



Commission on Justice in Wales Call for Evidence

Response from Huw Evans on behalf of Gorwel

Introduction

1. Gorwel is an independent Welsh think-tank established in 2012. It seeks to stimulate debate and critical thinking on key topics affecting Wales. This response on behalf of Gorwel is from Huw Evans, a Gorwel board member, law lecturer and former practising solicitor. It does not claim to be all-encompassing, but it is hoped that the content will contribute to the overall assessment that the Commission is undertaking.

2. As a starting point, and to make a general point, concerning the suggested practical purpose of any justice system - that purpose should be to give material effect to the rule of law as defined by Lord Tom Bingham.¹ His definition has the merit of giving practical effect to the concept through adoption of eight principles. Five of those eight principles seem to have immediate relevance: accessibility of the law; equality before the law; adequate protection of human rights; effective dispute resolution; and a fair trial.² In particular, unlike some others,³ Lord Bingham specifically links the rule of law to protection of human rights. This response supports that linkage.

3. The justice system is not devolved to Wales. Yet because of different policy priorities in Wales in devolved areas, the justice needs of Wales are increasingly different to those of England. Accordingly, there is a requirement for alignment of those justice needs with policy implementation in Wales. This necessitates the involvement of UK government as justice is a reserved function. Youth justice is an obvious case - where there is a Welsh Government and the Youth Justice Board's joint strategy to improve services for young offenders or those at risk of offending.⁴ But despite that arrangement there have been calls for the devolution of Youth Justice to Wales because it is not seen as effective; for example, by the Howard League for Penal Reform.⁵ In a broader devolved policy context there is the Well-being of Future Generations (Wales) Act 2015 and pursuit of the well-being goals. Promoting the rule of law contributes to achieving those goals.⁶ Devolution of justice, again, would provide better alignment of justice needs with policy implementation in Wales.

¹ Tom Bingham, *The Rule of Law* (Reprint edition, Penguin 2011).

² The other principles are: law and discretion; equality before the law; the exercise of power; and the rule of law in the international legal order.

³ Joseph Raz, 'The Rule of Law and Its Virtue', *The Authority of Law: Essays on Law and Morality* (Oxford University Press 1979).

⁴ Welsh Government & Youth Justice Board of England and Wales, *Children and Young People First: joint strategy to improve services for young people from Wales at risk of becoming involved in, or in, the youth justice system* (2014).

⁵ Howard League for Penal Reform, *Youth Justice in Wales: Thinking Beyond the Prison Bars* (2009).

⁶ Well-being of Future Generations (Wales) Act 2015, ss 2-6.

4. There is also no separate Wales legal jurisdiction. Yet despite that position there is an ever-increasing corpus of Wales only law. The law as it affects Wales therefore needs to be readily identifiable and accessible. But as there is no separate jurisdiction there is no over-arching imperative to make that Welsh corpus readily identifiable and accessible. The submission of the RSPCA Cymru to the Commission provides an apt illustration of this position concerning Welsh animal welfare law where ‘awareness of this substantial body of Welsh law is low especially amongst members of the public and the wider civil society in Wales’.⁷

5. It is argued that clarity ultimately cannot be achieved until justice is devolved and a separate jurisdiction established - as in Northern Ireland and Scotland (it is also the standard position in federal systems). It should be the same for Wales too – and not just for the sake of it but because, to work effectively, devolution requires this. That said, it is recognised that while this is a desired outcome, the Commission must make recommendations about ‘what is’, as well as what ought to be’. That normative position can still act as a guide in evaluating the current position.

Access to justice

6. It is argued that for the rule of law to flourish the cornerstone is access to justice. Access to justice also encompasses the five Bingham principles mentioned before concerning the rule of law.⁸ For current purposes ‘access to justice’ is given a broad meaning. In a general sense it is about creating an environment where people’s legal rights and obligations are realised (or where there are effective mechanisms for their realisation). From that general position four categories of access have been identified: the preventative role; the enforcement role; the adjudicatory role; and post-adjudicatory role. This analysis is offered because it is believed it assists in evaluating how justice needs may be better met in Wales.

Preventative role

7. The preventative role involves circumstances where rights and obligations are realised without the need for other intervention. There is access to justice because people live in a way that enables them to enjoy rights and comply with obligations. Therefore, for example, people can live safely and prosperously and are not subject to unlawful behaviour which causes harm to them or their property. There is ‘access’ because justice is delivered in the first place, ie, without need for follow-up. This might occur for a variety of reasons - two are mentioned.

