

Legal Aid and Criminal Defence in Wales and England

Dr Roxanna Dehaghani, School of Law and Politics, Cardiff University

Dr Daniel Newman, School of Law and Politics, Cardiff University

Evidence submitted to: UK Parliament: Future of Legal Aid

About the Authors:

Dr Roxanna Dehaghani

Roxanna's research focuses on access to justice, vulnerability, and effective participation, particularly during the pre-trial stage of the criminal process. She published a book on vulnerability in police custody with Routledge and is currently writing a book on criminal justice in Wales (funded by the British Academy).

Dr Daniel Newman

Daniel's research focuses on access to justice. His projects have included looking at the impact of austerity on the advice sector, exploring how criminal legal aid cuts effect the lawyer-client relationship under criminal legal aid and considering how rural areas are damaged by reduced spending on justice. In 2013, his first book was published by Hart, *Legal Aid Lawyers and the Quest for Justice*. He is currently working on two books, one on civil justice and another on criminal justice as well as editing a collection on law and social justice.

About the Submission:

This submission is based on a research project funded by the British Academy (SRG\170958) which examined the experiences of criminal justice in south Wales. The evidence provided in this submission is based on the data generated during this project and draws upon Dehaghani and Newman and Dehaghani and (2019a; 2019b; forthcoming) and Dehaghani and Newman (forthcoming).

Within this submission, we provide evidence of some of the reflections of the participants, namely on: Criminal Legal Aid: Restrictions; the future of criminal defence in Wales; and the Impact of the court reform programme. We draw upon representative quotes from participants to illustrate the impact of legal aid restrictions and the court reform programme on access to justice.

The study was comprised of interviews conducted in 2018/19 with 69 participants: 20 solicitors, 16 barristers, 6 police officers, 2 prison workers, 10 people who had been convicted of crimes, 12 family members of people who had been accused or convicted of crimes and 3 others who had been witnesses in criminal cases. The following codes have been used: DS for defence solicitor, BS for barrister, PO for police officer, PW for prison worker, CC for those accused or convicted, FM for family members, and SC for those who had had other contact with the criminal justice system.

The data was generated through semi-structured interviews, anonymised to protect the identity of participants. The length of interviews ranged from 10 minutes to two and a half hours with an average length of around an hour.

Contents	
Summary	4
Recommendations	5
Section 1: Criminal Legal Aid: Restrictions.....	6
Section 2: The future of criminal defence.....	12
Section 3: The decline in firms and offices	15
Section 4: Impact of the court reform programme	17

Summary

- The **fixed fees** payable for police station work **do not accurately reflect the amount of work** required.
- **Criminal defence practitioners** feel **undervalued and disincentivised**. They are facing **high workloads** with **low remuneration**. This has an **impact on the work** that they feel willing and able to perform.
- Criminal **law firms** and offices are in **sharp decline**.
- **Recruitment and retention** are significant obstacles to the future of criminal defence. These issues with recruitment and retention derive from **years of fee cuts and fee stagnation** in criminal defence.
- The current position of legal aid for criminal defence practitioners and the associated issues of recruitment and retention raises serious **concerns about access to justice**.
- **Court closures** are restricting access to justice by **taking courts away from communities**. This issue is **compounded by limited access to transport**.
- There have been **disproportionate impacts in Wales** (as compared with England) in relation to: criminal **legal aid expenditure**, reduction of **criminal law firms and offices**, and **access to courts**.

Recommendations

Criminal Legal Aid: Restrictions: **We recommend an increase in the fees payable for legally aided criminal defence work to reflect the rise in inflation and to accurately reflect the work conducted on cases. For the latter, discussions on how to do increase fees should involve the input from frontline practitioners and professional bodies. We also recommend a review of the tendering procedures and an urgent review of the means and merits tests.**

The future of criminal defence: **We recommend that further research is conducted on practitioner numbers and the demographic profiles of practitioners (age, sex, class) across Wales and England. We further recommend that the tendering process is reviewed and that the number of staff per fee earner is reconsidered to take account of the number of small practices outside of large metropolitan areas. We also recommend that any discussions regarding criminal defence and legal aid consider the specific nature and need of the locality.**

