

To the Chair of the Legislation, Justice, and Constitution Committee.

Race Council Cymru's response to Lord Bellamy's response to the findings of engagement work on access to justice Huw's Committee had commissioned earlier this year.

As valued partners, we would like to provide our views on the responses provided, along with some key issues which we believe should be brought to Lord Bellamy's attention. We hope that this evidence will be useful in your letter setting out the views you have collected.

The justice system is vital for ensuring a safe environment for everyone and for the resolving of disputes in an orderly way. Where the public, or a section of it, lacks confidence in the system, this may lead to a reduction in the reporting of crime or the provision of assistance to the police and courts, and may militate against the orderly resolution of disputes. There is a perception amongst some communities that the criminal justice system is not fair and just. There is evidence that some of the concerns underlying those perceptions may be well-founded. Further, the experience of racism or disadvantage in one sector of society will have an impact on perceptions about the administration of justice as a whole. An appearance before a court cannot be isolated from other social experiences. There is, then, a particular need for judges to demonstrate fairness in the carrying out of their responsibilities if confidence in the justice system is to be maintained and promoted amongst all ethnic groups. This requires an awareness of the way in which our own actions might affect perceptions of, and confidence in, parts of the justice system. Knowledge and information about what happens outside court can help judges to ensure that what happens inside is fair and seen to be fair.

## References:

- [https://www.judiciary.uk/wp-content/uploads/JCO/Documents/judicial-college/ETBB\\_Ethnicity\\_finalised\\_.pdf](https://www.judiciary.uk/wp-content/uploads/JCO/Documents/judicial-college/ETBB_Ethnicity_finalised_.pdf)
- <https://commonslibrary.parliament.uk/ethnicity-and-the-criminal-justice-system-what-does-recent-data-say/>

## **1. Attracting and Retaining Talent**

**RCC Comments:** The business of law remains a significant contributor to the overall UK economy. TheCityUK's 2017 report found that Legal services employ around 311,000 people, two-thirds of whom are located outside of London. Major centres of legal services employment included Manchester (with 12,000 in employment), Birmingham and Leeds (8,000 each), and Bristol (7,000). These jobs are highly skilled with clusters of expertise which attract investment and drive growth. **Focusing just on overall representation in the profession can be misleading, and a more nuanced perspective is needed looking at the experiences of different ethnic groups, across different parts of the profession. Not all groups are faring equally well.**

For example,

- There are specific barriers to entry to the profession for some Black, Asian and minority ethnic groups including a lack of role models and connections in the profession.
- The culture of law firms, particularly larger city firms, is not felt to be inclusive.
- Black, Asian and ethnic minority solicitors report lower levels of workplace wellbeing compared to White solicitors. The feeling of having no voice has led many to struggle with their mental health, paying for counselling or taking a break from the profession.
- Retention rates for Black, Asian and ethnic minority solicitors are lower in larger City firms than for their White peers, with many leaving to join smaller firms, or parts of the legal sector that are seen as being more inclusive, such as in-house legal departments.
- Black, Asian and minority ethnic solicitors see slower career development up to and including partner status, again impacting on retention rates, and there is a significant ethnicity pay gap.
- Representation at partner level is poor, particularly in the larger City firms. This has not improved significantly over the years, despite improvements in representation at junior levels.

The SRA's report '*Mapping advantages and disadvantages: Diversity in the legal profession in England and Wales*' found that although the legal profession has become more broadly representative of the population over the last twenty years, with more women and minority ethnic groups entering it, **the profession remains heavily stratified by class, gender and ethnicity**. It also found that women are less likely to work in senior roles in large city law firms and other high-income areas of the profession and minority ethnic women face a double disadvantage.

The main trends highlighted within the SRA's report are: • Across all ethnic groups, men are more likely to become a partner compared to their female counterparts. • The share of Black Asian Minority Ethnic males becoming a partner, especially those of Asian origin, has increased significantly. • The share of white males becoming a partner has decreased. • There is an increasing share of solicitors leaving private practice to work in-house. This tendency is more pronounced amongst women and white women.

However, it is our view that these actions do not go far enough. Race discrimination cannot be successfully eliminated through piecemeal and disjointed efforts, focusing on a few specific themes, rather than the big picture. The Equality Human rights [report on race](#) revealed a worrying picture of a post-Brexit rise in hate crime and long-term systemic unfairness and race inequality. For example, it found that:

- race discrimination cases dropped by 61% since the introduction of fees in employment tribunals.
- Black workers with degrees are paid 23.1% less on average than White workers with degrees.
- ethnic minorities are still hugely underrepresented in positions of power.

