

**Submission by Bob Chapman in response to the Call for Evidence by the
Commission on Justice in Wales – June 2018**

**C - LESSONS FROM THE OPERATION OF THE COMMUNITY LEGAL SERVICE
IN WALES**

THE ACCESS TO JUSTICE ACT 1999

An early piece of legislation of the Blair Government elected in 1997 was the Access to Justice Act 1999. This, amongst other things, created the Legal Services Commission (LSC) out of the Legal Aid Board and introduced the concepts of the Community Legal Service (CLS - concerned with civil legal aid) and the Criminal Defence Service (CDS - concerned with criminal legal aid) and, for the first time, capped the total amount that could be spent on legal aid. The new system was run by the Legal Services Commission, a non-departmental public body, from its London headquarters and its Wales and English regional offices.

THE LSC IN WALES

The Wales Office had 70-80 staff based in Cardiff and another half dozen based in Chester to cover north Wales. The staff were divided into an Operations Team which determined day to day claims for legal aid, a Contracting Team which issued and monitored contracts and quality, and, of most interest in our current context, a Planning & Partnership Team (of 12) which developed local Community Legal Services Partnerships (CLSPs) in each local authority area in Wales and prepared local and national advice plans.

THE LEGAL SERVICES COMMITTEE FOR WALES

Wales, and each English region, had a Legal Services Committee (for a short while there were two – one in the north and one in the south) comprising 6 members, four of whom were independent of the LSC and came with experience of local government, not for profit advice providers, legal aid lawyers, and the justice system more generally. The Committee was responsible for advising the LSC where and how to spend civil legal aid by approving a strategic plan for Wales and local advice plans as the local CLSPs developed them. The Committee agreed or drew up plans for civil law services across Wales and prioritised need for new services.

PARTNERSHIP WORKING

The system worked well during the five or six years it was supported (2000 – 2005/6) and made some progress at identifying and filling gaps in provision. In the local CLSPs advice providers were brought together from the not for profit, private practice and public sectors as were funders from local government, national government (UK & Wales), Europe, charitable trusts, national lottery distributors etc.). And the Wales Committee authorised the all Wales approach to shifting money towards the areas (geographic and type of law) which needed it most.

WHAT WAS THE CLS TRYING TO FIX? HISTORIC PROBLEMS OF LEGAL AID

Prior to the Access to Justice Act legal aid funding had been spent in the geographic areas where there were solicitors' offices willing to provide legal aid services and on the types of law on which they were prepared to work. And the green form scheme made legal advice available wherever there was a participating solicitor but gave no guarantee of expert knowledge in a particular subject, leading to claims of "dabbling" and poor advice through lack of expertise. This ad hoc system had grown up over fifty years following the introduction of legal aid and advice as part of the welfare estate in the post war period. Unfortunately it bore little relation to the needs of people for legal advice and representation. As most solicitors were not, for example,

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interested in, or expert at, welfare benefits law, those needing this type of legal advice found it difficult to access advice they could rely on. Law Centres, which did concentrate on this sort of work, were very few and far between, with only one ever opening in Wales (in Adamsdown in Cardiff) and now no longer operating.

NOT FOR PROFIT ADVICE AGENCIES

Whilst the Access to Justice Act was being developed the LSC, and the Legal Aid Board before it, recognised that most categories of social welfare law were better provided by not-for-profit agencies than by the majority of high street law firms and so there was an effort to encourage third sector agencies to apply for civil legal aid franchises, and then contracts. In Wales, Citizens Advice and Shelter Cymru (amongst others) played a leading role in this development and became the backbone of social welfare law advice across the country.

PROBLEM CLUSTERS

Part of the thinking behind the planning of legal advice services conducted by the local CLSPs and the Legal Services Committee for Wales was based on the work of Professor Dame Hazel Genn¹. Amongst other insights her work demonstrated the links between different types of law showing that people often experienced problems in clusters that required a holistic range of advice from different legal perspectives to be available to help them. For example, someone threatened with eviction for non-payment of rent obviously had a need for housing advice, but also was likely to be experiencing other debt problems all of which may be caused by not having successfully claimed all the welfare benefits they were entitled to. It was from work of this kind, followed up by Pascoe Pleasence² that the LSC in Wales developed a policy of letting joint contracts for welfare benefits, debt and housing advice to providers, or a consortium of providers, across Wales funded not only by the LSC through legal aid but also through the Welsh Government for the housing part of the package (funded from the homelessness prevention budget). Advice providers such as some Citizens Advice offices and Shelter Cymru worked together to deliver the package through a single front door, whilst Welsh Government and the LSC jointly funded and monitored the arrangement. Through such cooperative arrangements it was possible for the first time to provide the basic benefits, debt and housing social welfare law package in every one of the 22 local authority areas in Wales.

