

**Commission on Justice in Wales
Oral Evidence Session
8 February 2019**

Present:	Commission members	Secretariat team
Julie Brannan, SRA (JB) Crispin Passmore, Crispin Passmore Consulting (CP) Ewen MacLeod, Bar Standards Board (EM)	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.
Question area: Should the Welsh Government fund apprenticeships in the legal sector?		
<ul style="list-style-type: none"> • JB: What we hear is that English based law firms like apprenticeships. They see it as a way of broadening their talent base and the profession and they often do outreach activity into schools and so forth to target their recruitment activity. Firms think they are getting good people and they are finding they are loyal so recruitment via this route is often addressing retention issues. In terms of solicitor apprentices, the scheme launched in September 2016. The number of starts was 25 and this increased to 110 in 2017. Figures for 2018 are not yet available from the Institute of Apprenticeships but anecdotally we hear from firms that they are increasing the number of recruits they are taking through this route. In terms of academic standards, we needed to make sure standards were consistent and our answer was the SQE. Candidates must pass SQE1 and SQE 2 and we know they are being assessed on a level playing field. SQE 1 is the knowledge test taken during the apprenticeship programme which is up to 6 years. SQE 2 is taken in the last six months of the apprenticeship programme. There is a centralised independent examiner. • CP: If you want apprenticeships to succeed they must be properly funded. Why do you want them to succeed? If it's for diversity, there are the beginnings of evidence that whilst they were designed for social mobility, the middle classes are now grabbing the opportunities. • JB: I'm not sure there's much evidence on that point. Apprentices are often from groups that would not come to the professions. They are predominantly female. The purpose of the SQE was to drive greater diversity in the profession. We will be doing a comparative study to evaluate this. • EM: We don't offer any Bar apprenticeships yet. We are waiting for the LSB to authorise new training pathways into the profession¹ which would enable employer groups - which might include the Government Legal Service ("GLS"), local authorities and so forth - to establish an apprenticeship route. The GLS has introduced a scheme for solicitors and we are keen to see how this can be taken forward. 		
Question area: What lessons can be learnt in Wales from regional legal centres in other parts of the UK, such as Leeds and Belfast?		
<ul style="list-style-type: none"> • JB: My knowledge is from talking to law firms who have set up satellite offices in those locations. I hear from them that they value access to talent and well trained students, lower cost opportunities in terms of building rental and salaries and local authorities that will engage with them to remove barriers. Singapore has been mentioned as an example where ADR facilities were built and the business came to it. • EM: There is something to be said for the provision of training in the regions to build a community of practice. With the Inns of Court and regional circuits, we've been looking at promoting more training outside of London, particularly in relation to the qualifying sessions that need to be done 		

¹ The LSB approved the BSB's Future Bar Training rules on 28 February.

before call to the Bar. We see barristers running their qualifying sessions regionally as a way of engaging with students about the practicalities of a career at the Bar.

Simon Davies asked about relationships between barristers and solicitors and how strong these were regionally.

- EM: Anecdotally it's variable. When we consult on issues, Cardiff is a good example of where you get a strong turnout to our events and a feeling that there is a good community around the law school.
- CP: It's an interesting issue around the balance of getting people to buy locally, solicitors instructing the local Bar, and trying to grow exports. Why to Leeds and Belfast do well? They have infrastructure and talent and perhaps clarity about what they offer. What is the specialism you want to offer? You need an open market to reduce the cost of business. Wales needs to ask itself tough questions, for example about the role of the Welsh language and does it have a negative effect if you require, for example, judges to speak Welsh? If you require anyone thing that narrows the potential pool then it is harder to deliver excellence in other areas. You can't force this relationship, you have to grow it and you need a strong local economy that generates work and is a basis fir exports.

Professor Rick Rawlings asked for information on what training in regional centres would involve and of its tailored to the regions, for example Welsh law in Wales.

- EM: The reality is that training providers in Wales will cover Welsh law where relevant. We don't require it, but we could review that depending on how things develop. Delivering qualifying sessions in the regions is a new initiative and we are in the process of setting that up with the Inns. There will be an element of consistency, but we would expect it to be tailored to the local regions. I will let you have something further on this.

Question area: How can leadership skills be developed and improved within the sector?