8. Effective enforcement regimes can influence behaviour and cause people to comply with the law – this can be through a deterrent effect or, more positively, because there is genuine behavioural change. The preventative role might also come into play following application of the post-adjudication role (explained below) because a person is rehabilitated. Also, a person who might otherwise break the law can be prevented from doing so because they are incarcerated or subject to restriction of activity (e.g. not allowed to work with children, drive, be a director of a company or keep animals).

⁷ RSPCA Cymru, Submission to Commission on Justice in Wales (May 2018) 2.

⁸ Accessibility of the law; equality before the law; adequate protection of human rights; effective dispute resolution; and a fair trial.

Referring to an introductory point, one contributor to more effective enforcement is alignment with policy needs. This would be more readily achieved if justice was devolved.

9. Education and advice are also important. In a policing context, crime prevention advice can mean people adopt practices that reduce the risk of being a victim of a crime. A local authority might provide advice to traders on new legislation that it must enforce – say, about food safety or contract cancellation rights. In that context the likelihood is that traders will be cooperative, and that local authority effort will promote compliance. Similarly, consumer advice and education can empower consumers when trading so that they are more confident about asserting and realising their rights.

10. In a broader context when access to justice is considered it seems the preventative role is not part of the evaluation. Access, it appears, is concentrated at points where people need action to realise rights and enforce obligations. Of course, access to justice includes those other things but on any sensible interpretation it must include the preventative role. Furthermore, it is in wider societal interest for the preventative role to have effective impact. In a Wales policy context, and although not articulated in access to justice terms the preventative services approach set out in the Social Services and Well-being (Wales) Act 2014⁹ is an example of Welsh government policy to promote the preventative role.

Enforcement role

11. If the preventative role is not successful, the enforcement role comes into play. There is a need for machinery enabling claims for legal breach to be brought for adjudication - whether in a criminal, civil or administrative context. It is about the processes related to bringing a case forward (eg, investigation and prosecution in a criminal case, processes for making a civil claim – whether in a court or in an alternative way such as under an ombudsman scheme). The people who are primarily affected by such processes (users) are those alleging wrongdoing and those alleged to have done wrong - but it also includes others such as witnesses. Access to justice in this context refers to access of those users.

12. Therefore, for example, it is important:

- In a criminal context that: enforcement agencies are properly resourced, competent and accountable; and that the rights of users are upheld, ie, that there is due process.
- In a civil context that: there is access to appropriate legal advice so users can properly decide whether to pursue or defend a claim; there is access to appropriate support in pursuing or defending a claim.
- Where appropriate, that users benefit from public resourcing when bringing or defending claims.

Adjudication role

13. The adjudicatory role refers to the arrangements that provide for the adjudication of claims of legal breach - whether in a criminal, civil or administrative context. Adjudication need not be confined to the courts - and alternative dispute resolution mechanisms such as arbitration and ombudsmen are important. Adjudication also

⁹ Social Services and Well-being (Wales) Act 2014, s 15.

refers to informal criminal adjudications such as cautions. Those arrangements include the adjudicators (eg, the judiciary, ombudsmen) but also the location of adjudication – actual or virtual. Access for users in this context can be viewed from a variety of perspectives. For example:

- Geographical: proximity of places of adjudication, links to public transport.
- Digital: ways in which virtual places of adjudication can be accessed eg at a community physical facility to support the (otherwise) digitally excluded.
- Financial: affordability of the process.
- Speed: expedition of the adjudication process.
- Language: whether the system is equally effective whether conducted through the medium of English or Welsh.

14. Again, resourcing is a key issue whether, for example, in respect of the court system, alternative dispute resolution schemes, adjudication and public support for those bringing or defending claims.

Post-adjudicatory role

15. The post adjudicatory role refers to the effectiveness of what follows from an adjudication. At its most basic it is whether an adjudication is given effect. In a criminal context this will often not be an issue as the state is responsible for implementing the adjudication: eg, that a prison sentence can be served. In a civil context this will often be more problematic as action by the successful claimant might be necessary to enforce judgement. That person will usually have financial responsibility for this. If judgement cannot be enforced there is ultimate denial of access to justice. Conversely, alternative dispute mechanisms can often provide for effective implementation and overcome issues otherwise experienced following civil court adjudication.

