



Cymdeithas y Cyfreithwyr
The Law Society

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Exporting - expanding our horizons



1 Personal Introduction.

It is not often I get to be introduced by my best man. He knows me – far too well. I am not in a position today to make any great claims about myself, because he and others present know the truth about me – warts and all.

However, there are others present who do not know me at all and are wondering why I have accepted the honour of the Law Society's invitation to give this lecture today. As far as I am aware, I received the invitation because my practice is somewhat different from the majority of solicitors, dealing as it does with public inquiries of various kinds which often attract media and public attention.

I did my articles with a firm in Cardiff by the name of Phillips & Buck, a fairly small but enterprising and energetic firm. That firm is now known today as Eversheds, with 45 offices throughout the world in 28 countries, including London, Paris, Munich, Africa, Asia, China and India. The Cardiff office is one of the most successful of our 45 offices; the chief executive of the global business comes from Cardiff and lives there, and the first Chairman of the business lives in the Vale of Glamorgan and is from a family of Welsh-speakers. Approximately 500 people work in the Cardiff office; the firm is one of the biggest employers in Cardiff. Several other law firms in Cardiff which I shall refer to later on are also key employers and contribute extensively to the economy of Cardiff and Wales. Welsh commercial lawyers make a significant contribution to the Welsh economy.

I learnt my craft as a litigation lawyer by acting on behalf of the Welsh Development Agency (WDA), and various Welsh local authorities, before the WDA was swallowed up by the Welsh Government. I was responsible within the firm for administering the contract between Eversheds and the Welsh Government to undertake its work for the first three years of its existence. In doing so, I developed my understanding of the workings of the public sector and public sector litigation. Partly because I am a Welsh speaker, I also acted on behalf of HTV and various other media companies, advising on programme content and dealing with libel cases.

So when the letter came through the post from Westminster enquiring whether my firm would be interested in tendering for a contract to provide a team of 35 lawyers to fulfil the needs of the Bloody Sunday Inquiry in Derry, Northern Ireland, for just under a month, I felt I had the relevant experience. The invitation arrived in 1997, before the signing of the Good Friday Agreement, amongst continuing bloodshed and protests. This type of work was entirely new to me. I felt a certain lack of confidence when

offering to head up the team; the work was not without risk, the risk that the inquiry under the presidency of Lord Saville would not be acceptable to the community of Derry and the security risk to the 35 lawyers in my care.

However, on consideration, who better than a Welshman could understand anti-British sentiments – such sentiments arising apparently as a consequence of Lord Widgery's 1973 inquiry report which had been regarded as a whitewash by Irish nationalists.

By this stage, in 1997, I had already undertaken work of a sensitive nature for HTV investigating child abuse in homes throughout Wales for the series "Wales this Week" – which led directly to the public inquiry undertaken by Sir Ronald Waterhouse, on which I worked on a pro bono basis for some of the children who had been abused some 15 years earlier. Therefore I had some understanding of such inquiries, and had obtained this knowledge here in Wales.

I suspected that one or two witnesses to the Bloody Sunday atrocity would probably balk at the use of English in interviews held to collect evidence. I was in a position of being able to hold interviews bilingually - asking questions in Welsh and receiving answers in Irish.

So I summoned up some courage, prepared a tender, used my powers of persuasion in an interview, and got myself appointed to this controversial job for the next month. Seven years later, the Lord Saville inquiry, my work and my team came to an end. Over a hundred members of my team travelled to Derry, England, Europe and the United States to gather evidence. British taxpayers were £13 million poorer as a result. Martin McGuinness admitted his role as an IRA commander for the first time; and for the very first time evidence was obtained from some 50 members of the IRA together with their viewpoints and their operating methods; over 2000 further witnesses were questioned by my team, including former ministers, a Prime Minister, former soldiers, the police and civil servants. And all co-ordinated from the Cardiff office.

As a result of this inquiry, I had an opportunity to tender for work collecting evidence on behalf of an inquiry into the actions of Dr Shipman, who had been accused of killing 15 of his patients. There was a presumption that he had killed many more. Having tendered successfully and opened a mobile office in a warehouse in Hyde, with another 25 lawyers from the firm, in order to make enquiries and investigations to try and discover Dr Shipman's mode of operation and secure evidence which

would enable Dame Janet Smith, the inquiry chair, to come to a conclusion about the number of people killed. By the end of the inquiry it had been decided that he had been responsible for 200 deaths.