The decline in firms and offices: **We recommend a review of the availability of criminal defence provision across England and Wales. We further recommend providing incentives to practice in areas with declining rates of firms and offices. We also recommend engagement with practitioners on co-location of services alongside third sector/health/local authority provision, and support to encourage innovative outreach projects.**

Impact of the court reform programme: **We recommend a pause on all court closures with further research into the impact of court closures on individuals – witnesses, victims, the accused, and criminal justice practitioners – with a particular focus on rural areas and those areas with limited access to public transport. We also recommend that any future decisions made in relation to court modernisation consider the disproportionate impacts of closures in these areas. We recommend that individuals are provided with financial support to attend court where they would otherwise be facing financial hardship.**

Section 1: Criminal Legal Aid: Restrictions

Criminal legal aid has suffered significant cuts in recent years: during austerity, criminal legal aid was cut by 8.75% under the UK coalition government (Bowcott, 2015; NAO, 2009); the overall Ministry of Justice (which includes legal aid) budget fell by 29% (Sturge and Robins, 2018), the most significant budget cut to any Whitehall department. Fees payable to criminal duty solicitors have not increased in England and Wales since 1998 (Law Society, 2018), rendering the fees lower than they were 20 years ago. The impact is one of deteriorating working conditions and the inability of victims, witnesses, and the accused to access justice. Lawyers are unable to spend the time on cases that they feel should be spent and individuals may struggle to access a lawyer should firms go out of business or move to larger areas where more work is available (Dehaghani and Newman, forthcoming). The fee reductions are also more pronounced in Wales than in England: as the Commission on Justice in Wales (2019: 124) has illustrated, whilst total criminal legal aid expenditure for England and Wales fell from '£1,045 million in 2011-12 (£1,177 million in 2018-19 prices) to £873 million in 2018-19', the figure in Wales is significantly lower: £48.44 million in 2011/12 (£54.65 million in 2018-19 prices) to £36.10 million in 2018/19. The real terms impact is a 26% reduction for the entire England and Wales jurisdiction, increasing to a 34% reduction in Wales.

The Commission on Justice in Wales (2019: 125) has noted how the decline in legal aid expenditure in Wales has severely impacted upon 'the availability of publicly funded criminal legal aid in Wales which has a much smaller part of the available funding than it had in 2011-12'. They also note that the differential reduction in expenditure is too severe to be justified by arguments relating to lesser demand in Wales or larger scale cases in England (ibid).

There are specific concerns relating to the lack of attention paid by Westminster to Wales (Dehaghani and Newman, forthcoming):

What do the government care about it? ...It's Wales for a start, and there's not – there's nothing in it ... for Westminster in Wales, is there? Because it's... a Labour stronghold, or so they think, and – it's part of the Assembly although, obviously, criminal justice... has nothing to do with the Assembly, but you know, there-there's nothing politically in it for them, so why would they bother? (DS19)

There were also concerns about how disproportionate the cuts have been to the Ministry of Justice in comparison with any other department (Dehaghani and Newman, forthcoming):

Why should the Ministry of Justice suffer more cuts than any other department...it's the political decision that those people aren't going to scream and shout, whereas the health services, they cut that – or education, which has actually had cuts but you know...under the radar – then there would be political consequences. It's a factor that the Ministry of Justice is considered the, the lowliest sort of department, or the one that can suffer cuts without any public or media attention. (DS19)

Of particular concern for practitioners was the impact of the fixed fee and how this does not reflect the work required (Dehaghani and Newman, forthcoming):

So you probably work out how much work you need to do on a case and know that you're, you know, the fixed fee comes nowhere near it. So, yeah, again sometimes that may impact on the way that you prepare the case. It's possible. Yeah. Especially when you're busy. You know, because you, in order to try to make a living out of this, the only way round [sic] the fixed fees is to have a lot of work. So that the volume increases, so that you're still getting lots of work in. And sometimes when that happens, because you're so busy, you can't give a certain client enough time that they really should deserve on their case. We try our best, but sometimes it doesn't happen. (DS4)

