

THE COMMISSION ON JUSTICE IN WALES
LAW COUNCIL OF WALES DISCUSSION AND CONSULTATION PAPER

RESPONSE ON BEHALF OF THE LEGAL WALES FOUNDATION

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INTRODUCTION

1. This response sets out the history of the Legal Wales Foundation (“Legal Wales”) and its present role and activities. It also explains how Legal Wales has sought to follow a similar path to that of the proposed Law Council. The response concludes with the view of Legal Wales that there is a role for a body of the type proposed but that the voluntary and rotating support structure is unlikely to achieve the ambitious objectives set out in the consultation.

History of Legal Wales

2. When the Office of Counsel General for Wales was first created as part of the civil service at the time of the Government of Wales Act 1998, the then Counsel General, Mr Winston Roddick CB, QC, set up an informal advisory committee to act as a liaison point between the Office of the Counsel General - itself a new organisation with a wider role than the former Legal Department of the Welsh Office and including a putative legislative drafting function – and a cross section of the legal community in Wales. Membership was by invitation.
3. Another influential event was the inauguration on 17th April 1999 of the Wales Public Law and Human Rights Association (now Public Law Wales) at an Inaugural Conference on Devolution in Wales, held at Cardiff Law School.²
4. It was around this time that the term “Legal Wales” became current to describe the Welsh Legal community. At about the same time several new legal societies came into being, due in large part to the enthusiasm of the then Presiding Judge, Thomas J (as he then was) for the creation of a network of legal societies rooted in Wales, as part of Welsh civil society’s response to

¹ Chair of the Legal Wales Board since November 2018 and a member representing the firm of Geldards LLP since the inception of Legal Wales

² See “*Devolution in Wales Public Law and the National Assembly – Proceedings of a conference held on 17th April 1999 at Cardiff Law School, Cardiff University*” (ed. Prof. David Miers) published by Wales Public Law and Human Rights Association with the assistance of Edwards Geldard.

devolution. Of these societies, reference has already been made to Public Law Wales which has endured and flourishes along with the Wales Commercial Law Association and the Welsh Legal History Society, while the Wales Criminal Law Association and the Welsh Personal Injury Lawyers Association have did not.

5. The next significant development was a proposal put forward by me in a letter to Winston Roddick in February 2001, proposing a “Legal Wales Conference” bringing together the Welsh legal associations.³ The first Legal Wales Conference was held at Cardiff University in October 2003. It has been held every year since.⁴ The most recent conference in Aberystwyth in October 2018 attracted 135 delegates and the last time the Conference was held in Cardiff in 2016 it attracted 190 delegates.
6. The event has become increasingly successful and is now financially self-sustaining and it has come to provide a platform for significant contributions to the continuing dialogue on constitutional development in Wales.⁵ Since the Legal Wales Conference in Cardiff in 2010, successive Lord Chief Justices of England and Wales have attended and given a keynote address. The timing and location of the Conference now generally coincides with the annual Legal Service which marks the opening of the Legal Year in Wales and which alternates between Cardiff and Bangor and the Conference increasingly provides a focus for other events to take place around the same time.⁶
7. At the same time as the Legal Wales Conference was inaugurated, Winston Roddick proposed the expansion of the Counsel General’s Advisory Committee into a “Standing Committee on Legal Wales”. The initial constitution⁷ set the objectives that have remained largely unchanged since.
8. The original constitution also envisaged the Counsel General being the Chair of the Committee ex officio. With the advent of the office of Counsel General in its present form under the Government of Wales Act 2006 provision was made for the Counsel General to continue to take the chair should the current office-holder wish to do so. However, this option was never taken up and the

³ Attached at Appendix 1

⁴ Although on one or two occasions in the early years an abbreviated “symposium” event was held.

⁵ See, for example, the programmes the two most recent Legal Wales Conference held in Swansea in September 2017 and Aberystwyth in October 2018 attached at Appendix 2

⁶ In 2018 the Conference coincided with a meeting of the Law Society’s Wales Committee in Aberystwyth on the previous day and with a meeting of the Council of Welsh Judges on the following day.

