

The Commission on Justice in Wales

Submission by
The Law Society of England and Wales

April 2019

The Commission on Justice in Wales

Submission by the Law Society of England and Wales

1. The Law Society

- 1.1 The Law Society of England and Wales ("the Law Society") is the professional body for solicitors in England and Wales. The Law Society exists to represent, promote and support all solicitors, so they in turn can help their clients.
- 1.2 The Law Society works to ensure that no-one is above the law and to protect everyone's right to have access to justice. We promote England and Wales as the jurisdiction of choice and the vital role legal services play in our economy. As a professional body governed by a royal charter, our work with governments and legislatures is underpinned by a duty to act in the public interest.

2. Introduction

- 2.1 We attach great importance to understanding and taking account of the distinctive needs of consumers, citizens and the profession in Wales. Recognising the distinctiveness of Wales has become more important in light of the growing body of law that is applicable only in Wales and the widening role played by the Welsh government in the delivery of justice in Wales.
- 2.1 The Law Society has actively contributed to the Commission's work since the Call for Evidence was issued in February 2018. We have shared information and research on specific topics including technology and the law¹ and our work in relation to access to justice.² As a representative body, we have facilitated contributions from our members, including holding events for the Commission, and providing information to the Secretariat.
- 2.2 Drawing on the experience and views of our members, this submission focuses on two of the Commission's grounding principles, specifically issues for rural practice and the business of law and its contribution to the Wales economy. It also addresses some of the considerations arising from discussion about a separate legal jurisdiction in Wales.

3. The solicitors' profession in Wales

- 3.1. The legal services sector in Wales is substantial. There are 450 law firms registered in Wales including top international law firms such as Eversheds Sutherland. The legal sector in Wales also has a rich network of smaller law firms who are pioneering innovative new legal business models. This abundant legal expertise is combined with a ready skills pipeline with over 4,000 students studying law at Welsh universities. There are also legal services apprenticeships available

¹ Letter of 27 June 2018

² Letter of 19 February 2019

responding to the changing skill requirements needed by the legal sector. The legal sector is also a significant support to rural and post-industrial communities providing local employment and supporting access to justice.

4. Rural Practice

- 4.1 Solicitors practising in rural areas face a number of barriers to doing business. Failures to address these barriers will ultimately impact access to justice and the long-term sustainability of legal services in rural areas.
- 4.2 Due to the geography in Wales there are advice deserts. Potential clients have to travel long distances to obtain advice. Public transport can be unreliable and expensive and with court closures both lawyers and clients have to travel long distances to and from courts. Often public transport does not correspond with Court listing times (i.e. impossible to get to Court by 10am).
- 4.3 Loss of traditional 'high streets' mean fewer people are travelling to their traditional town centres for shopping and professional services. Many towns have lost their local bank branches which is a crucial issue for solicitors both because they are losing clients who are no longer coming to the towns and because solicitors require banking facilities to run their businesses.
- 4.4 There are particular problems in attracting and retaining talent in small towns. For example, those who are training to qualify as solicitors in rural areas are often being lost on qualification to the higher salaries on offer in larger towns and cities. Moreover, the statistics held on the legal profession in practice in rural Wales show an aging population in small practices. Action needs to be taken to retain qualified solicitors for both private and publicly funded work.
- 4.5 Internet connectivity is intermittent or non-existent in parts of Wales. This limits solicitors' ability to take advantage of new technologies that could enhance access to justice, legal advice and representation and which are being deployed with some success in other parts of the UK. The Law Society is undertaking a significant amount of work looking at the legal tech sector and how it could revolutionise the legal industry.

Recommendation: legal services need to be thought of as a critical service for the public good in the same way as other citizen-centric services. The Welsh Government should be proactive in pursuing policies that support rural businesses to flourish and invest in critical infrastructure.