And if you're, if you're in the police station on a Saturday night, dealing with an attempted murder, you've been a solicitor for eighteen years, you'd expect to earn more than seventy quid to do that case. People think that, you know, that you earn a lot of money! And it's not just the shop-lifts and everything else, it's a big serious world that requires a lot of expertise, and, you know, and anti-social hours and everything else, so you don't get paid properly for it. (DS14)

The fixed fee system also necessitates 'volume work' which reduces the amount of attention that can be paid to a client's case (Dehaghani and Newman, forthcoming). The result of which is a 'sausage factory' system (Newman, 2013):

...If you're sort of fully funded and reliant on legal aid work, what you're going to do is go to a factory sort of system where you are just bringing them in, getting them done, getting them out, because you haven't got time to mess about. And that is a terrible indictment of the position that a decade worth of cuts and efficiencies and everything else has done to our criminal justice system. (DS10)

The low fees payable and the necessity of volume work means that lawyers are unable to give the necessary due care and attention to a case. This may have serious implications for an individual's case (Dehaghani and Newman, forthcoming). This was particularly so when the case was deemed 'less serious', the result of which is that miscarriages of justice may have increased:

Back ten years ago, if there was a road traffic collision, I'd go out and go to the road and have a look at it and take pictures. I'd go around and speak to various people about the incident. If it went to Crown Court, I'd go to Crown Court and seek out Counsel and make sure Counsel have everything ready for the case. Now with the legal aid cuts and the way things are, you don't get paid for any of that, and there's less incentive to do a good job other than pride and responsibility and they can only carry you so far, especially with a firm that wants to make money, like every firm does, otherwise we couldn't stay open. I can't go out and do the best job that I can do and justify it. I just can't. I mean, on the more serious ones you can, but on the less serious ones, which are still serious for them, you can't justify it. There's no incentive to go out and do anything above and beyond what you're expected to do and that's really, really sad. (DS2)

The current merits test for legal aid was also a cause for concern, notably that the 'interests of justice' test often results in a lack of representation at the Magistrates' Courts (see also Gibbs, 2016):

I don't know if you've seen they want to reduce the minimum sentences? So that will impact greatly on legal aid because we won't get legal aid for anything that's going to be in the magistrates' court because they won't be at risk of custody. I mean unless they hit one of the other interest of justice tests, but the usual, isn't it, is real risk of custody. (DS14)

There were also concerns regarding the fees payable in the Magistrates' Court and how this often did not accurately reflect the amount of work required on a case. Police station work was noted as particularly problematic (Dehaghani and Newman, forthcoming):

...say a two-hour trial in a magistrates' court, where you're not going to get into a higher standard fee, then you're going to get two hundred and seventy quid, plus about maybe fifty quid travelling weight. So three hundred pounds for a trial. With two hearings and all the prep. So you lose money hand over fist on your general police station work, unless you've got a load of people in, and you get picking up standard fee. Standard fee in the police station's... a hundred and sixty-nine. Pounds. And that's regardless of how many

times you've got to go back. So you can do up to, I think it's sixteen hours' worth of work, for your hundred and sixty-nine pounds. So you lose money on that, you lose money on the magistrates' court, and you make your money on the odd Crown Court case which happily falls within one of the four well-paid categories. So my colleagues just dealt with a case which was a higher-paid category. In that case it was a long trial, but we got paid fifteen thousand pounds. Comparative case on the lower category you get paid fifteen hundred pounds. So the whole funding of the Crown Court thing makes no sense at all. (DS1)

There are similar concerns that a firm's financial viability depends upon well-paid Crown Court work. Without such work, a firm could struggle to maintain practice. This has an impact upon barristers as solicitors will attempt to take on greater volumes of Crown Court work:

The bar will contract, the criminal bar, in Wales, I think. Because solicitors are under financial pressure as well, a lot more than Crown Court to do work, you know, well that's a business decision they've got to make. That takes work away from the bar, so it will contract. And just trying to think from a Welsh aspect in particular. I just think, I'm really worried about the recruitment of junior criminal barristers. Where are we going to be in ten years' time? Are we going to have a body of people here in Cardiff who are going to be able to do that work? That's what I wonder. (BS4)

BS10 believed that UK government spending priorities on criminal justice and legal aid reflected the reality within English cities (as opposed to Welsh cities) (see Newman and Dehaghani, forthcoming):

