

**Commission on Justice in Wales
Oral Evidence Session
1 February 2019**

Present:	Commission members	Secretariat team
<p>Mr Justice Lewis (Lewis J)</p> <p>Mr Justice Birss (Birss J)</p> <p>Mr Justice Picken (Picken J)</p>	<p>Lord Thomas of Cwmgiedd, Chair (LT)</p> <p>Simon Davies (SD)</p> <p>Professor Elwen Evans QC (EE)</p> <p>Dr Nerys Llewelyn Jones (NLJ)</p> <p>Professor Peter Vaughan (PV)</p>	<p>Andrew Felton, Secretary to the Commission</p> <p>Dave Gordon</p> <p>Chris James</p>
<p>We have received evidence that:</p> <ol style="list-style-type: none"> a. Court closures have adversely impacted access to justice and made it difficult for parties, witnesses and jury members to travel to and attend court on time. b. Court closures have led to delays in proceedings. c. Video links are not operating to a sufficiently reliable standard. Some of our own experience has been the same. <p>Do you agree with this evidence? What is the cause of the problem with video links? What is the impact on the administration of justice of court closures and poor video links? Is there a clear strategy for making the court and tribunal system work better in Wales? If so, what is it? What other steps need to be taken to makes the system work better in Wales?</p>		
<p>Lewis J: I would like to make an opening statement in support of the Commission on Justice. Towards the end of 2018 the Commission approached all the Judges and asked them to produce evidence to the Commission. Your terms of reference are very wide. We received a list of suggested questions and received a list of questions on 22 January and a revised list on 29 January. There are areas which relate to policy that we would not be comfortable in answering, and some questions may be best placed to Her Majesty’s Courts and Tribunals Service (HMCTS).</p> <p>I will deal with a and b. As Judges we wouldn’t be happy on commenting on court closures; this is a matter for the Ministry of Justice (MoJ). In general we do hope that the Commission would have in mind the full picture. As a Presiding Judge I have regular updates on targets in terms of timeliness in bringing cases to court. We have performance indicators (PIs) of court proceedings. These record statistics in terms of crime such as the number of weeks for cases to reach Crown Court, appeals against Magistrates’ decisions, sentencing, hearings, and so forth. I would say that in relation to crime Wales consistently meets all the targets, and even exceeds them by some margin. We are consistently better than any English region. As far as civil work is concerned we have targets on the number of weeks between issuing a claim and its disposal. There are PIs for fast track cases, small claims, mutli-track and so forth. Again I have quarterly reports, and we do meet those targets. In terms of family work, again there are strict timetables. Wales meets that 26 week deadline, and we are the only region that meets those deadlines.</p> <p>So; to the issues of video links. You need to differentiate between links between prisons and courts, and special measures and access issues. They are used from prison to court for pre trial preparation hearings, and at the early stages in matters, and generally they work well. In regards to prisons these mostly apply in pre-trial preparation stages. It works well if there is one prisoner involved. But where there are bridging links, there are occasions were these links are unsatisfactory. Sometimes these can be human error, sometimes technical errors. In terms of vulnerable, or child witnesses, we haven’t had issues here. There is a modernisation Transforming Technology Programme – replacing all the existing video links with an internet based system. Modernisation is underway in court services generally. Again questions on this should be sent to HMCTS.</p>		

LT: The Commission has received evidence that the court closure programme has adversely impacted on justice and that the technology is not up to it. Our only experience of joining with the court has been difficult. There is an adverse impact on justice. What is the reason for this? We are anxious to make the justice system better. Can you help us, or not, and we can make a note of it?

Birss J: In the reform programme there is a pilot involving a video link with simpler laptop based technology. So this is happening and is being trialled in Birmingham – If it is successful it can be extended, and provide a much more tech based solution.

Lewis J: As I say I'd not want to comment on the closure programme. I am aware that eleven courts in Wales closed, and that a number of questions have been raised in relation to geographic issues especially in North Wales. My understanding was that the closure of certain courts was predicated upon suitable alternative provision being provided. In Llangefni, and Dolgellau, there is alternative court provision. There have been Law Society Gazette articles about alternative provision in Llangefni that commented on it being not as good as a court, but better than no court. I invite you to consider getting information about the MoJ's "transforming technology" programme.

