

The Commission on Justice in Wales

Submission of Roger Smith

1. The terms of reference for the Commission are as follows:

To review the operation of the justice system in Wales and set a long term vision for its future, with a view to:

- *promoting better outcomes in terms of access to justice, reducing crime and promoting rehabilitation;*
- *ensuring that the jurisdictional arrangements and legal education address and reflect the role of justice in the governance and prosperity of Wales as well as distinct issues that arise in Wales;*
- *promoting the strength and sustainability of the Welsh legal services sector and maximising its contribution to the prosperity of Wales.*

2. I am responding on the basis of long experience of writing about the organisation of legal aid and legal services around the world; consultancies in various jurisdictions as varied as St Helena and Moldova; and funding from the Legal Education Foundation to report on developments in relation to technology in access to justice (see law-tech-a2j.org). I was for three years the Director of Legal Education and Training for the Law Society of England and Wales. I have some experience of devolved jurisdictions - while director of JUSTICE, I helped to establish a Scottish branch. I was partially educated in Scotland.

3. I have read the paper from the Law Council of Wales on which comments are invited. I have also read some of the submissions to the Commission.

4. The point of departure invited by the terms of reference is to 'set a long term vision for the future of the justice system in Wales'. This has to be in the context of an increasing divergence of Scotland from England as it sets its own policies as a devolved jurisdiction. The job for Wales, it would seem to me, is to distinguish what is characteristic about legal needs and how they might be met in Wales. Scotland shows the advantage of a small jurisdiction in managing legal aid and legal services in ways which are specifically focused on its particular circumstances. For example, Scotland has been able to avoid the wholesale cuts to legal aid scope and eligibility which have been imposed on England and Wales. It has also developed a wider range of delivery mechanism to accommodate its geography and pattern of provision. Wales will manifest many similar characteristics.

5. I can see that it is probably unavoidable that an overall body of some size be appointed to oversee the whole project implied by the terms of reference. Understandably, all interests will wish to be involved.
6. However, I would create three strong but rather smaller bodies to lead on access to justice, legal education and Welsh legal services.
7. My prime concern is with access to justice. I think that the ultimate aim should be Welsh government control and funding of legal aid, legal advice and legal information within Wales with a particular responsibility to identify what assistance exists; fill gaps; use technology as much as possible; present for the Welsh public coherent and effective access to services; and to empower as many as possible to solve their own problems themselves.
8. Organisationally, this requires a lead body which does not too much antagonise any group of existing providers, on the one hand, nor be too open to capture by them, on the other. I would appoint a four or five person team from the overall council to be members of the Welsh Access to Justice Committee. I would seek people (if they exist) who had no financial interest in a particular form of provision eg were neither solicitors nor legal advisers but were committed to access to justice.
9. Such a committee - and, indeed, the whole project - needs to avoid being a talking shop. Within nine months, the Access to Justice Committee should meet specific goals and, I would suggest, be tasked with:
 - (a) publishing a preliminary guide to legal resources available to people in Wales;
 - (b) a preliminary assessment of legal need in Wales;
 - (c) a discussion paper on the feasibility of a Welsh Access to Justice Portal (see below);
 - (d) ideas for the longterm development of legal aid and advice in Wales.
10. The four papers above should be presented to - and discussed by - a conference open to all who are interested within a year. The Council should approve a final report summarising its response and the results within another three months.
11. This process will inevitably require resources - largely to fund at least one staff member of adequate calibre. I would look either to the Welsh government for these or to one of the foundations funding in the UK to which I would have thought that a coherent bid could be made. Or some combination. You could probably fund a 15 month project with a Welsh national conference for, say, £100,000 to £150,000. You could think of contracting this part of the project to an organisation like the Public Law Project or JUSTICE which would provide

some guarantee of - and accountability for - management and delivery. A Welsh organisation would, of course, be ideal.

12. It may well be that some of the information set out in para 11 already exists. And, overall, the project would have to beware of duplication. The US Legal Services Corporation is developing state-wide portals to provide information, referral and intake to services with Microsoft and Pew Foundation plus its own funding for pilot projects in Alaska and Hawaii. An example of the idea is provided for by Illinois Legal Aid Online - <https://www.illinoislegalaid.org>.
13. Adapted for Wales, my idea would be for something like a welshlegalaid.org.uk. This would refer people to the national advice sites citizensadvice.org.uk and advicenow.org.uk. It would highlight and cover particular Welsh issues. It would provide referral to local resources whether commercial, pro bono, salaried or volunteer. It could explore whether an existing resource like advice.local.uk might be a suitable vehicle to promote. It could provide some locally developed self help material. Its success would be dependent on bringing together a team committed to the project and capable of inspiring the various individual organisations concerned in the way that Illinois Legal Aid Online has done - largely through being part of the pro bono community. There would be a degree of cost to this but the experience of the US and others (eg JusticeConnect in Australia) could be marshalled to assist. Funding for this would probably have to come from the Welsh government but it would not need to be that large. Such a website would be, on the one hand, a fairly small step and, on the other, should be seen as a re-orientation towards digitally-led services supplementing and extending face to face provision.
14. The transfer of legal aid to the Welsh government is not likely to be of immediate attraction to a government in London and would only realistically take place within a wider transfer of jurisdiction and a further devolution settlement. However, it does seem arguable that the current administration of legal aid by London compares very badly with that by Edinburgh. Work could begin during the initial period of this project on a comparison between the two jurisdictions to prepare the case.
15. Two models for the ultimate goal of a body focused on delivering legal services in Wales would be the Scottish Legal Aid Board (<https://www.slab.org.uk>), on the one hand, or the US Legal Services Corporation (<https://www.lsc.gov>), on the other. Both are successful models of good management overseen by a diverse board of governors that have resisted professional capture and which have historically taken a broad and independent approach to service delivery. The Legal Services Corporation receives funding for a very interesting Technical Initiative Grant Program from Congress at the rate of about 1 per cent of its overall budget (roughly \$4m

annually). This allows experimentation with different technology-driven projects and includes an annual conference to consider them. That has proved a very good way of encouraging development.

16. The Scottish government has recently commissioned and received a report chaired by Martin Evans on the future of legal aid (<https://www2.gov.scot/Resource/0053/00532544.pdf>). This set itself the ambitious vision of Scotland as ‘a global leader in supporting citizens [to] defend their rights, resolve problems and settle disputes’. It outlined six strategic aims to do this. It set out a refreshing broad approach both to service delivery and institutional organisation. Broadly it recommended recognition of the need to combine a comprehensive approach to the delivery of legal information and advice from both the advice and legal sectors. Recommendations included:

1. There should be a new arm’s length public delivery body called in this report the Scottish Legal Assistance Authority. The new Scottish Legal Assistance Authority should have overall responsibility for the delivery of publicly funded legal assistance, along with powers to monitor and quality assure delivery, monitor access and adjust the delivery model as a result.
2. There should be competitive led investment in ‘just in time’ legal information and advice online platforms.
3. All publicly funded legal assistance services should be required to adopt an explicit ‘any door will do’ policy. The policy would actively refer a caller/ visitor to a specific and appropriate legal assistance service provider and offer to make an appointment.

17. The Evans report seems to me to provide a benchmark for the commission in terms of its recommendations for access to justice. Scotland is, of course, a larger jurisdiction than Wales with a historically different legal system. But, it represents a jurisdiction forging its own way from the domination of models primarily developed in England.

18. I would be very happy to respond further to any approaches from the commission.

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