

Commission on Justice in Wales

LSB submission to the call for evidence

June 2018

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Summary

1. We hope our research will contribute towards an understanding of the distinctive needs of consumers, citizens and the profession in Wales.
2. This research data illustrates that, while there are some interesting differences in experience, similar challenges exist in Wales and England, principally the linked issues of addressing unmet need and increasing competition in the market.
3. Regulation of legal services should contribute to the Commission's long-term vision for the justice system in Wales in three principal areas:
 - Supporting a thriving legal sector in Wales through an open, liberal and modern regulatory framework which maintains high standards
 - Increasing access to justice through a more transparent market and promoting understanding of how legal services can help to resolve common issues
 - Continuing to build and maintain a strong evidence base on the operation of the legal services market and the administration of justice in Wales.

Opening comments

4. We welcome the establishment of the Commission on Justice in Wales and are pleased to contribute to the call for evidence. Building on our discussions with your team, annexed to this response is an analysis of data from our major quantitative surveys identifying similarities and differences in findings between respondents in Wales and England. Below we make some high-level comments on the contribution that effective regulation can make towards advancing the aims set out in the call for evidence document.
5. We attach great importance to understanding and taking account of the distinctive needs of consumers, citizens and the profession in Wales. Through our research activity, consultation exercises, events and well-established working relations with stakeholders, we endeavour to ensure that we factor these distinctive needs into the development of policy and engage in ways that take these needs into account, including by meeting our obligations under the Welsh Language Act. Recognising the distinctiveness of Wales has become ever more important for us in light of the growing body of law that is applicable only in Wales and the widening role played by the Welsh Government in the delivery of justice services in Wales.
6. The enclosed slide deck disaggregates our survey data, where possible, to provide the best picture available from that data on the operation of legal services in Wales. The raw data from our surveys is published online to allow anyone to carry out further analysis. Our data illustrates that, while there are some interesting differences in experience, consumers, citizens and the profession in Wales and England face similar challenges. Demographic and social factors may mean that the impact of justice policies is felt differently in Wales compared to

England and therefore may require different approaches. For example, we are aware that the Commission on the Future of Advice and Legal Support ('the Low Commission') has highlighted particular issues regarding the sustainability of the Welsh legal sector and emphasised specific risks to legal services in rural areas due to cuts in funding and inadequate recruitment of younger professionals.¹

7. A wide range of actors can help to meet these challenges. Regulation of legal services should contribute to the Commission's long-term vision for the justice system in Wales in three principal areas:
 - Supporting a thriving legal sector in Wales through an open, liberal and modern regulatory framework which maintains high standards
 - Increasing access to justice through a more transparent market and promoting understanding of how legal services can help to resolve common issues
 - Continuing to build and maintain a strong evidence base on the operation of the legal services market and the administration of justice in Wales.

Supporting a thriving legal sector in Wales

8. The Commission's long-term vision includes promoting the strength and sustainability of the Welsh legal services sector and maximising its contribution to the prosperity of Wales. There is already a substantial legal services sector in Wales making a significant contribution to the economy and the international standing of the England and Wales jurisdiction.
9. Our data suggests some encouraging signs about innovation among law firms in Wales. A higher proportion of firms in Wales than England have introduced any new or significantly improved services to clients in the last three years.² Another positive finding is that overall service satisfaction is higher among both individual and small business consumers in Wales compared to England. However, analysis of professional registers indicates there are proportionally fewer alternative business structures (ABS) in Wales compared to England.
10. Creating and retaining a highly skilled and diverse workforce is an important component of a strong and sustainable legal sector for Wales. The higher education sector in Wales trains over 4,000 law students annually and we welcome developments, such as the Centre for Innovation and Entrepreneurship in Law at Swansea University, which will help to equip the lawyers of the future to exploit opportunities offered by modern technologies. The LSB has a statutory duty to assist in the maintenance and development of standards in relation to

¹ https://www.lowcommission.org.uk/dyn/1459955052268/WalesManifesto_English_web.pdf

² Unpublished research, forthcoming. This finding is close to statistical significance.

education and training.³ We deliver this through statutory guidance⁴ and by considering applications from the regulators we oversee when (amongst other things) they wish to make changes to those regulatory arrangements which relate to education and training.

