

Evidence to the Commission on Justice in Wales

Dr Daniel Newman, Cardiff University

Introduction

I am lecturer at Cardiff School of Law and Politics, Cardiff University. I conduct empirical research into issues of access to justice. My evidence is based on some of this research. I have established a reputation as a legal scholar with a speciality in access to justice as in my work on criminal legal aid (Newman, 2013). I am regularly called upon for my expertise as, for example, by BBC Wales who recently asked me to comment on the decline of the criminal duty scheme in Wales, a particular problem in rural parts of mid and west Wales.

This submission will focus on some of my findings on access to justice in Wales. All views and opinions expressed in this submission are my personal ones, and should not be attributed to affiliated organisations or those involved with any of the research.

The Research

I have conducted two research projects in Wales; *Attitudes to Justice in a Rural Community* and *Justice in a Time of Austerity*. Relevant reflections based on some of the findings in these studies will form the basis of this submission.

Attitudes to Justice in a Rural Community

Attitudes to Justice in a Rural Community (Newman, 2016) considered the effects of the stripping back of key justice institutions. This research is a case study of one mid Wales community; a group of five small settlements spread across a valley at the edge of the Brecon Beacons National Park. The first three were isolated collections of scattered houses with farms and cottages; the latter two were villages with limited amenities. The nearest town is Abergavenny, between 4 and 11 miles away. Most local services are provided in Abergavenny. There is a direct road for drivers but only bus services from two of the five locations and no rail links in any. The research was conducted in partnership with a local community group. We had previously worked together on a project considering local transport issues funded by the Countryside Council for Wales. The previous research established this community was reliant on travel to access services (76.3% went to Abergavenny), with high car ownership levels (94.4% owned a car) and frequent car usage (89.6% used a car to access services).

In 2015, Abergavenny Magistrates' Court was marked for closure, with its work being moved to Cwmbran Magistrates' Court, a little over 15 miles beyond Abergavenny and thus 20–25 miles from these communities. The council had raised concerns that the nearest police station, Abergavenny, was put forward for closure as part of Gwent Police's efficiency drive, which would make the nearest manned station Cwmbran, with a skeleton service provided at Abergavenny Town Hall. The nearest law firms were in Abergavenny, where there were five: it remained to be seen how they were affected by the legal aid cuts, but

one of these firms had a second office in Crickhowell (5.9 miles from Abergavenny), which could conceivably be merged.

The community group provided an initial list of 649 properties that make up the area. Through conducting the fieldwork, it became evident that 68 were holiday homes and 30 caravans. Around 25 properties were second homes unoccupied at the time of the research. In the week preceding the fieldwork, a letter was sent out offering householders the opportunity to opt out of the research. 14 chose to not take part, most of whom cited the reason that research on accessing local services would not be relevant to them, as they had their own cars and could drive wherever they chose. A revised list of 512 properties was considered relevant to the fieldwork, of which householders from 97 participated, giving coverage of 18.9% of households.

Justice in a Time of Austerity

Justice in a Time of Austerity (Newman, 2018) seeks to chart the impact of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012. It considers the reality of access to civil justice for the poor and not-so-poor after legal aid cuts removed large parts of civil justice from the scope of legal aid. The research is made up of a series of case studies based on 12 locations across England and Wales. We have sought a geographical spread as well as including contrasting areas based on factors such as urban/rural divides, relative levels of deprivation and known issues around access to justice. Nine of these locations are in England (Bolton, Cumbria, Lambeth, Kensington, Liverpool, Manchester and Salford, Newham, and Suffolk). The Welsh component covers three areas; Cardiff and the Vale of Glamorgan, the south Wales valleys (Caerphilly and Rhondda Cynon Taff), and north east Wales (Denbighshire, Flintshire and Wrexham).

The research is funded by the Cardiff University Research Leave scheme and, City law firm, Ashurst. This research project will last a year across 2018 and 2019, and will eventually be used to inform a book, academic journal articles and a report. We have a website at the Justice Gap, where we are posting regular updates of this research alongside publishing other accounts of access to justice and austerity. As well as the Justice Gap, articles have also been appearing in other sources such as Legal Voice and the New Law Journal. Overall, the project will combine interviews and observation from myself and my collaborator on the research, Jon Robins, legal journalist, editor and author. The point is to consider civil justice in the round, a holistic approach that recognises this area of justice, often characterised as social welfare law, is tied up with a host of broader social welfare considerations, such as mental health problems, poverty and unemployment.