- JB: We regulate core competencies to practice. Leadership is a broader issue for universities and the professions to develop in an unregulated way.
- CP: The problem is the legal sector is massively fragmented with 10,000 firms in England and Wales. There is good leadership and if firms value it and they will develop people in this area and this is what large law firms have done. In rural areas it's about how do you create sustainable businesses. This is where regulation can come in to reflect leadership and the liberalisation of regulation is significant, for example ABS practices widen the pool of talent by bringing in leadership skills from other sectors. Greater business opportunities such as MDPs also bring different professions together – enabling the most entrepreneurial or those firms with the best leadership to thrive. This helps with sustainability of business too, especially in rural areas where individual professional practices are less sustainable
- EM: Leadership in the Bar is a matter for the profession. Regional identity and leadership comes from the circuit and will vary between chambers too.

Question area: What can be done to address succession issues in legal firms in post industrial and rural Wales?

- JB: Succession is an important issue for the SRA in terms of access to legal services and client protection from orderly closures. There must be good replenishment of new blood coming into and staying in the profession. Apprenticeships can really help here as they tend to be recruited locally, they know the community and they tend to want to stay local so there is better retention. The SQE, by whatever route people take, means they can learn more on the job. This will make it easier for them to qualify and to do so in the local community will really help with wider regulatory reforms. The SRA is making it easier for solicitors to work, for example as freelancers, and all this

helps. We've heard anecdotally that retired people are now more able to continue to offer small scale services.

- CP: It's a similar issue to leadership and you need to find a sustainable way to practise. If you allow solicitors to practise in different ways then they can handle better the risks of being in business. Finding routes to qualify on the first place is important and this has been a challenge in very small law firms. Also, you need to allow people to come and go across borders. We must accept that talent will move and it needs to be easy for it to return at different stages of their career so you need to think about the infrastructure that allows them to do that. I think of lessons from Cornwall and what has been done there in the last 20 years using European and other money to keep the airport open and to develop good broadband infrastructure, so that people that have left may return. Universities are important in attracting people from outside because a proportion of students will stay.

Lord Thomas asked about the cost of professional indemnity insurance for firms wishing to close.

- JB: The SRA has consulted on this but no decision has yet been reached and the matter is going through SRA's internal governance. I can't tell you what that decision might be or when it may be made.
- CP: The SRA did consult on changing the professional indemnity insurance requirements such as capping liability over 6 years and tweaking obligations to make businesses more sustainable. In the end it is a balancing exercise of leaving consumers more exposed to risk, or having no access to legal services at all. Professionals must be able to come together and share some of the risks. Insurance risk can be spread over a wider base and is more sustainable as when one person retires you don't have to buy run-off cover when partners leave. Bigger businesses don't worry about run-off cover as the business doesn't close when a person leaves. It's a particular problem for small firms. I would say liberalise practice and the Welsh Government could assist in the creation of multi disciplinary practices to support that and lobby the SRA to reform the PII obligations. The problem with the SRAs requirements is that they are not replicated elsewhere in other professions in the UK or in the legal profession any where else in the world. It's an unlimited insurance requirement, it's not capped against fees on in any other way which is a real issue and utterly disproportionate for smaller practices in Wales.
- JB: This is what we are grappling with and I will take your concerns back to the SRA.
- CP: Sole practices can pay up to 10% of their turnover on indemnity insurance. Run-off cover for 6 years can be three times the annual premium so in the year you close that's 30% of your turnover to buy run-off cover on top of the 10% for that final year's cover. In what world is 40% of turnover on PII proportionate to risk for consumers?
- EM: The issue off run-off cover doesn't apply to the Bar. Annual insurance includes an element for run-off cover. There is therefore a more orderly ceasing to practice at the Bar. I agree strengthening of the young Bar is important for succession. In England and Wales there are issues about the retention of women particularly from around 10 years call. We are working with the profession to try and address the issue.

Question area: What can be done to improve diversity within the legal professions and the judiciary in Wales?

