

# THE COMMISSION ON JUSTICE IN WALES

## Submission

by Huw Williams



**Geldards**  
law firm

## CONTENTS

<b>1.</b>	<b>Basis of Submission</b>	<b>1</b>
<b>2.</b>	<b>Historical Introduction</b>	<b>1</b>
<b>3.</b>	<b>Commercial law firms in SE Wales today</b>	<b>3</b>
<b>4.</b>	<b>Current conditions for commercial legal practice in SE Wales</b>	<b>4</b>
<b>5.</b>	<b>A Welsh jurisdiction and commercial practice in Wales</b>	<b>7</b>
<b>6.</b>	<b>The next steps for the jurisdiction on England and Wales</b>	<b>9</b>
	6.1 Political adaptation	9
	6.2 Administration of Justice adaptation	10
(a)	Overarching principles .....	10
(b)	The Judiciary .....	11
(c)	The Welsh Tribunals.....	11
<b>7.</b>	<b>Court facilities in Wales</b>	<b>12</b>
<b>8.</b>	<b>Legal Wales</b>	<b>13</b>
<b>9.</b>	<b>Legal Education</b>	<b>14</b>
<b>10.</b>	<b>Policing and Prisons</b>	<b>16</b>
<b>11.</b>	<b>Conclusions</b>	<b>16</b>

# THE COMMISSION ON JUSTICE IN WALES

## SUBMISSION BY HUW WILLIAMS<sup>1</sup>

### 1. Basis of Submission

This submission sets out my personal views and response to the Commission's call for evidence. Although it draws on over thirty years' experience at Geldards LLP and its predecessor Edwards Geldard, the views expressed should not be interpreted as representing the corporate views of the firm.

### 2. Historical Introduction

My aim in this section is to set out my understanding and interpretation of the history of the solicitors' firms which have contributed to the commercial life of South Wales and the factors that have shaped the nature and distribution of some of the larger Welsh firms, particularly my own.

I hope that the Commission will find this of assistance. I do so because in beginning to think about this submission I re-read the paper "Legal Wales: Its Modern Origins and its role after devolution: National identity, the Welsh language and parochialism" by Thomas J (as he then was)<sup>2</sup> and I was struck by the extent to which, following the abolition of the Courts of Great Sessions, the debates about the making of distinct provision for Wales were focused on meeting the needs of the Welsh-speaking population. As the paper notes, the economic development of South Wales, centred on the growth of Cardiff, did not give rise to a volume of work or a demand comparable to that from the business communities of Liverpool and Manchester, for example, for specialised local mercantile courts. At first sight this is surprising. The explanation in my view, lies in the form of the economic development that propelled Wales, particularly the Counties of Monmouthshire, Glamorgan and the eastern parts of Carmarthenshire, an area hitherto largely peripheral to the British economy, to a position of global strategic significance. Along the way Wales became by the time of the 1851 census the first country in the world to have more people working in industry than agriculture and the only country in Europe in the 19<sup>th</sup> century to experience a net immigration of population.

Welsh industrial development was natural resources-based and narrowly focussed on the Wales pre-eminent position, in a world powered by steam, as a source of steam coal and other coals suitable for metallurgical industries – mainly the production of iron and steel, the smelting of copper and the manufacture of tinplate. Furthermore, the products of this economy were exported, not only to the rest of Great Britain and Ireland, but overseas to meet the needs of the Britain's

<sup>1</sup> Huw Williams is the Vice-chair of Geldards LLP and the Lead Partner, Public Law at Geldards. Prior to joining Edwards Geldard as it then was in 1987, he worked as an in-house lawyer in local government. His main areas of practice are planning, compulsory purchase and local government law and related subjects such as environmental law and highways. He has served on the Planning and Environment Committee of the Law Society from 2003 to 2016 and on the Wales Committee from 2003 to 2011 and from 2016 to date. He has served on the Board of the Legal Wales Foundation and the Legal Wales Conference Committee since 2002 and is currently Deputy Chair. He was a member of the Welsh Minister's Independent Advisory Group on Planning in Wales 2011-12. He has served as a Trustee of the both the National Museum of Wales and the National Library of Wales and has been Company Secretary of the Wales Millennium Centre since 1998.

<sup>2</sup> Lord Morris of Borth-y-Gest Lecture. Vol I Welsh Legal History Society 113 (2000)

empire and to fulfil the orders that flowed in from across the world for Welsh steam coal and the products of Wales' basic metal industries such as rails.