- Black African women had a mortality rate four times higher than White women in the UK.
- in school, Black Caribbean and Mixed White/Black Caribbean children have rates of permanent exclusion about three times that of the pupil population as a whole.

In other words, ethnic minorities continue to face stubborn obstacles in all areas of life – in accessing justice, in employment, education and health.

## **References:**

- <https://www.equalityhumanrights.com/en/our-work/blogs/race-inequalities-criminal-justice-system>
- <https://www.boltburdonkemp.co.uk/our-insights/campaigns/inequality-in-britains-legal-aid-funding-system/>
- [report on race](#)

## **2. Impact of the Legal Aid, Sentencing, and Punishment of Offenders Act 2012 Access to justice is a fundamental right.**

**RCC's Comments:** Access to justice in England and Wales continues to be severely hampered by budget cuts and political decisions made over a decade ago, according to a new report by the Bar Council released on 16 November 2022 - '[Access denied: The state of the justice system in England and Wales in 2022](#)'. The report reveals the current state of the courts, legal aid and law reform twelve years on from the court closures of the 'court estates reform programme' and ten years on from the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012, which significantly restricted access to civil legal aid.

The report combines data from the Bar Council's Access to Justice dashboard with powerful testimony from barristers and other practitioners working in crime, civil, and family law who took part in a Justice Week workshop earlier this year.

**The report paints a worrying picture of the current state of access to justice in England and Wales. Key findings include:**

- Cuts to legal aid funding having a catastrophic impact on the ability of people to access justice.
- A mixed experience of remote justice that requires further investigation.
- Crumbling court buildings that are not fit-for-purpose, including leaks, infestations, and a lack of basic facilities.
- An increase in litigants in person, due to reductions in the availability of civil legal aid, resulting in cases taking longer and costing more – the opposite of what LASPO set out to do.

- Barristers diversifying away from legal aid work due to workload pressures and poor remuneration, further reducing the capacity of the system.
- Worrying political attacks on the rule of law and anti-lawyer rhetoric that undermines confidence in the justice system and contributes to burnout and stress.

**To counter these issues, we are calling for adequate funding across the justice system and a greater focus on early intervention and diverting people away from the system.**

The report also included direct quotes from those who took part in the Justice Week workshop, providing important insight into the daily experiences of those working in the justice system:

**On access to courts:** “We have to remember that the people we represent do not have money by and large. The cost of travelling to court added an extra burden and the court does not keep any data on why people don’t turn up to the hearing. Anecdotally, people don’t show up as they can’t afford it.”

**On funding cuts:** All parties in this unusual, complex, bizarre situation are scared, anxious, angry. The judges are having to manage this. There is increased pressure on the Bar. We are doing more pro bono work, keeping the system afloat by assisting.”

**On access to legal aid:** “Prices rise, the cost of living is up, legal advice costs a lot. The threshold [for eligibility for legal aid] is quite high. Universal Credit is so low, people are expected to make it work on very little. There is a huge national crisis about the working poor.”

**The consequences of cuts are not only a failing system, but one that ultimately costs more – both in terms of money and in human terms. The Government must commit to long-term planning and resourcing of the system to provide people with the legal redress to which they are entitled.**

Regarding the capacity of providers, the Legal Aid Agency monitors capacity in the legal aid market and the provision of services, taking action when gaps appear. **Question to Lord Bellamy:** “How is this monitored and what measures are being put in place to ensure consistency across the board”?

Wherever someone is in England or Wales, legal advice remains available through the civil legal advice telephone service, subject to eligibility criteria – Is this criteria different in England and Wales?

## **Reference:**

- [Access denied: The state of the justice system in England and Wales in 2022](#)

### **3. Courts and Tribunals**

**RCC’s Comments:** The UK Government has taken important steps to improve victim support and access to legal aid, including the Victims’ Code coming into force. However, issues remain around the impact of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 on access to justice in England and Wales. **There is evidence of barriers for disabled people to access the**

**justice system, and court modernisation – including the rapid roll-out of remote hearings – might negatively affect participation for certain groups.** The coronavirus (COVID-19) pandemic has placed the court system and legal advice sector under significant additional strain, including by exacerbating existing case backlogs, though action has been set out to support recovery.

