

**Housing and Public Protection
Response to Welsh Government
Commission on Justice in Wales - Call for Evidence**

Specific questions

What is working well in the justice system in Wales? What is not working well? Are there examples of innovation and good practice, both in and beyond Wales, which should be adopted and shared?

Housing Management

Housing Officers are increasingly attending court in relation to ASB cases. The system generally seems to be working well. However, there are sometimes delays for a follow-up hearing due to the level of demand for hearings. Local Authority lawyers make efforts to keep the courts informed of any changes to aid this process – e.g. a Council tenant original intention was to contest the local authority's injunction as she had assaulted her neighbour. However, she subsequently pleaded guilty to the assault and the two-day hearing initially suggested was subsequently reduced to a much quicker hearing, which took under an hour.

Housing Enforcement – private sector

Demand across the Magistrates Court system appears to be high. There is a Local Authority court once a fortnight, however the court list is often overfull so that not all cases are heard that day. It would be beneficial for capacity to be increased to avoid unnecessary delays.

2. What are the economic, social, geographical, technological, constitutional and other barriers to improvement and how could these be overcome?

Trading Standards

Trading Standard's involvement in the civil justice process is usually to refer consumers or traders to the small claims court to obtain money back for goods or services. Consumers are often very daunted about going to court and giving evidence. This system recently has moved online for service of documents which consumers find more efficient and quicker. However, individuals who are digitally excluded are unable to use this facility and that may put them off making their claim.

Trading Standards process a number of files of evidence each year which go into the criminal court system in a similar manner to the police. Evidence is provided at crown court in paginated bundles of evidence electronically through a portal which is shared across a number of local authorities. There are constant difficulties with access to this portal from the court system. The police service and the Crown Prosecution Service have a linked system with the court service where the information is easily uploaded. It would be beneficial if this system could be widened to all law enforcement agencies, including local authorities. This would be more efficient than providing paper copies of the digital media especially when the evidence runs into 1000s of pages.

The experience of Trading Standards is a lot of mentions at court which are called for cases which could be dealt with administratively, especially if these matters are just a case of timetabling future events. This can be a costly exercise for the local authority as we have to instruct barristers to attend.

Housing Enforcement – private sector

Whilst there are legal options for Private Rented Sector tenants to take action against their landlords through the courts (eg disrepair claims, tenancy breaches etc) it can be daunting for them to pursue claims and give evidence in court. It can require a lot of knowledge, confidence, skill and financial resources (for phone calls, bus fare, photocopying etc) for a tenant to pursue action against a landlord. In some cases tenants will be supported by Shelter, CAB or a local authority, however it can still be an off-putting process.

3. What problems face the people who work within the justice system in Wales (including policing, prosecution, courts, prisons and probation) and the people who are affected by it?

Housing Management

The local authority's duties under the Equality Act have an impact. Judges tend to be very cautious in any cases where there is an Equality Act issue to be considered. The local authority also has to balance its duty to the individual against the effect their ASB is having on the community. Recently, after dealing with complaints from residents for many years and having tried many measures to resolve/support the tenant concerned, the local authority was granted a possession order, however it was of note that some residents had been experiencing problems with one of the tenants who had intermittent mental health problems for nearly 10 years on and off. Getting the balance right can be very difficult.

Housing Enforcement – private sector

There is a lack of apparent understanding and appreciation of the impact of offences by the Magistrates in housing enforcement cases. Whilst appreciating that housing offences, specifically with landlords and agents under the Housing Act 2004, come before the Magistrates infrequently, they seem reticent to sentence offenders with fines appropriate to the offence and impact upon tenants. It appears common for the defendant's means to be placed above the impact of poor housing conditions such as damp and mould and lack of satisfactory fire safety precautions on a tenant's health; the length of time that a tenant may have been living in such accommodation and the amount of rent that has passed from tenant, and/or local authority/Department of Work and Pensions in cases of benefit claimants, to the landlord.

One of the difficulties for Magistrates is that there are no sentencing guidelines for these offences, as there are for many other offences. In one recent case in Swansea Magistrates Court, Magistrates stated that they felt they were unable to pass sentence in response to a guilty plea as they were inexperienced in such a case. This resulted in unnecessary delays and additional costs for both the prosecution and defence as well as the Court as the case was adjourned and then heard before a District Judge.

4. Does the justice system in Wales currently provide access to all who require its services, including advice? How would you improve access to justice in Wales?

No comment

5. What impact has devolution had on the justice system in Wales? What impact do you believe devolution will have in the future?

No comment

6. Could local authority services in relation to justice and the local provision of legal advice be better organised and co-ordinated with policing, prosecution, courts, prisons and probation?

No comment

7. Are there changes that should be made to the capabilities and effectiveness of the ways in which the police, probation and prisons approach their tasks? What should be done to increase community safety, wellbeing and social cohesion and reduce crime? What can be learnt from other countries where rates of crime and imprisonment are lower?

Housing Management

Police resources are exceptionally stretched at present. This can cause delays with positive action being taken e.g. drug raids. There are also delays where substances found take some time to be tested and then any charges made can be well over 12 months later (if at all). The local authority is therefore held back from taking action against a tenancy and, due to the time delay, it can sometimes be difficult to proceed with possession action (and argue that it is a proportionate action) if charges aren't brought for 12 – 18 months after the arrest and no further tenancy issues have arisen. Additional police resources would definitely be beneficial for the overall justice system in the local area.