This economic expansion in turn influenced to the way that the practice of commercial developed and subsequently:

- (a) Many, if not a majority or entrepreneurs who developed the economy of South Wales were not Welsh or of Welsh antecedents. For example, John Nixon, who was one of the first to recognise the potential of Welsh steam coal came from the North East of England, while the Reardon Smith and the Cory families, prominent in shipping and coal, hailed from the West Country.
- (b) The Welsh families who did enter the coal and shipping industries were entering a global trade where the language of business was English. Notwithstanding the stories of colliers owned and officered by North and West Wales owners where the crew, including the Somalis and West Africans, spoke Welsh, the remark attributed to David Davies of Llandinam<sup>3</sup> that while Welsh might be the language of heaven English was the language in which to make money, neatly illustrates this attitude.
- (c) The nature to the coal export trade meant that while Cardiff ship owners readily found cargoes of coal for export on the floor of the Cardiff Coal Exchange, there remained the question of arranging a profitable return voyage and for this they were dependent upon the Baltic Exchange in London as the centre of the deep-sea tramping trade. The attention of these businesses was therefore as much focussed on London as it was on Cardiff.
- (d) The coal and other extractive industries as well as the basic metal industries depended upon an infrastructure of canals, railways and docks which required private Acts of Parliament to authorise their construction and operation. Consequently, promoters were frequently in London for long periods with their Parliamentary Agents and the Parliamentary Bar.
- (e) The relative brevity of South Wales' economic heyday, its nature and the subsequent history of decline and public ownership did not create an enduring sense of common purpose and collective interest that is the result of centuries of commercial endeavour found in the City of London or, indeed, in Bristol with its the Merchant Venturers. The institutions that might have provided a basis for this: the Cardiff Coal Exchange, the Bristol Channel Incorporated Shipowners and the Cardiff Stock Exchange all foundered with the end of the coal export trade.
- (f) Furthermore, Wales never developed as a financial centre during this period and Cardiff never saw the emergence of Welsh based

<sup>3</sup> Who made his fortune first in railways in Mid Wales, then multiplied it by being one of the first to mine coal in the Rhondda before being the driving force to develop Barry Docks and break the Bute family's stranglehold on the coal export trade through their ownership of the Cardiff Docks.

banks or insurance companies and had to wait until the 1960's and 70's to see the development of a financial services sector.<sup>4</sup>

While this historical survey focuses on South Wales, the history of the industrial development of North and North-East Wales shows a similar pattern of dependence on extractive and basic industries with slate as well as coal and steel providing the foundations. As far as professional services were concerned these areas formed part of the commercial hinterland of Liverpool and Manchester, a pattern which persists to this day.

### **3. Commercial law firms in SE Wales today**

The emergence of the modern commercial legal sector in Cardiff has diverse origins set against a picture of a post war Welsh economy whose commanding heights were occupied by the nationalised successors to the private enterprises which had created the coal, iron and steel and railway industries in Wales. Against this background it is relevant to look briefly at the history of some of the main commercial law firms in Cardiff.

Blake Morgan is the successor to the firm of Morgan Bruce and Nicholas founded originally in Pontypridd and with its roots in what can, I think fairly, be described as the Liberal establishment of the late 19<sup>th</sup> century and with strong connections with the mining industry. In the 1970's when I joined it as an articled clerk it was probably the best known and most respected of the Welsh law firms. Following the opening of an office in Cardiff on the late 1960's the firm developed strongly based on insurance litigation, corporate and commercial, commercial property and public-sector work notably for the WDA especially in its early days and the NHS. The firm subsequently developed a network of offices extending from Swansea eastwards along the Thames Valley to London and with its headquarters in Cardiff. However, in 2014 the firm merged with the South Coast-based firm of Blake Laphorn and the headquarters of the merged firm was established in Portsmouth.

Eversheds in Cardiff had its origins in the firm of Phillips and Buck and built a significant financial services practice acting for the businesses of Sir Julian Hodge and subsequently for some of the first financial services inward investments to Wales such as Chemical bank in the mid 1980's. Partners in Phillips and Buck have been prominent over the years in the development of the firm from the original consortium of regional firms. The size and international focus of Eversheds, as well as the specialisms that it has developed in areas such as judge-led public inquiries and its work on schemes such as HS2 now places it in a different position from the other commercial firms in Wales and its scale far outstrips the legal requirements of the Welsh economy.

Hugh James was best known for its personal injury and insurance practice in the 1970's with a network of offices around South East Wales. Since then it has developed into a business focussed on its base in Cardiff undertaking personal injury litigation and other "commoditised" services such as will writing as well as growing property, commercial and banking practices and undertaking public sector work.

<sup>4</sup> Largely through the efforts of Sir Julian Hodge and later through the initiatives of the WDA and certain local authorities, notably the former South Glamorgan County Council and its Chief Executive Michael Boyce.

Geldards was created by a merger of two family firms in 1970. C&M Edwards, Shepherd traced its origins to Merthyr Tydfil in 1815 when it was Wales' largest town and one of the cradles of the industrial revolution and then establishing themselves in Cardiff city centre in the late 19<sup>th</sup> Century. Charles Edwards' son, Sir Martin Edwards became the first Welsh practitioner to become President of the Law Society. Allen Pratt and Geldard was established in the Docks in 1916 and was very much part of the Docks business community. Over the years the firm absorbed several other Docks practices such as Ingeldew & Sons, Llewellyn and Hann, Vachell & Co.

