

Commission on Justice in Wales
Oral Evidence Session
18th January 2019

Present:	Commission members	Secretariat team
Professor Richard Moorhead (RM), Professor Nigel Savage (NS), Professor Scott Slorach (SS).	Lord Thomas of Cwmgiedd, Chair, Simon Davies, Professor Elwen Evans QC, Dr Nerys Llewelyn Jones, Juliet Lyon CBE, Sarah Payne CBE, Professor Rick Rawlings, Professor Peter Vaughan.	Andrew Felton, Secretary to the Commission, Dave Gordon, Chris James, Rhys Thomas.

Question area: Re-designing the curriculum in the light of modern legal practice

- RM: I would like to see the curriculum being given more chance to breathe. Reducing core elements would give an opportunity for innovation which can be stymied by the constraints of core requirements. I would like to see the study of professional ethics forming part of the undergraduate curriculum. Adapting to the future, we are seeing a greater emphasis on technology, digitisation, data and design which draws on psychology and management thinking. I would like to see law schools take account of behavioural sciences in the design of curriculum and research. I would like to see evidence based legal practice developed here to make us international leaders in the field.
- SS: The curricula for law schools were designed in the last century, or the foundations of them before that even. Assessments are typically done in an academic way through examination or assessments. During my time at university, I've calculated that I wrote 164 essays over three years and I've never written one since. My experience is curricula have not been driven by legal practice let alone modern legal practice. Only newer law schools have innovated over the last 10 to 20 years as they look to find a competitive edge. There are two aspects that are connected. First, there needs to be scope for law schools to develop programmes that prepare people for legal practice. Second, law schools should develop programmes that give space for students to develop their understanding of technology and artificial intelligence (AI).
- NS: The issue is how law schools are going to change. In my view and looking at the current position, it's not necessarily the fault of law schools. This is because Vice Chancellors have often used law schools as cash cows, and the law schools have lost autonomy by reason of their inclusion in and as part of bigger faculties. The surpluses they generate subsidise other courses in those larger faculties rather than reinvested for the future. It is easier to build more buildings than to change the structure of courses. Competition between universities and law schools can be in terms of either the quality of their respective teaching and learning offerings or the infrastructure, management tends to prefer the vanity projects of the latter. Law schools have not invested in content/intellectual property and I think the Welsh Government has a unique opportunity to influence the development of universities and legal education strategies going forward. They are in a position to pull key levers such as funding. The Welsh higher education funding agency can shape higher education in Wales and help the law schools to change as part of that process. Being a small jurisdiction, the Welsh Government has access to all the key levers that can be used to help develop schools and deliver an integrated strategy. The commercial firms have embraced knowledge management, they don't reinvent the wheel for every new development, they license and modify for their own needs. Higher Education and law schools are a million miles from that approach, they largely still originate their own know how and their investment is still largely in real estate and human resources. A strategic plan could be developed in Wales for the delivery of legal services underpinned by legal education. This is beginning to happen in Scotland and Northern Ireland and is something that is missing in England. It's notable that the biggest recruiter of LLB graduates in Scotland is Ashurst, an English firm that practises English law globally from Glasgow.

In response to a question from Lord Thomas about the freedom to develop curricula in response to the Solicitors' Qualifying Examination (SQE):

