

Legal Services in the Cynon valley

1 Introduction

This report provides an update on particular aspects of legal practice in the Cynon valley, following on from *The Human Rights Act 1998: An Impact Study in South Wales* (Costigan, Sheehan, Thomas, 2004).¹ I am extremely grateful to the solicitors who made time to contribute to this follow-up study, giving thoughtful and helpful contributions, which powerfully demonstrate their commitment to their clients and to the wider community.

2 Solicitors practising in the Cynon valley

There are six law firms in the Cynon valley, most of which are long-established. There has been some reduction in the firms since the original study in 2004, with two mergers, and the transfer of two departments to a different firm.

There are 27 solicitors based in offices in the Cynon valley. The average age of those solicitors is 50. Six of the 27 solicitors are aged 60 or above. There are no solicitors in their twenties.

In 2004, no solicitors in the Cynon valley had access to subscription-based, online, legal research facilities such as LexisNexis or Westlaw. Fifteen years on, only one respondent firm has access to such a database.

3 Challenges

3.1 Funding

As is widely known, the reduction in legal aid funding over time, and in particular through the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), has had a profound impact on firms. For the Cynon valley, an economically deprived area, the lack of public funding has had a damaging effect on the opportunity for local people to access, and on the ability of firms to provide, legal advice in fundamental areas such as family and criminal matters. Practitioners paint a concerning picture:

‘The virtual abolition of legal aid in private children proceedings is appalling given it is invariably children who suffer where there are disputes. In slashing legal aid, successive

¹ See further, R Costigan and P Thomas, “The Human Rights Act: A View from Below” (2005) 32(1) *Journal of Law and Society* 51 – 67; R Costigan, “Solicitors’ Awareness of the Human Rights Act: a South Wales Study” (2004) 3(3) *Wales Journal of Law and Policy* 271 – 83.

governments have grossly underestimated the vital role local solicitors have played in resolving family disputes.’ (CVS 1)

‘Our general family practice...has diminished following the cuts in funding availability because...in an area of such financial and social deprivation the affordability of legal advice, let alone representation, in straightforward divorce, private law children and or financial application cases is all too often beyond many of those clients who contact us but who subsequently cannot afford the retainer fee.’ (CVS 6)

‘Funding is of course still available to clients once the local authority has provided pre-proceedings notice but not necessarily at the preliminary investigatory or child protection conference stage, which means that whereas previously we would be able to provide a level of legal advice and assistance to clients to prevent matters escalating to pre-proceedings stage, now clients are left without legal advice and / or support until often it is too late.’ (CVS 6).

‘The lack of availability of legal aid has had a huge impact on our ability to provide a comprehensive service to clients. The LAA [Legal Aid Agency] has developed ridiculously high standards when awarding contracts in areas such as debts, benefits, community care, housing etc. There is no entry level for clients to get access to local first tier advice. There is over reliance on an individual’s ability to access advice over the internet and telephone. Core areas such as family have been hit really hard and most ordinary working people (let alone those on benefits) cannot afford access to legal advice and representation.’ (CVS 2)

3.2 Recruitment and retention

All respondent firms referred to significant difficulties in recruiting and retaining staff. One described it as ‘at crisis point’. The primary causes were identified by all firms as reduction in income, and inability to compete with large, city firms and the civil service in salary, pension and benefits packages. Crime has been the area of practice most severely affected by recruitment and retention challenges. Firms are losing solicitors to the CPS in particular. One well-established crime department is under real threat of closure because of the loss of staff and the difficulty in replacing them. As summed up by one respondent:

‘The problem in Crime is that it is not seen as an attractive career by most trainees. It follows that there is a dearth of qualified lawyers. This is the product of years of under investment by successive governments and an imbalance...[with] the terms and conditions available to civil servants (CPS, PDS, judiciary, local authority, National Assembly etc). Private practice is being drained of its talent.’ (CVS 2)

3.3 Competition

At the time of the original study, firms were concerned about the opening (in 2002) of the Public Defender Service (PDS) in Pontypridd. Solicitors were critical of the disparity in remuneration between the PDS and high street firms. They also felt that the existence of the PDS represented a failure to properly value the services provided by local firms. These concerns remain evident:

‘Competition is good as long as it is fair and “on a level playing field”. This is absolutely not the case in the specific area of Criminal Law in the RCT [Rhondda Cynon Taff] Borough due to the presence of the Public Defender Service. The PDS are completely atypical of legal practices in this county. Their budget is wholly different from that of private practice. There is no “need” for a PDS presence – there is no demand for legal service that was being already adequately met by private practice. The PDS presence is a purely political feature which disproportionately affects private practice in RCT as compared to anywhere else. It is, by its own figures, an expensive provider of service as compared to private practice.’ (CVS 3)

Competition from firms advertising services nationwide, online, was identified as a concern:

‘An increasing number of people tend to live their lives on their mobile phones, tablets and other computers and are attracted by services offered by these means. Increasingly, people do not consider the benefit of face-to-face advice in the town or city in which they live. The trend is caused greatly or, at the least, exacerbated by referral fees. This practice drains people away from obtaining legal advice, in person, in their area. It results in people being seen and treated as commodities. There has always been a balance to be struck between providing a professional service and running a commercial business. The balance appears to have moved to making money...It is now a matter of culture. Whereas the Law Society tries to promote ethical behaviour, the Solicitors’ Regulation Authority gives the impression of encouraging a laissez-faire, free-market free-for-all and deprecating solicitors’ professional standing.’ (CVS 5)

4 Perspectives on the future of legal practice in the Cynon valley

- 4.1 One respondent was optimistic about the future, seeing opportunities in the reduction of the number of law firms to capture work from a larger geographical area. Also, this solicitor felt that local firms offer a more personal and responsive service than that provided by larger organisations. There is community loyalty, with local firms serving families through generations, and clients still valuing face-to-face meetings with local practitioners. There has been a significant increase in the number of home visits undertaken by solicitors in this practitioner’s firm, along with appointments outside of traditional office hours, including during weekends.
- 4.2 The other respondents were not as optimistic. They all consider that legal practice in the Cynon valley will contract in future, with agreement on a variety of reasons:

‘New entrants to the profession will increasingly gravitate towards the brighter lights and better salaries on offer at city practices. It is already difficult to attract good, new people to practice in the Valley, which echoes the shortage of GPs in the area.’ (CVS 3)

‘There is no longer a County Court, Magistrates’ Court nor Coroner’s Court in the town. Expertise is moving to the places where there are such courts.’ (CVS 5)

‘Government policies to reduce the numbers of cases will reduce volumes. We see this in personal injury where the insurance lobby has been super effective in persuading the government to limit accident claims. In Crime, there are a host of policies which are now biting. Charging policies are designed to reduce volumes...There are all manner of schemes designed to avoid arrests and prosecutions. The number of arrests, by definition, will be affected by reduced police numbers.’ (CVS 2)

‘The large factory-style legal service providers will also have an effect. Bulk conveyancing and personal injury firms will take and absorb many clients who would otherwise use local services. They are shepherded toward these services by the introducers, including banks, building societies and insurance companies. Referral fees also have an impact on local numbers.’ (CVS 2)

5 Ensuring high quality, local legal services

- 5.1 Most of the solicitors in the Cynon valley are from the area. They have a strong commitment to the community. Some referred to it being essential for their firms to maintain ‘investment’ in the community, through, for example, pro bono clinics at local Citizens Advice Bureaux, grants and funding for individuals in need, and support for local sports clubs and charities.
- 5.2 Some respondents identified policy measures that would help ensure firms’ ability to provide high quality legal services: a prohibition on referral fees for all areas of law, a clear strategy by government to enable firms to plan effectively for the future, financial and training assistance so that firms can access and use specialist software and databases, and financial support to ‘halt the exodus of talent from the Valley’. Some practitioners identified a need for long-term investment, to attract young, aspiring lawyers and ensure firms’ sustainability, addressing the reality of firms with an ageing solicitor profile, struggling to make a worthwhile profit.
- 5.3 One solicitor called for Wales to have its own legal aid scheme, ‘thereby offering greater access to justice for its citizens in need of help.’ In the area of civil litigation, it was suggested that a legal aid scheme could be self-funding, through sensible means-testing, a condition that successful litigants contribute a fair proportion of damages to the fund, and a requirement that law firms provide an annual, proportionate, pro bono financial contribution.

6 Concluding remarks

There seems little doubt that the pressures on law firms documented in the 2004 study have increased. In particular, the erosion of legal aid has had a profound impact. Solicitors overwhelmingly expressed concern about denial of access to justice to those in society who are most in need. To recall the words of Sir Stephen Sedley, in the foreword to the original report, 'It's one thing to give people rights. It's another to make them real.'

Ruth Costigan
Hillary Rodham Clinton School of Law
Swansea University

February 2019