Edwards Geldard was created with the specific aim of building on the commercial traditions of the Docks and growing through commercial work. Thus, corporate and commercial property departments were established in the late 1970's. The acquisition of the one of the firm's client's, W. Williams & Sons a Caerphilly foundry company with a public listing which became Williams Holdings plc led to the growth of the firm's commercial practice. When Williams Holding decided to move its headquarters to Derby, <sup>5</sup> the firm followed, opening in Derby in 1988 and in Nottingham a few years later. In 1987 the firm began acting for the Cardiff Bay Development Corporation, which was the foundation for the firm's public-sector practice which now encompasses the Welsh Government and local authorities in both Wales and England. Geldards has also developed some specialised lines of business, for example, it now does highly streamlined network property work for most of the regional electricity distribution companies in England and Wales. Between 2008 and 2016, Geldards also used a case management system developed in-house to manage thousands of equal pay claims for local authorities in Wales and England.

The firm's turnover is now roughly split equally between its offices in Wales and in England although the firm remains headquartered in Cardiff with key "back office" functions such as accounts and IT based there.

More recently, Cardiff has seen the establishment of new and growing commercial practices in the form of Berry Smith, Capital Law and Acuity Legal, although they have yet to approach to size of the firms already mentioned. Meanwhile, other well-known names have disappeared through further consolidation; Leo Abse and Cohen has been absorbed by Slater and Gordon while Cartwrights, Adams and Black was ultimately absorbed by Hugh James.

Finally, reference should be made to the impressive commercial success of New Law solicitors from its establishment in 2004 as an ABS to take advantage of the opportunities in personal injury litigation. It is now part of the Redde Group Plc which is headquartered in Bath.

Of these firms it is important to note that only Geldards and Hugh James, along with Capital Law and Acuity are now headquartered in Cardiff.

#### **4. Current conditions for commercial legal practice in SE Wales**

This section is based on the experience of my firm and may not be fully representative. It also concentrates on the Welsh market and the work that we

<sup>5</sup> A consequence of the local planning authority's refusal to give permission to expand the company's original head office in Monmouth.

undertake from our Cardiff office although as a firm we derive our strength from a diversified practice in terms of geography, areas of practice and our client base.

Geldards currently has a turnover of £24 million of which 46 % derives from the firm's offices in Cardiff. There are 23 members of the LLP and the firm employs 357 people of whom 169 are in Cardiff.<sup>6</sup>

In terms of the Welsh market for our services, we find that there are fewer opportunities now than there were in the 1990's and the decline in the number of significant businesses with headquarters in South Wales is striking. Furthermore, the corporate finance teams of the banks and accountants are retrenching to Bristol.

In addition, the opportunities offered by inward investors have diminished significantly through a combination of the onward march of globalisation and the loss of focus and expertise formerly provided by the WDA.

However, opportunities continue to present themselves. For example, Geldards has made recent investments in our capacity in the Life Sciences and Tech fields.

Commercial property work has recovered strongly since 2008 and property lawyers are currently in short supply due to the hiatus in recruiting into property in the years after.

Nevertheless, since the crisis of 2008, the Derby and Nottingham offices have grown more strongly, and this is now reflected in the relative sizes of the Welsh and English arms of the business.

The public sector provides an important stream of contra-cyclical work and there are few major initiatives in Wales that do not involve the public sector in some way. In terms of legal specialisations, public sector work has enabled firms to develop expertise in fields such as State aid, procurement, planning and compulsory purchase and compensation.

Given the role of the public sector in Wales I am concerned at the seeming lack of co-ordination between different arms of the Welsh Government and the wider public sector in the way that legal work is outsourced. Although we do not fear competition, I feel that on the one hand the Welsh Government is promoting Wales as a location for Financial and Professional services and indeed offering support to law firms (which Geldards has benefitted from), while on the other, the architecture of the National Procurement Service's Solicitors framework ("NPS") for advising the public sector, which tendered in 2015 was flawed and risks over time losing Welsh based capacity to service the public sector.

The NPS was designed to enable the whole of the Welsh public sector to source all its legal requirements through a single framework (the so-called "buy once for Wales" approach). The result was that if a firm did not get on a panel for a particular area of work the firm would not be eligible to undertake that type of work for any part of the Welsh public sector for the four-year duration of the panel. The structure

<sup>6</sup> Out of this turnover the firm paid in taxes (£000): Members tax and NIC £1,837; PAYE and NIC for employees £3,464, Apprentice levy £9, VAT £3,682, Business rates £461, Nottingham car park levy £21 Total £9,474 which was 38.9% of revenue.

was reinforced by the protocols put in place by NPS requiring public bodies to report “off panel” use of law firms. My impression has been that the framework has not been rigidly followed and the future of NPS it itself now under scrutiny. Nevertheless, we consider that when it is using its not inconsiderable purchasing power to buy legal services, the Welsh public sector should at the very least take account of the desirability of fostering Welsh based capacity, especially in areas, for example public law, planning and housing, where Wales and England are diverging or project finance where Wales is developing the Welsh Mutual Investment Model an alternative to the PFI model.<sup>7</sup>

Law firms such as Geldards will, of course, create opportunities themselves but to an extent the ability to prosper and expand also depends upon the strength, diversity and dynamism of the economy in the areas where they are located. In the case of SE Wales, the pull of Bristol as a commercial and financial centre is strong and the city’s ambitions to be the centre of a “Severnside” region will gain traction with the abolition of the tolls on the Severn Bridge later this year.