- JB: As regards the SRAs educational reforms it's important not to over promise on what the SQE can deliver. We have identified barriers that prevent candidates qualifying which have nothing to do with their aptitude. The cost of training and access to training contracts are issues we are seeking too address via the SQE. On cost, there will be no requirement for the LPC, the cost of which is now £16,750, or the PSC meaning a cost saving of £19,000. There are new costs too, the SQE exam at up to £4,000 and additional training costs. But it will be a more competitive market that will drive costs down and quality up. In terms of access to training contracts we know people have the necessary qualifications but can't get a contract. They do work of a trainee or a newly qualified as a paralegal and the new proposals allow them to qualify. There are only 165

training contracts on Wales, up to 6,000 in England. I have heard from a large firm that the cost of paralegal apprenticeships is covered by the fee income they generate. I will let you have all of the statistics we have on this over the last 5 or 10 years for England and Wales and separated for Wales. We gather data on workforce by protected characteristics and we encourage diversity as a result. We have arranged outreach activities but we will only ever touch a small group most important thing we can do is require publication of EDI data and removing regulatory requirements that create disproportionate barriers for some people.

- EM: We monitor equality and diversity data and require the profession to do the same. I have mentioned the retention challenge. The young Bar is diverse but gets less so as you get more senior. I'll send you the same statistics as you asked the SRA to provide. As the profession gets more senior it gets increasingly male and white. But we do a lot of work with the profession to promote inclusion and we need to work out how we can better assist chambers in this regard. We focused on pupillage as the gateway into practice and research shows where people have equivalent educational background a white candidate is twice as likely to get a pupillage compared to a BME candidate. I'll forward this research to you.
- CP: I think this is a difficult issue. We should be proud of where we are. The diversity in the professions is quite good compared to some other areas in the economy – especially on entry. But in terms of progression and retention, diversity falls away as people become more senior and we need to ask tough questions about this. We need a diverse judiciary if it is to be held in high esteem by society, so equality and diversity is perhaps more important than it is compared to other professions. The profession and firms want to talk about entry because talking about retention and progression means focusing on what they do as business. It is always everyone else that should sort out diversity.
- JB: There are some positives here across England and Wales. The ethnicity profile of the profession was 14% in 2014 and 21% in 2017. There is a different profile between England and Wales as regards to women solicitors, there are more in Wales. But the profession is older and whiter on Wales. I will send these statistics to you.
- CP: Have you thought about the Welsh language. If it is a requirement for a judicial role that the post holder speaks Welsh then do you reduce the chance of diversity on other protected characteristics? Presumably you have access to diversity of Welsh speakers compared to non-Welsh speakers?

Question area: Wales has been disproportionately affected by cuts to legal aid. What can be done to address this impact?

- JB: The SRA can liberalise the way in which solicitors can practice, MDP and ABS are current examples, solicitors working as freelancers and so forth are all important opportunities. In terms of advice deserts, local authorities may be able to expand services to communities and offer community amenities.
- EM: I would say the same thing although there has been less innovation at the Bar. We are looking at removing unnecessary practice restrictions and we will be consulting on revising our practice rules. Access to justice is one of our regulatory objectives and we need to work with other regulators to understand the impact of cuts to legal aid.
- CP: I was Director of Policy and Legal Aid until 2009. From the current landscape that looks like the halcyon days of legal aid but it didn't feel like it at the time. I was criticised for creating advice deserts when the Green Form Scheme was helping about 1M people per year, compared to about 150,000 now. Legal aid has been cut, and there is an opportunity for Wales. Wales has done a lot in relation to public service delivery to join it up and to think differently which you can do when there are better lines of sight across the country than perhaps there are in England. The opportunity is in how you can better join up funding streams to create a more comprehensive service. There will be organisational barriers where there are too many providers. Do you want a public defender service? You can learn lessons from the way that public services are delivered in other areas like health and social services to develop solutions. A public defender service or a public social welfare law service could be delivered by the Government, by third sector, by private

law firms or by some sort of consortia. But the opportunity in Wales to do something joined up and radical to deliver better services instead of fragmented services that are lacking sustainability, leadership, technology and innovation seems huge.

- JB: There is a role for innovation and technology and the scope for seeing if technology can address some of the issues. The SRA has been awarded £700k from the Government's Regulator's Pioneers Fund to support funding for AI to improve legal services for small businesses. We will be inviting applications from Wales.
- CP: I ran the biggest law centre in England and Wales. In terms of access to justice, I found that the resistance from individual institutions to change is phenomenal. There will be push back against moving provision not just by local authorities but by councillors in particular wards. We tried to pool resources to address advice deserts but it didn't come to pass and then legal aid was cut. I'll send you any academic studies I have that are relevant. Sadly, much was lost when the Legal Services Commission was abolished.