- NS: There is a lot of detail yet to come out about the SQE but it is provoking law schools to think about their curricula. It is also encouraging law researchers to reflect on the teaching and learning opportunities they offer. Despite what the traditional research universities are saying about the SQE, I have noticed in recent months that there has been a drift of staffing appointments from the two big vocational providers, BPP and ULaw, into the research schools. The problem for the Russell Group Law Schools is that their teaching models haven't changed and they are trapped by their Vice Chancellors into taking too many undergraduate students, apart from the London based ones who have huge numbers of LLM overseas students driving revenue growth. Trying to change the culture of the "old" Law Schools is like changing the wheel on a moving vehicle. A parallel to developing new law schools and the way they look to educate professionals can be made with the opening of new medical schools where the newest schools were teaching differently to long-established institutions by putting patient care foremost. It's no coincidence that one of the Law Schools currently making the running is York which was only established fairly recently. The SQE is an opportunity to change things and at least provoke law schools into action to focus a little more on the role of preparing people for practice. The real game changer in the future will be the growth of learning in the workplace.
- SS: My fear is that law schools are moving towards preparing for the SQE exam as opposed to preparing students for modern legal practice. The exam will enable the SRA to meet its regulatory role at point of entry into the profession but my pessimism is that law schools will not fundamentally change what they teach. SQE requirements may well appear in the third year of university education but preparing for practice is far more complex and if it's just bolted on to current curricula it will be an opportunity lost.
- RM: Legal services regulators, policy makers, judiciary and everyone involved in legal services should want a plurality of approaches. Russell Group universities have an important role to play in developing policy in relation to the justice system and law and there are a number of examples where this has been the case. ADR, online dispute resolution, professional regulation, access to justice, and the evolution of whole fields of doctrine, such as medical law, have been critically influenced by academic research. The Russell Group law schools feel that a liberal education is important and they see the SQE as potentially damaging to that because the core assessment heads will act to crowd out the space for innovation and research. My view is that the Russell Group are standing back to see what will happen.

Question area: Continuing professional education and training delivered in the light of modern legal practice

- NS: Law firms are increasingly taking more control of training and learning and development. There has been a move away from counting hours for the purposes of continuing professional education and instead more of a focus on development needs for the individual. Subjects like mental health and resilience are more prevalent and the imperative for firms is to make sure staff are capable of carrying out activity and have a learning and development pathway that will take them through to senior managing roles within their respective organisations. Management training via apprenticeships through to level 7 is now available. Universities need to be sensitive to how law firms are moving forward and what their needs are. Change is hastened by greater use of technology and firms are behaving more like businesses these days than perhaps they did in the past.
- SS: I agree that there is benefit from moving away from a set number of hours for continuing professional development. The larger firms are looking at competency frameworks, at generating their own bespoke learning opportunities and they are often more aligned in their outlook to business schools rather than law schools in terms of their approach to continuing development. There is scope for regulators to look at what key competencies are required, including technology. Other areas include ethics, compliance issues, management skills, QA processes and so forth.

There is scope to develop a strategy in terms of developing the approach and allowing larger firms to be more self-regulated. Smaller firms can be assisted by using technology potentially through universities to make continuing professional development more accessible, targeted and measurable.

- RM: There needs to be a commitment from practitioners or continuing professional development will not work. Some firms are changing and exhibit commitment. Teaching needs to be realistic and immersive and developmental opportunities need to be personalised. Universities are not generally set up to deliver continuing professional development or incentivised to do so. This may change through the Knowledge Exchange Framework but it's one extra thing to do and most law schools are not in the market to deliver at this time partly because the demand is so weak. There is a role for the Law Society in Wales to pull together firms and universities and see how they could work together.
- NS: In my view the Law Society is clearly not focusing on the needs of its membership, it's still fighting battles long since lost. There is much scope for the development of strategies and qualifications with a stronger Welsh focus and more linked the Law Schools in Wales

Question area: Ethical challenges raised by the increasing use of technology within the justice and legal system