Also, the market can sometimes move in unexpected ways. In common with most commercial firms Geldards ceased undertaking matrimonial law around the turn of the century and focussed its private client practice on high net worth clients, providing them with an individualised service. The last twenty years has seen the growth of families with substantial assets acquired through the sale of businesses, substantial salaries and pension rights, the increase in the value of houses and property and though inheritance. As a result, Geldards private client business has expanded and the firm has restarted a family law practice which has flourished rapidly and continues to expand. In general, private client and family work exhibits a demand and a willingness to pay for quality individualised services at attractive hourly rates in both Wales and the Midlands.

Geldards has always invested significant amounts in its IT infrastructure over the last thirty years and was a relatively early adopter of email, desk top billing and time recording, electronic filing, document management and knowledge management systems, which we have subsequently upgraded over the years. We have also developed bespoke systems to meet client or sector requirements where we judge the return merits the scale of investment.

For a firm of Geldards size and client profile at present the state of development and investment required in AI systems means that the firm is currently watching developments until scale and costs come within our means and requirements. While recognising the transformative potential of AI this approach is the one Geldards has adopted with successive waves of IT development, notably the email revolution which superseded the daily post rituals I recall when I started my career and dramatically reduced the secretarial resources required within the offices.

Nevertheless, we benchmark ourselves against the largest firms and constantly find that we are either at the cutting edge or early adopters of legal IT developments. For example:

- (a) When we reviewed the lessons to be learnt from the “Wannacry” cyber-attacks, we noted that measures announced by some major

<sup>7</sup> The work for which was placed outside Wales following a tender exercise.

firms to upgrade their cyber security only brought them up to Geldards existing security levels before the attacks.

- (b) We have recently completed the first stage of ISO27001:2013 information security management accreditation.
- (c) All our lawyers work from laptop computers with secure access to all the firm's systems from any broadband enabled location.
- (d) We are moving away from bespoke case management systems, which create legacy system issues as they become obsolete and support is withdrawn, to agile professional services systems which will enable us to implement firm-wide electronic legal practice management.
- (e) We are developing our own pricing and budgeting programs which are likely to be further developed to utilise AI to learn from the firms' archive of electronic data.

In the five years ending 2017, the Members invested £1.5 in IT which is our largest item of expenditure after property costs. We have an IT team of 12.5 fte, five of whom are engaged on system development work.

Finally, the eventual effect of the UK's withdrawal from the EU on legal practice at the level of the commercial practices in Wales remains opaque. However, my assessment is that the principles set out in the Joint Ministerial Committee (EU Negotiations) Communique 16 October 2017 should give a further impetus to legislative divergence. The subjects that appear to be most likely to be affected are agriculture and environmental law. However, in relation to the latter the scope for divergence may be limited by the eventual terms of the Withdrawal and Trade Treaties. In terms of preparedness, therefore, the key factor is that Wales remains an attractive location for public and environmental lawyers to practice.

## **5. A Welsh jurisdiction and commercial practice in Wales**

I believe that the splitting up of the jurisdiction of England and Wales will perhaps offer opportunities but will also pose threats to firms in Wales offering business and commercial services.

Before considering what these might be, I think it is relevant to set out my perception that each of the jurisdictions within the UK is result of the particular histories of those parts of the British Isles and that generalisations should be treated with caution.

The Scottish jurisdiction has a continuous history as a legal jurisdiction and a distinct body of Scots Law developed under the independent Kingdom of Scotland and its continuation through to the present day is enshrined in the Act of Union 1707.

Although the jurisdiction of Northern Ireland can be said to date from 1921 it should also be thought of as the lineal successor to the jurisdiction of Ireland whose courts dated back to the mediaeval Lordship of Ireland created by the English settlement and which continued as the Kingdom of Ireland after 1542 then as part of the United

Kingdom, under the Lord Chancellors and the Lord Chief Justices of Ireland, until 1921.

The Channel Islands' jurisdictional history derives from their historic status as possessions of the Duchy of Normandy.

Turning to Wales, a counter-factual view of the demise of the Great Sessions of Wales is that had there been reform rather than abolition, the separate jurisdiction of Wales administering common law and equity might have survived. However, as the historical introduction above shows, the integration of Wales into the single jurisdiction of England and Wales also aligned with the aspirations and needs of Welsh business and commercial interests during the heyday of Wales' industrialisation and accounts for the lack of pressure for distinct arrangements to meet the needs of the Welsh business community.

Against this background, the processes of gradual but accelerating divergence of Welsh and English legislation, will undoubtedly give Welsh based firms or firms with a presence in Wales, a selling point as specialist local lawyers in corporate and commercial transactions with a Welsh element and I make some suggestions as to how this might be recognised later in this submission. Geldards has seen this from time to time since devolution particularly in relation to international or inward investing businesses who are accustomed to operating in countries with local jurisdictions and whose principal lawyers, when dealing with issues in Wales have found it natural to seek advice from Wales-based lawyers.

On the other hand, I think there is a degree of risk, to put it no higher, that clients will become concerned at having English work done "abroad" in a separate Welsh jurisdiction. While this perception would be unfounded, its mere existence will nevertheless be a matter of fact that will require additional effort on the part of firms to dispel such an impression.

