



Submissions to the Commission for Justice Wales.

Further to my attendance at the meeting held by the Commission at The University of Wales Treforest on the 27th of April 2018 I felt compelled to try and find the time to submit in writing representations to the Commission outlining the issues that are faced by solicitors in practice when undertaking their role in helping the public to access legal advice.

I am one of four Directors (all over the age of 40 years) in a high street practice with offices based in Merthyr Tydfil, Nelson (Gwent) and Llanishen (Cardiff). The practice is departmentalised with specialisms in areas which include criminal law, family law and Care (public) law. We employ 17 solicitors and 6 fee earners (paralegals, trainees, legal executives) across the offices with the requisite support staff. We undertake publicly funded work in all of the areas identified as well as privately paid work in those and other areas of legal practice.

As a practice it has become significantly more difficult to continue to undertake publicly funded work, such that our business strategy and development for the next 5 years is focused on moving away from such areas to more privately funded work (conveyancing and private client), which can sustain the profitability and viability of the practice and offer the right work/life balance for the staff that we employ.

The abolition of legal aid in areas such as family law and the lack of funding and cuts in areas such as criminal law has led to a point beyond which work can be more "efficiently processed" and the practice still be profitable, and has placed in jeopardy the ability of practices like ours to offer legal advice to a substantial section of the public who cannot afford to pay for it or whose ability to pay is limited.

As a practice we have adopted lean working methodology and used technology where appropriate to try and create efficiencies which allow competitive pricing and allow us to continue to provide advice in publicly funded work. We have introduced fixed fees and the de-bundling of legal services to help people try and afford access to legal advice, where there is no or limited assistance.

However the continued cuts on legal aid, the demographic make-up of the population and geographic nature of the areas of the country we practice in, is making it difficult to continue with publicly funded work and precludes many from having access to the legal advice they need. Over time the lack of funding in the justice system, has eroded the supplier base and will, if it continues result in advice deserts.

A practical example is in the criminal law sphere. Fixed fees are low. Profit is based on volume. Volume is dropping because of diversions and out of court disposals. There has been no real increase in fees since 1996. There has been 17.5 % cuts in the last 5 years. Many people have been excluded from the legal aid schemes as they earn enough to take them outside the scope of public funding in the Magistrates court, but do not earn enough so as to be able to pay the hourly rate for a Grade A, B, C fee earner to undertake their case privately. If a fixed fee is offered they rarely have the savings to pay in full and the practice often offers "interest free instalments" to try and avoid that person being unrepresented. On many occasions the work is done pro bono. The duty solicitor scheme is limited and does not offer the personal advice that can be provided by having an instructed solicitor who has personal knowledge of the individual, and an understanding of their circumstances and their case, before it gets to court. Other reforms (such as the limitation of defence cost orders) have

compounded the position, so that even if a person who has not chosen to be prosecuted, but is acquitted, cannot recover all of the cost of defending themselves. Deterring them from seeking legal advice which could help them and the situation as a whole. The increase in litigants in person has been significant with all the inherent impacts and risks that has both to the individual and the courts.

Those problems are mirrored in the family courts where there is no public funding at all unless the client can argue the domestic violence criteria.

The performance measures being used by the courts hide the reality. The focus being on time measurements in court as opposed to the legal process involved, the experience the court users have of that process and why the users are at court in the first place. Access to justice is being measured against those time parameters as opposed to whether good quality legal advice and support is available and effective.

Added to this has been the issue of court closures and the closure of police stations. The Magistrates courts in Pontypridd, Bridgend, Brecon, Aberdare, Llwynypia, Blackwood, Bargoed and Caerphilly have all been shut. All detainees at police stations are taken to either Swansea, Cardiff, or Merthyr Tydfil Bridewell Police stations, and in Gwent Newport Central police station.

Centralisation has removed the courts and the police stations from the communities they service and the use of technology does not resolve all issues. Many of the client we help are from disadvantaged backgrounds and do not have access to computers and the internet, nor the personal skills that would allow them to use technology so as to engage in a meaningful way. Making it even more important for them to be able to access legal advice and practical help in negotiating the new digital court system.

There are, as a result, unintended consequences;

- There is a lack of understanding by people of what is happening when they are involved with the justice process.
- People being unable to get to courts on time.
- People being unable to get to see the solicitor who represented them in the police station. (A duty solicitor slot on the Merthyr Tydfil scheme for our Merthyr office will advise clients from the Rhondda Valley, Llantrisant, Brecon, Hay on Wye, even Newtown, and sometimes a requirement to cover courts in Llandrindod Wells, which is 2 ½ hours travel from our Merthyr office).
- Practices being unable to cover court centres or police stations because of the travel time and lack of funding.
- Practices being unable to spend time with clients, particularly "face to face" to build relationships and provide a holistic service, which in turn, could help those clients deal with their personal circumstances, which are often linked to the reasons why they are in the justice system.
- Delays at court as a result.
- Working relationships are becoming more difficult to nurture and communications are being affected as a result. An example being that on average between 7/8 calls are made in attempts to speak to Custody at the Bridewell Police stations and often the police do not respond at all to enquiries being made about cases and people in custody. Solicitors are no longer allowed access to the cell complex to speak to staff face to face.

- A lack of awareness of regional variations of programmes and schemes, such as those offered by the third party sector, which can vary significantly, but which could assist people.

These issues are rarely raised as there is little engagement with practices like ours when strategic ideas are being discussed, implemented or reviewed by the MOJ, HMCTS, Police forces, Criminal Justice Board. This may be because of a misconception of our role, or maybe perceived conflict. However legal practices play a central role to access to justice and therefore should play a part throughout, rather than be informed of decisions subsequent to them having been made.

