

Commission on Justice in Wales
Oral Evidence Session
22 February 2019

Present:	Commission members	Secretariat team
Jonathan Hopkins (JH) (accompanied by Carla Lavender (CL)), Welsh Government Deputy Director Procurement Policy, Innovation and Sustainable Development	Simon Davies, Professor Elwen Evans QC Dr Nerys Llewelyn Jones, Juliet Lyon CBE	Andrew Felton, Secretary to the Commission, Chris James Rhys Thomas
Question area: Importance of the public sector as a client to the legal sector in Wales		
<ul style="list-style-type: none"> • JH: The National Procurement Service (NPS) was established in 2013. £6 billion is spent by the public sector in Wales and it was envisaged that £1.2 billion would be going through the NPS. At present, only £300 million in fact goes through the service so it is less than expected. This is probably because the organisation is still fairly new and there is a transition period from the old contracts to the new. There is also an issue of engagement with the wider sector of their use of the frameworks. Mark Drakeford AM when he was the Finance Minister commissioned a review of procurement last year and it concluded in September 2018. It was undertaken in collaboration with the wider sector. At the conclusion Mark Drakeford AM made a written statement with many recommendations. My role is to implement those recommendations. The statement recommended reducing the size of the NPS as there were 60 frameworks in place and the review recommended determining which frameworks were truly national, which ones were regional and which ones were local. The policy side is to be strengthened to deliver the key outcomes through procurement. There is a focus on greater clarity on policy outcomes and procurement in Wales focussing on delivery. Since the work began we have been working closely with local government and the NHS in deciding which frameworks should be national, regional and local. Mark Drakeford AM wants a better understanding of the £6 billion spend in Wales and a better understanding of the outcomes to be set out via a new procurement strategy for Wales with buy in from different sectors, with proper ownership and thinking long term. We are working in an integrated way to move things forward but there will be challenges along the way. • In terms of policing in Wales, they use our frameworks if they wish. • When the NPS was set up the frameworks were generally mandatory. There was an exception process whereby organisations did not have to use the frameworks if they made an application to opt out. What we found was that bodies were simply not using the frameworks and were not making an application to opt out. We now take more of a pragmatic approach. We are here to provide a service for customers. The key is to understand what they want and to assist them to achieve that. • I report to the Director of Finance and Operations who reports to Andrew Slade. We fall under the remit of the Finance Minister but we also undertake work that overlaps with the portfolios of other ministers. • Our remit was to put frameworks in place to deliver policy but the remit going forward can also be to provide services to support people in a specified area. If there is anything we can do to support the legal sector then we will. It is more of a partnership relationship now. We provide a service in an enhanced way. The private sector has criticised the public sector for making it difficult to plan as they do not know what is going on until they see a tender offer. If they know what's going on it is easier to plan. From a public body perspective we have gone out for tender and suppliers have not had sufficient time to respond. If there is better planning that helps everyone involved. • We have not specifically gone to the legal sector but we can in the future to find out how dependant they are on the public sector. 		

- CL: It is difficult to breakdown how much is spent on the legal sector. I will provide the figure for the total spent on legal sector and show how it is spent.
- JH: The spending on the legal sector will not be a significant proportion of the £6 billion total. We are now in the position that we have the high level detail on how the money is spent. It is categorised into categories and we could look at the areas to assess the level of detail. We could interrogate the data further. The way the public body categorises depends on the IT system they have. We did not previously have the data but now we have but we need an ongoing dialogue to find out how the money is spent and we need to explain to public bodies why we want the figures.
- If there was a designated person responsible for law, it would be helpful to give direction.

Question area: Public procurement of legal services to be used to support the legal sector in Wales

- CL: The legal firms with Welsh headquarters account for 56% of the overall public procurement spend across the public sector. With firms with a base in Wales the figure is 35%. The figures for Welsh Government spending are 89% in total, with 57% with Welsh headquarters and 32% with a Welsh base. The local authorities' figures are 76% for firms with Welsh headquarters and 12% with Welsh base. However, this is based on expenditure reported through the NPS and will not capture spend outside the agreement. From September 2015 to July 2018 £8.64 million was spent on the solicitors' framework. The Welsh Government use in house lawyers when possible and when they outsource they use the NPS. We can look to get figures on the spending on barristers.
- JH: We can engage with stakeholders to ask about the figures. We will have data and we need to see how helpful they are. If not helpful we can look to see how we can get helpful data.

Question area: Different approaches which could be adopted in public procurement

- CL: We don't want a large framework that prevents smaller firms from applying. The Counsel General has started the rapid review of the legal service. That is going to be fundamental in us looking at the procurement strategy in the future. We need to have a framework agreement that works for the customer. Procurement is a tool and we are looking for ways to improve the strategy. We can adjust the strategy to take on board the recommendations of the Commission on Justice and the rapid review.
- JH: One of Mark Drakeford's AM current priorities on procurement is to improve capability. Procurement has been process driven but he is looking to encourage a more rounded profession and to give new skills to people. If there is something not currently done in Wales he wants us to look at possibilities to do it in Wales. To give an example, the public sector use protective clothing and there is not a manufacturer in Wales so we are doing a commercial intervention to establish a manufacturer that does this. In another area, we are looking to identify the anchor organisations that spend most of the money in an area and to get them to work together to understand their priorities and to encourage the money to stay within their communities.
- In Wales because we are closer to the wider sector, Welsh Government can generally develop relationships easier. The approach that the NPS took was similar to Crown Commercial Service in Westminster but we are evolving this further. It is considered to be harder for England due to size but they do have a similar agenda to us.

Question area: Encourage local authorities to support the legal sector in Wales

- JH: In general terms we have not been asked this question. It is not something we have been actively doing but we could. Ultimately, I think it is timely to ask the question of organisations of what the public service needs in Wales. We don't want to displace existing firms but we would look at commercial interventions.

- CL: We have no influence in terms of the buying decisions of the public sector. We identify Welsh language capabilities in tenders. Even the barristers are broken down on language capabilities.

Question area: Build confidence within the legal professions in Wales

- JH: When the NPS was set up the public sector in Wales had frameworks in place already so it was a difficult beginning. However, now we have more of an integrated approach and so if there was a way we can add genuine value we have the remit to do it. In procurement terms the way to build confidence is to articulate a vision and have a dialogue on which sectors are best to provide services. Thinking longer term we need to look at potential issues to provide certainty and clarity on what we are trying to achieve. As part of spend analysis it is important to look at England and understand how much Welsh suppliers are reliant on English money. We need to be careful that we don't have a policy which could affect Welsh firms that are reliant on English procurement.
- CL: We need to look at the potential of how long we run frameworks. We could not run it every year but we need to talk to the sector to see what would work best for them.