

**Submission to the Commission on Justice in Wales made by
Jodi Winter and the Family & Child Care Team at CJCH Solicitors**

I have set out within this email our comments and observations which should be of relevance to the Commission in highlighting access to Justice Issues in Wales from a Practitioners perspective.

I am sure you are aware that there have been studies undertaken by the Law Society and Resolution in relation to Family Law and Access to Legal Aid which will no doubt assist the Commission. There has also recently been a research paper published by the Public Law Project which I have attached to this response, which very precisely and accurately reflects practitioners experiences and certainly those of practitioners within our firm, CJCH Solicitors.

You will see from the comments below that in relation to the issues of administering family justice in Wales generally, litigants in person, lack of public funding, intervenors in Child Care Proceedings and court closures, that our practitioners and the recommendations of the Public Law Project recognise the importance of legal aid and assisting people with complex and emotional family proceedings, that the scope of legal aid needs to be broadened bringing matters back into scope, particularly including any proceedings involving children, reinstating early advice by re-introducing legal help for early legal help and re-assessing the main threshold to ensure that legal aid is accessible to those most in need.

It is clear and well documented that there is, a lack of public funding for legal advice for family law matters. Where parties do not have representation (which is increasing) cases can take up to 50% longer with increased costs to the tax payer. It also leaves open the real possibility in family matters that the alleged perpetrator being unrepresented and having to cross-examine their victim and raises the questions as to whether this actually satisfies a person's right to a fair trial on behalf of either of the parties. It is estimated that fewer people are satisfying the requirements of the legal aid process which means that legal aid is not available where people most need help. I have categorized our feed back into General Matters, Litigants in Person, Intervenor Cases and Court Closures: -

1. Interveners in Child Care Proceedings

(a) Legal aid should be non-means, non-merits tested for those individuals joined as intervenor in Care Proceedings and in the pool of perpetrators. Non-Accidental Injury (NAI) cases are often complex and involve expert medical evidence which requires challenging. Many NAI cases are counsel led. If findings were made against an intervenor, then it could prevent them from having unsupervised contact with any child in the future and criminal proceedings could follow. Intervenor without representation are particularly prejudiced not having the legal knowledge or competence to challenge experts and other parties. It is also a breach of their Article 6 right to a fair trial.

(b) We are facing difficulties with representing Interveners where very detailed evidence has to be provided that the Intervener is on a low income and therefore passes the means test for funding, further the Legal Aid Agency has to be convinced that the Intervener has at least a marginal (45%) chance of a positive outcome.

(c) A well represented relative in child care proceedings can sometimes mean the difference between adoption and a placement within the family. Further, an Intervener may potentially have children of their own and any potential findings made against them could have implications on their own family life, how can it therefore be in the interests of Justice that these people are subject to means and merits testing and could potentially be refused funding in a case where the child's parents have been fully represented and may not even find themselves in a pool of potential perpetrators?

(d) It has been expressed within cases involving interveners that it is unacceptable that more and more people in such a position are faced with potentially life-changing allegations without being able to gain some financial assistance.

(e) Non-means, no merits legal aid ought to be available to any party who is able to satisfy the Court that they should be involved within the proceedings whether as an Intervener or a party given leave to make an application.

(f) More frequently we are seeing cases where the Local Authority are seeking findings against parents and there are grandparents or relatives who have been approved as potential carers for the children but who are not partaking in the proceedings. While they are often made aware of any findings made or given pertinent information regarding the proceedings, it is simply not the same as being given the full information made available to the parties or listening to live evidence at Court and being able to properly partake in the proceedings with the benefit of legal representation.

(g) Limited funding for relatives who have put themselves forward as potential carers to obtain legal advice is more frequently being made available by Local Authorities, increasing the already high costs of issuing Care Proceedings. It can be difficult and often time consuming for practitioners to recoup this funding from the Local Authority. This could also have the potentially dire consequence of Local Authorities incurring such high costs for the instigation of Care Proceedings that in future they become reluctant to do so.