For criminal legal aid spend on advocacy so, and not including police station work and the like, but in terms of what is spent on providing representation in courts in criminal cases, only seventy-five percent of what is spent in England on a per capita basis...there's a whole political aspect of trying to work out where [the Ministry of Justice] will devote the money to in terms of criminal defence, and I suspect that that is done very much reflecting the priorities of the big metropolitan areas in England. So what are the criminal defence needs of London, Manchester, Birmingham? Rather than what perhaps are the priorities here in Wales.... And they consume an awfully large, disproportionately large amount of the overall budget of criminal legal aid spend, for example, on terrorism cases. But yes, also as you say, organised crime, criminal gangs, that sort of thing.

The barristers in our sample expressed concern that resource allocation would meet the needs of English cities rather than what BS10 calls 'the community-based crime that we have here' such as house burglaries.

Other barristers raised similar and related issues. This barrister explained there was not enough work in south Wales:

It's not as sustainable to practice in crime here than it is elsewhere. The reason why is there's not the quality of work in Cardiff than there is in Bristol, Manchester, Birmingham. So forget about London; I'm talking about the regional centres, okay? So cuts for legal aid disproportionately affect us because we just don't have the volume and quality of work of elsewhere. (BS1)

Another barrister talked about the difference in case-load:

In the Midlands there more mortgage fraud, big drug work. Here you don't get the really big – you don't often get the really big conspiracies, the really big drug cases, and you don't really get the big gang violence. I mean, if you're in London, it's just routine: gangs, stabbings, shootings. Thank God we don't really have that in Cardiff or the surrounding areas.... But when you think Liverpool is one of the big centres for drugs, London is one of the big centres for drugs, and Manchester is one of the big centres for drugs, you do get much more of the massive cases in those areas than you do down here. (BS9)

There were more bigger cases on other, larger circuits. BS2 explained the impact of differing caseloads on barristers:

I think there's more career progression in London. When I was in London, the people over fifteen years' call didn't do rubbish. They didn't do ABHs, they didn't do Section 20s, they didn't do affrays, they just left that all to the junior people. They were more interested in cultivating a big case practice. Here, there just – you get people over fifteen, twenty years' call doing burglaries, affrays, rubbish trials, just because they've got to be in work that week. They've got to, they've got to earn some money. (BS2)

The fee structure thus impacts upon the payment for work for barristers. This results in them having to take on many smaller, less well paid cases.

The whole system of legally aided criminal work was said to be largely operating on good will (Dehaghani and Newman, forthcoming):

In common with all publicly-funded services I suppose it, it, it diminishes the amount of goodwill there is in any system, whether it's teaching, nursing, local government, whatever it may be. Because if people are, find themselves under pressure, expected to deliver more work for stagnating or less remuneration, then it will create a degree of ill-will, ... whereas there would be slack in the system so you might help people out, when you're not getting paid to do it, there, there will be less of that goodwill around, in any environment that's treated in that way. (DS18)

This position is unsustainable and must be addressed. Currently, **the rates are too low; they need to be increased. We recommend an increase in the fees payable for legally aided criminal defence work to reflect the rise in inflation and to accurately reflect the work conducted on cases. For the latter, discussions on how to do increase fees should involve the input from frontline practitioners and professional bodies. We also recommend a review of the tendering procedures and an urgent review of the means and merits tests.**

Section 2: The future of criminal defence

Owing to the impact of legal aid cuts and stagnation, there were concerns regarding the survival of criminal defence firms and barrister's practices. The issue of advice deserts – i.e. the lack of advice in certain areas due to an absence of provision – is a particular concern in Wales, especially across rural areas (see Newman, 2016). Another concern was that of the average age of criminal duty solicitors (see Law Society, 2019) and particularly whether, when these current practitioners retire, there will be enough solicitors to replace them. In Wales, as with rural areas in England, there are high numbers of criminal duty solicitors over the age of 50: between 49 and 60% in Wales (with higher figures in mid and west Wales). Predictions from the Law Society (2019) indicate that 'in five to 10 years' time there could be insufficient criminal defence solicitors in many regions, leaving people...unable to access their rights'.