So far, the Welsh component consists of 22 interviews that I have conducted spread across the three areas. In each area, representatives of key legal advice and social welfare support agencies have been interviewed. These have covered providers offering local services in debt, employment, housing, immigration and welfare benefits. In addition, I have interviewed lawyers working in practice across the range of civil justice matters and elected representatives from three political parties to consider their casework (MPs and AMs). In addition, I have conducted a week-long observation at a support service serving Cardiff Civil and Family Justice Centre. I will be conducting further interviews across Wales, and Jon, who

has so far been focusing on the English areas, will also later become involved in the Welsh areas to conduct interviews and do observation in the country.

Access to Justice in Wales

I will pick out three themes from my Wales-based research that stand out as problems for access to justice in the country. I conceptualise these as: advice deserts; access to services, and; legal awareness.

Advice Desserts

My research in mid Wales, north east Wales, the south Wales valleys and the Vale of Glamorgan highlighted that all could be labelled advice deserts – lacking in essential services for people struggling with justice issues. I talked to some dedicated people providing valuable services; organisations typically reliant on retirees giving up their own time with limited funding from churches and piecemeal charity funding. I also talked to local representatives of national charities, some of which were facing severe cuts on the local and national levels. Advice agencies can talk for themselves but I must note the importance of the funding concerns raised in submissions such as those by Riverside Advice or the Speakeasy in Cardiff as these tally with what I have seen in this research.

A Freedom of Information request I made to the Ministry of Justice showed that declines in legal aid were uneven between some of the areas that I studied. By way of comparison, the volume of civil representation applications granted civil legal aid in 2009/2010, before the coalition government in Westminster that brought the cuts, were 1,371 in Cardiff. This fell to 1,265 by 2017/18 (it had fallen into the 800s for several years in-between but has recently risen). Over the same time, Wrexham has fallen from 516 to 258, while Rhondda Cynon Taff has fallen from 804 to 372. There is a relatively less dramatic fall in Cardiff than in the south Wales valleys and north east Wales, where numbers had halved meaning that there was proportionally less civil legal aid being used outside the capital city. I am not aware of a population drain away from these areas but my research has shown me increasing numbers of people getting into debt, needing to challenge benefits decisions, struggling to keep their housing and claiming unfair treatment at work so the dramatic falls in numbers using legal aid here is concerning.

There is no law centre in the whole of Wales since Cardiff closed. A law centre is not-for-profit legal practice that assists people who cannot afford a lawyer across a range of legal areas and is especially important in social welfare law. My research in England shows how vital these are for people with legal problems, including those who do not qualify for legal aid. There is a Personal Support Unit in Cardiff, with a satellite operating in Newport. The Personal Support Unit is a charity that supports people who must represent themselves in civil and family court matters. My research has shown the value of the volunteers, for example helping fill forms and making notes at court, as the justice system is self-referential and alienating to lay persons so many benefit from support. Neither institution has a presence in north Wales at all. My interviews in north east Wales and north west England showed people in areas such as Denbighshire, Flintshire and Wrexham are having to phone Cheshire and Merseyside for advice. Requests for help and support at court could not be

accommodated by organisations across the English border meaning the assistance these people can receive is limited.

There is a particular issue with the advice sector in Wrexham after the local council had announced it was to end its funding of Citizens' Advice Wrexham (which dealt with over 16,000 cases the previous year). After protests, including intervention from local MPs, the council agreed to temporarily provide £25,000 of funding, which, with donations, meant the Citizens Advice could carry on until 2019 albeit with a reduced service that saw it cut its open hours and scale back outreach work. The situation is precarious and could be disastrous for vulnerable people if sustainable, long-term funding to keep it open is not found. This is an area in which one local MP told me they had needed to employ a new caseworker to deal with the quantity of social welfare related problems constituents were having. Citizens Advice across the region are already overstretched with high demand for help and limited resources to meet this.

