and representation that they need to secure their legal entitlements.

## Courts and Tribunals

The court closure programme created particular access to justice challenges relating to the rural and mountainous nature of the geography of Wales which I raised with Lord Bellamy when I first met him and which I know he understands. The position has in some ways been alleviated through the greater use of online hearings (see section below), but these are not universally available and we retain significant concern about people who are unable to participate effectively in proceedings of the greatest importance to their lives.

The Commission on Justice in Wales recommended that "a strategy for Wales for provision of proper physical and digital access to justice before the courts, tribunals and other forms of dispute resolution should be drawn up and determined in Wales based on the needs of the people of Wales".<sup>2</sup> We agree with this, but even prior to the transfer of powers to devolved institutions, we believe the Ministry of Justice could and should develop a strategy for Wales, in collaboration with Welsh Government and other organisations in Wales. This is something we have raised in discussions with the Ministry of Justice.

I am also concerned at the comments made in the report relating to reluctance to use the Welsh language. There has been a recent consultation on the HMCTS Welsh language scheme, the results of which are currently being considered.

There is no law that currently enables the empanelling of a bilingual jury to hear cases where Welsh is to be used. Welsh Government officials raised with HMCTS the need for reconsideration of the Jurors Act 1974 which does not provide for the services of a translator, so that deliberations have to take place in the language that is 'common to all', which inevitably means English.

An amendment to the Juries Act has recently been made which provides that a British Sign Language interpreter is a reasonable adjustment that judges can grant for people with hearing impairments. We consider that the law should be similarly changed to enable an interpreter to facilitate jury deliberations when there is a mix of bilingual, first language

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<sup>1</sup> [£8 million funding for advice delivery services across Wales | GOV.WALES](#)

<sup>2</sup> Rec 39

Welsh jury members, and jury members unable to speak Welsh and that this is especially needed when cases are heard in Welsh. This is a matter which will be raised with the new Welsh Language Commissioner when appointed.

### Technology

The pandemic has accelerated the use of information and communication technology in the justice system. Remote hearings or online conversations between solicitor and client will ease the difficulties of travel and the delays associated with courts. They are an opportunity for more efficient performance but, like your panel, I am concerned for those left behind.

Through the National Survey for Wales 2021-22 we know that 7% of Welsh adults (aged 16 and over) do not personally use the internet. This means that approximately 170,000 individuals in Wales are completely digitally-excluded. Of those who do personally use the internet, our National Survey for Wales shows that 22% lack the basic digital skills to do so safely and confidently.

An area which will have an impact, although there is not yet any robust National Survey data, is the ability of people to afford connectivity/data – potentially pushing those currently digitally included, to exclusion. A Bevan Foundation report '[A snapshot of poverty in Summer 2022 - Bevan Foundation](#)' shows that 19% of people in Wales are cutting back on the internet or internet enabled devices.

The use of information technology in the courts and legal profession is at an early stage and there is a critical need to ensure that faults within any new system are corrected with alacrity. Early users of the Common Platform rolled out by HMCTS highlighted concerns with its accuracy and ease of use, yet these issues were not immediately rectified and with a strike ballot having been held over the matter, it can be said that there remain serious issues with it.<sup>3</sup>

### Accessibility of Welsh law

The responses the Committee received and have reported on reflect the long-standing concerns over the inaccessibility of the law and in some cases the particular difficulties which we experience here in Wales (for reasons we have articulated extensively in previous papers and reports). It is why we have taken the steps we have with the Legislation (Wales) Act 2019 and [The future of Welsh law: A programme for 2021 to 2026](#). The 5-year programme contains a blend of legislative and non-legislative projects designed to increase the accessibility of Welsh law.

The most ambitious element of this first programme is legislative consolidation and I was very pleased to introduce into the Senedd the Historic Environment (Wales) Bill on 4 July 2022. This is a substantial piece of work which will bring real-life benefits to those involved in this area by making administrative procedures and the application of the law more efficient and transparent. Bringing all the law on this subject together in one place will also make it easier for people to understand their legal rights and their legal obligations.

During this Senedd term we will also be bringing forward a consolidation Bill which simplifies and modernises the law on Planning and a Statute Law Repeals Bill to repeal or disapply legislative provisions from across the statute book that are obsolete, spent, or are no longer of practical use in Wales.

Your summary report mentions an online tool created by the Ministry of Justice. We have also started to explore the potential for using machine learning and artificial intelligence to

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make Welsh law more accessible. I will report further on this shortly when I lay the first progress report on the programme before the Senedd.