Where there is consultation there is a perception that the preferred course of action has already been decided and the consultation is paying lip service to the process. Anecdotally, prior to the consultation on the closure of the Pontypridd court, developers had already been seen visiting the site.

The combination of poor funding and the reforms referred to have led to law graduates choosing different career paths, resulting in difficulties in attracting the right calibre of candidates for trainee solicitor posts and difficulties in retaining them as solicitors in publicly funded areas of work post qualification. The salary expectations cannot be met on the levels of fees they can earn via publicly funded work.

Work volumes are such that the hours of work are often long and unattractive. Significant time being spent in the evening preparing cases, on top of a normal working day. Trying to process sufficient work so as to meet fee targets required to try and pay overheads. Trying to meet more stringent time scales set to meet HMCTS targets. Out of hours on call. Dealing with clients who often suffer from mental health issues or have social, economic and emotional issues which requires additional time and effort in undertaking the work.

Recently we had a criminal lawyer (who joined as a trainee) leave after 12 years with the practice to join the CPS. The reasons, work/life balance following the birth of his second child and a salary increase of £8,000 that could not be matched in private practice. We have sought to appoint a replacement lawyer, but have received only three applications, none of whom are suitable. Of those three candidates two were in their fifties, reflecting the findings of the recent Law Society report which outlined the ageing profession of solicitors undertaking publicly funded work throughout the UK and particularly in Wales. People are leaving or retiring and are not being replaced. Succession is an issue and ultimately practices will disappear and with them the expertise and access to justice they provide.

We are a practice who have historically taken on law graduates and had between 2 to 4 trainee solicitors at any point in time. We have sought to avoid the use of paralegals or fee earners, who are reliant on case management systems. Believing that access to justice also means access to levels of expertise consistent with a recognised profession and requisite qualifications. However, this has been increasingly difficult to do as a result of the reduction in fees and other costs of practice, for example the investment we have had to make in IT.

No funding, that we could find or were made aware of, has been available for us as a practice to assist. This is despite us being a practice based in the South Wales Valleys/Gwent and employing more than fifty staff over three offices. No financial support has been available to help with the costs of training a solicitor with the appropriate levels of skill and competencies. No financial support available to assist us keeping pace with the digitalisation of the courts, justice and court agencies. No

financial support to assist with investment in buildings and the infrastructure required to provide legal services in these areas.

Where funding has been identified often we have been excluded from applying for it as a result of being in the legal sector, or funding has been limited to businesses offering services, 'business to business'.

Obtaining private funding has been affected by Government reforms of the legal sector in these areas. Our practice spent time and money to successfully apply for Legal Aid contracts in Crime and Family law only to have the awards subsequently withdrawn. The Crime contract tender process in particular involved considerable planning in terms of Infrastructure and staffing, only for the entire process to be scrapped. The ability to borrow and the willingness to invest in practices that are providing publicly funded work or less profitable work is therefore limited.

Recent capital investments by us have included £32,000 in IT infrastructure and reliable Wi-Fi access. £200,000 in redeveloping suitable office space for clients. No help has been available. This is despite seeing headlines in the press of investment by the Welsh Government in projects which lack longevity and which, when in the legal sector, have a focus on the commercial/corporate/IP arena, rather than legal firms whose primary or only focus is on those areas of law which relate to ordinary people accessing help. The capital investment has been obtained by private loans guaranteed personally by the Directors, by reducing profit share to try and fund the continuation of the practice and by other privately funded work undertaken by the practice.

It is appreciated that funding is limited and resources are finite, but it does appear that sometimes, the funding which is available, is utilised in the wrong way.

If access to justice is sought for the majority of people living in Wales, then a refocus on investment in the development of projects, businesses and lawyers where the emphasis is on longevity and the development of a highly skilled lawyers, who will practice in those areas of law for many years, using but not dependant on case management systems or apps. , would be the correct approach.

If there is no funding available, help by making the cost of practice cheaper. Reduce the overheads. Business rates, utilities, practicing certificates, PII insurance, Wi-Fi access. Allow private practice to be part of procurements by other agencies (including Government) for things such as IT software and hardware. Consider cross funding between private practice and the third party sector for services.

Stop the constant reforms by Government which are unnecessary and politically driven, but that preclude long term business planning. Stability would be good. When considering reforms recognise the need to attract talented people into these areas of law. Recognise that we cannot be replaced by technology/AI and that if the talent is lost it will not easily be replaced.

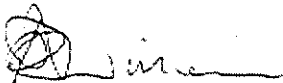
Accept that one size does not fit all and that when there is reform it needs to take account of the demographic and geographic nature of Wales.

Engage directly with practices for ideas and development and make it easier for practices to do that by direct communication with them.

Change the perception of the courts, police, social services and other agencies, so that they understand the holistic approach that some practices can take when providing clients with legal advice. It is not always us and them.

Ideas need to be developed that reverses the current trend of a reducing supplier base, an ageing talent pool that is not being replenished and justice reforms where the primary driver is cost cutting. It is hoped that the Commission can assist in creating and deploying those ideas. As a practice we take pride in helping the communities we are a part of and would hope that in the future we can continue to do so, with access to justice being central to our business plan. However to do that practices like ours need help to continue to be viable and still offer the level of service and coverage that is needed.

Kind Regards,

A handwritten signature in black ink, appearing to be 'D. J. ...', written in a cursive style.