

**CYMDEITHAS BANWYR CYMRU**  
**ASSOCIATION OF JUDGES OF WALES**  
**RESPONSE TO THE CALL FOR EVIDENCE**  
**FROM THE COMMISSION ON JUSTICE IN WALES**

**Introduction**

1. This response is submitted on behalf of the Association of judges of Wales/Cymdeithas Banwr Cymru (“the AJW”) following consultation with its members.
2. Membership of the AJW is open to all court judges, and their deputies, who sit or who have sat in Wales and includes representatives of all levels of the judiciary of England and Wales.
3. Membership of the AJW is also open to the salaried members of the six devolved Tribunals of Wales, namely, The Mental Health Tribunal, The Special Educational Needs Tribunal, The Agricultural Land Tribunal, The residential property Tribunal, The Welsh Language Tribunal and the Adjudication Panel for Wales. As such, the members of the Association have a keen interest in the administration and delivery of justice in Wales.
4. Our membership has had the opportunity to read the response to the Commission’s Call for Evidence submitted by the Judge’s Council Committee for Wales (“the JCCW”) and respectfully agree its content to be a fair and accurate summary of the situation in Wales from the perspective of the salaried and fee-paid judiciary of Wales.
5. In particular, we endorse the remarks made by the JCCW that it is inappropriate for the judiciary to comment on matters of policy or to become involved in the development of policy. The additional comments we tender in our response are based upon the experiences of our members working within the justice system in Wales which is, of course, an integral part of the justice system of England and Wales.

**Response to Questions**

6. **Question 1** – The courts of Wales are running efficiently in terms of performance measured against other Regions of the jurisdiction. This enables cases which, in the past, would have been transferred for hearing in London to be retained and other cases to be transferred to Wales where the lead-time for listing substantive cases is currently

about 3 months compared with considerably longer waiting times in London. The sittings of the Administrative Court and the Business & Property Court in Wales have enabled more cases with a Welsh connection to be heard and determined in Wales. The higher judiciary are very willing to convene courts sitting in Wales to deal with Welsh business. In addition, the specialist circuit judges based in Wales have, for years, been only too willing to travel the length and breadth of Wales to hear cases locally. That is a prime example of good practice in Wales which should be retained to maintain access to justice for the people of Wales. However, more such cases could be listed for hearing in Wales and better mechanisms and greater encouragement of legal practitioners is necessary for that to be achieved.

7. Many individuals and organisations in Wales, including local authorities and other public bodies, routinely instruct solicitors and/or counsel outside Wales in proceedings which have a connection to Wales. This is a long standing and, in some cases, a deeply rooted practice. This adds to the problem of such proceedings being issued outside Wales. Whilst there are mechanisms now in place in some of the courts, such as the Administrative Courts, to identify such cases and where appropriate to transfer them to Wales or to direct that they be heard in Wales, this is not the case in all courts and where it is a mechanism is not always robust. There is a wide spread perception that practitioners in Wales do not have the necessary expertise in some specialised cases. For example, research by Dr Nason and others in Bangor University over the last 5 years suggests that there is an unmet need for public law services in Wales as well in some English regions outside London. Whilst this may be true in some highly specialised cases, it is also clear to those who hear cases in England as well as in Wales, that in the significant majority of cases, legal services available in Wales are favourably comparable to those available elsewhere. Whilst choice of legal service is a matter for the consumer, there are cost and time implications of accessing such services other than locally. Legal services providers in Wales are gradually diversifying the services they provide and there have been a number of initiatives and suggestions. To give a meaningful choice and to promote access to justice in Wales they must be encouraged.
8. The gathering pace at which Welsh primary and secondary legislation is being passed, coupled with the increasing amount of legislation

passed at Westminster which does not apply in Wales is now making it necessary for lawyers to be specialists in the law to be applied in Wales which provides an opportunity for those working within Wales but a dilemma for lawyers based in England which may bring acute problems in the future if measures are not taken to train and retain in Wales specialists knowledgeable in the law to be applied in Wales. This is likely to come to the fore in early course in the field of housing law when the new Welsh housing legislation is brought fully into force. Our members have heard of some legal firms, based in England, considering withdrawing their services in the housing field because of the challenge to their staffing resources. Housing law in Wales will shortly be radically different from that to be applied in England.

