



Comments from members of SDLS regarding the possibility of a separate Welsh jurisdiction.
Members of SDLS are solicitors practising in and around Swansea, Neath Port Talbot and Llanelli

Discussion held at Swansea University, 14 May 2019.

1. The overall feeling in the meeting was that whilst a separate legal jurisdiction in Wales may be an attractive patriotic option, the practical implications are of such great concern that such a proposal would not be supported.
2. The big (unanswered) questions surround what it would mean for us as a profession including whether this would mean separate Regulation, separate representation (and therefore Law Society) and separate Qualification. Questions were raised about how this could operate and, importantly, be funded given our experience in a currently under funded profession.
3. There were some who questioned why a separate jurisdiction would be needed anyway. The ability to pass “different” legislation from England just because we can is not a good reason for change and would not necessarily result in any improvement. This was countered somewhat by the accepted position in those areas of law that are already devolved e.g. the public law framework for families/children in Wales. However, there are already practical difficulties with this such as the confusion caused for practitioners and judiciary alike with the need to operate to different systems. Anecdotally there are examples of local family practitioners needing to correct judges (most often those who are not local) as to the relevant regulations. There are also funding concerns for those areas already devolved such as Mental Health Tribunals. There are also concerns regarding the ability of the WAG to follow through on proposals as already demonstrated e.g. in the areas of planning/housing.
4. Funding for a separate jurisdiction is a major concern. Wales is a poor nation and there is no evidence that a pot of gold exists that would improve upon the currently under funded system within which we already operate. Indeed there were fears that this could lead to a worse situation with no obvious source of funding for investment in the infrastructure. There are only 4,000 holders of Practising Certificates in Wales. It seems a huge burden on such a small number if these had to sustain a regulatory function if that needed to be a separate one from England and a Law Society given that the profession needs a representative body. If there is to be a separate jurisdiction but regulation and representative functions remain across England and Wales, there would be concerns about ensuring that there is sufficient understanding of the Welsh picture going forward and that this would be taken into account if the jurisdictions diverged greatly. This is a difficult enough task already.

5. Grave concerns were raised regarding the question of whether a separate jurisdiction would result in the need for a separate qualification. If so, this has far reaching consequences. Assuming this would need to be undertaken by law departments in Welsh Universities, how would this impact upon them? If they need to offer both Welsh and English qualifications how would they fund this? In particular if they focused more on a Welsh jurisdictional syllabus there is a high risk that this would have a negative impact upon their ability to attract non Welsh students. This could make their institutions less attractive to the non-Welsh, and particularly the global market given a high reliance already upon foreign students and their current business plans which are looking to extend this.
6. It is felt that there would also be an impact upon the number of training contracts available as this sort of proposal would always hit smaller firms hardest and their ability to attract and train future members of the profession would be put in doubt. The likelihood of young lawyers wishing to be trained in Wales if this limited their career horizons would only worsen the current limitations on available training contracts in Wales.
7. For those in practice already the prospect of needing further study/qualifying exams or the like is considered unattractive. Whilst some present at the meeting quoted other examples of dual qualifications being eminently doable the greater concern in the room is that this would be an enforced position on many who would not out of choice wish to take further qualifications mid-career. There was also a concern raised by those who have moved to Wales from England and whether this would have prevented or at least created obstacles to their move (and this would apply vice versa).
8. Longer term, there is the question of how we would find (and fund) suitably qualified members of the judiciary given that there is such a small pool of practitioners in Wales anyway. There are fears that a separate jurisdiction would not attract the most ambitious and talented practitioners who would likely be tempted to leave Wales to join global firms based in England with global opportunities and salaries to match. Not only does this have an impact on Welsh practitioners risking a “second class” reputation but would also impact upon the quality of the judiciary who would be appointed from those who have “remained behind”.
9. Most firms in Wales (outside of Cardiff) are Welsh based with no offices in England. This does not however mean that we do not have clients in England and we rely upon that fee income. Those present at the meeting who have a significant client base in England were extremely concerned about any possible impact on their ability to carry on their business in this way. Perceived difficulties and the perception of any additional levels of bureaucracy are as worrying for them as actual difficulties. We do not want Wales to look like a place where it would be more difficult to do business.
10. Overall the meeting concluded that a proposal for a separate jurisdiction was not a positive development as the possible negative impacts outweigh any potential benefits. Any extra financial or administrative burdens would hit smaller firms particularly hard in a climate where they are already struggling. This is already contributing to the advice deserts and poorer access to justice for those in more rural areas. The practitioners at this meeting could not see that a separate jurisdiction (however constituted) would bring them any obvious benefits but would likely result in extra unwelcome layers of bureaucracy and expense.

11. And finally, there was significant concern that even if this proposal was to be supported, there are huge question marks surrounding the ability of WAG to deliver on this. There was no confidence in this meeting that there would be the resource or capability within the Welsh government to introduce and run an independent legislative machine and justice system.