- Despite changes to improve access to legal aid, issues remain around the impact of LASPO, particularly for those with certain protected characteristics. Issues include the removal or reduced availability of civil legal aid, inaccessibility of the exceptional case funding scheme, the financial eligibility thresholds for legal aid, and unnecessary barriers to justice in discrimination claims.
- **A 2019 report by the Commission on Justice in Wales concluded that proper access to justice is not available in Wales due to legal aid cuts under LASPO.**
- The UK Government plans to increase selected court fees in line with inflation, though many respondents to a consultation on these plans noted that increases could negatively impact access to justice.
- There is evidence that the needs of disabled defendants with certain impairments are not being met in the criminal justice system. There are concerns in England and Wales that aspects of the court reform programme, particularly the move to remote hearings and online processes, could make it difficult for certain disabled defendants to take part in justice processes and also put older people at a disadvantage.
- There are risks that court closures under the reform programme might particularly disadvantage disabled people, women with the protected characteristic of pregnancy and maternity, and carers.
- The use of video and telephone hearings to support the court system expanded during the COVID-19 pandemic before their impact had been fully evaluated or any unintended negative effects mitigated.
- Advice organisations and the legal aid sector face financial challenges, while demand for free advice has increased during the COVID-19 pandemic.
- Provisions in the Judicial Review and Courts Bill could be used to restrict access to, and remedies from, successful judicial reviews, undermining access to justice.

## **Reference:**

- <https://www.legislation.gov.uk/ukpga/2012/10/contents>

The state's reluctance to address the social rights gap has meant that shifting sands beneath the surface are re-orientating constituent parts of the UK towards a substantive rights based model of the rule of law, whilst the national political discourse is focussed on regression and diminution of existing

protection. This includes retreating from European Convention on Human Rights (ECHR) under the Human Rights Act (HRA) 1998<sup>15</sup>, subject to consultation at the time of writing<sup>16</sup>, and the judicial enforcement of human rights post-IRAL review.

The devolved trajectories may ultimately compel the UK to address this normative gap or, alternatively, lead to greater state fragmentation in a fragile unitary state. The dominant narrative of rejecting social rights as legal rights is subject to challenge at both the devolved level and emerging discourses from civil society and oppositional parties at the national level. Providing an opportunity to ensure evidence-led research informs potential reform to address this accountability gap.

It is important to consider those who experience violations of social rights. These are those who are mostly likely to be excluded from hegemonic structures of power. They face intersectional structural discriminations and barriers on the basis of immigration status, disability, gender, age, ethnicity and socio-economic disadvantage among others. They may be at risk of homelessness, face significant debt, experience in-work poverty, or be fleeing domestic abuse.

Clustered injustice recognises that people in such positions often experience multiple synchronous clusters of legal problems for which the traditional 'single issue' lawyering approach is ill-equipped. Their situation is therefore compounded by the fact that social rights violations are often systemic in nature, but the legal system is individualised and siloed into distinct 'legal problems'.

### **UK justice system faces in resolving social rights violations:**

- the hostile immigration environment,
- the crippling impact of austerity and the increase in inequality and poverty and the decimation of legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO').
- the Grenfell housing tragedy,
- the removal of free school meals for children during Covid,
- the proliferation of food banks,
- the removal of the £20 Universal Credit (UC) uplift<sup>25</sup>,
- the imposition of the benefit cap in housing and social welfare provision,
- the two-child social security limit,
- the debt crisis for those below the poverty line,
- the section 21 housing eviction process,
- the risk to life by way of destitution,

### **References:**

- The Independent Human Rights Act Review Report, available at <https://www.gov.uk/guidance/independent-human-rights-act-review#the-panels-report>.

- Human Rights Act Reform: A Modern Bill of Rights (Responses due by 8 March 2022), available at <https://www.gov.uk/government/consultations/human-rights-act-reform-a-modern-bill-of-rights>
- Independent Review of Administrative Law Report available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/970797/IRAL-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970797/IRAL-report.pdf)

#### 4. Technology

**RCC Comments:** The move to online advice services during the COVID-19 pandemic potentially disadvantages groups that are digitally excluded. We are aware that there has been a monumental effort by all working in courts and tribunals to maintain a functioning system despite the COVID-19 pandemic. Hearings rapidly moved online, new temporary court rooms were opened, and buildings were adapted to facilitate social distancing. **But recognition of these significant efforts should not obscure the scale of the challenges now facing our courts and tribunals. The sudden shift to remote hearings has stretched limited court resources and risks excluding court users. The backlog of cases, which predated the pandemic, has reached record levels.** The impact of virtual hearings across the justice system remains fundamentally unclear in a number of respects, as insufficient data is being collected and analysed by Her Majesty's Courts and Tribunals Service (HMCTS).

