



Y Comisiwn ar Gyfiawnder yng Nghymru

The Commission on Justice in Wales

Law Council of Wales Cyngor Cyfraith Cymru

Discussion and consultation paper

We invite comments on the proposals contained in this paper by 30 November 2018. Please send them to the secretariat team of the Commission on Justice in Wales at JusticeCommission@gov.wales

Background and overview

1. This paper responds to the demand in Wales for greater cooperation, coordination and communication in the field of law. As such, it draws on the lecture by Lord Lloyd-Jones at the 2017 Legal Wales Conference ('Developing Legal Wales'¹), and on the burgeoning evidence to the current Commission on Justice in Wales chaired by Lord Thomas,² notably including the discussion of the Joint Standing Committee for Legal Education in Scotland by Professor Alan Paterson.³ In providing a direction of travel, the paper makes practical suggestions about an institutional framework –

one which must be purpose built for the particular needs of Wales.

2. While the 'Welsh devolution journey' is the essential backdrop, in particular the move to 'reserved powers' in the Wales Act 2017, the forum here proposed is not dependent upon further constitutional change involving the justice system in Wales. The need in Wales for a high-level body able to facilitate and promote a more joined-up approach to knowledge and skills, best practice and innovation in the legal field is already amply demonstrated. Indeed, in light of the multiple challenges faced by the justice system and legal practice in Wales, a theme elaborated by Lord Thomas in a series of lectures and articles,⁴ the matter is urgent. Coupled with sharp competitive disciplines and overarching constitutional change, the sheer pace of educational, regulatory and technological change in the sector underwrites this.

¹ www.lawgazette.co.uk/law/legal-wales-new-supreme-court-judge-calls-for-institute-of-welsh-law/5062836.article

² <https://beta.gov.wales/sites/default/files/publications/2018-08/Submission-to-the-justice-commission-from-professor-alan-paterson.pdf>

³ <https://beta.gov.wales/sites/default/files/publications/2018-08/Submission-to-the-justice-commission-from-professor-alan-paterson.pdf>

⁴ <http://sites.cardiff.ac.uk/wgc/files/2017/11/The-Past-and-the-Future-of-Law-in-Wales.pdf>

3. Lord Lloyd-Jones' lecture helpfully points up some relevant pressure points: the particular problem in Wales of accessibility to law; issues of professional and judicial training and continuing education as the laws applicable in Wales and in England show increased divergence; practical difficulties around legal education and training in the Welsh medium, beginning with the provision of basic materials. Evidence to the Justice Commission is already highlighting others, not least issues concerning professional and judicial training and continuing education in the new Welsh law; succession and diversity in the legal profession in Wales; the rise of 'law tech'; relations between the law schools, legal professions and judiciary in Wales; and public legal education.
4. As Lord Lloyd-Jones' lecture also highlights, various initiatives have already been taken in response. New forms of Welsh legal infrastructure have been introduced, as with the Welsh Advisory Committee of the Law Commission, and new policies and practices have gradually emerged, as epitomised by the local interest in codification. At one with the story of Welsh devolution, however, much in the development is ad hoc and piecemeal, valuable but limited. Speaking more generally, a recurring theme in the engagement with the Justice Commission is the challenge and opportunity for the justice system and legal practice in Wales associated with the conditions of small country governance. While resource is limited, especially in view of the post-industrial and rural demographics, the twin potentials for a more joined-up approach, and for collaborative or partnership ways of working, are considerable.
5. At one with the list of pressure points, this paper envisages a wider remit for the proposed advisory forum than, say, the Joint Standing Committee for Legal Education (JSC) in Scotland. At one and the same time, this should facilitate a more holistic view and allow prioritisation and targeting. Such is the pace of change in the sector that care must be taken not to overload the remit with too much prescription or detail.
6. Buy-in or mutual ownership of the proposed advisory forum across the legal sector in Wales, and hence a clear sense of shared responsibility, is vital. Not least, that is, with a view to mainstreaming the consideration of Welsh law and related workings of the justice system on a pan-Wales basis. As well as a major role for the professions, it is appropriate to stress the importance of contributions from the Counsel General and the judiciary in this endeavour, not least as regards the scope of Welsh law and, as an essential ingredient of the rule of law, access to justice in Wales. In addition to providing the necessary academic input, the Welsh Law Schools have a valuable organisational role to play, which need not be onerous especially when delivered on a rotating basis.
7. As indicated, the Justice Commission is casting new light on the workings of the legal system in Wales through the provision of evidence as well as targeted research inputs. Clearly however, dedicated processes of examination and review should not cease with the Commission. Quite the opposite: irrespective of the eventual political – legislative – response to the recommendations, there will be a major body of knowledge and understanding to build on. A standing, representative body with the capacity and flexibility to respond creatively not only to existing