In terms of the practical reason why the links don't work I can't help you. Information is required from the MoJ to look at this.

Have practicable steps been identified for the use of technology to improve people's access to and experience of courts and tribunals in Wales? What is the timescale for their implementation?

Lewis J: We are in the process of the MoJ and the Crown Prosecution Service (CPS) moving towards a digitalised case system; that is already the case in criminal cases, and we are now in the process of this for civil cases. There is an online facility to deal with probate, as well as other matters. This goes well beyond video link. I can tell you that 150,000 people used that service in 2018. Also they are developing an online money claim system. A digitised system for criminal cases is used in all Crown Courts. There was a major problem in the past two weeks when the system didn't work. This can't be acceptable, but is not indicative of the way in which it is working. A case system across all of England and Wales is being developed that will work from police stations, through to court and beyond recording charges, witness statements, forensic reports and so forth.

Picken J: My experience of the current digitised system ('DCS') is exactly that as described by Lewis J. It works extremely well and is a great enhancement. There will be at some point a replacement which will provide linkage from the police station through to the trial. It is a national programme. Cardiff will be part of a pilot for this; to date the only court which has been piloted is in Liverpool.

Lewis J: The police, at the moment, don't have access to it. The next stage will be to allow the police to add documents to this.

Birss J: We currently have a pilot for Online Civil Money Claims in England and Wales which has had 46,000 claims issued under this system. The District Judges, including those in Cardiff, have been very pleased with this system. When cases are defended and go to trial District Judges have good material before them, which explains the litigants' case in a better way, because the questions in the online system help them to do so.

Picken J: Both Birss J and I have experience of a system known as CE filing – a digital filing system. Despite a few teething problems it has been highly successful. It is now working very well, and has been wheeled out across the Queen's Bench Division in London and in the Business and Property Courts in Cardiff. Judge Jarman dealt with the first CE file recently, and if the experience of the Rolls Building is anything to go by it will be highly successful..

We have received evidence that some of the premises used for courts and tribunals are inadequate

and that Cardiff does not have proper or adequate court facilities for a capital city. What can be done to remedy this?

Lewis J: If we can focus on the Civil Justice Centre in Cardiff. The aim of judges and HMCTS would be to have a combined Civil, Family and Tribunal Centre which is fit for purpose. We went for consultation to see what was required. From that feasibility study it was found that it would not be possible to create on the footprint of the existing centre a combined civil, family, and tribunal building. So as far as the adequacy of the current civil justice building is concerned, most of us would recognise that there are real difficulties with the current building.

EE: Could I take you up on the offer of the problems you have identified?

Lewis J: Some of the judges must move across public areas when they are going from one court to another, or from chambers, which raises questions of security and distance from the public. Also there is the issue of having enough court rooms.

There is also a problem with the facilities with the Personal Support Unit. There are no private consultation rooms. Clients must therefore be seen in corridors, with no privacy. The entrance to the court does not comply with the Equality Act 2010. So there are some issues that I see myself when I sit there. Our aim has been a combined civil, family and tribunal centre, but there is not enough footage to accommodate the number of court rooms required. HMCTS is exploring options to address this.

Picken J: It strikes me that the aesthetics and the building more generally are a problem. It is only looking scruffier, with the new buildings being built around it. If business disputes are to come to Cardiff, there needs to be a better building.

LT: We have received evidence that the situation can be described as a “disgrace” for a capital city, but I gather that’s not a view that you would be prepared to express?

Lewis J: I as a Judge tend not to resort to a word like disgrace, but instead a factual description of what the position is.

Birss J: Frankly speaking as a Judge of the Business and Property Courts in Cardiff, the quality of the building from the outside is a disgrace. I’m quite happy to call it a disgrace in that context.

Picken J: I would agree. Wales is not just a region, it is a country, it should be having the business and work of Wales dealt with in Wales. It should be better.

Lewis J: We recognise the deficiencies, and see that it cannot fulfil its duties as a court premises. Judges will express their views in different ways.