North east Wales, then, could legitimately be considered an advice desert with an inadequate level of advice and support (and one that might conceivably get worse soon). Such a low provision of service should be unacceptable anywhere across the country let alone in a region including the largest town in Wales and main centre of population in the north of the country in Wrexham, as well as including wards with high levels of poverty such as in Rhyl where Rhyl West 2 is ranked second on the Welsh Index of Multiple Deprivation. There are also significant areas of rural poverty and problems of access to what limited services there are across Denbighshire and Flintshire. I saw similar in Rhondda Cynon Taff, Caerphilly and the Vale of Glamorgan but, at least, they had Cardiff relatively close by for those who could travel there, which mitigated the problem to a small degree (though is still unduly inconvenient for people suffering hardships).

Access to Services

In mid Wales, north east Wales, the south Wales valleys and the Vale of Glamorgan, there are problems resulting from the centralisation of services around justice and other social welfare services. These issues are borne of the difficulty of accessing key services for advice and support, and even for the administration of justice. The only area that I conducted research in that did not suffer such issues was Cardiff, which is the minimum that should be expected from a capital city with the largest population in the country. Outside Cardiff, people in every area reported how inadequate public transport was (infrequent, taking too long, not going to the places it was needed), while people implicated in, for example, social welfare law matters around debt, housing or welfare benefits often struggle to afford the prices of such a commute.

In the Vale of Glamorgan, the closure of Barry magistrates' court made it the largest town without a court and left the Vale of Glamorgan the only local authority without a courthouse. The expectation, as with so many Vale of Glamorgan services, is that residents will travel to Cardiff. This causes hardship and stress for local court users. For example, the cost of public transport for those who do not own a car is often prohibitive for defendants who might already struggle to make ends meet while Barry's status as a specialist domestic

violence centre is undermined by potentially having all parties in a case share the same public transport as I was told about during my research.

In my mid Wales example, as established in previous research I had conducted in the area, people expected to have to travel to access key services. It was part of the package living in the country. They were frustrated at the decline of the few local services there were, seeing it as a further death knell for the local community but their having to travel was acknowledged as being a choice that was made by people who moved to the area. Compared to some of the areas I looked at in my south Wales valleys sample, the mid Wales population was relatively prosperous, had access to and could run their own cars, and felt this was a matter in their control. As with one of the south Wales valleys groups I spent time with, people who had the ability and resources to travel would come from distances up to a hundred miles away just to access their (free) advice. Not everyone is so fortunate as to be able to travel to where the advice is.

The contrast between my mid Wales and south Wales valleys samples was stark considering what I heard in, for example, Rhondda Cynon Taff, where stories included an individual being expected to attend court over 30 miles away in Neath Port Talbot who could not afford to run a car or pay for the cost of public transport. They were not able to contest the matter against them as they could not physically be at the court house, therefore had to accept a fine (that they would struggle to pay, likely leading to further problems). Here and in Caerphilly, the idea of having to travel to access services was not always approached as a choice made by people with the money to combine scenic countryside with regular travel. Rather, it was often a necessity imposed on people who were struggling, had few other options and were forced to accept the consequences. There was desperation in people realising, for example, that they would need to come back to the courts another day. I watched as they called family and friends to ask for favours, or worked out what they could go without to afford a bus fare. In one example, I saw one crestfallen young unemployed man working out what he could do to afford fares for the three buses it would take for him to go back home to the south Wales valleys and then the three more it would take to come back to Cardiff just to be able to submit his form to the court on time. It should be noted that HM Courts and Tribunal Service has mooted experimenting with extending opening hours to make courts more accessible. This would not make life easier for many of the people I encountered and could, indeed, make it more difficult by expecting them to get to the distant court earlier. In many of the areas I considered, earlier court starts would mean having to commute before public transport even runs – this being a particular problem in rural areas where bus services have declined.