Conceivably, there may be a need (with consequent expense) to differentiate the English arm of the practice, in the same way, for example, as the WJEC/CBAC has rebranded its examination work in England where it is regulated by Ofqual.

The other risk is that while Scotland and Northern Ireland can maintain thriving legal professions within their jurisdictions, neither is immune to the pull of London as a legal centre both within the UK and internationally, and South East Wales is much closer geographically. If the prospects for commercial practice in Wales become less attractive than they are now due to a negative perception of a separate jurisdiction, then Wales risks becoming unattractive to lawyers wishing to pursue commercial careers. Consequently, they will be attracted to London, or to the legal centres close to the border, such as Bristol, Manchester and Liverpool.

I recognise, therefore, that the effect over time of the reserved powers model created by the Wales Act 2017 will be the emergence of a jurisdictional entity different from that in England and that this will place increasing strain on the common institutions of the justice system as reserved by the 2017 Act. If this is to avoid creating a further disruptive element to the business environment for Welsh commercial law firms, I consider there are two essential principles that should be agreed and observed by the Welsh and UK Governments:

- (a) That any separate jurisdictional entity of Wales (whether separate or distinct but within a united entity) should be allowed emerge over time and take the form of gradual and pragmatic adaptation of the justice system to diverging legislative provision for Wales and England.
- (b) That the single, internationally recognised, title of “Solicitor in England and Wales”, with no restrictions of practitioners operating across both jurisdictional entities, should be maintained and supported for the foreseeable future.

## 6. The next steps for the jurisdiction on England and Wales<sup>8</sup>

While what I propose to term a Welsh jurisdictional entity is bound to emerge over time, there is in my view a worrying unwillingness to recognise that even the existing combined jurisdiction must evolve and adapt to if it is to survive. Even those who adhere to the view that the jurisdiction has served Wales well need to acknowledge this need if that argument is to remain sustainable.

Accordingly, I consider that in the immediate future there needs to be further adaptation within the existing jurisdiction at both a political level and at the level of the administration of justice.

### 6.1 Political adaptation

The legislative capacity of the current National Assembly is already stretched. If the Assembly and the Welsh Government are to develop their capacities to play a meaningful role within and, in due course, perhaps, to operate a separate jurisdictional entity, then the expansion of the Assembly to 90 members is essential, that is to say at the upper end of the range proposed by the Expert Panel on Assembly Electoral Reform in its report “A Parliament that Works for Wales” (2017), if the Assembly is to be able to play a proper role in scrutinising the way the existing jurisdiction functions under latest model of devolution and contributing to its evolution in the light of the Assembly’s legislative activity.

However, reconfiguration at both UK and Welsh Government levels is also called for in my opinion, specifically:

- (a) There should be a ministerial role within the Ministerial team at the Ministry of Justice involving the oversight of the effectiveness of the jurisdiction of England and Wales in serving both Welsh and English interests, as a distinct function from that for “devolution.”<sup>9</sup>
- (b) The creation of a Welsh Minister clearly identified as the Cabinet Secretary with responsibility for Justice, recognising that this may require a reconfiguration of functions which currently appear to be divided between the First Minister, the Cabinet Secretary for Local Government and Public Services and the Counsel General.

<sup>8</sup> In preparing this section I acknowledge the assistance derived from reading the submission to the Commission of Keith Bush QC.

<sup>9</sup> Currently allocated to Mr Edward Argar MP, Parliamentary Under- Secretary and the 4<sup>th</sup> (out of 5) ranking minister in the Department.

In addition, the Welsh Government and the Assembly need to decide at a political level whether they are prepared to take the risks of seeking devolution within the existing system and with similar budgets of key elements that would enable some justice functions to be administered within Wales in a manner that better reflects Welsh circumstances.

Without expressing a settled view on the matter, the areas that seem worthy of consideration are:

- (a) Legal Aid to facilitate as system that better reflects the patterns of criminal and civil cases in Wales as well as a distinctive Welsh view of administrative justice.
- (b) Responsibility for the Court estate in Wales to which I refer further below but I would mention here the fact that the provision of court buildings was, of course a local authority function, up to the creation of the Crown Court in 1971 and remained so in relation to Magistrates Courts until quite recently.
- (c) Devolution of criminal justice and offender management services to at least the same extent as proposed for some of the English Combined Authorities.

## **6.2 Administration of Justice adaptation**

### **(a) Overarching principles**

I see it as a critical test of the newly announced “concordat” between the Ministry of Justice and the Welsh Government that the MoJ will be receptive to proposals by the Welsh Ministers for reforms to the justice system to accommodate Welsh requirements, appraised through the Justice Impact Assessment process.<sup>10</sup>

In particular, there should be a willingness on the part of the MoJ to consider favourably adjustments both in relation to the current organisation of the Courts within the current single jurisdiction and to enable the Assembly to lead in determining the appropriate arrangements for recourse to the Courts and Tribunals (including Welsh Tribunals) arising from Welsh legislative reforms and policy developments.

