

Commission on Justice in Wales
Oral Evidence Session
15th November 2018

Present:	Commission members	Secretariat team
Jeremy Miles AM, Counsel General Huw Davies, Senior Legislative Counsel Andrew Slade, Director General for Economy, Skills and Natural Resources Michael Clarke, Deputy Director Legal Services	Lord Thomas of Cwmgiedd, Chair Simon Davies Professor Elwen Evans QC Dr Nerys Llewelyn Jones Juliet Lyon CBE Professor Rick Rawlings Sir Wyn Williams	Andrew Felton, Secretary to the Commission Dave Gordon Chris James Rhys Thomas

Opening remarks

- The Welsh Government has consistently set out its position for the devolution of justice in Wales. There is a great deal of work to be done to deliver on this objective.
- The Wales Act 2017 has put in place a complex devolution settlement.
- We recognise the need to have a resilient legal sector and professions in Wales.
- We realise we don't have all the answers and we appreciate that the Commission will raise some other questions and challenges.

Question area: Accessibility of the law

- A separate law of Wales: The nature of the devolution settlement and the proliferation of law have led to a position where there is not great clarity about the law in Wales. The lack of availability of legal advice services due to legal aid cuts has made this more challenging. Complexity is caused by the devolution settlement in Wales, with reservations and exemptions particular challenges, and the ambition of the UK Government to maintain the single jurisdiction. Because of the complexity in Wales there is a particular challenge for us to make the law more accessible.
- We hope that the approach to drafting legislation in Wales makes it as clear as possible to members of the public. We have tried to re-state law rather than to only amend it to make it clearer. Through the Legislation (Wales) Bill we want to make law more accessible by the restatement and codification of statute law and by placing an ongoing duty on the Counsel General to look at accessibility of the law. There is a very different approach to legislating in Wales, which is a long term goal.
- Within the UK we already have three jurisdictions with devolved and non devolved areas. Of critical importance is delineating the boundary of devolution and ensuring there is clarity between laws created in Wales in devolved areas and laws created outside Wales in respect of reserved subjects.
- In terms of accessibility we see DefraLex, the online portal to legislation of the UK Government's Department of Environment, Food and Rural Affairs as a template to publish law, and the proposed Bill will help address accessibility issues. The key issue to codification is resource, but Cabinet colleagues are very supportive of it.

Question area: The legal sector and the law schools in Wales

- In the early years of devolution, the settlement was less complex. There was also less in-house expertise available. Instructions to the Bar went primarily to one QC who was a door tenant in Cardiff. There was no panel arrangement until 2007.
- Under the current National Procurement Service (NPS) solicitors' framework, 89% of the Welsh Government spend on legal services in terms of value is to legal firms based in Wales, and for the public sector as a whole it is 91%. Of the 19 firms on the framework, 11 are based in Wales.
- There is a discussion to be had about how we support the legal sector and how we approach the next NPS procurement exercise. We have the opportunity to do something different. I'm inclined to

postpone those decisions to take into account the Commission's recommendations and I have asked officials to look at options. Perhaps we could test the knowledge of Welsh law given its increasing importance. We can look at the offer of business support for firms, too.

- It is the case that 45% of the Welsh Government's instructions to counsel go to Welsh barristers on its panels. Two-thirds of counsel in Wales that apply to the Welsh Government's panels get appointed. It is a priority for me to develop the Bar in Wales as far as I can with government procurement. I have brought in initiatives to try and instruct Welsh counsel and I provide figures to the Circuit and the trend is going in the right direction. I have asked the QC appointments panel to include knowledge of Welsh law as a requirement and they have agreed. I am conscious of the signalling and confidence building measures of the Welsh Government sending work out to Welsh counsel and the importance of building capacity and expertise in Wales.
- I am considering specific initiatives to build capacity in the Bar in Wales. We have capacity issues to deal with Brexit and perhaps we can use that to build capacity at the Bar too.
- We have not been going out of our way to encourage more students to study law as there is an over supply compared to the approximately 160 training contracts annually available in Wales. The challenges are what levers we have to develop a more collaborative network with law schools. This previously has not been successful. We have succeeded in other areas such as engineering through Ser Cymru and we could look at how this could be done in law. I was at a legal tech conference this morning. All the law schools were invited, but only Swansea attended. There needs to be a better knowledge transfer between law schools and law firms in Wales. The Welsh Government can act as a convener and work through procurement capacity to encourage firms to collaborate more amongst themselves and with law schools.
- I will look into whether the Welsh Government has been involved in setting up the LawTech Delivery Panel.
- I am inspired by the work happening in Ulster University and the work with law firms. We need to encourage better collaboration between law schools and firms. We need to be able to lead the way in understanding the challenges of legal tech which many are not recognising.
- Swansea is leading the way. The University of South Wales is doing good work around technology competencies. The Welsh Government has a convening power to get people around the table.
- The Welsh Government recognises the need to take a fresh look at how we use procurement. It has been too narrow in the past with a "best value" driven approach. There is an opportunity to develop specifications and broaden the ask to include law schools, training and apprenticeships and there may be a social element. We do see procurement as an important lever. As advised, we are considering pausing the next procurement process to consider the Commission's recommendations.
- Through the Economic Action Plan (EAP) the Welsh Government has a policy to enable and build capacity. We take a more proactive approach around the opportunities of automation and artificial intelligence and attracting headquarters to Wales. The EAP provides a focus around tradable services, for example, and this is relevant to the legal sector. The sector is important for underpinning the economy at large. The EAP does not provide a sectoral focus, but a regional one. I am concerned about strengthening firms across Wales and I am hearing issues about the impacts of technology, attracting talent and the loss of legal aid through my discussions and meeting with practitioners across Wales. The EAP can be a catalyst for change.
- The EAP provides the lens to consider how supported sectors are incentivised to use the legal sector in Wales.
- Sustainability issues: The sustainability challenge is particularly significant for the smaller practices across Wales. We need to understand the challenges and look at tailored ways to support them. I would be interested to hear any views on this.
- Legal apprenticeships: There has been a limited take up. We are looking at how it is working in other areas of the UK. Money has been going to further education without looking at the demand side. This is being reviewed.
- The diversity picture in Wales is mixed. A key challenge for us is that we have socio economic diversity. There is more work to be done here.
- We have had some success in attracting lawyers to Wales. We recognise that a tailored approach is needed for larger City firms. There are two key perception issues for potential nearshorers we need to