It was noted how legal aid cuts had impacted on the recruitment and retention (Newman and Dehaghani, 2019a):

The last contract tender was quite a complicated one. They tried to introduce almost competitive tendering, where they wanted to restrict the number of firms in an area because there's misbelief that if you get bigger you make more money because your costs go down. But as I said you, it doesn't work like that because of the contract that they issue. You have to have a certain number of staff per fee earner, and a certain number of supervisors per fee earner. And every other cost goes up when you expand, but they only wanted four firms in Gwent that would do duty work. So we entered this tendering process, where we had to go through this process of supplying documents, and answering all these questions, and essentially writing a huge document like a prospectus as to how we would service that contract and why we are best suited as opposed to other firms to do that ... But if we were the only firm left in Gwent, then you know you can to a certain degree play more hardball with the legal aid agency: "Well, I'm not signing that contract." But we're going to end up in that position in about ten years when all these people leave the profession. (DS7)

Lawyers were reluctant to encourage students to engage in criminal practice:

It impacts on the work I do, it impacts on the advice that I give to students that want to be criminal lawyers, I tell them not to do it. With a heavy heart, but I tell them not to do it, because they'll never – they'll always be poor! Because it's hard work being a legal aid lawyer

and it's very important, obviously. And it's so badly remunerated ... it's ridiculous. I could earn more money if I went and manged a KFC than I could if I was a legal aid lawyer in Cardiff... I don't think I would do it for the money, because ... it's just not enough. (DS14)

There were similarly concerns about the quality of lawyers who would engage in criminal defence work (Newman and Dehaghani, forthcoming):

My two sons who are sixteen and eighteen who probably, certainly the younger one would have definitely become a criminal lawyer but how can you recommend a profession which is – it's not just the money but you need money to be able to live and unfortunately in the next five, ten years I can't see it is going to be a profession which is going to attract those of perhaps the calibre that it once would have done. (DS5)

Recruitment at the bar was also noted as a significant issue (see also BS4 above) (Newman and Dehaghani, 2019a):

And it's going to be a big problem in the future, because one thing I should stress about the cuts is the job is dying from the bottom up. If you go around the chambers in Cardiff now, we always historically used to have tenants in that call grade of nought to ten years called the 'junior tenants', learning their job, nought to five years' call, we'd always have about five or six people; five to ten years' call, we'd have five or six people. So we had a team of people under ten years' call that would be about ten people, and that would be across all the chambers. Now, we just cannot get people, once they've qualified, to do criminal work. They just do not want to do it because the money is so bad, they don't see any career path there for them to do it ... Your first five years you're just trying to learn the job. Second five years you're promoting yourself forward, you're getting into more serious work. Then after ten years' call, you've got to motor on and do more and more difficult cases ... There is no one coming up behind. Absolutely no one. We cannot get our tenants, once they cross the line and become a tenant here, they look at civil, family, immigration, and see that they can earn twice as much. (BS2)

That smaller firms operate in Wales was also a concern (Dehaghani and Newman, forthcoming):

I do tend to do work around the country...I can see how in bigger cities there is a dearth of client care. That's possible. But the reality of that is that those firms who have got a larger

number of clients coming through and a greater pool from the legal aid fund will be able to survive, whereas south Wales has been historically been a lot of smaller companies, a lot of one-man bands. It's just going to be impossible for them to survive with legal aid cuts, with legal aid regulation, with all the requirements that are placed on you to just have a firm with SRA [Solicitors Regulation Authority] compliance. We're in a different, different position of, there is quality being provided but how long can it last? (DS5)

There are serious concerns regarding recruitment and retention. **We recommend that further research is conducted on practitioner numbers and the demographic profiles of practitioners (age, sex, class) across Wales and England. We further recommend that the tendering process is reviewed and that the number of staff per fee earner is reconsidered to take account of the number of small practices outside of large metropolitan areas. We also recommend that any discussions regarding criminal defence and legal aid consider the specific nature and need of the locality.**

Section 3: The decline in firms and offices

Along with problems with recruitment and retention, there has also been a decline in the number of offices offering criminal defence (Newman and Dehaghani, forthcoming):