11. It is not the role of regulators to suggest in which areas the legal sector in Wales should look to grow or how it should seek to achieve this. However, regulators have an important role to help create the conditions that can allow the sector fully to exploit opportunities to meet the needs of consumers and adapt to the changing external environment. We consider this ambition can best be achieved through an open, liberal and modern regulatory framework which maintains high professional standards of ethics and conduct.
12. Since the commencement of the Legal Services Act 2007, deregulation has introduced reforms that allow a wider range of business models. Restrictions on business ownership have been removed, making non-lawyer ownership of and investment in a wider range of legal services businesses possible. Regulators have contributed to reducing regulatory burdens by simplifying and focusing their processes and removing barriers to market entry. Together, these regulatory improvements support growth and innovation in legal services, allowing the professionalism of individual lawyers to thrive and new businesses to grow, within a framework focused on protections that are essential to consumers and the public.⁵ The evidence indicates that these reforms have been achieved and have delivered benefits without compromising on consumer protection.⁶
13. Legal services today benefit from more proportionate and targeted regulation that underpins the critical importance of law as a profession and enables better outcomes for individual and small business consumers. Reform remains a work in progress. The essential changes to out-dated, inflexible and over-complex regulation must be sustained for the benefit for providers, consumers and the wider economy alike. The deregulatory steps that have already been taken will continue to have an impact, and we anticipate reforms planned for the future will also yield benefits. However, we have also identified a need for eventual reform of the underlying legislative framework and set out our vision for reform.⁷ Likewise the Competition and Markets Authority (CMA) has questioned the long-term sustainability of the regulatory framework, in a report following its market study on the sector which concluded that the market is not working well for consumers.⁸

³ See section 4 of the Legal Services Act 2007.

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http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/20140304_LSB_Education_And_Training_Guidance.pdf

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http://www.legalservicesboard.org.uk/what_we_do/pdf/20150720_Report_On_Progress_On_Deregulation_And_Market_Liberalisation.pdf

⁶ <https://research.legalservicesboard.org.uk/wp-content/media/2015-2016-FINAL-Market-Evaluation-Main-report11.pdf>

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http://www.legalservicesboard.org.uk/news_publications/LSB_News/PDF/2016/20160909LSB_Vision_For_Legislative_Reform.pdf

⁸ <https://www.gov.uk/cma-cases/legal-services-market-study>

Improving access to justice

14. Many of the most significant factors relating to access to justice – for example, law reform, legal aid policy, administration of the courts – fall outside the control of the legal regulators. However, legal regulators can make a positive contribution to improving access to justice in various ways. Access to justice closely links to effective regulation since unnecessary regulation can add costs for providers which feeds through to prices that consumers pay, limits choice and stifles innovation. Therefore, a proportionate regulatory system can both help the legal sector to thrive and help make legal services more accessible and affordable for citizens.
15. One way in which regulators can contribute is through research activity that can shed a light on gaps in access to justice. In summary, our data shows:
 - No statistically significant differences in the legal needs of either individual or small business consumers in Wales compared to those in England. Individual consumers respond in similar ways to legal problems, i.e. about one-third seek advice, almost half deal with the problem by themselves or with the help of family and friends, and only a small proportion do nothing
 - Levels of shopping around are similar, but there is less fixed fee billing and less transparency on price in Wales compared to England
 - Unbundling – where consumers and providers share out legal tasks between them – is less common in Wales than in England
 - Some differences in types of provider used for small business matters – consumers in Wales are more likely to use solicitors and less likely to use accountants compared to consumers in England
 - Small business consumers in Wales are less likely to consider that lawyers provide a cost effective means to resolve legal issues.
16. Our research has found that perceptions of cost and lack of transparency of costs are a key barrier to the use of lawyers. Following the CMA's market study in 2016 there is currently a strong focus on improving transparency on price, quality, redress and regulation for consumers and making it easier for them to compare providers. The LSB has an important role to monitor the progress that regulators are making in considering and implementing the CMA's recommendations. While we recognise there are factors that make transparency challenging to deliver in a legal services context, making progress on this agenda should make a real contribution to tackling unmet legal need.
17. Our regulatory objective of increasing public understanding of the citizen's legal rights and duties is an important dimension of access to justice. As highlighted in paragraph 5 above, a key development in recent years is the growing body of law that is applicable only in Wales. It is important that consumers in Wales can access accurate information and advice on their legal rights and duties. This is even more challenging in the context of data showing that more consumers are handling their legal issues alone by drawing on (often unregulated) online

information sources. Initiatives such as the establishment of the National Advice Network and the Law Wales website are helpful in this context. Part of the response by regulators to the CMA market study is a major redevelopment of the Legal Choices website. The Legal Choices website will also need to consider how to ensure that consumers are aware of the fact that the law applicable in Wales may not be the same as England.

18. Finally, while the principal focus of our submission is on improving access to justice for citizens, small and medium-sized enterprises (SMEs) also face the issue of unmet legal need on a significant scale. Our research suggests that engagement by SMEs with legal advisers is limited, they see using lawyers as a last resort and do not consider lawyers to offer a cost effective means to resolve legal issues. Our research also shows the economic and health consequences of legal problems, but equally an untapped market for the profession to access.⁹

Strengthening the evidence base

19. The LSB will continue to ensure that our research activities enable analysis of the situation in Wales, including by publishing the raw data from our surveys online.
20. Having a strong evidence base on the legal market and operation of the justice system in Wales will better enable policymakers to design measures that are targeted at the needs of consumers, citizens and the profession in Wales. We consider organisations involved in the justice system should be encouraged to review current data collection practices and where possible provide separate data for Wales, ensuring this is easily accessible to stakeholders and the public.

⁹ <https://research.legalservicesboard.org.uk/wp-content/media/FINAL-Small-Business-Report-FEB-2018.pdf>