A key first step should be for there to be an appropriate policy statement by the Lord Chancellor agreed with the Welsh Ministers recognising three principles:

- (i) that the jurisdiction of England and Wales encompasses two national entities and that this will involve adaptation to the differences between the national entities within the structure of the present justice system serving both entities,
- (ii) as a corollary of that, accepting as an overarching organising principle that cases arising in and relating to Wales are heard in Wales and administered in Wales, and

<sup>10</sup> See s110A GoWA 2006

- (iii) recognising that if the Assembly legislates for the provision of remedies within the Welsh Tribunals system which will have the effect of removing causes from HMCTS that there should be a proportionate transfer of resources from HMCTS to the Welsh Tribunals.

While these principles could be enunciated within a revised “concordat” the more appropriate form would be a ministerial declaration, perhaps by the Joint Ministerial Committee.

## **(b) The Judiciary**

Welsh law shares the tradition of common law and equity that has evolved over the centuries and I see no reason why even if there is an eventual emergence of distinct jurisdictions there should not continue to be a shared judiciary, subject only to necessary adjustments to judicial training to ensure judicial awareness of the law in Wales and the protection of the status of the Welsh language.

The prospect of continuing to be part of the generally acknowledged to be “world class” judiciary of England and Wales with the prospect of being deployed on occasion outside Wales can only be advantageous in attracting the best candidates, including those with Welsh connections but who may have made their careers or have been based outside Wales, from seeking appointment to the Welsh-based judiciary. I think that this model with Welsh judges being part of the same collegiate judiciary serving Wales and England is preferable to the examples cited in some submissions which refer to the position of the Channel Islands and Gibraltar which to my mind conveys the unfortunate impression of senior judges being “parachuted” into Wales for appellate business or the heaviest cases.<sup>11</sup>

I fully support the proposal that the judicial lead of the judiciary in Wales should be given more permanent status within the judiciary of England and Wales. That status should be as President of the Courts in Wales. The arguments for such a status are the same as those relating to Wales’ status as a country, accepted by May LJ in recommending the creation of a distinct Administrative Court in Wales authorised to sit anywhere within Wales.

I would see this a precursor to reviving the title of the Court of Great Sessions, perhaps by designating the Administrative, Mercantile, Chancery and Family Courts sitting in Wales as part of a Great Sessions in Wales Division of the High Court of England and Wales.

Likewise, I support the creation of Welsh administrative structures within the Judicial Appointments Commission and the Judicial College.

## **(c) The Welsh Tribunals**

I agree with other submissions that there should be greater alignment between devolved functions and the provision of remedies via Welsh Tribunals.

<sup>11</sup> I also note the analysis of current judicial work in Wales set out HH Anthony Seys-Llewelyn QC’s 2015 Mather-Jackson Lecture “Whether to rebuild Offa’s Dyke: advantage or disadvantage?”.

Welsh Tribunals have many advantages. Tribunal procedure can accommodate greater flexibility and greater ability to sit locally to hear cases. For example, the Planning Inspectorate has traditionally heard cases locally in venues such as council offices and parish halls and Inspectors are accustomed to dealing with complex cases in such settings.

Specific proposals will require consultation with relevant stakeholders, but it is important that the principle is accepted by both the Welsh Government and the MoJ as proposed above.

A case in point is the emerging issue of the impact on the justice system of Welsh Government policy in the fields of planning and the environment. Wales is unique in the UK in having established a single environmental regulator in the form of Natural Resources Wales. Also, the current Law Commission project on Planning Law in Wales is the preliminary stage in the first major codification project. However, planning codification will require a further element of reform and there are indications that the Welsh Government will look again at the arguments for a separate Planning Inspectorate for Wales. In my opinion, such a debate should by now be able to explore the case for wider reform involving the creation of a Welsh Environment Tribunal with jurisdiction over appeals from planning decisions and under the various environmental appeals from decisions of NRW. Such a Tribunal, if organised with Planning and Environmental Regulation Chambers and an Upper Tribunal would align with the Welsh Government's devolved functions and could also provide a basis for the functions of the Planning Court in Wales to transfer to the Welsh Tribunals. As I have previously commented, such alignment with the functions of the devolved government in Wales could surely be undertaken without threatening the continuation of the current combined jurisdiction and might indeed demonstrate its continuing utility through its ability to adapt.<sup>12</sup>

## 7. Court facilities in Wales

Other submissions have commented upon the gradual withdrawal of court provision over large parts of Wales and the concentration in a very small number of court centres. The extent to which the administration of justice has withdrawn from a very local system of magistrates' courts and quarter sessions/assize/Crown Courts sitting in county towns and the cities to the present arrangements has taken place during my professional career. As a newly qualified solicitor I spent my first eighteen months dealing with children's cases in Magistrates Courts across the then County of Mid Glamorgan. Except for Merthyr Tydfil every one of them has now closed – including court houses I can recall being opened, such as Aberdare.