16. The post adjudicatory role is not just confined though to the ‘wronged’ person. Rehabilitation is also an applicable aspect. It is a feature of both youth and adult criminal justice. The principal aim of the youth justice system to prevent offending by children and young persons.¹⁰ Reform and rehabilitation of offenders is a purpose of sentence for adults.¹¹ This is also linked to the preventative role as a rehabilitated person does not then breach the law. But diversion and rehabilitation effort is expensive as it requires intensive working with individuals. Adequate resourcing is crucial.

Some aspects of access to justice in practice to Wales

17. Having broken down access to justice into four categories these are now considered in Wales context in relation to specific examples. This consideration is not intended to be exhaustive but to give practical illustration about application of those categories to Wales.

18. *The preventative and enforcement roles:* In the public eye there is concentration on the police as an enforcement agency to the exclusion of others. While the police clearly are core to criminal justice - in particular, in the preventative, enforcement and adjudicatory roles - the efforts of others materially contribute and deficiencies in their regimes lead to deficiencies in the overall system of justice. One key area for concern is

¹⁰ Crime and Disorder Act 1998, s 37(1).

¹¹ Criminal Justice Act 2003, s 142(1)(c).

resourcing. There has been reported public concern over reduced resourcing of the police and the effect on police effectiveness. There has been less public reporting in other enforcement areas.

19. Examples of other enforcement regimes include local authorities' enforcement of food law (as food authorities) and trading standards law (as local weights and measures authorities). The Health & Safety Executive (together with local authorities) enforce workplace health and safety law. The RSPCA (at great saving to the state because to a large extent it does the state's work) enforces animal welfare law in England and Wales. There are also central government enforcers such the Department of Work and Pensions and HM Revenue & Customs.

20. In England for the period 2010-11 to 2017-18 there was a 28.6% real-terms reduction in local authority spending power, but the effect of that reduction was not evenly spread; 3% real-terms reduction in local authority spending on social care but a 32.6% real-terms reduction elsewhere ('elsewhere', of course, include local authority enforcement).¹² No comparable Wales figures have been identified but these are unlikely to be materially different.

21. According to the Chartered Trading Standards Institute actual average local authority trading standards budgets in Great Britain for the same period fell from £1,343, 813 to £784,696 in 2017-18¹³ - an actual average reduction of 41.6%. The average real-terms reduction would have been greater. This must inevitably undermine ability of trading standards to effectively contribute to the preventative and enforcement and adjudicatory roles. As an illustration, *Which?* started judicial review proceedings against Peterborough Trading Standards because of alleged failure to enforce product safety law against Whirlpool over tumble dryer safety concerns.¹⁴ *Which?* subsequently did not pursue the proceedings after Peterborough Trading Standards did then take further action to the satisfaction of *Which?*

22. Local authority enforcement in its various manifestations is a significant contributor in furthering the prevention and enforcement roles in Wales. But local government funding in Wales, as in England, has suffered significant continuing reduced resourcing. In some cases, this calls into question the ability of a local authority to carry out its statutory duties and 'enforcement deserts' emerge.¹⁵

23. *The adjudication role:* Following a review of the court estate in England and Wales in 2010 the Ministry of Justice announced the closure in Wales of 12 magistrates' courts and four county courts.¹⁶ After another review in 2015, ten more courts were closed.¹⁷

¹² Comptroller and Auditor General, *Financial Sustainability of Local Authorities* (National Audit Office 2018). Comparative figures for Scotland and Wales were not identified.

¹³ Chartered Trading Standards Institute, 'Workforce Survey 2017' (CTSI 2017).

¹⁴ *Which?*, *Which? launches judicial review of Peterborough Trading Standards' handling of Whirlpool fiasco* (press release, 2016) <<https://press.which.co.uk/whichpressreleases/which-launches-judicial-review-of-peterborough-trading-standards-handling-of-whirlpool-fiasco/>>.

¹⁵ See: Committee of Public Accounts, *Protecting Consumers – the System for Enforcing Consumer Law* (2011) 10.

¹⁶ Ministry of Justice, 'Court Reform: Delivering Better Justice' (press release, 14 December 2010) <<http://webarchive.nationalarchives.gov.uk/+http://www.justice.gov.uk/news/newsrelease141210a.htm>>.