There has also been talk from HM Courts and Tribunal Service about digitising the courts and introducing online systems but this was something the advice agencies I have spent time with were often resistant to. They were already seeing problems from similar moves in welfare benefits claims, which were causing enough stress and confusion on their own without also sending more of the legal process that might subsequently occur when there were problems online. They saw people who had mental health problems or were illiterate and might struggle to undertake legal processes at home on their own. Others pointed out how many people with social welfare issues would struggle to afford sufficient devices or internet connections. Internet coverage was patchy across my research; some areas I

considered in mid Wales and north east Wales particularly lacked good enough internet coverage to engage in such work. Some advice agencies were investing in more space to allow people to use computers there but not all could offer such services.

Legal Awareness

In Cardiff and the Vale of Glamorgan, mid Wales, north east Wales and the south Wales valleys, I saw widespread confusion about whether and what help was available for people experiencing legal problems. This added to many people being confused as to what to do in their own cases, and indeed could make it worse. In another research project on criminal justice, I have heard about confusion around accessing legal aid lawyers – even where there is statutory provision as with duty solicitors in the police station. The big issue here, though, was in civil justice, where the justice system is remote and seen as detached from most people's lives. That despite the reality that this element of the justice system is focused directly on their most essential needs and experiences; welfare benefits to pay for food, housing to ensure a roof over their heads, family law to protect access to their children.

There was a lack of awareness at the damage being done to the justice system in Wales. People too often do not realise the impact that cuts are having until it is too late. For example, in the mid Wales communities I surveyed, most people reported having never been involved in the justice system and not having used a lawyer outside of conveyancing or wills and probate. As such, they had not previously thought about the impact of court closures removing local justice to facilities in other areas or legal aid cuts meaning that firms merged and consolidated their businesses in larger towns. When they were made aware of what had happened, people were concerned and worried for those who might not have access (e.g. elderly or disabled who may not be able to drive or know people locally who could drive them). By then, it was too late to do anything to change it.

Conversely, there was also a lack of awareness as to what services there remained for people to get advice and support. There is a widespread, misplaced assumption there is no legal aid at all anymore – the occasional poster on the wall of an advice agency stating otherwise is not a sign of wider cut-through for the message that some areas are still in scope. For example, pro bono organisations reported people coming to them at late stages of a civil case for which the people could have got legal aid if they had approached a lawyer at an earlier stage. Time and again, agencies dealing in debt and welfare benefits work across the country told me stories of how people let problems build up until it was too late and the problem had gotten worse (for example, bags of letters being brought into the office as a debt had escalated).

Those people that did seek help were often those with a good handle on what they needed to do anyway. They were either willing and able to research, and proactively seek out advice, or they had gone through similar issues previously and learnt by experience. Agencies in all areas told me how those least likely to come for help were those who most needed it, often the most vulnerable and disadvantaged feeling they had to go it alone and not understanding what they needed to do (thereby making mistakes). I found many examples, people with language problems, elderly people who could not leave their homes, people with poor literacy and people with mental health problems. These were people who

did not have help and struggled because the justice system is so confusing, even down to the forms that are used (and the forms are a much bigger issue than many people realise; they make a difficult process harder). Easy, free to access face-to-face contact is key to people like these; it needs to, both, exist and be widely known to provide access to justice.

The closure of courts and contraction of legal aid, combined with the real struggles to survive faced by the charity and not-for-profit sector, will only exacerbate these problems. What legal and advice services remain will be less visible. When people are expected to travel from one local authority to another for a court date, when they must telephone an advice agency located in a town they have never been to, and when they face the fear of going to court alone (if, for example, they live outside the south east of Wales this is highly likely in civil cases), justice feels like something done to people rather than a process that they are a part of. My research has found a great deal of confusion about the justice system in Wales; a confusion that often breeds resentment, especially when the only experience is that it is difficult to navigate and that there is little help. The idea of procedural justice is that communication and making people feel engaged in the justice system is important to ensuring people feel the justice system is fair. I have heard many people who think they have been treated unfairly by an uncaring and remote justice system in Wales.