Regardless of the advances of technology there will remain the need for cases to be heard in public at convenient locations. I think it is unlikely that the MoJ will be persuaded to pay closer attention to the distinctive needs of Wales, especially in this case the effects of rurality and the needs of post-industrial communities. I can only see this changing if the Welsh Government is prepared to take a political decision to seek the devolution of responsibility for the Court estate in Wales. Doing so may enable the trialling of new (or perhaps a reversion to older) methods of provision with Courts that can harness technology to once again go out and sit in locations

<sup>12</sup> See my oral evidence to the Welsh Affairs Committee's pre-legislative scrutiny of the Draft Wales Bill <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/welsh-affairs-committee/prelegislative-scrutiny-of-the-draft-wales-bill/oral/25126.html> at Q228

that are convenient to the people; Council buildings and other community buildings could all provide locations that would improve the accessibility of the Courts system.

Of course, such facilitation depends upon the improvement of on-line access across Wales, which is an issue that aligns directly with the Welsh Government's Infrastructure Investment Plan and the Next Generation Broadband Programme.<sup>13</sup>

At the other end of the scale, I believe that if Cardiff is to develop as a legal centre to compete with other regional centres in Great Britain and Ireland and even internationally, there needs to be an investment in the Court and hearing facilities that will put Cardiff in the top rank for hearing facilities. This can only be achieved in the current climate if the Welsh Government is willing to see such a project as part of its economic development aspirations for financial and professional services in Wales. While recognising that we do not have the resources of the City of London Corporation, the announcement in recent days of the Corporation's investment in a new court to hear economic and cyber cases, is an example of what I have in mind.

Cardiff Civil Justice Centre is currently obscurely located to the rear of the old General Post Office as part of an office development that has otherwise never been fully occupied, while the former Cardiff County Court building next door, has remained disused after being sold off to the WRU, who since then appear to have struggled to find a use for it. A project to create a civil court centre for the digital age on this site within what is now Cardiff's emerging business district adjacent to the main transport hubs and with ample hotel accommodation nearby, offers the potential to combine the civil courts and tribunal hearing rooms within a "legal hub" that could also offer arbitration and mediation facilities for private dispute resolution and perhaps utilising remaining space on a commercial basis for law firms and chambers or perhaps academic and training uses or offices for the Law Society Wales and the Wales Circuit. A business case would have to be developed, but I believe that a commitment by the Welsh Government to investigate the feasibility of such project with the MoJ and Cardiff Council (along with their "Cardiff City Deal" partner authorities) would be an important vote of confidence in Cardiff's ability and ambition to develop as a legal centre. It could be a statement comparable in its effect on Cardiff's image of the development by the Cardiff Corporation in the early years of the 20<sup>th</sup> Century of the City Hall and the Law Courts in Cathays Park.

## 8. Legal Wales

The twenty years since devolution has seen some progress in the development of a distinct Welsh Legal community and it is sufficient here to note:

- (a) The Law Society's establishment in 2003 of a permanent specialist Wales Committee, which meets four times a year around Wales and supported by the Law Society's national Wales Office with its own manager and research capacity. This is a significant investment by the Law Society of England and Wales and recognition of Wales' status as a national entity with the combined jurisdiction. The office has been able to support members of the Wales Committee and of other specialist committees in work on policy development in Wales

<sup>13</sup> <https://gov.wales/funding/wales-infrastructure-investment-plan/?lang=en>

and responding to Welsh Government consultations and National Assembly and Parliamentary inquiries.

- (b) The Legal Wales Foundation (formerly the Standing Committee on Legal Wales) which has a broad membership across all sections of the Welsh legal community including the judiciary. It has successfully nurtured the annual Legal Wales Conference so that it is now an annual event which attracts 150 – 200 delegates and provides a forum for discussion of current legal issues and professional development opportunities. The Foundation has a recognisable identity which I believe could be used to develop the role of convening events and occasions where the whole Welsh legal community can come together.
- (c) Several legal societies were started in the wake of devolution. Of these, Public Law Wales, the Wales Commercial Lawyers Association and the Welsh Legal History Society have continued to present programmes of events and, in the case of the Legal History Society, publications, aimed at exploring the Welsh dimension of these subjects and fields of practice. These societies depend for their continued success on vitality on the efforts of volunteers and, in the case of solicitors in many instances the support of their firms.
- (d) There remains scope for other societies to develop.
- (e) An area where there may be potential is for a body bringing together higher rights advocates either practicing in Wales or with significant Welsh practices – perhaps a Welsh Faculty of Advocates. Membership might also act as an indicator of practical expertise in Welsh law and Welsh legal practice. A category of membership for lawyers who have contributed to Welsh Law or practice, other than as advocates, might also be considered. Clearly, such an initiative would have to be led from within the legal community in Wales and would depend upon the perceived usefulness of such a body and the degree of differentiation that might be conferred and a willingness to sustain it financially. I believe that such an initiative would fulfil a useful purpose within the present jurisdiction and should not be seen as a move to separate Welsh legal qualifications but would be rather akin to the specialist bars.
- (f) I believe there is a positive attitude among the Welsh commercial law firms to work collaboratively with other stakeholders with the aim of raising the profile of Cardiff generally as a legal services centre.