Table 2 England and Wales Criminal Law Firms and Offices¹

	2010/1 1	2011/1 2	2012/1 3	2013/1 4	2014/1 5	2015/1 6	2016/1 7	2017/1 8	2018/1 9
Firms	1,861	1722	1656	1603	1517	1512	1388	1314	1271
Offices	2598	2415	2338	2282	2172	2240	1991	1998	1921

Whilst the above table provides the figures for England and Wales as an entire jurisdiction, a Freedom of Information request to the Ministry of Justice² has indicated that the situation for criminal law firms and offices in Wales is significantly worse than the overall figures for the England and Wales jurisdiction.

Table 3 Wales Criminal Law Firms and Offices

	Mar 2011	Mar 2012	Mar 2013	Mar 2014	Mar 2015	Mar 2016	Mar 2017	Mar 2018	Mar 2019
Firms	146	140	137	132	122	109	105	94	89
Offices	186	183	181	176	165	150	145	131	126

¹ Ellie Reeves MP: Written Questions. Available at:

<https://members.parliament.uk/member/4620/writtenquestions?page=5#expand-1079333>

² Daniel Newman Freedom of Information request dated 6th March 2019. Accurate as of 18th March 2019. Table 3 includes providers who are either physically located in Wales and/or who operate Duty Schemes in Wales.

The 31.7% decrease in criminal law firms across England and Wales rises to 39.04% when considering Wales only; the decline in the number of offices across England and Wales is 26.06% compared to a 32.26% in Wales. Wales has thus lost a greater proportion of criminal legal aid firms and offices than England and Wales as a whole. This means that for a total of 59.12 million people across England and Wales there are 30.78 criminal offices per person; this declines to 24.9 offices per person in Wales across the population of 3.14 million. Our participants noted the decline in advice provision in certain areas of the country (Dehaghani and Newman, forthcoming):

I mean, even in Abergavenny there were probably about ten firms of solicitors when I first started; there's now three. And in Ebbw Vale...two or three, out of, maybe – there were ten or fifteen. So, it's just declined and declined and declined. (DS19)

If your high street practitioner in Tredegar closes? You know, in fact... I could probably bet you ten pounds that if you walk down Tredegar high street, you're not going to find a solicitors practice, because they can't afford to dabble in bits. You either have to go all in or not at all. So as a nation of high street practices it's a very Welsh issue, that if you lose one aspect of it you can't afford to run the rest, so you close the firm down, and then the rural areas especially, if they, you know, they want a defence solicitor, they've got to come to Newport or Cardiff. (DS9)

We recommend a review of the availability of criminal defence provision across England and Wales. We further recommend providing incentives to practice in areas with declining rates of firms and offices. We also recommend engagement with practitioners on co-location of services alongside third sector/health/local authority provision, and support to encourage innovative outreach projects.

Section 4: Impact of the court reform programme

The effect of court closures in Wales has also been disproportionate to that in England. Our previous submission to the House of Commons (Newman and Dehaghani, 2019b) has illustrated that while official accounts indicate a figure of 50% of Magistrates' Court closures across England and Wales, the figure has been higher in the latter as compared with the former: 59% in Wales as compared with 49% in England.³ Wales has thus lost 22 out of its 36 Magistrates' Courts, with 9 principal areas in Wales operating without the lower-tier court. Within our south Wales sample area, there are only six Magistrates' Courts remaining (see also Newman and Dehaghani, forthcoming). The lack of courts in Wales was noted by our participants as having an adverse effect on access to justice (see Newman and Dehaghani, 2019a):

The courts ... Carmarthen Court has closed, Ammanford Court has closed, so for Carmarthenshire it all comes down to Llanelli. ... Haverford West up to Llanelli. The worst, talking from experience ... that I've ever been involved with a fifteen-year-old on a Section 5 public order. So not an imprisonable offence, okay? He gets arrested in Burry Port, gets taken in the car, en route to Llanelli, gets told Llanelli is full, go to Ammanford. En route to Ammanford he is told, Ammanford is full, go to Haverford West. En route to Haverford West, he gets told Haverford West is full, go to Brecon. (DS11)

