

Call for Evidence: Commission on Justice in Wales: AdviceUK response

Our response focuses on the following workstreams and issues:

- Civil justice, family justice, administrative justice and tribunals

AdviceUK's 25 member organisations in Wales provide social welfare advice with a focus on welfare rights, housing, debt and fuel poverty, and include advice centres and services, housing associations, community interest companies, student unions and law clinics.

- The legal profession, legal tech and the economy of Wales
- Legal and vocational education and training

AdviceUK provides professional training and qualifications to social welfare legal advice providers: most advisers in this sector are not qualified as solicitors or barristers, but nonetheless require in-depth knowledge of the law in areas such as debt, housing and welfare rights. Some AdviceUK members do employ solicitors, such as Speakeasy Advice Centre in Cardiff. AdviceUK seeks to build relationships between law schools, law firms and social welfare legal advice providers, working closely with individual universities and seeks to work with funders in the area of advice such as The Legal Education Foundation, Big Lottery Fund and Baring Foundation. Pro bono work including the development of law student placement schemes in social welfare law advice centres has been developed and has increased in importance following cuts to legal aid funding for social welfare issues involving welfare rights, debt and housing.

- Access to justice and other overarching issues: we are particularly concerned to ensure that people throughout Wales can access high-quality, independent civil legal advice, irrespective of their ability to pay. Access to civil legal advice enables people to enforce key rights and meet their responsibilities in areas such as: income from work and/or benefits for essential living needs; having a home; fair employment; fair management of debt; access to care; and citizenship / immigration status. Access to civil legal justice for people in Wales maintains their liberty, their homes, their goods and utilities which are all vital to the mental and physical wellbeing of the people of Wales

General comments:

The following points draw from AdviceUK's past experience of efforts to improve the impact of social welfare advice both in Wales and in other parts of the UK.

1. Stakeholders should seek to avoid command and control approaches to the provision of social welfare legal advice, such as externally-imposed service standards and specifications. Centralised targets and controls get in the way of improving services. Providing individualised help (advice) is not the same as providing 'mass-produced' information products or automating simple transactions with public sector services.
2. People needing advice – as opposed to people needing online information or guidance such as that already provided by bodies such as Citizens Advice, Shelter and Law for Life – present with messy, complex situations that need to be unravelled. Often advisers need to pull in other forms of support if the advice intervention is to be effective, for example

- support related to mental health. Advice services that work well have flexible, adaptable, processes that can absorb and respond to demands that vary depending on the needs and circumstances of the client.
3. Technological solutions need to be pulled in by the grassroots rather than pushed down from the top: there are multiple examples of over-ambitious centralised IT projects run by the public sector where huge sums of money have been wasted to little or no effect, often duplicating resources that already exist and failing to plan for long-term sustainability and ongoing investment. Think through the purpose of the service, make the system effective and sustainable – only then pull in the IT.
 4. Stakeholders should focus on resourcing and encouraging learning and improvement – particularly across whole client journeys that involve multiple organisations – rather than inspection regimes, quality assurance badges and standardization of individual services. AdviceUK has identified high levels of failure demand for advice services (levels of failure demand of 40-60% are typical), and often such failure demand is completely invisible to inspection regimes. Failure demand is sometimes referred to as avoidable demand i.e. demand that results from the failure of the system or service in the first place.
 5. Engage and empower the people that use the services and the people delivering them on the frontline: define service purpose from the perspective of the people who use the service; understand what they want, how they behave and what they value; and design the service in the light of this.
 6. Leverage the influence of the Welsh Government and other institutions in Wales to change systems that drive failure demand for social welfare advice. For social welfare advice, the priority for systems change is benefits administration by the DWP: in particular the urgent and long-standing need to improve administration of working-age disability benefits and Universal Credit.

Responses to specific questions

1. 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?