## 9. Legal Education

Geldards finds (and this contrasts with the position in the Midlands offices of the firm) that it can attract a good flow of applications for training contracts and I would draw attention to the following:

- (a) The number of training contracts the firm offers has not returned to the levels before 2008 which led to many firms adjusting the intake of trainees in line with long-term retention rates. Geldards Cardiff office currently has between 6 and 7 trainees in all, representing an intake of three or four a year.
- (b) Cardiff and Swansea University account for most of our trainees with a small but consistent intake of Oxbridge graduates.
- (c) Most of our Cardiff trainees have acquired qualifying time working as paralegals with the firm or in other capacities such as library and research assistants. Many of them are now working for the firm in such roles when they apply for training contracts and a number undertake their LPC examinations on a part-time study basis. These trends have improved the overall quality of our trainees and, further along, of our newly qualified solicitors and they are generally much better known to us when they start their training contracts than was the case some years ago.
- (d) The availability of part-time study has helped with the diversity of our intake, especially as the firm stopped offering bursaries or fee support around 2008.
- (e) We also have some trainees who have consciously decided against the graduate route and who have planned their careers from the outset to achieve qualification as solicitors via the FILEX route while also working.
- (f) In order to promote Cardiff as a location for training I am at the early stages of exploring how Cardiff firms can work with the Welsh Government's Seren initiative to offer work experience to in Cardiff and SE Wales along the lines of the programme that has been developed in London by the Lord Edmund-Davies Legal Education Trust.
- (g) For the sake of completeness, there are two other points to mention;
  - (i) I strongly support the proposals made at the 2017 Legal Wales Conference for an Institute of Welsh Law which can foster the study and teaching of Welsh Law, its integration into legal professional training across Wales and England and undertaking research and contributing to the development of Welsh law and policy.
  - (ii) The establishment by Swansea University of its Centre for Innovation and Entrepreneurship in Law is a significant and welcome development and should be seen as a partner organisation to the Institute of Welsh Law.
  - (iii) The need to ensure, as a matter of principle, that the forthcoming SQE can be taken in Wales with options to take

the examination in Welsh or bilingually. I believe that other submissions will go into this in greater detail.

## **10. Policing and Prisons**

- (a) While the criminal law has not figured greatly in my career, I have two observations to make:
  - (i) Welsh police forces should not find themselves inhibited by legislative constraints from being able to work within the devolved arrangements for offender management, public health and safety and the control of anti-social behaviour. Perhaps a short Law Commission project sponsored by the Home Office, the MoJ and the Welsh Government could identify where legislative barriers exist and make recommendations.
  - (ii) The principle should be accepted that Welsh prisoners convicted of offences in Wales should, save in exceptional cases, serve their sentences in Wales and the Welsh prison estate should provide facilities for Welsh speakers and address the absence of any accommodation in Wales for female prisoners. A corollary of this is that Wales should not act as a “prison hulk” accommodating prisoners from England sentenced for offences committed in England.

## **11. Conclusions**

- 11.1 Commercial legal practice in Wales in many ways reflects the pressures on the Welsh economy, combined with strong competitive legal centres nearby in the form of Bristol and Manchester, as well as relative proximity to London.
- 11.2 There only remain two significant Welsh headquartered commercial firms, both of which derive a large part or a majority of their income from work originating in England.
- 11.3 The desirability of ensuring indigenous legal capacity which can develop legal specialists and services aimed at Welsh needs and within Wales, for example for the public sector, should be considered when public work is being tendered.
- 11.4 From the perspective of commercial legal practice, the response of the justice system and the existing combined jurisdiction to legislative and policy developments in Wales should be pragmatic and evolutionary and focus on practical solutions.
- 11.5 A more evolutionary approach, which may or may not lead to complete separation, is to be preferred to the declaration of a separate jurisdiction. Such a declaration is a concern to me as a commercial practitioner in a firm based in Wales as I foresee that such a move will be seen to make us “foreign” and will deter business from England.

- 11.6 If the existing single jurisdiction is to be maintained, however, it will have to show flexibility in adapting to the consequences of the Wales Act 2017 reforms. This will require a positive attitude and a collaborative approach from the MoJ and the development of a specific Justice function within the Welsh Ministers, supported by greater legislative capacity in the form of an expanded Assembly to allow greater specialisation and scrutiny by AM's.
- 11.7 Adaptations to the Courts system and developing the potential of Welsh Tribunals can be accommodated through practical reforms within the combined jurisdiction, but this critically depends upon a positive attitude on the part of the MoJ supported by the Wales Office.
- 11.8 The Welsh Government and the Assembly should, as a first stage of developing a justice function, seek devolution of aspects of the justice system and be willing to accept a degree of political responsibility for the accompanying budgets: legal aid, offender management and the Court estate should be considered.
- 11.9 From the perspective of commercial legal practice there are some specific measures that should be investigated, which will improve the capacity and resilience of the sector:
- (a) Development of a modern Civil Justice Centre, Dispute Resolution and Legal Hub in the central Cardiff Business District.
  - (b) Further development of legal "civil society" bodies such as a "Welsh Faculty of Advocates" and a collaborative approach among leading solicitors' firms to developing Cardiff as a legal centre and to give practitioners in Welsh law and Welsh legal sector a distinct identity.
  - (c) The Development of an Institute of Welsh Law and the Centre for Legal Innovation and Entrepreneurship.

**Huw Williams**

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Dumfries House  
Dumfries Place  
Cardiff  
CF10 3ZF