As a result of these reviews, the nearest court for many people in Wales cannot be regarded as 'local' - ask a person in mid-Wales, for example. The effectiveness of the adjudicatory role of access to justice must be undermined by such change. This is not to question the good intent of those responsible for making the changes, but those decisions were not made based on what was best for Wales. Sir Roderick Evans, then a High Court judge, said that:

Spending criteria and administrative templates set in London for England and Wales may be suitable for England but not necessarily suitable for Wales.¹⁸

24. Sir Malcolm Pill, when a Lord Justice of Appeal, posited:

If a Welsh public body decides where hospitals are built in Wales, should not a Welsh public body decide where courts are built?¹⁹

25. These are the voices of knowledgeable and respected individuals who speak with authority. As to the type of detriment likely to be suffered arising from this change, the Welsh government, in response to the 2015 review, commented:

Communities currently serviced by the courts...will be affected by unreasonable, and in some cases unacceptable, increases in journey times and increased costs, which may become a barrier for court users...Proposed closures may impact on local administration of justice, particularly where there would no longer be a court building in the town... The proposals do not provide any analysis or consideration of the Welsh language needs of the population and service providers in Wales.²⁰

26. It is difficult to see how barriers to access have not been created. There also seems no obvious reason to doubt the assertion that Welsh language needs were not properly analysed or considered. The Welsh government's submission provides support for the views of Sir Roderick Evans and Sir Malcolm Pill.

27. *The post adjudication role:* As mentioned, part of the post adjudication role is about reform and rehabilitation. This is included in HM Prison and Probation Service's (HMPPS) purpose, which is to:

provide effective and humane Prison, Probation and Youth Custody services which protect the public from harm and help people who have been convicted of offences to reform so that they can contribute positively to society.²¹

28. Two points arise: first, at a time of reduced resourcing, reform of individuals is probably less achievable because of the investment required to bring about that change; the second relates to how individuals' reform needs in Wales are to be properly

¹⁷ Ministry of Justice and HM Courts & Tribunals Service, 'Response to the Proposal on the Provision of Court and Tribunal Estate in England and Wales' (2016).

¹⁸ Roderick Evans, 'Devolution and the Administration of Justice' (Lord Callaghan Memorial Lecture, Swansea, 19 February 2010) <<http://www.iwa.wales/click/2010/02/devolution-and-the-administration-of-justice/>> .

¹⁹ Malcolm Pill, 'Address to Legal Wales Conference' (Legal Wales Conference, Cardiff, 9 October 2009) <<http://legalwales.org/downloads/legal-wales-conference-cardiff.pdf>> accessed 11 September 2017.

²⁰ Welsh Government, 'The Welsh Government's Response to the UK Government's Consultation on HM Courts and Tribunals Service Reform' (2015) 3-4.

²¹ Her Majesty's Prison and Probation Service, *Her Majesty's Prison and Probation Service Annual Report and Accounts 2017-18* (HMPP 2018) 5.

addressed when HMPPS is responsible for 102 public sector prisons, 14 private prisons, 7 National Probation Service divisions, 5 young offender institution/sites for young people and 3 secure removal centres.²² There is an HMPPS Wales directorate which was established 'because of the distinct differences arising from devolution'.²³ It is therefore recognised that Wales has a distinct needs but ultimately it is questioned how far these can be addressed. It is difficult to see how those needs can be regarded anything other than peripheral to addressing needs elsewhere. Questions arise, for example, about HMPPS addressing the welfare needs of Welsh speakers, women and their families. A devolved justice system would allow for better concentration to meet the needs of individuals in Wales, combined also with improved alignment with policy needs.

Policing

29. This part of the response draws from a blog published by Gorwel.²⁴ It also draws a distinction in a devolution context between policing and justice. Sometimes it is argued that because of policing's natural relationship with the justice system the two cannot be separated – a point made by the UK government in its submission to the Silk Commission.²⁵ But, surely, each can be looked at separately? The Silk Commission separated them and recommended that devolution of the justice system be deferred.²⁶ And UK government in pre-devolutionary times previously contemplated separating them and the transfer of policing to (what was then) the Welsh Office. In the Second Reading debate of the Wales Act 2017 in the House of Lords, Lord David Hunt, Secretary of State for Wales from 1990 to 1993, recalled how he had reached agreement with then, Home Secretary Kenneth Clarke about the transfer of policing from the Home Office to the Welsh Office but that 'it was stopped by the bureaucracy of Whitehall'.²⁷

30. From the Commission's perspective, if that distinction is accepted, it could also be reflected in its approach to formulating recommendations. It is submitted that there is a strong case for the devolution of policing. Policing is delivered locally. Effective policing is integral to successful delivery in matters that are devolved. Economic and social well-being is advanced if there are safe communities and the role of law is upheld. Policing in this context is a key player in the preventative role of access to justice.