- RM: The Legal Services Board have asked me to help advise them on think pieces about regulatory issues around AI, so that work should help the Commission. I refer the Commission to the Law Society's Technology and the Law Policy Commission chaired by Law Society President Christina Blacklaws. The main challenges concern competence and the knowledge of practitioners about what "tech" to buy, how to use and deal with risks and how to update. I have concerns about the knowledge within the court service and judiciary too. Cyber security is an issue and many practitioners have been caught out. Ethical issues exist around decision making and AI and they relate to numerous issues. Many of those issues around bias and maintaining the balance between automated decision making and the human factor are well rehearsed. The impacts can be significant on users, for example sentencing outcomes or triaging personal injury cases and associated decisions whether to pursue them both raise justice concerns. I recently tested the "DoNotPay" chatbot in a scenario about making an appeal against a parking penalty notice citing health and medical factors as a ground of appeal. I had concerns that the letter produced from my interaction with the chatbot contained misleading inaccuracies that would encourage users of the chatbot to make submissions that are not entirely truthful. The regulatory framework for AI and technology such as this is very different to that where the technology has been developed and promulgated by a law firm. In this sense, there is something of a regulatory black hole around ethical use and development of technology as not all developers of legally focused packages are captured by the same regulatory requirements. That regulatory black hole is particularly acute around mediation and adjudication, which is excluded from the definition of legal services in the Legal Services Act. In summary, competence, decision-making and regulatory black holes are the ethical challenges that very much need to be kept in view.

Question area: In light of modern legal practice how should legal ethics be addressed and regulated in the legal professions?

- RM: I was part of an assessment of the junior Bar of up to three years call to see if they understood the ethics code and could deal with ethical issues. They did not want ethics and the code taught at undergraduate level but agreed they should be taught at the Bar course and at continuing professional development stages of education. They also indicated strongly that more ethical training is needed to encourage ongoing conversations at all levels of practice. There is an opportunity to improve the structure of ethical training in Wales.
- SS: I think it's important to consider the design of education as a whole and I refer the Commissioners back to the first question about curricula. A lot of the time, undergraduate programmes don't look at ethics, as law courses usually follow traditional academic lines and formats. Programmes that prepare students better for legal practice should be a life long part of

education and continuing professional development. Students that do not follow a training contract route to qualification as a solicitor are required to submit a portfolio of their evidence and this must encompass evidence of their understanding of professional codes of conduct, ethics, conduct issues and dealing with dilemmas. There is an opportunity to have better assessment and better regulation of ethics.

- NS: I take comfort from the fact that 44% of firms providing legal services are corporate bodies and this is having an impact on the way in which they tackle ethical issues. The old model of partnership is going and is being replaced by new corporate business models. Barristers don't even run their own businesses. Within the corporate model, managing ethical issues is better accommodated in formal corporate structures. Using the corporate framework and having an independently chaired Risk and Audit Committee, ethical issues and risk become more embedded within the entity. As a non-executive director of a law firm I chair our Risk Committee and am able to hold the COLP, COFA and CEO to account more effectively. I take comfort from that and from what is happening in many law practices that have a corporate structure.

Question area: Technology used to facilitate face-to-face advice and extending its reach across Wales

- SS: There is evidence that face-to-face advice is the most effective at meeting legal need. In particular there is research about communication and the transmission of messages being better face-to-face. There is a role for technology to facilitate this too.
- NS: The Legal Education Foundation is doing some interesting things using technology to link advisers in London with clients in Devon and Cornwall. Technology can be a cost effective way to deliver advice services. You have a good opportunity to make delivery of legal services more effective if you can utilise remote access technologies.
- RM: Face-to-face advice is usually more effective once you get over the barrier of access to justice, but it should be remembered that face-to-face systems can create barriers to access as well as seek to overcome them. I draw the Commission's attention to a very good report published by Justice and produced by Amanda Finlay. The report focuses on preventing digital exclusion. Strategic leadership and co-ordination is important. Following the Legal Aid, Sentencing and Punishment of Offenders Act 2012, we lost functions around strategy, development and co-ordination, seemingly overnight because of the abolition of the Legal Services Commission. Wales needs to grasp these initiatives to draw people and services together to help people.