Much of the demand for civil legal advice encountered by AdviceUK members is driven by the systemic failure¹ of benefits administration and related decision making. AdviceUK has – since 2008 and the publication of *It's the System, Stupid! Radically Rethinking Advice*² – highlighted the role that social welfare advice provision could play in the improvement of public services at both local and national level. This report and subsequent projects highlight the need for methods of service improvement that are not driven by inflexible, centralised, command-and-control arrangements, whether applied to the advice sector or to bodies such as the Department for Work and Pensions.

Housing associations play a significant role in providing welfare benefits and money advice in Wales: service provision is typically triggered by rent arrears or other indications that someone is struggling to maintain their tenancy. Often advice services are integrated with support in other

¹ <http://www.bbc.co.uk/news/uk-wales-44157953>

² <http://www.adviceuk.org.uk/wp-content/uploads/2017/10/Its-the-System-Stupid.pdf>

areas of people's lives, for example, support finding employment.³ This integration of advice with other practical support is in AdviceUK's view essential: it is possible for people to get advice that is technically accurate, but which does not result in long-term improvement to someone's life or even equip them to stop the problem recurring or if it does being able to deal with it.

More understanding is needed of what characterises the journeys that result in people ending up in the justice system: these could include the journeys of people who end up in court for non-payment of fines or those facing eviction from their homes. For many parties, participation in a formal court process is not something they have sought. Taking early action to address problems often results in better outcomes for all involved.

Social welfare legal advice is usually provided in situations where neither the market, nor the public sector wishes to provide a solution. Although there are opportunities to work with solicitors in private practice to deliver social welfare advice on a pro bono basis, such services do not have the capacity to fill the gaps left by loss of legal aid funding, loss of local authority funding and increased competition for grant funding. By definition, advice involves help that is tailored to an individual's needs and circumstances. Factory-style provision of advice becomes less and less effective the more complex the person's needs or circumstances.

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

Individual services need to have the flexibility to understand the demand they are currently dealing with and what matters to the individuals they support. They also need to be resourced adequately. Many advice services would be funded more effectively through commissioning that does not assume that competitive procurement is the only way forward, and that instead looks to develop learning about what works at a local level. There should be no ideological commitment to a particular funding mechanism or standardised provision of services. The ways in which the advice needs of rural communities in Wales are met will be different to the way in which the needs of migrant communities in urban areas are addressed.

Collaboration between services is a worthy goal, but needs to be driven by knowledge of what is important. AdviceUK's experience indicates that demand for advice is typically significantly outstripped by supply, particularly supply of in-depth advice combined with support for the most vulnerable. Here, consistency of relationships and provision of ongoing support over periods of six months and more are often required. The best results have been achieved not by blindly insisting on collaboration between advice services, but by understanding where collaboration would make the most difference: that may be collaboration between providers of advice and mental health support, or collaboration between local authority housing departments and independent advice services.

Advice provision has typically developed organically in response to local need, with local provision set up by local people: for example, AdviceUK members Advice Mid Wales⁴ and Brecon Advice Centre⁵ both emerged as a response to the lack of suitable advice services locally. The main difficulty faced by such services is the lack of simple, straightforward grant funding programmes that would enable them to maintain and invest in their service provision. Competitive procurement

³ <http://www.monmouthshirehousing.co.uk/--work-skills-wise>

⁴ See <https://www.advicemidwales.org.uk/>

⁵ See <http://www.breconadvicecentre.org.uk/>

is often not an appropriate funding mechanism for smaller voluntary sector organisations that are committed to a particular community. Rather than a command-and-control approach whereby the centre determines what is provided in a particular area, AdviceUK believes instead that the centre should instead focus on facilitating and resourcing local communities to address their own needs, listening to feedback from advice services where this indicates how public services could be improved. Independent advice services are an important component of a healthy civil society, and should not in our view be a centrally-controlled arm of the state.

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?

In our view, one of the most significant problems faced by people who work within the justice system is their powerlessness to improve it. The component parts of the justice system should be integrated into longer-term efforts to improve the lives of people living in Wales. Many people struggle to access support to realise their rights in areas such as welfare entitlement, housing and debt. In some cases, people are pulled into the justice system needlessly: simple interventions at an early stage could avoid costly activity that is of no value to any of the parties involved, for example early action to address people's inability to pay fines or advocate on their own behalf.