9. **Question 2** – the geography and demography of Wales makes it essential that the court and tribunal estate in Wales be retained at no less than its current level if access to justice in Wales is not to be compromised. Court closures to date have placed an additional burden upon the remaining estate particularly in relation to the availability of court and hearing rooms. In a time of great change and innovation in the administration of justice the current situation must be balanced against the vision of the courts of the future but the facilities to deliver justice locally must remain a priority whatever form the courts and tribunals may take in years to come. It will require lateral thinking to provide local facilities, with the latest technology and trained staff enabled to feed into the courts of the future to assure access to justice for people of all walks and stations of life in Wales.
10. **Questions 3 & 4** – We recently responded to a Consultation issued in relation to the Court and Tribunal estate nationally entitled “Fit for the future: Transforming the Court and Tribunal estate”. We append a copy of our response which sets out the views and experience of our members on that subject and, in doing so, address some of the problems faced by the people of Wales. There are particular topographical and infrastructure difficulties in Wales (which also exist in some of the English Regions) but also language issues (which do not). Court Estate is presently dealt with by the HMCTS Property Board in London, which may be perceived to be remote from, areas where such issues arise.
11. The lack of a women’s prison in Wales also causes problems, not only in terms of family visits but also in facilitating the attendance of

mothers in the Family Court when cases concerning their children are being heard. Those problems can sometimes be overcome by using modern technology but in family cases in which the future lives of children are being determined, actual attendance at court throughout the hearing is desirable if not essential in the interests of justice.

12. **Question 5** – The illustration referred to above in the field of housing law provides an example of the impact and potential impact of the Welsh devolution settlement. Housing law in Wales will shortly be radically different than that applicable in England. That will impact not only upon people living in rented accommodation in Wales but also the owners of such property who often live outside Wales. The situation gives rise to an urgent need to make the new housing law of Wales easily accessible; that is no mean task and requires more than access to the primary and secondary legislation. It requires texts providing commentary and guidance. Such works are unlikely to be forthcoming under the present structure of research funding in England and Wales and will require new funding measures to be taken to encourage and sponsor academic activity to produce and disseminate the literature and to promote others producing similar texts on the law applicable in England to collaborate to incorporate Welsh law into the standard texts used throughout the jurisdiction.
13. With the introduction of the Wales Act 2017 there are likely to be similar developments in other fields with a resulting need for greater numbers of specialist lawyers.
14. **Question 6** – It would be inappropriate for the AJW to comment upon the provision of local authority services. It is clear, however, that the pace of technological change and innovation surpasses the ability of many to keep pace and that there will be a greater need for local centres to be available to assist the public with their legal problems including assistance to deal with the online initiatives being introduced as part of the modernisation of the courts and tribunals System. Funding and staffing of such centres requires urgent consideration and may provide fertile ground for collaboration between all interested parties to provide and staff such centres.
15. **Question 7** – This question concerns matters about which we consider it would be inappropriate for the judiciary to comment.
16. **Question 8** – The response of the JCCW to this question is endorsed by the AJW.

17. **Questions 9, 10, and 11** – These questions are outside the scope of matters upon which it would be appropriate for the AJW to comment.
18. **Question 12** – Our members have insufficient knowledge of curriculum and legal training currently available in Wales to be able to respond to this question. However, we consider there is a major role to be played by the educational institutions of Wales in the dissemination and teaching of the law to be applied in Wales and that there is urgent need for a forum to be established to address this issue and how it is to be funded bearing in mind the comments made earlier concerning the need for collaboration with their counterparts in England.
19. **Question 13** – The Wales Training Committee of the Judicial College ensures that the training issues for judges sitting in Wales are identified and that appropriate training is delivered in accordance with the principles of College strategy. That necessarily includes training, as appropriate, for judges who sit in Wales the better to enable them to discharge their judicial functions through the medium of Welsh. That does not include teaching judges to speak Welsh. Rather it focuses upon the use of Welsh legal terminology and the interpretation to be given to legislation in the Welsh language. The Wales Training Committee has appointed two Lead Training Judges to monitor and report to the Committee on matters arising from the Welsh devolution settlement requiring training. The Committee produces three Wales e-letters each year to update the Judges of Wales of developments. The Wales e-letters and articles concerned with the law applicable in Wales are posted by the Judicial College on its online learning platform for the benefit of judges throughout England and Wales. Funding for such work is necessarily limited within the College budget and increased funding will be needed as the body of Welsh law increases.
20. **Question 14** – Primary and secondary legislation is available online but there are substantial difficulties encountered in navigating around them and checking where they differ from the law to be applied in England. The current lack of commentary and legal texts makes the task harder and there is no doubt that the answer to the question posed is presently “No”. Whilst there is a Welsh Government website designed to assist in meeting this need it is, as yet, sparsely populated and requires considerable development.
21. Looking to the future, the AJW commends the Law Commission report “Form and Accessibility of the Law Applicable in Wales” published in

June 2016. The recommendations of that report were, in large measure, accepted by Welsh Government and whilst the process of introducing the accepted recommendations will take time, it seems to us that represents the best way forward. The codification of Welsh Law would provide certainty as to what the law to be applied in Wales is and provide opportunity to highlight in commentary where the law applicable in England differs. There is, as the Commission will be aware, currently a draft Bill, the “Draft Legislation (Wales) Bill 2018” giving initial consideration to making Welsh Legislation more accessible though it does not reflect all of the accepted recommendations of the Law Commission. In the long term we see adopting those recommendation would assist greatly in making the law in Wales accessible.

Submitted by:  
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Hon. Secretary  
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