Some of the new technology introduced to the courts service in recent months has not been fully embraced by court users. Use of the Cloud Video Platform, a new IT platform developed for use in the criminal courts, has started to decline since its introduction, and police have recently withdrawn support for video remand hearings on the Platform. This represents a missed opportunity to use technology to ease pressures on the court system. We recommend that the Government sets out what lessons it has learned from the uneven adoption of new technologies during the pandemic and how it plans to support public bodies in making full and effective use of digitised court services.

The sudden shift to remote hearings has stretched limited court resources, created new barriers to communication between lawyers and their clients, and risks excluding court users. Limited IT access, home distractions, and the more tiring nature of remote hearings all threaten to undermine effective participation. To ensure access to justice is sustained during virtual hearings, we recommend that the Government ensures clear guidance on their use is made available to all court users, judges and court staff. This will aid preparation, enhance public perceptions of fairness and help to secure procedural justice. The interruption to the normal operation of the courts has had a detrimental impact on the publicly funded and legally aided sectors of the legal profession. The reduction in legal aid funding over the preceding decade has exacerbated barriers for accessing legal representation. We recommend that the Government increases the legal aid budget to meet the new challenges for access to justice that have arisen during the pandemic.



## **Reference:**

- <https://www.equalityhumanrights.com/sites/default/files/parliamentary-briefing-wec-response-evidence-on-coronavirus-impact-on-people-with-protected-characteristics-1-may-2020.docx>

## **5. Accessibility of Welsh Law**

**RCC's comments:** There is a need for the growing body of Welsh law to be easily accessible to people living, working, and doing business in Wales, as well as to lawyers, other advisers and the judiciary. There may be challenges connected with providing academic and professional training in Welsh law to law students, practitioners, and judges. These issues form part of a broader set of jurisdictional issues connected with the possible emergence of a distinct and growing body of Welsh law and the possible formation of a distinct Welsh legal jurisdiction. **These must be addressed in a coherent and pragmatic way to help clarify for users the law applying in cases proceeding through courts and tribunals in Wales and England. The report considers, in the context of these changes and wider reforms of the justice system and the Welsh language, how a Welsh approach to justice could be developed.**

We fully endorse the 7 *recommendations* put forward by the Commission on Justice in Wales and urge the Government to consider them:

- Recommendation 1 – The Welsh Government should consider how it can take a greater role in ensuring the effective and comprehensive promotion of the law affecting Wales, including access to the law of Wales.
- Recommendation 2 – The Welsh Government should seek consequential funding from the UK Government to support the publication, promotion, and accessibility of Welsh laws.
- Recommendation 3 – The Welsh Government should further engage with the administrators of the legislation.gov.uk website to further develop the Cyfraith Cymru/Law Wales website.
- Recommendation 4 – The Welsh Government should seek consequential funding from the UK Government to support the publication, promotion and accessibility of legal texts and materials that address the law in Wales.
- Recommendation 5 – The Welsh Government should undertake research on how codification has operated in practice in common law jurisdictions, including countries such as Canada, New Zealand, and Australia.



- Recommendation 6 – The Welsh Government should engage with law schools and training bodies to support the development of Welsh law in education and training programmes for law students, practitioners, and the judiciary.
- Recommendation 7 – The Welsh Government should be proactive in developing a jurisdictional solution to the accommodation of Welsh law and the distinct needs of Wales, without creating barriers for the operation of justice or the ability of practitioners to continue to work across England and Wales.

RCC believes that our justice system could be so much better. Our successful partnerships happen in the broader context of a disjointed system, where services which should be tied together are instead split across devolved and non-devolved bodies. The effectiveness of these partnership arrangements and their ability to improve are therefore fundamentally limited — which impacts on our collective ability to deliver the best possible outcomes for people in Wales.

In the words of the former Lord Chief Justice of England and Wales, Lord Thomas of Cwmgiedd, “*the people of Wales are being let down by the justice system in its present state*”. These words are contained in the report of the independent Commission on Justice in Wales, which he chaired, following the largest ever examination of the state of the justice system in Wales, based on written evidence from more than 200 individuals, institutions, and organisations, and over 150 oral evidence sessions across the whole spectrum of the justice system.

The commission’s conclusions were clear. ***If the justice system is to be truly reformed, policies and decisions about justice need to be determined and delivered in Wales, so that they align with the distinct and developing social, health, social justice and education policy and services in Wales and the growing body of Welsh law.*** - Lord Thomas of Cwmgiedd

Justice policy should be developed, and funding allocated to serve the needs of, and provide greater benefits for, the people of Wales.