31. There are obvious examples where there is an interface with policing and devolution. Four are mentioned to illustrate that position:

- *Youth justice*: The Crime and Disorder Act 1998 establishes a multi-disciplinary approach to youth justice involving the police and devolved matters such as social care, education, health and housing.
- *Children and adult safeguarding*: The Social Services and Well-being (Wales) Act 2014 establishes separate children and adult safeguarding structures, to which the

²² *ibid* 8.

²³ *ibid* 27.

²⁴ Huw Evans, 'Policing – If It's Good Enough for London and Manchester, Why Not Wales?' (*Gorwel Blogs*, 31 January 2018) <<http://www.gorwel.co/wordpress/?p=3180>>. There is some use of direct quotation which for pragmatic reasons is not acknowledged directly in the text.

²⁵ Commission on Devolution in Wales, *Empowerment and Responsibility: Legislative Powers to Strengthen Wales* (Commission on Devolution in Wales 2014) 104.

²⁶ *ibid*.

²⁷ 'Wales Bill (HL Deb 10 October 2016, Vol 774, Col 1730)'.

police necessarily contribute as safeguarding is about protection of vulnerable people.

- *Mental health:* The police have powers under the Mental Health Act 1983²⁸ to remove a person from a public place and take her/him to a 'place of safety' if it appears that the person is suffering from a mental disorder. The police under this arrangement is an agent of the health service.
- *Economic development:* Policing of economic crime through enforcement of the law on theft and fraud promotes economic development because fairer trading conditions are established. This allows legitimate economic effort to flourish.

32. If there is a natural policy relationship between policing and devolved matters, it is legitimate to ask why is policing not yet devolved, especially when it is devolved to Scotland and Northern Ireland. That position looks more anomalous in the light of London and Manchester. The Police and Social Responsibility Act 2011 gave policing responsibilities to the mayor for London.²⁹ In 2017, there was a transfer of policing responsibilities to the mayor of Greater Manchester from the police and crime commissioner for the Greater Manchester police.³⁰ Policing in London and Manchester is part of wider portfolios that include matters that are devolved in Wales.

The legal profession in Wales

33. The legal profession in Wales needs to be appropriately structured and its members skilled and qualified to meet Welsh needs – a statement of the blindingly obvious, perhaps. But the real challenge is to bring about that state of affairs. This is more likely to arise if justice was devolved and a separate jurisdiction established. In that event justice arrangements can be tailored in such a way that is appropriate for Wales and the legal profession (as part of those structural arrangements) can better develop.

34. For example, in a separate jurisdiction there would be increased need for lawyers to have expertise in Welsh law. There would also be an opportunity to make a fresh start. The traditional classification of solicitor and barrister is anachronistic and not helpful. A common legal professional qualification and practice framework in which practitioners can develop specialisms and career pathways would be more coherent – including access to the judiciary. There would be a separate court system and need for a bespoke Welsh judiciary. With that development there is more incentive (economic or otherwise) to develop legal professional capacity to meet service needs through the mediums of English and Welsh.

35. As to legal vocational education and training, much of this is tied in with identifying and meeting those needs. Education and training programmes - whether for qualifications or continuing professional development - need to have a market. There

²⁸ Mental Health Act 1983, s 136.

²⁹ Police and Social Responsibility Act 2011, ss 3-4.

³⁰ Greater Manchester Combined Authority (Election of Mayor with Police and Crime Commissioner Functions) Order 2016 (SI 2016/448) and Greater Manchester Combined Authority (Transfer of Police and Crime Commissioner Functions to the Mayor) Order (SI 2017/470).

has to an incentive for provision. Wales in which the justice system is devolved and there is a separate jurisdiction has a better chance of beginning to generate that market.

36. Legal technology is essential for a variety of reasons. But, again, this needs to have best effect if looked at in a Welsh context. In the current system, where is the incentive to adapt it to a Welsh context?

