

**SUBMISSION TO THE JUSTICE COMMISSION FROM MELANIE HAMER,
DIRECTOR, WENDY HOPKINS FAMILY LAW PRACTICE**

1. My background and the background of our Firm

I grew up and was educated in Aberdare, which at the time was very much a mining community with both my grandfathers being coalminers. If any of the local community needed legal advice, the majority of them would have been reliant on legal aid. I trained with Eversheds (formerly known as Phillips & Buck) in Cardiff and when I qualified in 1989, I specialised in family law. At the time, approximately 50% of my workload was private paying and 50% was legally aided. In the early days of qualifying, we would every year see an increase in the hourly rate paid for legal aid cases. Eventually the increases stopped and the legal aid rate remained static for around a decade.

In 1996, I co-founded the first specialist family law firm in Wales, Wendy Hopkins Family Law Practice. This was at a time when the majority of the law firms were either large commercial practices or high street practitioners. For the first ten years of our Firm we continued to do legal aid work at rates that had not increased for approximately a decade. However, it soon became apparent that we as lawyers had to work three times as hard on our legal aid cases to make the same money as on our private cases. Furthermore, it was publicised that legal aid was coming to an end. We therefore took the very difficult decision to jump from the legal aid ship before the cut off deadline. This was a really difficult decision for me personally. I had grown up in the Valleys community and realised how important legal aid was. However, with increasing overheads and salaries and trying to attract the best caliber of staff, we simply could not make the books balance on the legal aid rates. Therefore, since 2006 we carried out exclusively private paying work and this is something that I still at times have difficulty with. When I gave up legal aid work, I also had to give up doing public child care work and this pained me. I had gained a specialist accreditation in child care work which enabled me to represent children in care proceedings. On saying goodbye to legal aid, I also had to say goodbye to my child care practice which had given me considerable satisfaction in helping some of the most vulnerable in society. Luckily for me by this stage I had also specialised in the financial aspects of divorce and separation and private children law disputes.

Ours is not the only Firm to have stopped legal aid work for commercial reasons. The landscape of law firms today is very different to what it was in 1996. There are very few, small high street firms. There are more commercial firms and boutique specialist firms (ours is a boutique specialist firm). Larger firms are buying out or merging with some of the smaller firms and some of the smaller, generalists that cannot be bought out are struggling.

2. Access to Justice in Wales

Legal aid is basically now only available if there is domestic abuse (proven with independent evidence) or child care proceedings. This means that huge numbers of individuals in Wales can no longer instruct or afford a lawyer. This has meant that the only way some people can afford a lawyer is either by their parents paying or by taking out litigation loans. There has

been much in the news about how lots of adult children cannot afford to leave their parents' homes until they are in their thirties. Therefore, this places a strain on their parents. What has not been in the news though is that in addition, their parents are now often using their lifetime savings in retirement to fund their children's divorces and family law issues. The grandparents are therefore being stripped of their savings at a time when they should be enjoying their lives.

Litigation loans are available but only if a lawyer is approved by a specialist litigation loan company and only if the lawyer can virtually guarantee that the individual will come out of a divorce with enough money to repay their litigation loan. Law firms need to apply to be part of an approved panel maintained by the loan company. Each loan company has its own panel. To be approved a lawyer must be a specialist in their field. Litigation loans come at a price. The interest rate charged is normally 18%. However, some individuals have no choice but to take out these litigation loans to enable them to have legal advice.

Another detrimental effect of the withdrawal of legal aid, is that many individuals now have to represent themselves – i.e. they are litigants in person. This can have adverse consequences for all concerned. Firstly, the litigant in person can find him or herself facing a lawyer on the other side in Court in an alien environment with no knowledge of the law. The litigant in person can therefore lose out severely. Furthermore, litigants in person (through no fault of their own) can take up far too much of a Judge's time which means that Judges' lists run over and Judges end up having to sit really late to finish their lists or matters have to be relisted, causing delay. Litigants in person can also have an adverse effect on their opponent by ratcheting up their opponent's own legal bills by constantly phoning/emailing/writing to the opponent's lawyer.

3. Do we have a justice system fit for purpose?

There is no doubt that demand is outstripping resources in the Courts. There are far too many cases needing to be heard than there are Judges available to hear them. This leads to huge delays in the Court systems. It can easily take 12-18 months to get from the start of a divorce to the final financial order.

The closure of many local Courts has also compounded this problem.

4. Lack of continuity with Judges

In many cases, unless specifically requested, there is often no continuity of the Judge in a case. This can also lead to delay.

5. Specialist Financial Remedy Courts

There is a strong need for specialist financial remedy courts in family law matters. This will ensure that judges who hear these cases will be specialists in this field which should in the long run save time and money. The former President of the Family Division (Sir James Munby) created a pilot project for the same in Birmingham which appears to be going well. There was to be the same specialist pilot project in South East Wales for this very purpose

and at its very infancy, before it even got off the ground, it was stopped. Apparently, there was a concern within the courts that it would have an adverse impact on the civil judges and the civil court lists. This was an opportunity missed. However, the pilot project in Birmingham is going so well that it is hoped that the pilot project in South East Wales will be resurrected shortly.

6. Some possible solutions to some of the problems in Wales' justice system:-

- (i) More funding to be made available to the third sector to help those who cannot afford their own representation.
- (ii) Funding to be made available in the same way as litigation loans but at a lower interest rate.
- (iii) Parties who can afford it to be encouraged to go to arbitration rather than use up the Court system. With arbitration you pay a private Judge or Barrister to hear cases for you, thereby freeing up more of the Court judiciary.
- (iv) Specialist financial remedy Judges to hear financial cases.
- (v) More continuity with cases which will speed up hearing times.

7. I have deliberately above, not dealt with the thorny subject of whether we should have a different legal system in Wales to that of England in terms of family law. A different family legal system in Wales would however be fraught with difficulties especially since, in many cases, one party might live in England and the other might live in Wales. Also, one lawyer may be in England and one in Wales. I do not however feel qualified to express more of an opinion than this.

I hope that the above in some small way may assist the Commission on Justice.

Dated this 30th day of October 2018