The General Medical Council was severely criticized by Dame Janet for the way it operated, and following on from that I received an invitation from the GMC to act on its behalf in reforming its procedures for the investigation of doctors presumed to be a danger, or guilty of malpractice. This continued for seven years with a team of 15 lawyers. Once again this national work was co-ordinated from Cardiff.

Following on from that, there was another public inquiry, leading a team of 25 lawyers, again in Northern Ireland, and then in London, to investigate on behalf of the Judge Chairman, into any wrongdoing by MI5, Special Branch, or other governmental bodies, in connection with the death of solicitor Rosemary Nelson, killed as a result of a car explosion after she had successfully defended various individuals suspected of being prominent IRA leaders in the Lurgan and Craigavon area – another four years working away from home.

However, the next two appointments were much closer to home – acting on behalf of the Metropolitan Police Authority and the Office of the London Mayor in that famous inquiry, the Leveson inquiry, dealing with the deficiencies of press regulation. However, that was a minor role compared with the one I undertook as solicitor to the Mid Staffordshire hospital inquiry where it was suspected that between 400 and 1200 patients had died unnecessarily as a result of inadequate care, due to failures in commissioning and regulation systems. The report into the basic failures in the health service in England will be published in October. Twenty-five lawyers were involved in the work, including 10 from Cardiff.

So that's a rough guide to me and my practice!

2 "Offa's Gap"

At the same time as I received this invitation to address you today I also received two other items of note. Firstly, an interesting report which caused me to reflect on wider matters, and place my personal experiences in a wider context. It was a report commissioned by the Institute of Welsh Affairs and produced by Dr Eurfyl ap Gwilym and Adam Price. This is not a political report – it does not represent Plaid Cymru

policy, or any other party's policy. I do not intend to make any political comments or points today. I intend to express a personal opinion – the personal opinion of an individual who is a member of the Law Society. I am not an economist; I am not in a position to offer a critique of the comments made by the report's authors; but they do have interesting ideas which, I believe, are relevant to us, as members of the Law Society, and as lawyers trying to succeed in practice in Wales.

The report's main message is that Wales, since the mid-90's, has seen a serious economic deterioration, to such an extent that Wales is now at the bottom of the economic table in terms of prosperity and wealth. There is a gap, if not chasm, opening up between Welsh economic success and the rest of Britain. The report suggests that each individual in Wales is £1,850 poorer than their counterparts in England – referred to in the report as “Offa's Gap”. It notes that the financial services sector is becoming increasingly centred on London, leaving Wales all the poorer. It suggests that Wales imports far too much, and the famous economist A P Thirwal is quoted as suggesting that long-term growth depends on exports rather than imports. Is this principle also valid when considering the export of talent as well as goods? The report suggests that adopting a strategy to export Welsh produce is essential for any ambitious business. It suggests that the strategy needs to take advantage of our particular understanding in Wales of the public sector, as Wales is and always has been dependent on this extremely important sector. It refers to the success of Statkraft, a company owned by the Norwegian state, which caught my attention for reasons I shall return to later.

3 A Picture of the Welsh Client

The second item I received was my firm's financial returns for the last financial year, together with the budget for the next year. This is always a bleak time of year for all partners in any large legal firm. It is like the feeling a child gets when drawing a picture with a magic pencil and pulling the screen down. The picture disappears, and you have to start all over again. The success or failure of the previous year is forgotten, and you have to start from scratch once again.

When the time comes to look back on the past year's performance, and to plan for the year to come, you have to think about which clients will be seeking commercial legal assistance during the next year. You have to explore the business possibilities on the horizon.

When undertaking my budget review, I noted the analysis in “Offa's Gap” with regard to the dearth of large private limited companies in Wales which would be likely to use Welsh lawyers for their work. My understanding is that there are only 16 such companies with an office or base in Wales. Of those, seven are in Cardiff or Newport, two in Ewloe, one or two in Swansea, one on Anglesey, another three in North Wales and one in Chester – possibly on the other side of the Welsh border anyway! The annual reports of these PLCs suggest that only three are represented by Welsh law firms.