Accessing commentary on Welsh law remains a challenge which the newly formed Law Council may consider further. The Government is continuing to support the Cyfraith Cymru/Law Wales website. This site provides information, and seeks to explain, Welsh law and the constitution of Wales, together with more detailed commentary on individual topics. We are currently seeking contributions from subject experts in external law firms, who welcome the opportunity to submit articles on subjects in which they have expertise. We hope this development will encourage further commentary and debate on the law in Wales so that citizens and legal practitioners will eventually have a comprehensive source of reliable information to help them understand and access the law for Wales.

One of the areas of the law mentioned in your report relates to the accessibility of housing law in Wales. Housing law has long been criticised for being unnecessarily complex and relying on obscure case law. The implementation of the Renting Homes (Wales) Act 2016, which is based closely on Law Commission recommendations aimed at simplification and improving accessibility, will in part tackle this problem. We have produced a wide range of guidance aimed at both landlords and tenants. Collaborative work with the Ministry of Justice and HMCTS is also under way to ensure guidance on court processes properly reflects the new legislation.

#### Welsh Government support

The Welsh Government remains committed to supporting information and advice providers to ensure some of the most vulnerable people in our society have access to free and impartial advice on debt, discrimination, employment, housing, and welfare benefit issues, particularly important during these unprecedented times. We welcome the positive reflections of contributors to this exercise on the value that the Welsh Government's Single Advice Fund (SAF) has provided to those in need of advice and support.

It is important to note that the purpose of the SAF is not to provide core funding to different advice providers. The SAF was established as a project with a specific aim of ensuring that there is a framework of quality assured, generalist and specialist advice services across Wales that can effectively target early access to advice amongst the more vulnerable households.

Bids to the SAF were managed through a fair, open and competitive grant exercise. Bids could be submitted by an individual organisation, or by a collaboration of organisations. The successful Citizens Advice Cymru led consortia demonstrates an innovative service delivery model. It offers an integrated service which enables people to access advice on their social welfare problems. It also provides wraparound support services to help build an individual's resilience to future social welfare problems.

An independent review of the SAF is expected to be completed by the end of the year. The review will include consideration of whether the SAF has altered the way citizens access niche advice services and will identify any issues such services have with funding perhaps not being currently available to them. It will also explore whether small providers should be invited to join a SAF consortium.

#### Commission on Justice in Wales

I share the concerns of participants about legal aid delivery not being devolved and how this could restrict access to it, particularly in legislation enacted for Wales.

Wales would benefit from an equitable distribution of legal aid resources since spending per head on legal aid is £15 in England but only £11.50 in Wales.<sup>4</sup> A better-funded, innovative legal aid system that could link in with other devolved services would be the first steps towards giving the people of Wales the improved justice system they deserve.

The Welsh Government is committed to ensuring the people of Wales can access quality assured advice services as poor advice is often worse to a person than receiving no advice at all.

Information and Advice services in Wales are quality assured by a number of independently owned Advice Quality Standards. Welsh Government introduced the Information and Advice Quality Framework for Wales (IAQF) in response to the lack of consistency and understanding of what constitutes quality information and advice.

The IAQF is not a separate quality assurance process for individual information and advice providers. It works by assessing the quality assurance audit processes undertaken by the different Advice Quality Standards as being compliant with the IAQF. Many of the independently owned Advice Quality Standards have applied for and been awarded IAQF Wales Accredited Body Status.

The Welsh Government is committed to ensuring that smaller community organisations can apply for an IAQF Accredited Quality Standard. Following a recent review of the IAQF, a proposal has been developed that provides a “lighter touch” accreditation framework for these organisations and a programme of support will be delivered helping them to develop their policies and procedures to a level where they can apply for an IAQF Accredited Quality Standard.

#### Hybrid working

The Welsh Government shares the optimism of your participants in the opportunities presented by hybrid working and we presented a remote working strategy in March 2022. Flexible hybrid working can be better for staff, for the organisation and for the environment. The strategy will increase and enable remote working to help workers stay local with an aim to see 30% of the workforce working remotely on a regular basis.

In conclusion, we share the substantive access to justice concerns raised in this report. We have already, and on several occasions, raised key issues with the Ministers responsible for the Ministry of Justice and we have made, and are making, as much support as possible available to users of the justice system in Wales under what we can all agree is the current unsatisfactory settlement.

Yours sincerely,



**Mick Antoniw AS/MS**

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad  
Counsel General and Minister for the Constitution

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<sup>4</sup> [Commission on Justice in Wales report](#), 2.105, page 78.