Conclusions

The Call for Evidence of the Commission calls for, both, promoting the legal services sector in Wales and maximising its contribution to the prosperity of Wales. It is fundamental that any recommendations that are made, including devolving responsibility for the administration of justice to Wales, is grounded in the links between legal services and prosperity. In these terms, prosperity must be taken to include concerns for ensuring the comfort, welfare and well-being of the people of Wales. A functioning legal sector, with sufficient resources and capacity, is vital for promoting social justice and ensuring fairness for all. Any such understanding of the legal services sector needs to be broadly constituted to properly take in the range of advice and support services that I have encountered, and which are increasingly important in how people come to understand and navigate the justice system. Understanding civil justice as part of a wider system of social welfare that should work for the benefit of all, rather than an outside institution reactively punitive in its mechanism, is crucial.

Little empirical research has been done into access to justice in Wales, with most subsumed into generic England and Wales research that would typically involve fieldwork conducted in England but reported with the assumption that Wales is the same. That assumption needs to be probed, not simply for nationalistic reasons but so that we can engage with and learn from our own communities to see how justice issues specifically play out. People in different areas of Wales could and should be made to feel part of this research so that they feel invested in a justice system that should serve them. In my research, I have talked to many people in different parts of Wales who have not thought about the justice system before, while I have talked to others who have been drawn into it but have never felt their opinion was considered worthwhile. Justice in Wales should be something people across Wales understand and can engage with. That is how to ensure it works for them.

Many of the findings I report here from the Welsh aspects of my research are also found in the English parts of my (and others) research. They are failings of the justice system of England and Wales as a whole to provide access to justice, though there are distinctive considerations for Wales. For example, England has more, and larger cities, which to judge from the research I have done in places such as Liverpool and Manchester have a greater number of services for people who need help with social welfare and the civil justice system. Many of these are threadbare and overstretched in terms of their resources, heavily reliant on goodwill and pro bono, and would still require people from outside the cities to travel to them for a chance of support. That is, though, still more than many people in Wales can access outside of Cardiff. Whatever the differences between England and Wales, though, it is worth considering the overall situation across England and Wales for access to justice as this is how the system is currently constituted. From there, we can properly decide if what we currently have is acceptable from a social justice perspective and, if not, what could and should be done to change that.

The Amnesty International report, *Cuts That Hurt*, claimed that LASPO had created a two-tier system, 'increasingly closed to the poorest, most vulnerable and most in need of its protection'. They pin the blame on rushed, ill-considered reforms by the UK government causing damage to the human rights of vulnerable people. Their research showed that, if left unaddressed, legal problems could create the type of financial shock that pushes a vulnerable person under the poverty line as well as making it harder for those in poverty to escape it. For example, in family law, the failure to enforce child support arrangements can preserve and worsen poverty in female-headed households. Their research commented on the effects of the England and Wales-wide LASPO reforms but relied solely on interviews from England. Their findings should make us particularly keen to understand the national situation in Wales, where we have higher levels of income poverty than England and thus the potential for harm resulting from these cuts is even higher.

It has been found that the changes to civil legal aid adversely impact the most precarious in society with families in poverty being prevented from obtaining access to justice. Such was shown in *Priced out of Justice?*; a report commissioned by the Law Society. The report looked at whether those required to contribute to legal costs in the civil justice system can afford to do so. The means testing of legal aid, using a disposable income limit that considers income and assets, is set at a level that requires many people on low incomes to make contributions to legal costs that they cannot afford. Those on incomes 10-30% below the Minimum Income Standard are excluded from legal aid as they meet the disposable income limit. As such, the family that might have relied on legal aid to fight an eviction are being effectively denied access to justice because they simply cannot afford the legal bills required.

Even those below the disposable income limit, ostensibly eligible for legal aid, generally still need to contribute to legal costs – unless their income is extremely low. These people often cannot afford to gain access to justice in practice without resorting to extremes such as selling their house to pay for their legal bills. The civil legal aid financial eligibility test can act to debar people below the poverty line from getting legal advice or obtaining representation. The choice is too often between accessing justice and maintaining a minimum standard of living, which is unacceptable for the fifth richest country in the world

supposedly renowned for its legal system. Professor Alan Paterson's submission makes promising recommendations on what Wales could do with legal aid.