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?

As noted above, demand for advice has outstripped supply for many years. We believe that there needs to be increased resources available for local, independent advice services who can respond flexibly to the varying needs of different individuals and communities in Wales. At present, there are insufficient resources available to local services and an unhelpful focus on funding standardised provision of services on a pan-Wales basis.

Policy makers should learn from the experiences of the advice sector and design systems for benefit administration that work. Addressing the systemic problems of working-age disability benefit administration and the rollout of Universal Credit would have a massive impact on the advice sector, freeing up capacity to work with those most at risk: typically those reliant on working-age disability benefits income, particularly those in poor mental health. Much has been made of the role that information technology can play in improving access to services, but our members have significant concerns that the focus is on use of technology to provide services at a shallow level: impressive in terms of transaction volumes; ineffective in terms of long-term impact on people's lives.

The Welsh Government is currently investing in an Information and Advice Quality Framework for Wales. AdviceUK has previously noted that the chief barrier to improving the lives of people in Wales through social welfare advice and support is not the lack of quality assurance frameworks or standards. Rather, these barriers are: a) large levels of preventable demand for advice services, particularly systemic problems caused by poor benefits administration b) the lack of money available to resource not-for-profit advice providers and c) in some cases, provision of services that are successful in ticking boxes, but fail to do what matters for their service users and bring about long-term change. These barriers are better addressed by individual social purpose organisations – particularly charities – having more time to learn about what matters to their clients and how advice can contribute to longer-term improvement in people's lives. Organisations

need more time and money available to spend on service redesign, training, and work to link advice to other interventions that improve people's lives.

Our own cautious estimate is that any adoption of a new quality assurance standard requires organisations to spend in the region of 100 hours of paid / manager level staff time. This does not include time taken for frontline staff to evidence audit requirements in the course of their daily work. There is a real risk that inappropriate use of quality standards drains already limited resources away from organisations that are financially stretched, and have been so for many years. In AdviceUK's view, the risks of poor quality advice could be simply addressed by funder due diligence and engagement with the organisations they support: encouraging organisations to join one of the nationally-recognised advice networks which impose their own criteria for membership; requiring organisations to hold professional indemnity insurance; requiring money advice organisations to be FCA authorised; and appropriate use of measures to improve services. In addition organisations should be asked to agree to and uphold a set of principles that guide their work and the quality of that work. Unless the Welsh Government proposes to fully cover the costs of preparing for, assessing and auditing external quality standards, AdviceUK's view is that the implementation of the IAQF will reduce the capacity of independent advice organisations to support those in need.

AdviceUK is concerned that if the Advice Quality Standard (currently the most appropriate standard for the majority of our members in Wales) is unable to fully meet IAQF requirements, independent advice services may be required to adopt a combination of quality assurance arrangements with different standard holders. We are concerned that advice quality standard owners for standards such as AQS, SQM and Lexcel will decide that it is not worthwhile making their standard compliant with Welsh Government requirements, resulting in our members being unable to access Welsh Government funding.

For AdviceUK, the most important arbiter of quality for an independent advice service is the person receiving the service: funder views on quality and desired outcomes are of course important both for funders and advice providers, but should be considered separately as part of individual funding agreements and should not fetter the ability of voluntary sector organisations to act independently. Common outcomes frameworks risk either being so generic as to be meaningless or promoting a one-size-fits-all approach that stifles innovation. AdviceUK has long-held concerns that outcome measures easily become prescriptive targets, leading to operational practices such as cherry-picking, or undertaking inappropriate activity simply to tick a box.

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

Devolution has opened up new opportunities to redesign the ways in which advice services operate: a best-case scenario is devolution of power that enables people and communities to co-design the services they need – a genuine partnership of the public sector, the voluntary sector, the private sector and local communities; a worst-case scenario is the top-down imposition of a centrally-specified and standardised pan-Wales advice service which instead of freeing up individuals and communities, attempts to force them to adopt a one-size fits all approach.

