

Commission on Justice in Wales

Oral Evidence Session

9 April 2019

Present	Commissioners	Secretariat
<p>Professor Elwen Evans QC, Swansea University (EE)</p> <p>Dr Nathan Gibbs, Aberystwyth University (NG)</p> <p>Mr Tim John, University of South Wales (TJ)</p> <p>Professor Urfan Khaliq, Cardiff University (UK)</p> <p>Dr John Gwilym Owen, Bangor University (JGO)</p>	<p>Lord Thomas of Cwmgiedd, Chair</p> <p>Simon Davies</p> <p>Juliet Lyon CBE</p> <p>Professor Rick Rawlings</p> <p>Sir Wyn Williams</p>	<p>Andrew Felton, Secretary to the Commission</p> <p>David Slade</p>
<p>Lord Thomas welcomed the panel and invited them to give some information about their roles.</p> <p>UK – I have been the Head of Law at Cardiff University since 1 January 2019 and co-head of the School of Law and Politics since the end of last week. I was a public international, EU and human rights lawyer.</p> <p>EE – I have been Head of Law and Criminology at Swansea University for about three and a half years. I am a practising Barrister and was a head of chambers.</p> <p>TJ – I have been Head of Law at the University of South Wales since last Summer and Deputy Head of the School of Humanities and Social Sciences for seven years. I specialised in criminology following a law degree.</p> <p>JGO – I was in the legal profession for 30 years and I have been a law lecturer since 2011. I have been the Deputy Head of the Law School at Bangor University since November 2018 and my specialisms are in equity, land law and legal history.</p> <p>NG – I am acting on behalf of the Head of the Law School at Aberystwyth University,</p>		

where I am a lecturer mainly in EU law, labour law and the theory of public law.

1) How do you think the Commission's proposal for a Law Council of Wales developed with Lord Lloyd-Jones should be taken forward?

UK – I have read the report and the documents referred to. A collaborative project recognising the respective strengths of stakeholders would be welcomed by the law school at Cardiff University. I would like to take part, but I wouldn't have the resources to drive it.

TJ – The proposed constitution of a Law Council seems sensible. The Legal Wales Foundation have suggested there needs to be a standing secretariat. The University of South Wales would be very happy to be involved.

JGO – It is important to have a co-ordinated body and I would like to be part of it. I think the Welsh Government has a significant role to play.

NG – The proposal for a Law Council is relevant to other issues we will be discussing. It proposes the types of roles we need. I would second the issue raised regarding the secretariat and there would need to be an examination of the practicalities. It is important to have a forum that is ongoing, rather than ad hoc, between what the law departments are doing on a daily basis. It would need to have a permanency.

Rick Rawlings asked what the Law Council might usefully focus on and what contribution could each of the law schools make regarding legal education.

NG – It could partly be to put ideas out for discussion and it could consider thematic issues regarding ongoing collaboration, such as information technology and artificial intelligence (AI) and public law and its operation within Wales, to allow the institutions to engage. Questions of research, post doctoral and academic, could provide an organic link with the programme and a link into undergraduate teaching, such as public law and public administration. It is important that the law schools don't react to external pressures with research, but lead it through the Law Council. I have a dynamic view of our role.

JGO – Collaboration would be key and very important. I see the Law Council as supporting that. The law schools are in competition with each other at the moment and anything that encourages collaboration is a good thing, such as housing research and academic papers.

TJ – I agree with the issues regarding research. The Law Council could coordinate activities relating to public engagement, through public legal education (PLE) and AI and the role of law clinics, and improving public awareness of access to justice. A forum that brings academia together with the private sector and the law firms, to develop similar themes in our different regional areas, would be very valuable.

EE – Yes, it should absolutely be taken forward. How it is taken forward is dependent upon issues of resource, priority and independence. We will need to look at what is available here and now. The law schools in Scotland have the resources to do it. It is more fragmented in Wales and the Law Council could be used as a mechanism for powering up something that is necessary for the future. There is a lot of new leadership around the sector in Wales and re-engaging on this now would be good.

UK – I would like to see the Law Council leading in areas of most impact, such as agricultural and environmental policy relating to Brexit. Cardiff University could provide assistance in those areas.