I mean I've had clients who have been arrested out of area, and they have problems getting back, but that's a different issue, isn't it? ... I remember having a client coming from Porthcawl, and he was worried about the money because he'd only get the money back, you know, if he's found not guilty, and then he can make an application, but he's also got to pay his own train fare stuff, and, you know? Of course, the judges ... well what can they do? They can't do anything about it, but it's, you know, five quid there, five quid back, he's on like fifty-three quid a week, whatever it is, that's a lot of money, isn't it? And also frustratingly ... you go to court and nothing happens, and it gets adjourned and you have to come back again. Less so now, so you've got to balance that with being too fast. (DS16)

³ Residents of Staylitttle in Powys (mid Wales) experience the greatest travel distance to their nearest criminal court, with a 74-mile journey to Caernarfon criminal justice centre (the designated "receiving site" for Dolgellau Magistrates' Court, which closed in 2017-18). This journey takes 1 hour and 50 minutes *by car* and seems impossible via public transport.

The impact of closures of Crown *and* Magistrates' Courts was also noted:

It is hugely significant in Swansea, because Swansea is, covers the whole of West Wales and it's a massive geographical area. Initially, there were Crown Courts in Carmarthen, there were Crown Courts in Haverfordwest. The Crown Court in Haverfordwest covered the whole of Pembrokeshire, and Pembrokeshire is a big old county. They closed the original court in Haverfordwest and built a new court, which was allegedly a combined centre, magistrates and Crown. The Crown Court was so badly designed it was unusable ... as soon as counsel stood up ... if you were on the jury, you couldn't see the witness ... So Swansea has gone from having effectively seven courts to four courts ... you would have people basically travelling from Swansea – to Swansea from Pembrokeshire, taking hours and hours and hours to simply plead not guilty, and spend all their money for one hearing ... People who have the misfortune of being charged with indictable-only offences from Pembrokeshire, unless they're remanded in custody, they're not going to get to court. Well they do, but I mean it's, you will often a case where, you know, the bus is gone, the train's broken down, or his lift didn't turn up ... It's just not fair, and there is no... alternative provision for allowing somebody to say, "Well, I'll plead not guilty, but I'll do it from round the corner from where I live" ... there should be a provision for that, and ... well it's the same in the magistrates' courts isn't it? ... they've closed so many of the outlying magistrates' courts ... I would say surprising; it's maybe not surprising. Very few people at that level have access to private transport. You know, they may be relying on someone giving them a lift. (BS15)

As BS15 notes, the effect of court closures has been disproportionate on those without access to transport. This issue is compounded where cities, towns, and villages are poorly connected by public transport. Many defendants, even if able to access transport, may not have the resources to pay to get to court:

You've got people now ... the boundaries for which court you go to ... you're just on the wrong side of a boundary, you've got a person that doesn't work, is shoplifting because they've got no money, expected to then be in Cardiff by nine thirty AM. Well, it's just not going to happen. And then warrants issued for their arrest, and... and some people would rather let a warrant issued for their arrest just so they can get to court. Like, "Well, come and get me if you want to get me there, because I haven't got the money to pay for it" ... I never understood why they closed Pontypridd Valley Magistrates' Court. I've never understood it. Because every time that I went there it was rammed, and that was covering all of that part of the valleys. So now, you

know, if you're just on your boundary you've got to get to Merthyr, just on the other side of it you've got to get to Cardiff, you know, those are your only two courts... when I started ... there were so many more courts. You had Blackwood, you had Pontypridd ... Port Talbot to Neath, someone who doesn't drive, got no money, it's still a bit of a trek ... Pontypridd magistrates' court was perfect for covering that catchment area ... There was just no reason, no need to close that, I don't think ... There's a lot of clients that are always late, you know, and they, as long as they keep you updated you can kind of buy a bit of court time for them. Some district judges won't stand for it. If you're not there by the time your case is called, they'll issue a warrant for your arrest. (DS14)

Whilst a decrease in footfall has been the official line to justify many court closures, the quote above indicates that courts were closed even where there was significant activity and demand. It is evident that, despite HMCTS assurances to the contrary (Ministry of Justice, HMCTS and Gauke, 2018), communities and individuals from certain communities have been unable to access alternative courts.

