



LawWorks submission to the Commission on Justice in Wales

Introduction and general comments

LawWorks (the Solicitors Pro Bono Group) is a charity which aims to promote, support and facilitate pro bono legal services that extend access to the law for individuals and communities in need and the organisations that support them. LawWorks supports a network of over 230 independent pro bono clinics across England and Wales (34 in Wales), we connect smaller charities with free legal advice, and provide a 'policy voice' for pro bono especially on access to justice matters.

We welcome the initiative of the Welsh Government in establishing this Commission, addressing key strategic and delivery issues about the Welsh Justice system and devolution following on from the Silk Commission and debates about the Welsh legal jurisdiction and its distinct challenges. What is especially welcome is that the Commission's remit extends beyond constitutional issues to look at how the whole justice system works in Wales for its users, including the important issue of access to advice (Question 4). To meet the continuing demand for free legal advice in Wales, LawWorks has put considerable energy into developing new pro bono legal advice clinics in Wales having obtained funding from the Big Lottery Fund to develop the Wales pro bono community. We are currently working in partnership with over 40 different organisations in Wales including 22 solicitors' firms, the Court Service, 3 universities, a number of third sector and advice agencies, the Bar Pro Bono Unit and the Personal Support Unit, and we are active participants in the Independent Advice Providers Forum (IAPF).

With more than 3,700 qualified solicitors' practicing in Wales and over 8,000 people employed across the legal sector, we believe that there is more that can be done to develop pro bono in Wales through cross-sector partnerships. Pro bono cannot and should not replace legal aid, or change the Welsh Government's approach in directly funding advice services. However, we hope that the Commission and the Welsh Government might recognise the benefits and objectives of a strategic pro bono approach working through collaborative partnerships, and ensuring that voluntary resources can be used as effectively as possible to address unmet needs.

Our submission to the Commission focuses mainly on civil and family aspects of the justice system in Wales, and the challenges for access to justice in Wales including the role of pro bono in the difficult context of cuts to justice, legal aid and scarce funding and resources. We believe that through partnership and collaboration the



justice system can be improved, and help the Welsh Government to deliver the aims of the Wellbeing of Future Generations (Wales) Act 2015.

Question 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?

There is much that is positive about the policies and overall approach that the Welsh Government and its stakeholders in the justice system have adopted towards the delivery of access to justice. Wales has led the way with an innovative and strategic approach towards the provision of advice services in establishing the National Advice Network (or 'NAN') and mapping needs across the network, in legislating to strengthen help for people threatened with homelessness, and in embedding advice services within financial inclusion, public health and tackling fuel poverty projects.

As well as the National Advice Network, the Legal Wales Foundation, the Committee for Administrative Justice and Tribunals in Wales (CAJTW) and the Equality and Human Rights Commission also provide a degree of organisational infrastructure and knowledge sharing at an all-Wales level, which enhances the opportunity to identify and respond to a Welsh agenda and deliver a collaborative process to improve outcomes in the justice system. In our experience, collaboration is key to success. An example of where collaboration has worked well is the Cardiff Court Family Free Advice Clinic, launched in October 2015. This initiative brought together 6 law firms, 22 barristers, a pro bono mediation service, 2 local universities, HM Courts & Tribunals Service and the Personal Support Unit. We also supported Employment Judge Sian Davies to set up a working party in Wales to support litigants in person who are navigating their way through the Employment Tribunal process by producing a bi-lingual leaflet signposting sources of legal and professional support.

However, the backdrop for the justice system is extremely challenging. Between 2012-2017 Wales saw a larger proportionate fall in civil legal aid expenditure, and in firms or agencies providing legal aid, than England. The reduction in legal aid providers for matters remaining in scope in Wales has led to large geographical areas with sparse legal aid provision. An analysis of the Legal Aid Agency's figures show that Wales has seen a 34% fall in civil legal aid expenditure on solicitor firms and a 69% fall in civil legal aid expenditure on not for profit organisations, compared to 23% and 63% in England .ⁱ

The number of firms in Wales providing legal aid has fallen by 29% since 2012, whilst the average fall for the England is 20%,ⁱⁱ and the impact on legal aid available through the non-profit sector has been even more dramatic, including the closure of Cardiff Law Centre. So, for example, whilst in 2012 there were 31 providers holding welfare benefits legal aid contracts located throughout the whole of Wales; now only

three remain, in Cardiff, Newport and Swansea. For the justice system to work well, priority should be given to improving access to legal advice and services in rural areas.