tackle: visibility; and legal talent, particularly at 5 years post qualification experience level. There is a perception over the lack of legal talent in Wales. Our strategy needs to be aligned with investment and existing strengths or strengths which can be realistically achieved.

- The Government's strategy has been aligned to Fintech and technology companies and that is of interest to others sectors such as insurance and hopefully the legal sector.
- A lot of work is being done to build relationships with City firms, but we can build on that with political leadership too.

Question area: Implications of having (1) a separate law of Wales and (2) a separate Welsh court system

- There is a difference between describing destination and journey and what there has been is an evolution of devolution in Wales. Some things necessarily will exist across England and Wales and some across the UK. One of the challenges is dealing with the complexity that we have. In our alternative Government and Laws in Wales Bill to the draft Wales Bill, we described a route to a distinct jurisdiction. At the moment, we have an interlinking set of relationships with the UK Government that makes delivering Welsh policy very difficult in some instances.
- I have spoken to law firms about jurisdictional issues. Some see it as an opportunity, but there are some anxieties we need to tackle. A lot is perception rather than reality and there is unlikely to be any real change in commercial law. Rather, there may be an opportunity for firms to market themselves differently. Scotland is an example of this. There are concerns that this will create extra regulation, but there are practical solutions we need to consider, such as dual qualification. Devolution offers us a chance to design a system that works better. We need to set out an ambition to design a legal and court system that is more attractive to do business in.
- In terms of both the capacity of the Welsh Government and the National Assembly, part of the rationale for establishing the Justice Commission was to begin building the capacity. We don't have all the answers, but we have developed capacity in the past.

Question area: Access to justice – legal aid, advice services, broadband and technology

- Third sector: In my capacity as an Assembly member, I see the concerns of the third sector. We need to ensure there is value for money and accountability, but we also need to ensure that this isn't affecting delivery of services. On the funding of the third sector we recognise that there needs to be a different approach on how it works and to have more intelligent outcomes on what we expect. There needs to be more collaboration and we need to strip out duplication. Funding needs to be attuned to more intelligent outcomes and should look to incentivise collaboration and strip out duplication to maximise delivery of advice services. There are three funding streams currently and we are looking to align them into a single advice fund with a budget of around £2 million per annum. The benefit of a streamlined approach would be significant. Aligning funding from other sources too is important. We are looking at funding an advisory hub to align priorities. We are working with the National Advice Network. The Law Commission has identified this complexity in this area.
- We haven't got the levers available to us to deal with advice deserts. I was at a Law Society breakfast recently and heard that there are no legal aid housing lawyers in North Wales. The deserts are significant. We can make representations to the Ministry of Justice and use our third sector funding, but that doesn't meet the need. Funding across the UK is under pressure.
- The point of having a justice system for Wales is one that works for Wales. We want to build a distinctive system rather than accumulate powers to replicate what is happening in the UK.
- Human rights: The devolution settlement has enabled the Welsh Government to legislate to enhance human rights. We have legislated on children's rights and we are considering what else is possible. We are exploring possibilities around a Welsh Human Rights Commission.
- Not having justice functions limits what we can do. Devolving justice would bring broader opportunities and powers.