5. The business of law and its contribution to the economy of Wales

- 5.1 Legal services contribute £22.35 billion to the economy of England and Wales³, largely driven by the popularity of the choice of the law of the jurisdiction of England and Wales in international trade and finance and of our courts and other forms of dispute resolution by international parties.

³ TheCityUK' Legal Excellence Renowned: UK Legal Services 2017

Combined the legal sector in Wales and England is one of the UK's greatest exports. We are home to the most respected law firms in the world, globally renowned courts and a wealth of legal talent. Our law is the most commonly used law in international business because it is flexible, predictable and stable. We have a world-renowned legal system with judges of the highest calibre. These benefits have developed over hundreds of years and will continue for years to come regardless of our departure from the European Union. Senior figures from global businesses have told us that they value English and Welsh law.

- 5.2 Promotion of the jurisdiction internationally is a key part of the Law Society's work. We have developed a campaign that promotes the reputation of England and Wales as a global legal centre⁴.
- 5.3 By creating a separate Welsh jurisdiction the benefits of this might be lost and Wales could be perceived as a difficult place to do business. The single legal jurisdiction of England and Wales is a general reservation under the Wales Act 2017 therefore any changes will require UK primary legislation. Future development would be uncertain potentially drawing value away from Wales. Complete 'separation' of Wales from the current single jurisdiction could dilute the jurisdiction of England and Wales and curtail the ability of solicitors to maintain the current level of legal services activity in Wales. An approach which provides for a 'distinct' solution without complete separation can be tailored to the unique circumstances of Wales.
- 5.4 Economic and social advantages may flow from developing the legal profession in Wales and in the development of law that is suited to the particular situation in Wales, however there is merit in protecting the ability of practitioners in Wales to undertake legal services for business across England and Wales and globally.
- 5.5 Where the Commission considers there is an evidenced need to move towards a Wales-centric approach, e.g. for publicly funded legal advice, there is a concomitant need to consider the business of law within the context of the wider economy of Wales. The contribution of legal services is significant currently and many want to see that contribution grow. It follows that providers of commercial legal services based in Wales will not want to lose access to the current market. Further, any arrangement for the future administration of law in Wales must consider the wider economy.

Recommendation: The Welsh Government should be proactive in developing a jurisdictional solution to the accommodation of Welsh law and the distinct needs of Wales without creating barriers for the operation of justice or the ability of practitioners to work across England and Wales.

6. Regulatory structures and qualifications

- 6.1 A separate jurisdiction would raise the question of whether there needed to be a separate regulatory system for legal services providers and a different system for qualification. In the context of a smaller legal profession, the costs of this might well be considerable, particularly if a number of practitioners wished also to practise in England and were to face a double regulatory cost. It might,

⁴ <https://www.lawsociety.org.uk/policy-campaigns/campaigns/global-legal-centre/>

however, be possible to adapt the existing structures that work for both England and Wales, at least in the first instance, to apply to both sections of the jurisdiction.

- 6.2 The Law Society recommends that a single regulatory system continues across Wales and England. The practice of law will continue in a similar way regardless of changes to the single jurisdiction. For solicitors, a single regulator will facilitate cross-border practice and movement of solicitors between Wales and England. There will be optimal benefits from keeping the border open: Wales can attract solicitors from a wider pool; solicitors will be able to move between Wales and England to gain experience and advance their own careers; and solicitors' firms and businesses based in Wales will be able to continue to provide services across England and Wales.
- 6.3 The Law Society has members throughout the public sector including central and local government, the third sector and in industry as well in small and large Welsh firms and satellite offices of England based firms. A single regulatory system would best serve our members across England and Wales and provide the broadest opportunities for individual members and for legal services to grow in Wales.
- 6.4 A regulatory system for legal services covers both firms and individuals and includes education requirements; qualification; practice rights; the professional roll; and registration of businesses. A single regulator can provide a complementary system for Wales and England by providing core requirements across these functions with tailored provisions for Welsh and for English law practitioners.

Recommendation: A shared regulatory system should be maintained and developed to accommodate Welsh and English law and practice