

Lord Thomas of Cwmgiedd
Chair
Commission on Justice in Wales

19 July 2018

Dear Lord Thomas,

Commission on Justice in Wales

Following my letter of 25 May 2018, in which I drew your attention to our predecessor committee's 2012 report on a *Separate Welsh Jurisdiction*, the Constitutional and Legislative Affairs Committee gave further consideration to the work of the Commission at its meeting on 25 June 2018 and agreed that I should write to you to offer further commentary, although this letter was not agreed to by David Melding AM.

Justice

The National Assembly is only responsible at present for a small, but growing, part of the justice system, mainly a number of tribunals and the appointment of members of those bodies. They are nevertheless important and it is essential they operate to the highest judicial standards. This means training, independence of government, efficiency and compliance with the rule of law. The appointment of Sir Wyn Williams QC is an important step forward in the development of this part of the justice system.

However, consideration needs to be given to further reform. There may be scope for a single Tribunal body with tribunal members or Chairs with skills in several areas. In essence, the system needs to be streamlined. Furthermore, the appointment system should be totally separate from Government. In our view it should be the responsibility of the Counsel General as the Senior Law Officer.

Access to Justice

Cuts to Legal Aid have had a significant impact. They have disempowered parts of society who now have little access to the justice system. In the areas of



housing, benefits and many welfare areas there is no entitlement above and beyond what is provided through advice agencies.

There is limited evaluation of the quality and scope of advice and, in some cases, the representation given. We suspect there is considerable variation around the country.

We may need to re-establish a Welsh Legal Advice and Support scheme, which could start by coordinating the sources of advice with the aim, in the longer term, of consolidating them.

If there is further devolution of parts of the justice system, there should be devolution of the commensurate relevant parts of the residual legal aid scheme and its funding to Wales.

Access to Welsh Law

Codification is an important step forward. Promotion and accessibility of Welsh Law is inadequate and should be properly resourced.

The role of the Welsh Law Schools should become an integral part of the development of Welsh Law and the developing Welsh legal system. The establishment of an Institute of Welsh Law is an important initiative.

Jurisdiction

The suggestion of a distinct jurisdiction is a workable transitional proposal which may eventually lead to a more formal Welsh jurisdiction.

The opposition to this comes mainly from a product of misunderstanding of what a jurisdiction is. During the passage of the recent Wales Bill (Wales Act 2017) the Secretary of State for Wales echoed this by talking about how the England and Wales jurisdiction has served us well for centuries and there is no reason to change it. These comments confirm the lack of understanding as to what jurisdiction is about, namely the efficient administration of justice. It needs to be de-mystified if there is to be progress in this area.

Policing, Youth Justice and Probation

Arguments for devolution of policing, youth justice and the probation system have not been well made, and have tended to have been made on the basis of subject rather than rationale. Furthermore, communication on these issues with Westminster has been poor.

The starting point should be our devolved social policy responsibilities. We have responsibility for children and youth policy and education, housing and



homelessness, family, welfare and social care issues, equality and poverty related issues. To fully manage these it is also necessary to engage with police and community safety issues, the management of youth problems, and the subsequent way in which the justice system is part of this. It is logical to link these and see them as inter-related.

Welsh Government Ministry of Justice

Justice per se is not devolved. It is reserved under the Wales Act 2017.

This actually misrepresents the true situation. There are a number of justice and judicial functions which are currently divided between the First Minister and a Cabinet Secretary. Justice should not be dealt with in this outdated manner, and it should become a full single ministerial responsibility.

In a small Parliament such as the National Assembly for Wales, there is a temptation to say that this could be done by the Counsel General. This would be possible but is probably undesirable. Firstly, it would require an amendment to the Government of Wales Act 2006 which prevents the Counsel General from assuming ministerial responsibilities. In addition, there is an attraction to keeping the Law Officer role separate from ministerial functions. Judicial functions relating to tribunals, appointments and so on should be fully removed from the Welsh Government and placed with the Counsel General. Justice functions are likely to increase and this adds weight to this proposal.

Funding of Justice Functions

Operational and administrative costs, including those relating to training, lie predominantly with the Ministry of Justice. If we genuinely want these responsibilities and believe they are necessary, we need to take responsibility for them and that includes the financial cost.

It is regrettable that, at the present time, it is very unlikely that the UK Government or Ministry of Justice would agree to a consequential transfer of funding.


The Legal Profession in Wales

The Welsh Government needs to recognise the importance of the legal profession in Wales to Wales' reputation as a modern, technologically fluent legal and financial services sector. Technology and artificial intelligence developments are transforming the world. The legal profession in Wales needs to embrace this, not in isolation but as part of a world network. This impacts on access to justice



issues as well as being vital to the economic future of Wales in a post Brexit world.

Yours sincerely,

A handwritten signature in black ink, reading "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AM

Chair, Constitutional and Legislative Affairs Committee