(h) As Legal Aid Child Care Practitioners, we feel very strongly that intervenors and third parties in care proceedings should have non-means tested legal aid given how serious the ramifications can be from fact finding hearings and where the outcome in care proceedings is potentially adoption out of the family.

2. Litigants in person

(a) Proceedings are emotive. Often litigants in person are unable to separate their personal feelings towards their opponent from what is right in law. This often results in unrealistic positions being taken by parties and the Court having no choice other than to list cases for trial taking up additional Court time. Trials involving litigants in person are often emotive with litigants in person using them to personally attack the other party rather than deal with the legality of the case (particularly in private law child arrangements). Litigants in person can find themselves against solicitors or barristers with little or no knowledge of the law putting them immediately at a disadvantage. Is this position reflecting a right to a fair trial. Where parties do not have representation, cases can take up to 50% longer unnecessarily taking up valuable court time and at an increased cost to the tax payer.

(b) There has been a significant increase in litigants in person. They are often difficult to deal with as they have unreal expectations and can make contact issues more acrimonious. The hearings take much longer as the court has to explain the court process to them and we find that in care proceedings the Court always allows an extra day in a final hearing if there is a litigant in person because of this. This is adding to the court listing pressure and having judicial continuity

(c) A significant number of Clients we take initial enquiries from say they cannot afford to pay or cannot face court proceedings as a litigant in person. We are concerned about the number of children who must now be growing up without any contact with the absent parent. We often end up giving free advice about the court procedure, giving clients forms and advice as to how to fill in C100's because we feel sorry for them and that morally it is the right thing to do. Clearly from a business sustainability perspective it is absolutely the wrong thing to do.

3. Local Court Closures

(a) Local Court closures have had a significant impact on listing and availability with parties often having to wait up to three months for a simple directions appointment. Delay is negative in relation to all types of proceedings however, can be particularly troublesome in contact cases and in matrimonial finance cases.

(b) There is often a lack of judicial continuity in cases.

(c) Due to court closures clients (who are usually on benefits) are having to travel much further to court frequently arriving late, putting an additional strain on them and we often pay for their travel.

(d) Court Closures and insufficient hearing time for privately paying clients can mean that if you come to an agreement in the FHDRA quite often that

agreement cannot be finalised because there is no safeguarding report or there is no judge/ bench available. We have recently had a case which was agreed on the first day, was adjourned to be made into an order in another court hearing and then adjourned again because the report was not done, and the case had to go to another court for all parties to attend, for a hearing on what had been agreed at first hearing.

(e) Additionally, we have recently had a case on child arrangements which started in one court and we had to follow the judge to another court out of the area to keep judicial continuity. Client was privately paying and facing a legally aided client who lost the case which ran alongside the Children act proceedings. Cases can cost up to £5000 or more and the time length of them is considerable, which often leads to frustrations because arrangements are not sorted until a DRA or worse a final hearing. There is no ability/ court time to have an interim hearing on things such as contact.

(f) Also, the process of turning an agreement made before court process is started (see bottom questions on C100), is rarely used because of the procedural problems.

4. General Issues

(a) There has to be greater appreciation that solicitors practising in predominantly publicly funded areas such as criminal/ Child Care and Family, Mental Health are frequently dealing with clients who have social, economic and emotional issues which often requires additional time, effort and patience in undertaking the work required. The approach to this type of work often needs to take a more holistic route than simply a 'solicitor and client' relationship. Such a sensitive approach to the most vulnerable people in society often facing something as catastrophic as the potential adoption of their child is needed, but often difficult to achieve with practitioners having to work with such rigorous financial constraints.

(b) Given the severe legal aid cuts, Law graduates are choosing different career paths, resulting in difficulties in attracting the right calibre of candidates for paralegal/ trainee posts or difficulties in retaining them as solicitors in publicly funded areas of work post qualification. Further the population of solicitors undertaking publicly funded work is ageing with no sign of these solicitors being replaced.

I trust that our comments along with the paper and recommendations of the Public Law Project will assist the Commission in understanding the very real and significant problems with the processes for administering Family Justice in Wales.

Please do not hesitate to contact us should the Commission require any further details.

Jodi Winter and the Family & Child Care Team, CJCH Solicitors