Question 2:

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

As referenced above, there are large legal ‘advice deserts’ in Wales, reflecting the scarcity of investment in the legal aid and advice system. What free legal advice provision there is tends to be concentrated around the urbanised south coast of Wales. Advice deserts create obvious geographical barriers as it is difficult to physically access legal services in a large parts of rural Wales, with Poyws, Pembrokshire, and Monmouthshire being especially poorly served.

However, there are also subject-based advice deserts, for example in welfare rights expertise. This in itself is concerning as Wales has a higher percentage of people on benefits and prevalence of disability than England. Demographic statistics in Wales also show an increasingly ageing population and the decline in traditional industries, which has led to deprivation and poverty with striking differences between the wealthiest and poorest parts of Wales.ⁱⁱⁱ

Geographical barriers can be overcome to some extent by exploiting new technologies. Initial advice and assistance can be given via Skype, for example. There is a well tried and tested model though of joining up remote communities to established centres of legal expertise via video conferencing, and we understand that some Clinics in Wales are very interested in exploring this approach. However it does require resources to make it happen. However, remote access should not be treated as an all-encompassing solution; complex casework and certain categories of client will often still need some face-to-face interaction.

There is also potential (with additional funding) for developing in-court support, by expanding PSU (Personal Support Unit) provision beyond Cardiff’s Civil Justice Centre to other civil and family courts across Wales. Currently the nearest PSU to North Wales is Chester and there have been no court-based support services for litigants in person west of Cardiff until Swansea University’s Law Clinic started a piloting a Helpdesk for Litigants in Person at the Swansea Civil and Family Justice Centre.

The Low Commission’s 2016 Wales Manifesto identified a role for ‘second tier’ specialist legal advice capacity, especially in relation to Wales only law to support existing advice sector provision.^{iv} Despite efforts of the Assembly and Welsh Government to address the “accessibility” of Welsh law, awareness of rights and obligations existing under Wales only law is low. This could be addressed through awareness raising activities, and a more central focus led by the Welsh Government

on public legal education. A general lack of public legal education means that people often don't know that they have a legal problem until they are summoned to court, and if they do know, they often don't know where to look for help.

The social exclusion that has been left from the decline of traditional industries in Wales exacerbates this problem. Those most in need of professional advice are often the least able to pay for it. They may therefore have little hope of achieving justice in a court process delivered by professionals when there is reliance on the ability to pay. Public legal education should therefore be one strand of strategy for improving justice in Wales, alongside increasing capacity of the free advice sector including legal aid, advice agencies, pro bono clinics, and court-based support such as PSU provision.

Questions 3 - 4:

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?

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?

There are significant challenges and barriers for those both using or working in the family courts because of pressure on court time, travelling distances following court closures, and the increasing number of litigants in person due to cuts in civil legal aid. As we have suggested above, the barriers to accessing and understanding the system are multiple, so the Commission needs to look at different solutions including diversion from courts and early intervention approaches.

Swansea Clinic's experience of running a pilot for a Litigant-in-Person Helpdesk found cases where people were unrepresented before the First-tier Tribunal, Social Entitlement Chamber whose cases could have been dealt with more expeditiously if early legal advice had been more readily available. The Clinic has been piloting a Helpdesk for Litigants in Person at the Swansea Civil and Family Justice Centre as an assistance-only service for those who arrive at court without a solicitor or barrister.

We would urge the Commission to look at the efficacy of early intervention/initial legal advice and support in terms of later cost savings. For example, helping someone with a housing issue at an early stage can avoid escalation and associated problems, for example with employment, housing, debt and benefits at a later stage. This approach would be entirely consistent with the Wellbeing of Future Generations (Wales) Act which emphasises the importance of an holistic approach.

We believe that there is also potential for greater outreach work by advice services in rural areas. However, the justice system itself also needs to adapt better to Wales'

geography, such as running pop-up courts and tribunals in areas which are some distance from civil justice centres.

Questions 5 – 6:

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

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?