Question area: Technology used to assist the most vulnerable in society to receive access to advice services

- SS: Universities can do work in this area and it may be a more cost effective way of developing advice services. The model has been developed by law schools in the USA. At York, we are looking at using technology to address access to justice problems. This includes a form of triage service, to help people identify the legal issues that they have to direct them to the correct agency for assistance. In addition, we are using technology to assist people who are bringing claims by helping them work out the documentation they need to bring along to interviews with advisors. All of this helps vulnerable clients and technology can be used to assist with the delivery of advice to clients. I would refer the Commission to Legal Education Foundation projects that fund outreach programmes to deliver outcomes that will help clients access advice services.
- RM: The Justice report that I've drawn the Commission's attention to is a good starting point I agree with and emphasise the points made by SS. There are various stages across the life of legal problems where a law school could help clients. What is not often done though is a proper evaluation of whether solutions taken forward as a result of technology help people and whether they get better outcomes as a result. Projects are deemed a success because someone, often an NGO or charity, is trying to help, and what is needed is more hardheaded assessment of whether

the interventions actually help. Developing a culture of evaluating projects and outcomes is important.

Question area: Technology used to assist people in Wales to have access to bilingual advice services

- RM: I'm not aware of technology that can help people in Wales have access to bilingual advice services. I am aware of some providers that use chatbot technology in the context of different languages and I believe that there would not be an issue in terms of deploying such technology in the context of the Welsh language too. Some providers have begun experimenting with machine learning and Chatbot interfaces to help develop aspects of advice services. I'm aware of one example, in particular. I will pass details on to the Commission.
- NS: I am not aware of technology specifically providing assistance to people in Wales to access advice services via the Welsh language.
- SS: I'm currently looking at how technology can be used with oral skills and speech recognition and being able to translate language. Such technology does exist.

Question area: Views on the future size and shape of the legal sector in England and Wales

- NS: In my view the legal sector will remain fairly stable for the coming few years before decreasing by around 20% due to the development and deployment of technology. In terms of the structure of the profession, we currently have professionals who are barristers, solicitors and CILEx. Wales has an opportunity to create a Welsh legal profession that is bespoke. Looking at the solicitor qualification, so much has now been packed into it and I believe we should go back to how solicitors started out, namely as people of business. I would not give solicitors automatic advocacy rights but enable them to qualify as solicitors operating in the general non-contentious sector, which is what the original qualification enabled in Victorian times. The big four accountancy firms are investing heavily in developing their legal services offering and are looking at recruiting and deploying graduates from a mix of specialisms to offer the best services to their clients.
- RM: The Big Four will concentrate on services currently provided by commercial law firms. Some routine tasks will be automated or semiautomated, but large parts of the job will require significant human input as they do now, sometimes augmented by technology. There will be more multi disciplinary work across the legal sector, but the size of that sector is guess work at this time.
- SS: There will be fewer professionally qualified lawyers but a greater proportion of people involved in technology. There will be a need for those qualifying to have a better understanding of modern practice, understanding of innovation, entrepreneurship and the law. Traditional academic degrees of three years will still have their place but at the same time we will need more rounded lawyers in professional practice.

Question area: Lessening the dominant force of London

- NS: The most interesting trend in recent years has been the growth of large law firms located in centres outside London and including Northern Ireland, Manchester and Glasgow. The Welsh Government has been slow in not getting this work and attracting law firms to Wales. Firms in these centres offer good quality and interesting work. They do more than just back office functions. This is what Singapore did as the government there could pull levers to make Singapore a location of choice for global legal services. You need governmental levers and a clear strategy and everyone has to work to deliver that.
- SS: The other significant example is that the most recent law degree, together with the law school, developed in Singapore is highly vocationally focused.
- RM: My worry about NS's strategy is that something different needs to be done if Wales is not to simply do another version of what, say, Manchester has. Firms are not sure how technology can assist. You need knowledge to develop legal firms that understand what needs to be done. If Wales is to leapfrog regional centres then it would need to lead knowledge generation in legal innovation. Here researchers can assist. Law schools have a role in this if they can develop multi disciplinary teams to develop expertise that supports regional capacity and capability.