However, only through joining up the justice system with the rest of government can we truly find effective ways of reducing crime — or indeed reducing the numbers of family breakdowns, or all the other causes of the immense pressures on our justice system. **It is important that our vision for the future of justice in Wales is co-produced with experts and those with lived experiences of contact with the justice system; particularly those often least heard.**

## 6. Hybrid

**RCC’s Comments:** Research indicates that workers perceive both benefits and disadvantages to flexible working. Benefits of remote and hybrid working for staff can include increased wellbeing, self-reported productivity and work satisfaction, reduced work-life conflict, new ways to collaborate and more inclusive ways of working using technology. Challenges can include increased work intensity,

longer working hours, distractions, health issues, decreased social interactions, less promotion and learning opportunities and an inability to disconnect from work.

*Available research suggests that:*

- remote and hybrid working can have both positive and negative impacts on workers' health and wellbeing. ONS data show that in February 2022, almost half of those who worked from home in some capacity reported that it improved well-being (47%). Positive and negative health impacts vary by socio-demographic characteristics as well as individual factors, such as an employee's work satisfaction and personal circumstances. During the pandemic, enforced home working has been among the most common causes of workplace stress; however, it is difficult to attribute findings on health and wellbeing from data collected during the pandemic to remote and hybrid working, because of the wider impact of the pandemic on people's mental health and wellbeing.
- remote and hybrid working can have both positive and negative impacts on work-life balance. ONS data show that in February 2022 more than three-quarters (78%) of those who worked from home in some capacity said that being able to work from home gave them an improved work-life balance. **However, remote and hybrid working can lead to blurring of work-life boundaries and a feeling of pressure to always be available online, as well as an increase in unpaid overtime work hours. Use of information and communication technologies to engage in work-related tasks outside of work time can make it difficult for workers to 'switch off'.**
- in self-reported surveys, around two-thirds or more of employees working at home say they got as much or more done as pre-pandemic in the workplace. There is variation in worker self-reported productivity, with younger workers reporting feeling less productive and disabled workers reporting feeling more productive; and
- before the COVID-19 pandemic, people who worked mainly remotely were less likely to be promoted and to have access to training opportunities. There are limited data to suggest whether this trend has continued throughout the pandemic, and it may change if a larger proportion of people work at home more frequently. **Research from before and during the lockdowns indicates that there is 'flexibility stigma' – a biased attitude – towards remote workers, though there are some indications that the COVID-19 lockdowns have reduced this stigma.**

## 7. Wider impacts

**RCC's Comments:** Experts suggest that **supporting remote and hybrid working in the longer term will require supporting more inclusive approaches to remote working, more training and support to workers on cybersecurity and increasing access to digital technologies and infrastructure as well as improving digital skills.** Other potential wider impacts, but with less available evidence, include those on energy and the environment. Increased remote and hybrid

working could improve air quality, reduce plastic pollution and reduce greenhouse gas emissions. However, it could also increase energy consumption and electronic waste.

In conclusion, there remains an over-representation of ethnic minorities within the Criminal Justice System, and disparities in aspects of their treatment, which Government is determined to challenge and change. The Lammy Review offered a concerning picture of our Criminal Justice System and provided deep and valuable insight into one area of life experienced by Black, Asian and Minority Ethnic people. The data picture is summarised in the Race and the Criminal Justice System statistics report which was published in November 2019. **The systemic nature of disproportionality means that progress in tackling it is incremental and positive outcomes will take time to be reflected in official statistics. While progress in some areas will take time, it is nonetheless clear that the case to address disparities remains compelling.**

As various stakeholders have pointed out during the progression of this work, mistrust among Black, Asian, and Minority Ethnic communities often stems from the evidence and/or experience of unequal treatment in the CJS. **Trust should therefore be (re)built as outcomes improve, with the entire programme of work to tackle race disparity trained on this objective.** However, given the systemic nature of the reforms and the need to unpick historical relationships with the CJS, it may take some time for improved outcomes to have the desired impact on trust.

In addition, there is evidence that Black, Asian, and Minority Ethnic and foreign national women can have distinctly different experiences or outcomes at some stages of the Criminal Justice System in comparison to other offenders, and that these may differ between faiths and cultures. The Government has committed to consider the needs of Black, Asian and Minority Ethnic women in the CJS in both their response to the Lammy Review and in the Female Offenders Strategy. We understand that work is being taken forward jointly by these policy areas, under the governance of the Race and Ethnicity Board and the Female Offender Programme Board respectively. **Question:** *Would Lord Bellamy be able to comment on this?*

Yours sincerely,

Nkechi Allen Dawson, Lead Policy Officer, Race Council Cymru

#### Sources:

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