Cardiff University's 2016 report *Justice in Wales: Principles, Progress and Next Steps* referred to a "fragmented and piecemeal justice system for Wales."^v Devolution has caused some difficulties for the justice system in Wales, for example when policy development at a UK national level fails to consider or fully take into account, the policy matters that have been devolved to the National Assembly for Wales. As justice is not a devolved area, cuts in legal aid over recent years may have worked against Welsh Government priority areas such as homelessness prevention and tackling domestic abuse. The Law Commission suggested that the Wales share of the legal aid budget could potentially either be devolved or at least ring-fenced and commissioned on the basis of Welsh Government priorities.^{vi}

We agree that local authorities could probably play a bigger role in joining up different parts of the justice system, the advice sector and other services such as probation and supporting ex-offenders, although it is difficult for us to comment as we do not have any particular expertise on the operation of the criminal justice system. The Law Commission's Wales report made various proposals for how advice and justice services could be more joined up, including integrating with health and social care, an area of policy for which the Welsh Government has significant responsibility. We would point to the recently established Swansea University Law Clinic's outreach at Maggie's Centre, Singleton Hospital as an example of what can be achieved in a pro bono context

Questions 11-14:

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?

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?

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?

Is access to Welsh law properly available?

We will address the above questions about the Welsh legal sector as a whole, again with particular reference to pro bono. Part of the challenge is that pro bono is not as embedded in the Welsh legal sector in comparison to some other parts of England and Wales. Arguably, this may be reflected in the sector by the number of potential clinics which have stalled for want of resources e.g. a coordinator or administrator (whether full or part-time). Pro bono needs an infrastructure to flourish, there is potential for this to develop in Wales as there are many in the sector interested in developing clinic initiatives, but are unable to access even the very modest funding needed to cover basic set up costs.

We would urge the Commission to look at the model whereby very limited resources (e.g. a single clinic coordinator) might enable a clinic where solicitor volunteers could advise a significant number of people. There is potential for development both in the university and the third sector, but many organisations are very stretched as things are without taking on additional responsibilities.

Encouraging a pro bono culture in Wales could add to the legal sector's strength and sustainability, and its contribution to the prosperity of the Wales economy as well as the social value. One idea we have discussed with the Welsh Government is how it might be able to use its own procurement policies and practice when engaging the legal sector in Welsh Government projects; ie looking at whether legal service procurement by the Welsh Government might encourage or require firms to engage in pro bono work under the tendering process, consistent with the Community benefits section of the Welsh Government's procurement strategy.^{vii}

We would again emphasise the important role of collaboration. One area where with the potential for collaboration, for example, is between university law clinics (and other legal advice providers) and the legal profession in furthering legal aid exceptional case funding applications.

In respect of legal education, it is important that professional body education and training requirements keeps up with the pace of change in Wales, and take fully into account the development of Wales only law. Any further devolution of the Welsh justice system might mean that new requirements could be needed to practice law in Wales. Currently the Solicitors Regulation Authority is restructuring the qualification route for solicitors by introducing the Solicitors Qualifying Exam (SQE), and this needs to take account of the legal landscape in Wales. Consideration should also be given to ensuring that devolution issues have a more prominent position as a compulsory part of qualifying law degrees and diplomas, within public law modules.

As others have noted the legal sector in Wales is facing challenges, as the traditional demographic of law firms in Wales has been largely small practices with a population of rural solicitors ageing over time but without new blood to replenish firms for the future.^{viii} The need for a suitable number of practitioners to be able to practice in the Welsh language, to enhance access to justice for those who prefer to communicate in the Welsh language, could be overcome by making legal education, training and assessment more readily available in Wales. There could also be continuing professional development implications for those practitioners who have some proficiency in the Welsh language but may lack confidence to practice law in Welsh.

ⁱ http://www.publiclawproject.org.uk/data/resources/293/LASPOA_briefing_Wales.pdf

ⁱⁱ UK Parliament, Legal Aid Scheme: Written question - 9862 (September 2017):

ⁱⁱⁱ Stats Wales, Out-of-work benefit claimants by GB country / region, measure and client group (updated May 2017); Department for Work and Pensions, Family Resources Survey 2012/13

^{iv} https://www.lowcommission.org.uk/dyn/1458066760967/WalesManifesto_English_Print-2-.pdf

^v <http://sites.cardiff.ac.uk/wgc/files/2016/09/Justice-in-Wales-Sept-2016.pdf>

^{vi} https://www.lowcommission.org.uk/dyn/1458066760967/WalesManifesto_English_Print-2-.pdf

^{vii} <http://gov.wales/docs/prp/toolkit/june15walesprocurementpolicystatement2015v1.pdf> and the Community benefits guidance: <http://gov.wales/docs/dpsp/publications/valuwales/140904-community-benefit-report-en.pdf>)

^{viii} www.lawsociety.org.uk/news/press-releases/legalaid-cuts-are-biggest-problem-facing-solicitors-in-wales/