Legal costs are typically unpredictable and frequently unavoidable. When they have an undue impact on the poorest and most vulnerable in society – let down by the system of public provision that is supposed to protect them – this means we must consider their role in contributing to poverty. The stripping back of the state under austerity is making life harder for the poorest and most vulnerable in society. A lack of access to civil justice means there can be no social justice. My research shows that it is the people least able to pay for legal services in Wales, who are most likely to need them so to expect payment to achieve fair treatment is a de facto justice tax on the poor. We must question whether we in Wales will accept this or, perhaps, whether it is something we can mitigate with tools already at our government's disposal.

At the very least, the Welsh government should fund more research that considers access to justice in Wales, to reach out more to communities around Wales and to take heed of the messages from those who work in the advice sector. We need to better understand what the needs of people in different parts of the country are so ways should be found to encourage academics in Wales to conduct empirical research into Welsh justice issues. They need to take Wales seriously as a site in which justice is done. More events, such as the Commission engagement session at Butetown Community Centre, should be held to bring the voices of people from different communities in different part of Wales into a wider dialogue about how they experience our justice system. People should be listened to and made to feel as though they have a stake in the justice system here. Advice agencies need to be properly funded so their expertise on how best to do that can be incorporated. That may, for example, point toward the need to provide funding for a larger range of providers based on local need rather than simply national organisations. These approaches should be grounded in, and thereon improve understanding of, the regional variation that exist across Wales.

More boldly, we may consider whether this is an area in which we should be looking to put clear water between what happens here and what a Westminster government is willing to allow in England. In the two decades since devolution, Welsh democracy has developed distinctly to England in so many areas, not least the development of the Future Generations Act to promote our cultural, economic, environmental and social well-being. At the same time, we continue to accept the one size fits all model of a legal system largely designed in and focused on England yet presiding over both nations without the ability to make sure that it meets our needs in Wales, and matches our aspirations. Access to justice is failing in England and Wales. If we care about what this means for the people who are being let down, we must decide what we should do next.

We can simply hope that future Westminster governments take a more enlightened approach to justice matters than those over the last couple of decades. That The Right to Justice report produced by Fabians is apparently being taken seriously by the opposition there gives some promise in that regard. So much of that is out of our hands, though, while this Commission offers a chance to grasp the opportunity and allow us to take the initiative ourselves so that people struggling in Wales do not suffer any further. A Welsh legal

jurisdiction aligned to the principles of the Future Generations Act could guarantee it worked to promote social justice and thus aimed to help the most disadvantaged and vulnerable so let down by the current system. With civil justice properly understood as a social welfare matter, operating a justice system regarding well-being as per the Future Generations Act offers great promise to put right some of the wrongs that are currently being inflicted on people who end up in the legal system, often through no fault of their own. We need to do something about access to justice in Wales for the well-being of all and especially our most vulnerable.

References

Newman, D (2013) *Legal Aid Lawyers and the Quest for Justice* (Oxford: Hart).

Newman, D (2016) 'Attitudes to Justice in a Rural Community' *Legal Studies* 34 (6) pp 591-612.

Newman, D (2018) 'Justice in a Time of Austerity' *The Justice Gap*, 24th September at <https://www.thejusticegap.com/justice-in-a-time-of-austerity-launch/>.

JUSTICE submitted its evidence to the Commission last week. Our submission focused on court closures, digital exclusion, legal advice shortages and criminal law advice and representation. In particular, we advocated for a flexible deployment of the court estate in Wales, a realistic assessment of the viability of criminal law representation in Wales under current funding arrangements and the need to consider the efficacy of Online Justice Services, and "Assisted Digital"™ in remote parts of Wales. JUSTICE had the benefit of seeing the evidence submitted to the Commission by the Wales & Ches Dejusticia and Conectas Human Rights (Brasil) presented this report to complement their oral presentation in an audience called by the Inter-American Commission on Human Rights, "Business and Human Rights: Inputs for the Construction of Inter-American Guidelines." Find the entire book here. Conectas & Dejusticia - submission to the IACHR - 167th period of sessions. Human Rights Due Diligence to Identify, Prevent and Account for Human Rights Impacts by Business Enterprises. By Claret Vargas | May 10, 2018.