PARTNERSHIP INNOVATION BUDGET (PIB)

In another development a formal agreement was brokered between the LSC the Welsh Government and the Community Fund (one of the National Lottery distributors at that time) whereby each funder contributed to a single pot to fund innovative projects which would test new and better ways of delivering advice services. The PIB was administered jointly by the LSC and the Community Fund and decisions on whether to fund projects were taken by the Legal Services Committee for Wales on behalf of all three funders. Whilst some excellent projects were funded through the PIB the biggest lesson from the exercise was that funders can successfully work together to fund joint projects if the will is there.

REFERRALS

¹ Genn, Professor H, "Paths to Justice – what people do and think about going to law", Hart Publishing, 1999.

² Pleasence, P, "Causes of Action – civil law and social justice", Legal Services Research Centre, 2006.

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Professor Genn had also pointed out the importance of developing active referral protocols as her research had shown (1) that a large proportion of people referred from one agency to another never arrived at the second agency, and (2) that if a second referral became necessary an even smaller proportion actually arrived at the third agency and got the advice they required. Whilst this sounds like a slightly academic argument it is, in fact, crucial to ensuring access to justice. The stock response of many agencies when faced with someone needing advice outside of their own expertise is to send them to the nearest Citizens Advice office. This might be the right answer, although many will not arrive, but if what they really need is a specialist housing lawyer then it adds an extra unnecessary link into the chain which will risk many more people to dropping out and not getting the legal advice they need. First time active referrals which make it easy for people to get to the right place is vital if the system is to maximise the chances of people getting the advice they need. This means that wherever people first go for advice the agency needs to have the ability to correctly diagnose what advice people need even if they can't provide it themselves; and it then needs not just to signpost the person but to actively find the right agency or firm which has the expertise and capacity to see them within any time limit imposed by the case. Passing on basic details of the client and the case will also make the transfer easier as the story will not have to be repeated over and over again. There is scope for better use of technology to make this all happen – if there were a single case recording and management system used by all quality assured advice agencies it would then be so much easier to organise successful referrals. The requirement to actively participate in such referral arrangements must in time become the norm in advice commissioning.

PLANNING ADVICE SERVICES

Advice planning, whether conducted at local (local authority) level by the Community Legal Service Partnerships, or at the Wales wide level by the Legal Services Committee for Wales, was based on a mixture of statistical data (historic usage, deprivation data etc.) and local knowledge. In Wales at least, these plans sometimes led to the actual shifting of expenditure as there was no new money to fill gaps. For example, expenditure on family law in Cardiff, Swansea and Wrexham was reduced one year (2003 or 2004?) to enable additional social welfare law provision in some of the least well served south Wales valley communities. But before the new planning system could properly establish itself it crumbled as resources were withdrawn by the LSC: firstly, the reduction of the staff to service the partnerships and carry out the joint planning work, and secondly, the reduction of legal aid funds for civil law advice following ever-increasing pressure for additional funds for crime and immigration advice.

In their assessment of the CLS, Steve Hynes and Jon Robins³ conclude:

“Credit must be given to the government for trying to introduce a more rational system of planning and organisation to what had been largely haphazard in design. The major drawback to the CLS was that while it had created a bureaucracy which was identifying gaps in provision and raising quality standards, there was not the political will to find the cash to expand the service when need was identified”.

³ Hynes S, and Robins J, The Justice Gap, Legal Action Group, London, 2009.

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In Wales, one of the reasons the CLSPs were expensive to support was because there were too many of them – one for each of the 22 unitary local authorities. But where they were successful one of the reasons was that the over-centralised agenda was driven flexibly at a local level and this enabled them to achieve significant improvements in services. Some of the lessons we can draw from the relatively short-lived CLSP experiment must include:

- that planning can improve services even where there is no new money;
- that the planning process is not cost free – it has to be supported. Partnerships don't just happen – they have to be facilitated;
- that it is a waste of resources to repeat the planning process 22 times across Wales - planning will work best when done at a regional (six regions?) or at a Wales-wide level; and
- that there needs to be flexibility within a Wales wide framework for regional partnerships to take account of local factors when planning services.
- that any future partnership working must consistently involve links with credit unions, food banks, local authority one stop shop information hubs etc.

LOOKING FORWARD

There are two over-riding factors in considering the future of legal and advice services in Wales: Demand is ever increasing; and resources are limited if not actually decreasing.

A comprehensive planned system of civil and social welfare law advice services across Wales, of high quality, integrated and working together, can deliver an improved experience for the people of Wales as well as contributing to a range of government initiatives – promoting equalities, tackling poverty, supporting communities and promoting the wellbeing of future generations.