We have received evidence about the severe adverse impact of criminal and civil legal aid reforms on practitioners, litigants and the population in general, including the increasing numbers of litigants in person. Of equal concern is the absence of legal aid for housing, social welfare and employment advice and support in proceedings; this is left largely to the third sector. What has been the impact on the courts judiciary and the tribunals judiciary?

Lewis J: It’s well known in terms of impact, and has included a decline in representation in family cases. There are lots of figures available, such as in the number of legal aid providers and family law case numbers. That means there are greater pressures on the judges and the courts. We will have all experienced delays with litigants in person. Litigants in person are not familiar with the law and court processes, and often do not have the evidence that they require. It’s worse than that when you are dealing with family cases, where things are highly charged and can turn to threats and aggression. It’s incumbent on judges to make sure that they are best served, but I see it in the Administrative Court –

they are up against the government and seem helpless as they are unable to present their cases.

Picken J: I'm not able to comment on the causes. There are enormous problems with the rise in the number of litigants in person who don't know what to do. Judges need to effectively do what the lawyers would have done. A lawyer's job is to condense the arguments in a format for the judges. But when that is gone that is effectively what is now taking place in the courtroom facilitated by the judge. Whatever can be done to improve is welcome as it's an enormous problem.

We have received evidence about the strong support the judiciary is giving the specialist courts, including the Administrative Court and the Business and Property Court, in Wales. However it appears there are still significant issues including the numbers of Welsh based advocates who appear. What further practical steps can be taken by the judiciary, the professions, the Welsh Government and others to strengthen these courts and the professions in Wales?

Picken J: I've already said about the building, so I won't repeat it. There is an issue as long as I was in practice about the depth and number of barristers in Wales who are able to deal with business property type cases. I started off in practice in Cardiff, with the intention and hope of doing commercial work. A hope that was not fulfilled due to the structures in place there. That is why I went to London, but retained a door tenancy in Cardiff. I do not think some 26 years later the position has altered or is much better in Cardiff than when I left. The problem is still there. So now work which should be dealt with in Cardiff, or Wales more generally, is not being done in Wales. There are commercial solicitors that do high quality work for clients in Cardiff and elsewhere. Those solicitors, many of them, do not instruct the local Bar, but go to London and having gone to London then very often stay there in terms of where they commence their proceedings and so forth.

So this is a problem, but is it a problem that judges can seek to solve? I'm not so sure. I made this observation in delicate terms on Monday at a seminar at the Cardiff Business School. A couple of members from the Bar in Cardiff were there. They advised that there were twenty to twenty five specialists in business and property type work. I'm in no position to second guess this.

When I started off, the problem was that even if there are people that say that that is their specialism, they are not specialist enough to be attractive to the local solicitors. There needs to be a truly specialised Bar if there is to be work in Cardiff. In contrast just across the channel in Bristol they have specialist bars – how can that be?

There is no case which is too big for Cardiff. Either of the resident judges can handle cases, or in appropriate cases High Court judges can come to Cardiff. I make this clear now.

Birss J: One of the things Cardiff has at the moment, is two High Court Judges, responsible for Cardiff (myself and Mr Justice Picken) committed to having Welsh business work in Wales. It's completely mad that Welsh business work is happening in London, or Bristol. I speak as the Business and Property Court's Supervising Judge for Bristol too. I'm responsible for Bristol and it's a busy centre which I support, but it makes no sense that Welsh work be dealt with there rather than Cardiff. The more we can show people that High Court Judges are sitting in Cardiff in a specialist capacity – that is the way to show the professions that there is work in Cardiff.

Lewis J: In the Administrative Court it must be considered who can provide what in Cardiff. We have supported public law organisations in Wales, and the training work for young barristers – we've done all that we can realistically as judges. We bring judges from London to deal with Welsh planning cases, and Administrative Court cases. I wish I knew the solution, but I think you need to ask those who do the instructing.

Picken J: There is something that judges can do – that is to recognise when there are cases being heard in London that could be held in Cardiff. That type of situation can arise and judges can make orders to transfer in appropriate cases. It obviously depends on the type of case and the

circumstances of the particular case, but in an appropriate case there should be a transfer.