In addition, I looked at ownership and companies from North America which have a presence in Wales. There are around 220 of these, varying greatly in terms of their work, and including car manufacturing firms as well as companies providing nursing services; loans on the web; chemical research, and even dental repair and wheelchair design. However, I know that several of these 220 companies use lawyers in London, or other European centres; usually the choice of lawyers depends on who represents the parent company at its European headquarters, wherever that may be, but typically the headquarters are outside Wales, and that is where the choice of lawyer is made. Therefore I imagine that few of these companies would be likely to use Welsh law firms for their main work.

4 What conclusion should be drawn from this?

I described my own practice at the beginning. Of course I operate in Wales and act for Welsh clients but these are not the cases or clients which are chiefly responsible for Eversheds employing so many lawyers, increasing year on year, and expanding the practice, raising the standard of our work, and generating work and income for the partners and staff, and thereby contributing to the economy of Cardiff and Wales. By luck, by chance, I learnt my craft in Wales, learning here the public sector skills, learning how to deal with high-profile cases, and as a result expanding horizons and selling these skills the other side of Offa's Dyke, and thus narrowing "Offa's Gap".

5 And what about others?

But am I the exception? Do other commercial lawyers in Wales succeed in feeding themselves from a Welsh menu alone? Unlikely. I decided to investigate and analyse

the firm's income source at our Cardiff office. I discovered that the Cardiff office last year earned some £54m in fees by selling our skills to clients outside Wales, with the only Welsh connection being the solicitor who was providing the day-to-day legal service. Then I considered some examples from within the firm.

One of the most exciting legal fields is renewable energy. This includes everything from biomass burning to solar energy, hydro-power and wind energy. I have two partners in Cardiff who lead the way globally for the firm in this field. Both learnt their skills in Wales, and both still live here. The main partner learnt these skills by acting for a local private business involved in this field, managed by entrepreneurial directors from Wales – one which grew to become a substantial company by buying out other companies internationally. By acting for them when they were a small company, the client became more important, and the business more significant and international. The two chief executives moved abroad, and became involved in other foreign businesses. One comes from Barry. The two partners are now at Eversheds leading a team of 45 international lawyers in the field. Twenty five have settled in Cardiff. They have negotiated projects with Statkraft of Norway, the company cited as an example of success in “Offa's Gap”. An example of local skills being exported worldwide.

My old firm, Phillips & Buck, which evolved into Eversheds, had close ties with the banking sector in the early days of the new banks in Wales. My partners acted for banks such as the Bank of Wales, the Julian Hodge companies, the Chartered Trust, the Banque Nationale de Paris, which had a large office here, and Principality Building Society, amongst others. Nowadays, these partners act on behalf of worldwide banks such as JP Morgan, which bought a mortgage book worth £2.2 billion from Northern Rock, in the North of England, for example. They act on behalf of other international banks such as Deutsche Bank, as well as the familiar high street banks. A Welshman from West Wales is head of department – another example of a Welshman exporting his talent honed in Wales, and thereby creating a team which enjoys national recognition. Without exporting in this way, he would not have been able to develop such a practice. All my partners at work share my vision for developing our practice beyond Offa's Dyke, but without relocating from Wales to do so.

Is my firm an exception?

It is not my place to speculate about other members of this Society, who are partners in other commercial firms in Wales. However, from discussions I have had, and

information which has come to light in national publications, such as *Chambers* and *Legal 500*, it seems that they also see a similar future. Geldards, for example, is another commercial firm in Wales which, like every other commercial firm in the area, has been nurtured in part on public sector work. Geldards has also acted for a Welsh company which developed quickly and opened a new headquarters in the Midlands. Through this client, the firm seems to have developed new skills in the area of utilities - and other areas - as a result, and has been very active in the Midlands as well as Wales. Morgan Cole has also acted extensively in the field of health and other public sector areas, and has exported these talents outside Wales, and acted in important cases such as the Dianne Blood case which received national coverage recently.

I had a conversation with a partner at Hugh James, a firm I had been familiar with for many years as largely providing services for private clients in the valleys. However, from its personal injury work, it too has developed a significant part of its practice by acting in test cases, or class actions, for groups of former quarrymen or coal miners, and proceeding from this to act in test cases for those injured in airplane accidents abroad. I heard that they are currently acting on behalf of a number of those who received poor quality breast implants and faulty joint replacements; another practice which has developed talents fostered locally in the wider field and for clients further afield. This work is carried out at a national level. And there are many examples of other firms expanding in this way, or contemplating doing so. There lies the future.