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?

Yes, but this has to be done on a service by service basis. Individual services need to understand what typically matters to the people they serve and the journeys they go on. So for example, services that provide social welfare advice to people with drug and alcohol problems need to understand the journeys that their clients take through the justice system and the best points at which, for example, debt advice can be provided during the course of rehabilitation.

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?

AdviceUK believes that services need greater flexibility to design their services around the needs of their beneficiaries. Services should be resourced and incentivised to learn about what works, instead of being incentivised to hit arbitrary targets or pre-determined quality assurance frameworks. Providing social welfare advice that is well-integrated with typical journeys taken by those who have contact with the police, probation and prisons is vital: for example, the Peer Advisor model developed by AdviceUK member St Giles Trust.⁶

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

AdviceUK is seeking to engage stakeholders across the voluntary, public and private sectors to ensure that EEA nationals currently living in Wales are provided with well-designed support to help them protect their rights and improve their lives with regard to Brexit. This includes initiatives such as the Transition Advice Fund,⁷ and the work of online services such as Advicenow.⁸

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

This is covered in other answers.

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?

National cuts to civil legal aid in areas such as housing, welfare benefits and debt have led to a sharp reduction in the numbers of people assisted and the closure of organisations providing specialist advice services, such as Cardiff Law Centre.⁹ The viability of social welfare law as a practice area for lawyers given the lack of resources available to fund such work remains in doubt, though there are isolated examples of good practice, such as the legal training given to solicitors by AdviceUK member Speakeasy Advice Centre, using both its own resources and support from the Legal Education Foundation's Justice First Fellowship.¹⁰ More resources to cover the costs of legal advice apprenticeships¹¹ and qualifications would significantly improve the capacity of the sector to invest in its workforce. There are opportunities to develop the work of pro bono legal advice

⁶ See <https://www.stgilestrust.org.uk/page/london-peer-hub>

⁷ See <https://www.thinknpc.org/publications/transition-advice-fund-position-paper/>

⁸ See <https://www.advicenow.org.uk/>

⁹ No Law Centres have operated in Wales since the closure of Cardiff Law Centre

¹⁰ See <https://jff.thelegaleducationfoundation.org/>

¹¹ See for example <http://www.adviceuk.org.uk/wp-content/uploads/2014/11/apprenticeships.pdf>

services¹² and initiatives involving university law schools, such as the work of AdviceUK member University of South Wales Legal and Financial Advice Clinic.¹³

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?

AdviceUK is seeking to and does engage with higher education institutions – primarily those with law schools – to ensure that law students are both aware of and given opportunities to contribute to the development of social welfare law: we believe that law student placement schemes and law clinics offer significant potential in this regard. In the longer term this “exposure” to social welfare law in practice will undoubtedly mean that some present day law students will become players in and around the advice sector thereby keeping a healthy long term demographic for the sector. Advice services need a better understanding of where new technologies can best be applied in the journeys people typically take – this includes challenging assumptions about deploying technology at the point of initial access to cut costs: sometimes it will be far more effective to build a personal relationship with a service user and then deploy a technology once a person’s needs are understood.

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?

Given our concern to make advice accessible to as many people as possible, AdviceUK wants to encourage our members to respond positively to the Welsh Government’s promotion of the Welsh language and move towards provision of bilingual services: however, this promotion needs to be accompanied by investment of resources in front line agencies to make such provision viable. The financial implications of providing bilingual services increase with depth and complexity of service: given that our members often provide advice with ongoing casework support, this needs to be recognised and resourced.

14. Is access to Welsh law properly available?

Our earlier comments on access apply in this regard.

¹² See <https://www.lawworks.org.uk/solicitors-and-volunteers/get-involved/lawworks-cymru>

¹³ See <https://www.southwales.ac.uk/about/faculties-and-schools/school-law-accounting-and-finance/legal-and-financial-advice/>