We have received evidence about the importance of ensuring the use of Welsh is treated on a basis of equality with English and that this is not receiving the compliance required. What practical steps can be taken to ensure treatment on the basis of equality now and for the future by the judiciary and HMCTS, taking account of the rationalisation of the court estate and the need for the digitalisation programme to treat both languages on a basis of equality?

Lewis J: The starting point must be that everyone has the right to use the Welsh Language in Court in Wales. That's well understood by the judges and HMCTS Wales. We have two judges who are responsible for identifying issues and reporting on Welsh language issues, at the Circuit and District levels. We identified a particular issue around the availability of forms being available in the Welsh language. This has now been put in place. Practice Directions and the Civil Procedure Rules have been updated to make provision for the use of Welsh language documents. There is a system to ensure notification, and translation is available if required. We also have a Welsh language training committee. There is a large number of judges who can do trials in Welsh.

Picken J: I chair two committees – one is the Welsh Training Committee of the Judicial College, and this is a real success story. From a standing start we have now arranged three training sessions on devolved Welsh housing law. So from nothing we have had training sessions on Welsh devolved law. We have also put together e-letters. We now have three training leads – they put together the e-letter which gives updates on Welsh law. It provides a substantive text. It is difficult to track Welsh law, and this is a way we have found to do this.

The Judicial College website was not good enough, but it is now being enhanced. We focus also on the need of judges to conduct proceedings if Welsh if required. We recently conducted a survey to identify judges with the potential and inclination to conduct proceedings in Welsh.

The other committee I chair is Welsh Language Advisory Committee which is made up of various representatives including from the Coroners, the Police, Magistrates, and the judiciary – it is a committee devoted to ensuring that the Welsh language is promoted throughout the entire justice system.

Any court facility needs to be able to deal with people contacting the court with the Welsh language.

Birss J: For proceedings in connection with Wales, but held in England rules now state that documents can be provided in Welsh.

We have received evidence of pro bono work in court centres facilitated by judges. What more can be done to ensure pro bono help is provided, particularly by judges within their courts and tribunals?

Lewis J: The short answer is that we would be supportive of this. I'm not quite sure what we could specifically do as judges.

In January '*Sentencing and Immediate Custody in Wales: A factfile*' was published by the Wales Governance Centre at Cardiff University. Can you comment on the accuracy of the figures. Assuming they are accurate, what is the explanation for the higher rates of imprisonment in Wales? We have received evidence about a lack of confidence in the probation service following *Transforming Rehabilitation*. Is this affecting the imprisonment rate? How well is liaison working with the probation service at each court centre? Is there in place a programme for judges and magistrates to visit prisons on a regular basis?

Lewis J: You're not going to get an immediate answer on that. It is a hugely important report. It takes a great deal of digesting and consideration. We are working our way through this report to understand

what it means. It is highly important and needs to be looked at. We would like to consult then with other bodies, such as the Magistrates' Association, and the Sentencing Council. We have no reason to doubt the accuracy of the information written on the page, but I would reflect on what further information I would want. For example, the number of BAME people in prison – we need to know the offender profile, and the certain type of offences, and then we'd need to know the social factors here. I would want to know that the figures are statistically robust. So for example page 33, the sentencing of children, they refer to the small sample size. This can change hugely between years. Also page 54 on the ethnic make up of prisoners – small changes can have a massive impact.

Judges in Wales are using shorter sentences rather than longer sentences. It raises the question as to why these sentences are not being used. The probation service is being reorganised here, and is clearly something that needs to be looked at.

We are very grateful for your response to our Law Council of Wales proposal. What role would you envisage the judiciary playing in such a Council? What role does the judiciary have in supporting academic, professional and public legal education in Wales?

Lewis J: We'd like to see the terms of reference and once seen we'll see what role we can play.

Birss J: I think it's a really good idea, and I'd be happy to see the terms of reference so we can give our full support to this.

Picken J: I agree. In the last paragraph of our Presiding Judges' response, we suggested that the Chair of the Wales Training Committee should be on it too. That is me. It's a good idea and it's something we would support. The major point will be its terms of reference.