challenges and opportunities, but also to new ones, has much to contribute to the future health of the justice system and legal sector in Wales.

8. How then might all of this be given tangible expression in an institutional design? For the avoidance of doubt, what follows is open to amendment or tweaking.

Title

9. The title 'Law Council of Wales/Cyngor Cyfraith Cymru' is suggested for several reasons. It suitably reflects the character of the proposed institutional design. It conveys the seriousness of purpose. It works well in both languages.

Remit

10. A general rubric and some basic parameters and steers are suggested along the following lines:

The Council is an independent advisory forum which promotes knowledge and skills, best practice and innovation in the field of law, with subject-matter including:

- **the study, teaching and propagation of Welsh law**
- **access to justice and accessibility of the law in Wales**
- **the practical workings of the justice system in Wales**
- **equality and diversity in the justice system and public legal education**
- **professional and judicial training and continuing education**
- **the development of 'law tech'**
- **legal education and practice in the Welsh medium**
- **relations between the law schools, legal professions and judiciary in Wales**

Composition

11. A proper representation of multiple constituencies and interests effectively dictates a fairly large full Council. Provision for co-opted members would allow for the involvement of leading experts; likewise dedicated expertise in the Welsh medium is required. Noting that they have been a valuable source of constructive challenge in the work of the JSC in Scotland, lay members are also recommended.

*President: Present or retired
Supreme Court Judge*

*Chair: Head of Welsh Law School
(1–2 years' rotating basis; institutional responsibility for Council Secretariat etc)*

Counsel General

Presiding Judge Wales

President, Welsh Tribunals

District Judge (1)

Magistracy (1)

*Senior Welsh Member of the
Judicial College (1)*

Head of CPS Cymru-Wales

Solicitors - Law Society (2)

Bar - Wales and Chester Circuit (2)

CILEx (Wales Forum) (1)

*Heads of Welsh Law Schools (5):
Aberystwyth, Bangor, Cardiff, Swansea,
University of South Wales (including 1
representative from 'chairing' Law School)*

Coleg Cymraeg Cenedlaethol (1)

Legal Wales Foundation (1)

Learned Society (1)

Lay representatives (2)

Co-opted members (provision for 2)

Style and workings

12. In terms of the general style and approach, the JSC in Scotland is a useful precedent. To quote Professor Paterson:

'The JSC is not a creature of statute and although it has informal Government recognition it is not funded by the Government... Nor does the JSC have an Executive role – it cannot tell anyone to do anything, but by building trust between the stakeholders it can facilitate the early exchange of information. [It is] a neutral forum at which friendly criticisms of... proposals can be aired without preventing any of the constituent stakeholders from pursuing any reform course that they have determined on. As such it would be an easy model to introduce into Wales.'

13. Especially in view of the wider remit proposed for Wales, collaborative or partnership ways of working should be very fruitful. It would clearly be for the Council to flesh out working methods. Suffice it to suggest regular periodic meetings (3 a year, dependent on work streams) with rotating locations and if possible the availability of modern video links providing telepresence; provision for panels (chief candidates being 'law and language' and 'law tech'); Secretariat support on a rotating basis (see above); and of course a web-site.