Question area: What can be done to address the issues caused by growing advice deserts?

- **Answered above.**

Question area: How should Wales be better represented within justice bodies in the UK?

- CP: In my spare time I'm a Non-Executive Board Member of the General Dental Council. That Board must have a representative from each of the 4 nations. The issue of quotas is a hard area but perhaps we need to go that way. I think it's almost inevitable on public bodies we are heading in this direction. To me the challenge is diversity is wider than nationality. There is an issue about being credible to populations you serve in terms of England and Wales bodies. But other characteristics are relevant too like gender. In most bodies it's about executive leadership and ensuring what matters is delivered. Legal quotas don't solve leadership problems. If the Chair and CEO are focused on recognising that being a body for England & Wales must treat each country equally and fairly rather than being an English body that nods towards Wales then change will happen.
- EM: It is important to hear the Welsh voice. We had a Welsh Barrister on our Board for the last 6 years who has stepped down and we will be recruiting to fill the vacancy. We welcome applications from Wales but it's not a dedicated slot for Wales.

Lord Thomas asked EM if the question of formal Welsh representation on the Board of the Bar Standards Board could be put to the Chair.

- CP: Legislation can help. But members of bodies are jointly accountable and are not members for a narrow area.
- JB: The SRA has had a Welsh Chair and Board Members. I wonder if the solution is not to require an appointment but that it be made clear in the objectives of the organisation what their responsibilities and accountabilities are.

Question area: What impact do you think the creation of a separate legal system in Wales would have on the regulation of the professions?

- JB: The SQE looks at core areas only. It does not look at areas where there is diverging law. The property core topics do not include diverging law. City firms say the SQE doesn't reflect their needs either. The exam is centred around peoples ability to understand fundamental legal principles and to apply them to be able to work as a lawyer. It's not about gaining knowledge of all law. We rely on post admission obligations that people only practice in areas where they are competent. We could have a massive SQE and therefore it would not workable.
- CP: The key issue for me is about preparing people to practise law rather than trying to cram knowledge into them.

- EM: The focus of our new training pathways is about delivering competencies, skills and behaviours to enable a person to practise rather than them acquiring knowledge of large areas of law.

Question area: What impact do you think the creation of a separate legal system in Wales would have on the professions continuing to practise across England and Wales?

- EM: It need not have much of an impact at all. I worked for the General Dental Council that regulates across the UK and it's possible for a regulator to set common standards across different jurisdictions. If regulation was devolved and the National Assembly decided it wanted different standards the regulatory regime could adapt in that way. Whether it is two jurisdictions or not, fundamentally the principles of regulation will be the same. There is already the ethical obligation only to practise in areas where one is competent, so the protections already exist.
- JB: In terms of Northern Ireland, solicitors have an automatic entitlement to apply to practise in England and Wales, subject to a certificate of good standing and the position is the same for solicitors in the Republic, with the addition of a land law test. In Scotland the law is more divergent and we require tests in those areas. It's based on a mapping we have done on a jurisdictional level. Different jurisdictions in England and Wales could be dealt with by having bilateral recognition of qualifications. Provided there is sufficient commonality between qualifications and the law there could be mutual recognition. I can send you further information about recognition for solicitors from Scotland, Northern Ireland and the Republic.
- EM: In terms of the transfer of barristers from the Republic of Ireland, they are assessed on a case by case basis and are not required to sit an examination. They may be required to sit part of pupillage depending on their experience.
- CP: The question I would ask is what impact do you want it to have? You could design the system as you want to deliver an open or a closed system.
- JB: We've seen the issue in microcosm in terms of apprenticeships and why systems are different between England and Wales is an issue some firms struggle to grapple with.

Professor Elwen Evans asked about the Welsh language.

- JB: We take the view that access to bilingual legal services is very important and many people may wish to access legal services in their first language or their language of choice. In terms of the SQE we have tasked the assessment provider to assess what systems can be put in place to deliver it in Welsh and at what cost. We have talked to the WJEC. We are looking at systems for translation.

Professor Elwen Evans referred to this already being dealt with in Wales and the position that in law the Welsh and English languages are treated on the basis of equality.

- JB: We are trying to find a way to do it and ensure the translation into Welsh is standardised and comparable. We are willing to follow up any suggestions about how we do this.