⁷ Attached at Appendix 3

Committee has always elected its own chair.⁸ The relationship between the Welsh Government and Legal Wales was raised in a letter from HH Judge Milwyn Jarman on behalf of the Board of Legal Wales to Mick Antoniw AM dated 19th December 2016 and clarified in the First Minister's reply dated 3rd March 2017.⁹ As a result, the first liaison meeting took place in September 2018, when Judge Jarman and myself (as the Chair elect) met with Jeremy Miles AM, the Counsel General and Alun Davies AM, Minister for Local Government and Public Services. The next meeting is due to take place in February/March 2019.

9. To reflect the change in the relationship with the Welsh Government the full name of Legal Wales was changed from Standing Committee on Legal Wales to the Legal Wales Foundation and provision has since been made for Legal Wales to elect its own chair.¹⁰
10. While the Legal Wales Conference has grown in stature, Legal Wales has been less successful as a forum debate and discussion of matters of interest to the wider legal community in Wales. Consequently, Legal Wales has not generally played a major role in policy formulation on legal matters relating to Wales. The most notable example of an influential submission was that to May LJ's examination of the arrangements for administrative cases outside London, which led to the creation of the Administrative Court in Wales.
11. The reasons for this are various, but all share the same theme of a lack of resources, notwithstanding considerable commitment by the officers of Legal Wales over the years, but who have also been busy individuals active in other parts of Legal Wales. These reasons include:
 - 11.1 The other mechanisms for contributing to policy development that have evolved over the years, for example the Wales Committee of the Law Society, the Judges' Council Committee for Wales and the Law Commission's Welsh Advisory Committee.
 - 11.2 The absence of a policy officer or secretariat with the time and resources to serve working groups, collate correspondence and

⁸ Since Winston Roddick QC stood down the Chair has been taken by Professor Bob Lee, Professor Iwan Davies and, between 2010 and 2018 by HH Judge Milwyn Jarman QC.

⁹ Set out in Appendix 4

¹⁰ The present constitution is attached at Appendix 5

organise meetings. Keith Bush QC was the Director of Legal Wales between 2012 and 2016 on a voluntary basis, but the task of organising and running the Legal Wales Conference largely accounted for the time he had available for Legal Wales work.

- 11.3 The unofficial status of Legal Wales culminating in the exchange of correspondence already referred to with the Counsel General.
- 11.4 Caution on the part of representatives of individual bodies affiliated to the Board about signing up to collective expressions of opinion which may involve differences of emphasis from those of the bodies whom they represent.
- 11.5 There are particular sensitivities about the position of judicial members, whose positions necessarily constrain their ability to comment on matters. Consequently, where consultations have been submitted they have to make clear that the views of judicial members of Legal Wales are not reflected in the response.
12. Given the ambition of the objectives that Legal Wales set itself, it is not surprising that the achievement of all of them, in addition to the demands of the Legal Wales Conference, has proved beyond the ability of a voluntary Board with other and varied professional commitments.
13. There is no doubt that with a modest level of resources to create a basic administrative infrastructure Legal Wales could provide a ready-made platform for pursuing the activities identified for the proposed Law Council.
14. As already noted in the submission by Keith Bush QC (whose analysis accorded with Legal Wales' own views), the provision of some resources to Legal Wales would enable it (and the Legal Wales Conference) to extend its relevance and awareness of its activities to practitioners and academics who have yet to be convinced of the relevance of Legal Wales to the task of addressing the challenges facing the Welsh legal community.
15. The proposed model, led from within the Welsh Law Schools, but supported by the wider legal community seems to conflate two requirements:

- 15.1 The need for the Welsh Law Schools to develop and move as one in finding a collective response to the emergence of “Welsh Law”. In its fullest expression this would encompass an Institute of Welsh Law as outlined by Lord Lloyd-Jones at the Legal Wales Conference in 2017. However, the demise of the federal University of Wales now precludes the sort of approach that in a previous generation saw the creation of bodies such as the Centre for Advanced Welsh and Celtic Studies. While practitioners and regulators have a contribution to make to this aspect, not least in relation to activities with application to legal practice, it is primarily a matter for the academic community to address how the Welsh Law Schools present themselves within an emerging and distinct new common law jurisdiction and continue to contribute to the national life of Wales; although perhaps there is a role for the Welsh Government to express its expectations of the Higher Education institutions in this regard.
- 15.2 An overarching body that can speak for all elements of the Welsh legal community, or at least – and perhaps more realistically – offer a forum where the different strands of the community can come together to discuss and comment on the state of the law in Wales and its future development. This is very much the sort of role that Legal Wales has sought to fulfil but has been unable to bring fully to fruition because of its purely voluntary character.
16. A single body could cover both these roles subsuming some, if not all, of Legal Wales’ role, but the size of the proposed Council does risk creating an unwieldy structure, whose deliberations may deter members from attending regularly. Furthermore, if the Council is to succeed it will need strong and enthusiastic leadership from the outset. The short rotation basis proposed would tend to militate against this happening. Practitioner representation is limited. Also, if the Chair is to be drawn exclusively from the Heads of Law Schools, there is a risk of the work undertaken being too academically orientated and less practitioner based – which is an issue that we have been mindful of in Legal Wales. Even if this is unjustified the arrangement may nevertheless create that perception which may affect the broad support of the legal community which the Commission seems to be aiming at with this proposal.

17. Another defect in the proposal is that only six members will be drawn from legal practice. In terms of the Law Society representation two solicitor representatives are unlikely to cover the breadth of practice models required to make a full contribution to the work of the Council. As proposed, the academic and judicial component appears disproportionate and this again may make it difficult to find practitioners who will consider investing time in the work of the Council to be worthwhile.
18. If the membership is expanded further there is probably an argument for academic and practitioner sub committees to be formed to address matters of particular interest to those constituencies and to report back to the full Council and to create more manageable work streams for the Council.
19. It is also unclear as to how the Council, as an advisory body, will promote knowledge, skills, best practice and innovation. With no resources of its own the Council is likely to have to work hard to find individuals or institutions interested in collaborating with the Council on projects and, for any significant research-based projects, in finding and applying (itself a time-consuming activity) for grants and resources.
20. While none of these points are fatal to the arguments in favour of creating a body with the aims proposed, the funding of an adequate secretariat remains the key consideration and is probably decisive in assessing if the Council could be a success. Individual or corporate subscription membership would be a precarious basis on which to proceed. Legal Wales has not considered asking for a subscription for some years partly because of concern at the response¹¹ and it is questionable whether there is sufficient interest in the idea of the proposed Council to sustain such a model. The best hope seems to be if the main components of the legal landscape agree to jointly fund such an enterprise. This would have to involve the Law Schools, the Law Society/SRA, CILEx/CILEx Regulation, the Wales Circuit and, ideally, Welsh Government and the Ministry of Justice. By spreading the burden in this way, the figure of £50 - £60,000 a year suggested by Keith Bush may be achievable and a commitment to fund for, say three to five years, initially would provide a secure platform to create an enduring and useful structure.

¹¹ Although the success of the Conference in recent years has made Legal Wales financially self-sustaining.

21. It is disappointing that the consultation does not refer to the work of Legal Wales to date and if the Law Council proceeds then it will be necessary for Legal Wales to reassess its own mission. Legal Wales is about to embark on a process of reappraisal following the recent election of the new chair and officers. Without pre-empting matters it is likely that the advent of a Law Council would enable the Legal Wales Foundation to focus on a role as the organiser of the Legal Wales Conference and a promoter of educational, access and diversity initiatives, relinquishing its policy development role to the Law Council.

Conclusions

1. There is a real need for a body with the proposed remit of the Law Council.
2. To succeed, the Law Council will require a structure that will inspire volunteers to come forward to participate in its work; this will require:
 - (a) A degree of official recognition and standing for its work,
 - (b) Formal support for the Council and its work from the key professional and regulatory stakeholders (e.g. Law Society, the Bar, CILEx)
 - (c) A funded secretariat to administer and progress the work of the Council.
3. The proposed structure, given the very wide proposed remit of the Council is too heavily weighted in favour of the Law Schools and the Judiciary and this may adversely affect practitioner recruitment.
4. Increasing the practitioner representation to address this may have implications for the Council's methods of working.
5. Further consideration needs to be given to the practicalities of the ways in which a Council would bring about the promotion of knowledge, skills, best practice and innovation.

6. While it is a matter for Legal Wales, the effect on the objectives of Legal Wales of a Law Council covering the same ground, and the consequent need for Legal Wales to consider how it might reconfigure itself, should be borne in mind.

30th November 2018