Increasingly, both Housing and South Wales Police Officers are having difficulties dealing with cases where the tenant may have mental health issues but still have capacity; problems however arise when the person either stops taking the medication or uses drugs/alcohol which makes their behaviour chaotic. If not considered necessary for them to come under the Community Mental Health Team then the problems worsen. This is very much on the increase and there is no clear way forward for the Officers concerned dealing with repeated complaints. Additional support being made available in the area of mental health support could potentially help to address problems at a much earlier stage.

Mediation is being suggested in a number of lower level cases and has proven successful; again, if resources were put into this area it may prevent problems increasing to a more serious and resource intensive level.

In the interest of community cohesion and tackling ASB, it would be helpful for the Police to investigate, as far as possible, anonymous reports of ASB. Whilst it is accepted that this can be time intensive, there are instances when individuals are genuinely too afraid to give their name through fear of reprisals and intimidation.

8. What impact is the divergence between Welsh and English law having upon sentencing? What impact do you foresee in the future? Should Wales implement a different approach to sentencing than England? If yes, what lessons can be learnt from other jurisdictions?

Trading Standards

In respect of sentencing matters across the devolved governments if a law is a devolved matter it would make sense that as the regulation is drafted that the devolved government have some input into the sentencing guidance or allowed to offer an opinion on how they should be enforced. In future, were legislation to be drawn up across the devolved nations and are broadly the same there should be agreement on guidance for sentencing on those matters across the devolved nations otherwise there could be a disparity in justice. This could lead to offences being committed across nation's boundaries as defendants may know it carries a lesser sentence in the next nation.

Housing Enforcement – private sector

The majority of our cases are dealt with in the Magistrates Court where information regarding similar previous cases, irrespective of where the cases were tried, is not taken into account by Magistrates when sentencing. Sentences for similar offences already differ widely even across local authority areas in Wales.

Housing is a devolved matter and there are different offences and penalties across the private rented sector in England and Wales. Where the legislation, or its underlying intent, remains consistent, sentencing should also be consistent, but obviously allowing for specifics of each case to be accounted for. Landlords and agents often operate across national borders and should be brought to account in similar ways.

9. What are the capabilities in the justice system in Wales for responding to Brexit?

No comment

10. What steps do you think need to be taken to facilitate positive change in the justice system in Wales?

No comment

11. How could the strength and sustainability of the legal sector in Wales be promoted? How could its contribution to the prosperity of Wales be optimised?

No comment

12. To what extent do current university curriculum and vocational and professional development courses reflect the law in Wales and the need to deal with the digital revolution and how should they be further developed?

No comment

13. What is the current provision for the Welsh language within the justice system and legal education in Wales? How should Welsh language provision within the justice system and legal education in Wales be improved?

No comment

14. Is access to Welsh law properly available?

No comment

Swansea Council – Legal Services submission

Views on Commission on Justice in Wales

1. What is working well

Civil -Relatively short periods for hearing dates including case and costs management conferences, application hearings and trials. The e-portal that works in respect of sharing documents for trial bundles in childcare matters, could easily apply to civil cases as well, particularly now that wifi has been rolled out in Swansea County Court.

Family- The portal is working well. Would assist if judges used portal rather than require paper bundles.

Criminal – Summons are issued sufficiently.

2. What are the economic social geographical technological constitutional and other barriers to improvement

Civil- Cost of court fees eg. Costs of issuing proceedings and hearing fees. They are fine for Clients on CFAs where the solicitors foot the bill, but can be prohibitive for others. Close urban areas benefit from courts within a short distance of court users, however rural areas have longer travelling times.

Family -Legal aid constraints in family proceedings. Difficulties to get listings before judges.

3. What problems face the people who work within the justice system in Wales

Staff shortages due to public sector cuts. The knock on effect is that all court users are unable to access court staff. I have frequently been cut off by the automated system in Swansea County Court when “all operators are busy”. Counter services are also only open for shorter hours than they used to be.

Criminal- clerk reporting the sentence in court is time consuming for parties.

4. Does the justice system in Wales provide access to all who require its services including advice. Please see 3 above.

Not relevant to LA.

5. What impact has devolution had on the justice system in Wales.

Devolution has brought about changes in laws affecting only Wales. It has also brought about another level of bureaucracy which has to be paid and which diverts funds away from front line services.

It causes confusion as practices /law different in UK.

6. Could local authority services in relation to justice and local provision of legal advice be better organised and co-ordinated with policing, prisons, probation.

No comment

7. Are there changes that should be made to the capabilities and effectiveness of the ways in which Police, probation and prisons approach their tasks
Not applicable to Civil law.

8. What impact is the divergence between Welsh and English law having upon sentencing

No comment

9. What are the capabilities of in the justice system in Wales for responding to Brexit

No comment

10. What steps do you think need to be taken to facilitate positive change in the Justice system in Wales

Legal aid restrictions need to be re-considered. The paperwork that needs to be issued by LA in care proceedings is too onerous and not necessary.

11. How could the strength and sustainability of the legal sector in Wales be promoted. How could its contribution to the prosperity of Wales be optimised

Not relevant to Local Authority

12. To what extent do the current university curriculum and vocational and professional development courses reflect the law in Wales

Not relevant to Local Authority

13. What is the current provision for the Welsh language within the justice system and how can it be improved

The court service is subject to the same Welsh language standards as the Local Authority. I'm not aware of any resident Judge in Swansea County Court who can conduct a trial through the medium of Welsh, however that is a matter for the court service. As a Welsh language speaker I am able to ensure that City and Swansea can conduct litigation through the medium of Welsh should it be required.

14. Is access to Welsh law properly available

That is a matter for Welsh (or English) law firms with a speciality in Welsh law.