The stress of attending court may be overwhelming and exacerbated by the need to travel a significant distance:

We had a client today who lives in, just north of Merthyr, who, it's an offence of harassment, so they deal with it in the area where the complainant is. So even though he's miles away, the offence is committed in Gwent, so he gets dealt with here. So he was interviewed, denied it, has received a postal requisition at very short notice, and can't afford to get from Merthyr to Newport ... the individual I spoke to today was threatening to kill himself. He's rang the court and said the same thing. Because he's not without his problems, and he just can't afford to get to court, and doesn't want to be in a custodial setting. (DS7)

Whilst court closures in large metropolitan centres may not present difficulties for those wishing to access the courts, the impact does indeed create difficulties – often extreme – for those outside of these areas.

The necessary travel to court may have a disproportionate impact on those who are on state support or otherwise on a low income (Newman and Dehaghani, forthcoming):

Where it's a real issue is where you have, if somebody is on benefits. They've got a family. They can't afford it. It's not cheap. Whether they're going by car, train, bus, whatever, it's not

cheap. So there is that, and it's, it will be difficult for them. And somewhere along the line, you know, there's a fear that, well, they've got to get to court; if they don't get to court, they're going to prison because it's breach of bail. And I wonder whether the kids have to do without some food the day or two before in order that the money is there to get to court and back. You just don't know with these things. But where they're going to court because they're having a trial, and perhaps a trial is going to take a week or sometimes longer – even for a simple one, it can take longer – how do they manage? They couldn't possibly have the money to travel. They're, if they're working, they're not going to have income for that period, you can be fairly sure. They're not going to get benefits for that period because they're not available for work, as well, because they're in court. And I must admit, I do wonder how those people cope... a lot of people are hand to mouth nowadays, you know. (DS6)

We recommend a pause on all court closures with further research into the impact of court closures on individuals – witnesses, victims, the accused, and criminal justice practitioners – with a particular focus on rural areas and those areas with limited access to public transport. We also recommend that any future decisions made in relation to court modernisation consider the disproportionate impacts of closures in these areas. We recommend that individuals are provided with financial support to attend court where they would otherwise be facing financial hardship.

References

Bowcott O (2015) 'Legal aid fees to be cut by 8.75%, confirms Ministry of Justice' (*The Guardian*, 10 June 2015), available at <https://www.theguardian.com/law/2015/jun/10/legal-aid-fees-to-be-cut-by-875-confirms-ministry-of-justice>.

Commission on Justice in Wales (2019). *Justice in Wales for the People of Wales*. Cardiff: Welsh Government.

Dehaghani, R and Newman D (forthcoming) The Crisis in Legally Aided Criminal Defence in Wales: Bringing Wales into Discussions of England and Wales. *Legal Studies*.

Ministry of Justice, HM Courts and Tribunal Service and Gauke, D. (2018) Government announces changes to court estate: 24 July 2018. UK Government. Available at: <https://www.gov.uk/government/news/government-announces-changes-to-court-estate>.

Gibbs P (2016) *Justice denied? The experience of unrepresented defendants in the criminal courts*. London: Transform Justice.

Law Society (2019). *Criminal Duty Solicitors: A Looming Crisis*. London: Law Society.

National Audit Office (2009) *The Procurement of Criminal Legal Aid in England and Wales by the Legal Services Commission*. London: The Stationary Office.

Newman D and Dehaghani R (forthcoming) *Experiences of Criminal Justice: perspectives from Wales on a system in crisis*. Bristol University Press.

Newman D and Dehaghani R (2019a) Experiences of criminal justice in south Wales: evidence submitted to the Justice in Wales Commission. Technical Report: Cardiff University;

Newman D and Dehaghani R (2019b) Experiences of Criminal Justice in South Wales. Submission to UK Parliament debate on court closures.

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

Newman, D. (2016) Attitudes to Justice in a Rural Community. *Legal Studies*, 36(4), 591-612.

Sturge G and Robins J (2018) 'Estimates day: Ministry of Justice spending' House of Commons library (29 June 2018), available at <https://commonslibrary.parliament.uk/research-briefings/cdp-2018-0162/>.