Naturally, firms in rural Wales are not in a position to invest in similar ventures; the role of these solicitors, certainly to me, is a tremendous challenge in a specialist world, offering a complete provision to local clients. However, by responding to these challenges, we see a number of solicitors, from Barry to Bangor, gaining prominence through their work, and often receiving personal recognition by their appointment to the bench, or as stipendiary magistrates, or their participation in tribunals - different examples, if personal ones, of solicitors expanding their horizons.

6 The future

Over the years, we have seen some of our most prominent judges sit in the highest courts of the land and bring credit to Wales through their work. Some of our barristers also move to London to expand their practice, often having received the honour of taking silk. And we have, without doubt, lost a number of prominent individuals from the ranks of lawyers who have upped sticks and gone to work outside Wales.

However, it does not have to be like that. I have provided some evidence to prove that today. The lawyers who are responsible for generating an income of £54m in our office in Cardiff all live in Cardiff, although their clients are scattered far and wide in England, Europe and beyond. There is no doubt that a significant proportion of our income at our Cardiff office comes from exporting their talent. It is true of me, and I am sure it is true of others who are part of the Welsh legal market. Whether by chance, by accident, by deliberate design or not, Welsh commercial lawyers have jumped Offa's Dyke, and closed the gap. And they have done so successfully.

However, as I suggested earlier, there have been certain factors which enabled me to take advantage of the opportunity. A number of us were educated in universities in Wales. It is essential that talent is discovered there, which can be guided initially and then exported in due course. Language skills as well as an understanding of overseas legal systems are an important part of the development of our young lawyers. It is also paramount that we encourage our young lawyers to stay in Wales, by meeting their needs in providing first-class training here in Wales. I am concerned to see so many of our talented law graduates leaving university with good degrees, full of confidence and enthusiasm, but failing to secure a training contract in Wales. Training contracts are becoming increasingly scarce and more difficult to come by. We are therefore losing young talent at the first hurdle because of a lack of training contracts.

Whilst accepting that we must successfully maintain and keep hold of this talent in Wales, it is essential that at the next stage they develop their skills here in Wales. We need a vibrant economy, with entrepreneurial clients who share the ambition to expand and develop. The "Offa's Gap" report notes the loss suffered as a result of the disbanding of the Welsh Development Agency, and recommends the setting up of a similar body to promote and guide business once again. I too felt a sense of loss when that body was disbanded; a body which was bold, prepared to take robust decisions and show leadership. Such a body could justify taking risks, and in doing so acquired a reputation for itself, not only in Wales and Britain but world-wide.

We need to remember that many of us in the legal world have succeeded in marketing ourselves within the British public sector because we have been immersed in the Welsh public sector. A partner of mine became a specialist in Wales in an area of major significance today – state aid. Her knowledge of this subject enabled her to become a specialist lawyer for our clients throughout Britain. She has succeeded in building up a substantial team of lawyers who also specialise in this area. They too are exporting their talent outside Wales.

The Welsh Government's response to the development of the legal economy may be seen in a report published in the Gazette in June of this year. The Welsh Government is leading a campaign to encourage large legal firms in London to export their work to Wales where it does not make sense for them to do the work in London, because of high production costs. We have already seen examples of London firms exporting sectors of their work to low cost areas, such as Belfast. However, is importing such work the answer to ensuring the development and growth of the next generation of members of this Society in future? Yes, there is a place for this work, and why not undertake it in Wales? A number of successful firms in Wales already provide such a service. But will this keep our best lawyers, our future exporters, here?

And is the Welsh Government's policy of creating a large legal department which confines their skills within the walls of the Government's legal departments the way forward? Under such a system, my partner who specialises in state aid work would not have had the opportunity to develop her skills for export. I too would have found it more difficult to develop my skills in the field of public inquiries. By centralising work in one large legal department in Government, it may save money in the short-term, by not employing external lawyers, but in doing so, a generation of young lawyers will be deprived of work and experience. Who in future will develop a law office in Cardiff or Swansea, employing hundreds of workers based on the interesting, high-quality work which comes from outside Wales? Does the Government's current policy of centralising work, and of encouraging the import of work, promote export in the future?

I trust that the members of this Society will continue to go from strength to strength. There are problems to overcome; and little consideration, in my opinion, is being given to these problems. We, as lawyers, need to ensure that we do our part to close "Offa's Gap". To a certain extent, we need to expand our horizons, be more confident and respond to the challenge. As our Chair today has told me several times over the years, "If you can do it, any fool can"!