Other providers of legally related services

37. The legal profession does not have a monopoly on the provision of legal and related support. Others, especially within the third sector, make a significant contribution in furtherance of the access to justice roles - particularly in specialist areas such as housing, welfare and immigration law. Citizens Advice, Shelter Cymru and BAWSO are examples. These other providers must be form part of a coherent strategy for meeting justice needs in Wales.

Economic consequences

38. The economic consequences of devolution of justice are a legitimate consideration provided they align with promotion of the rule of law. So, for example a devolved justice system could be tailored better to the needs of Wales. There might include multi-functional justice centres at places reasonably accessible throughout Wales. A Wales Court of Appeal could be part of the court system with peripatetic sitting at those justice centres. Access to justice could be materially improved in adjudicatory and post adjudicatory roles. Economic benefits for Wales could be substantial because: Welsh work would be done by lawyers based in Wales; staff will be needed to support the devolved justice system; academia and practice can thrive in a more integrated and productive structure; there are more meaningful career pathways.

Ideological difference

39. This point is made because it is believed to have material impact on the delivery of justice. As the justice system is not devolved there is occasion where the ethos behind the delivery of public services at a reserved level conflicts with its devolved counterpart. Marketisation (or 'contracting out') of service delivery is an obvious example. So, in relation to health, there is an ideological contrast between the UK government health policy for England and Welsh government health policy. Those policies are reflected in the NHS structural arrangements in each country. Although made in a different context, and probably an oversimplification, the Wales position can be broadly encapsulated as follows:

From the [Welsh Local Government Association] perspective...there will always be 'red lines' where direct public provision should always be the norm especially in relation to many statutory services.³¹

40. If, for practical purposes, there is sufficient devolution in a policy area, that difference in ethos should not impede devolved government – health might fall into this category. Where, however, that is potentially not the case is where devolved government is materially dependant for overall effectiveness on service delivery involving reserved functions. Service delivery linked to justice might fall into this

³¹ Keith Edwards, 'Is the Feeling Mutual? New Ways of Designing and Delivering Public Services in Wales' (Welsh Government 2015) 10.

category. For example, there has been marketisation of probation services in England and Wales. Because of the type of person involved, probation service delivery interlinks with devolved services' delivery such as in social services and housing. Devolution of justice would avoid this problem. This is not to make an ideological point, however. The same argument would apply if devolved and reserved ideological positions were reversed.

Conclusion

41. Devolution of justice and establishing of a separate legal jurisdiction is necessary for the effective working of devolution. If that is to happen though the justice needs of Wales must be properly assessed so that there is a coherent framework and effective implementation. But It would be a mistake to merely take current arrangements and blindly replicate them. Obvious areas for consideration include:

- *Structural arrangements of the court and tribunal system.* For example: use of multi-functional justice centres could provide for accessible and proximate facilities throughout Wales; a single criminal court could be established to replace the current two-tiered structure; the continued role of magistrates could be seriously evaluated.
- *Legal support.* For example; provision of publicly resourced legal services could be reviewed on a 'back to first principles' basis and services delivered accordingly. This would include deciding areas in which there should be resourcing and then deciding the best way to resource. So, say, if there is to be public resourcing for criminal defence work, this could be achieved through a Wales public defence service.
- *The legal profession.* For example; as mentioned before, there could be consideration of the benefits of an integrated legal profession replacing the current solicitor and barrister classification. Producing accessible but quality assured pathways to judicial appointment is part of that consideration.
- *Prosecution arrangements:* For example; consideration of whether an independent Wales prosecution service be established and, if so, the extent of its remit. The Crown Office and Procurator Fiscal Service in Scotland is responsible for public prosecutions generally, not just police prosecutions.

42. Mention was made in the introduction to Lord Bingham's definition of the rule of law and how this was categorised under certain principles. It is believed that the definition and those principles provide an invaluable practical tool in assessing justice delivery, and which can be applied to Wales. The access to justice roles identified incorporated application of those principles. Linking the rule of law to adequate protection of human rights is fundamental. The Human Rights Act 1998 provides that it is 'unlawful for a public authority to act in a way which is incompatible with a Convention right.'³² Ineffective rule of law promotion can involve breach of that duty. Amartya Sen argues that ensuring meaningful enjoyment of human rights must mean placing reciprocal obligations on others. If this does not happen, there are inequalities and injustice in consequence. Effective promotion of the rule of law avoids this.³³

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³² Human Rights Act 1998, s 6(1).

³³ Amartya Sen, *The Idea of Justice* (Penguin 2010).