But for this to happen, and in the absence of the Ministry of Justice taking the lead, Welsh Government must play a leadership role and dedicate sufficient resources to make it happen. An injection of funding into front-line services to expand and enhance the provision of both family and core social welfare law services (housing, benefits and debt) would demonstrate a recognition of the important role that can be played by advice services in Wales – these are high volume services, of high value to people in Wales, and directly support the anti-poverty agenda. The funding doesn't need to come from Welsh Government alone: funding from a devolved legal aid fund and other sources within the justice system could be added to Welsh Government and local authority funds, supported by local health boards, possibly still the European Union, alongside a strategic partnership with the Big Lottery, and could together allow the creation of a comprehensive, planned network of quality civil & social welfare law advice across Wales. What is required is the mechanism for the coordination of this joint expenditure linked to a comprehensive planning system which provides consistency across Wales whilst taking into account local needs.

Action No 15 in the Welsh Government's Information and Advice Action Plan⁴ is about establishing a Funding Advisory Hub to encourage a consistent strategic

⁴⁴ Information & Advice Action Plan, Welsh Government, December 2016. <https://gov.wales/topics/people-and-communities/communities/advice-services/information-and-advice-action-plan/?lang=en>

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approach to the funding of information and advice services. Whilst work on this has not really started yet, it might form the basis of a new body which could take on the role of coordinating funding across Wales. The model of the Legal Services Committee for Wales may also have something to contribute to considerations of how this should be structured.

I conclude with some more recent thoughts on how the experience of the Community Legal Service might now be improved upon:

SYSTEMS THINKING

In 2007-08 the Barings Foundation funded a “Radical Advice Project” for AdviceUK which demonstrated in its final report⁵ the scope for improved delivery of local advice services by introducing a systems-thinking approach, analysing the local demand for advice services and bringing influence to bear on the local causes of problems. There is much to be gained from a wider application of such an approach as outlined in the final report of the project.

ADVICE AND HEALTH

There is much good practice all over the UK demonstrating the positive impact of advice services which are provided alongside or linked to health services, and showing how quality holistic advice provided on the spot can reduce the impact of poor physical and mental health. In 2015, the Low Commission published an evidence review and mapping study of the impact of advice on health outcomes.⁶ Sir Michael Marmott says, in his foreword to the report:

“This report is a welcome contribution to the discussion about how we can tackle the underlying causes of ill health in the short to medium term It provides us with a wealth of research and a very useful mapping of current initiatives designed to help people to deal with the practical issues that underlie or are associated with so much ill health. This report reminds us that the patients who are seen in clinical settings may well have problems in their everyday lives that may be causing or exacerbating their mental and physical ill health or may be getting in the way of their recovery. If we do not tackle these everyday “practical health” issues then we are fighting the clinical fight with one hand tied behind our back.”

In Wales we have specific evidence⁷ of the good effect of providing social welfare law advice in health care settings through the Welsh Government funded “Better Advice Better Lives” programme which has been running for over 15 years. We need more of this sort of programme in Wales so that the benefits are evenly felt across Wales. The Arad Research report also includes a useful literature review – “a full

⁵ “It’s the System, Stupid – radically rethinking advice”, Report of the Radical Advice Project 2007-08, AdviceUK, 2008.

⁶ Parkinson A and Buttrick J, “The Role of Advice Services in Health Outcomes”, The Low Commission & the Advice Services Alliance, 2015. https://www.lowcommission.org.uk/dyn/1435582011755/ASA-report_Web.pdf

⁷ Arad Research, “An assessment of the implementation of the ‘Better Advice, Better Lives’ scheme: Final Report, Welsh Government, 2015. <https://gov.wales/docs/caecd/research/2015/151125-assessment-implementation-better-advice-better-lives-scheme-en.pdf>

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overview of the advice service landscape in Wales, how it is funded and its delivery structures”.

THE WYMAN REVIEW OF DEBT ADVICE FUNDING

In January 2018 the Money Advice Service published Peter Wyman’s Review of Debt Advice Funding⁸. There are a number of key recommendations which will significantly improve the debt advice sector and which would, if applied more generally across the advice sector improve that too; for example, an increase in funding for advice (from the levy on financial institutions), mandatory professional training and qualifications for debt advisers, better use of technology, and a more consistent customer journey.

⁸ Wyman P, Independent Review of the Funding of Debt Advice in England Scotland Wales and Northern Ireland, Money Advice Service, 2018.
https://masassets.blob.core.windows.net/cms/files/000/000/900/original/Peter_Wyman_Review_of_Debt_Advice_Funding_2018.pdf