2) What are your plans for redesigning your curriculums of your law and related degrees in light of the rise of technology-driven legal practice to prepare students for the digital revolution and the advent of artificial intelligence?

UK – Cardiff University is in the process of redesigning the curriculums and we have consulted law firms. There is a need for data literacy and we will be offering a data analytics module through the politics part of the school. Law firms thought it was an attractive idea, but they were not sure what they would do with those skills; and there was no common understanding of what they meant by data. The students will learn skills not traditionally for lawyers. Technology is influencing the teaching process and has fundamentally changed instruction. Everyone uses blackboards and is computer literate, with online multiple choice questions and voting buttons. There are downsides to technology, with 12 people with their heads in laptops not participating in seminars. We don't allow students to use laptops in seminars, but to hand write notes because there is better retention. The traditional lecture is different now because of shorter attention spans and there is evidence that attendance at lectures reduces where they are available online indefinitely, but increases where they are available only for seven days.

EE – The sort of areas identified by the UK are very important. Law “practice” can sometimes be seen as an oppositional word, but I see practice and academic law as being synergistic. The current opportunities arising from qualification changes and enhancing curricula present ways of better embedding changing professional demands into a broad range of our modules. The technologically driven factors are built in in a range of ways, such as with Legal Technology Core Competencies Certification Coalition (LTC4) skills available, modules on coding for lawyers, and legal project management systems used in clinics. We are actively building up skill availability with core skills of communication and we have introduced a wide range of skills-based modules with credits. It is a fabulous time to be redesigning the curricula (driven by the Solicitors' Qualifying Examination (SQE)) without undermining the academic content. We have the Centre for Innovation and Entrepreneurship in Law (CIEL), which is looking at ways in which one can be entrepreneurial and innovative. I gave evidence to Doolan about my views on the direction of travel and we are doing this. We have introduced a Masters in legal tech, we are, I think, the first university in the UK to do so. This is much more

developed in the US than here. We introduced a Masters last year in cybercrime and terrorism. We are doing work with “bots” and AI and we have developed a programme on the dissemination of children’s rights which makes use of AI. We are looking at ways in which these sorts of developments can be used to further innovation and engagement in these fields. We have a Summer school coming up with a focus on AI, with links to the research agenda. We are working with a Chinese higher education institution on autonomous shipping and one of our professors is focusing on blockchain.

TJ – We also use tech in the school for teaching and offer lectures in different formats. We recognise the technological changes in the profession and the key to equipping our students with the skills the profession needs. We have LTC4 benchmarks within our Legal Advice Clinic for the benefit of our students. We are about to appoint a legal tech specialist to advance our provision in this area including in scenario-based learning and working with the profession regarding what its needs are to ensure we continue to deliver graduates with the tech skills the firms need. That will inform curriculum changes. Skills are so much more important than simply learning to use individual software packages, as packages will change.

JGO – We don’t have any current plans to change the curriculum because of restructuring due to resources. We recognise it is vital students are given exposure in university to AI and data management and we will be doing this in time for the SQE. We are giving very serious thought to the changes that are needed and looking to the university to provide the resources to incorporate it.

NG – The Head of School can write to you with further detail. There have been significant changes in recent years to the ways in which courses are delivered using tech for teaching. We have the octo system and distance learning and we are developing new teaching practice. As a department we’ve been making substantial changes to the curriculum, with new types of courses that are vocationally based with the use of new technologies and for the impending SQE. Regarding wider developments and the Law Council and collaboration more generally there is a more proactive role for law schools to take, into postgraduate programmes and academic research. In recent years there have been links between law and criminology and there needs to be a broader reflection on this. There are other disciplinary tie ups that may prove more fruitful for law in terms of research potential, such as philosophy, technology, IT and maths. Universities have not historically collaborated on this. There are models like this in Cambridge regarding questions of IT design and regulation. Consideration needs to be given to how commercial law and public administration play out in practice. Undergraduate curriculum changes need to have the ground prepared by postgraduate research. It is an organic process that depends on the postgraduate level.

3) What partnership working is in place between Welsh law schools and what are your future plans for building on it?

TJ – There is relatively little formal co-operation currently. There are venues for sharing research and teaching practice. A co-ordinating body like the Law Council proposed by the Commission would be helpful, to focus on areas where we can have an impact, such as PLE and access to justice. The law schools are geographically distinct and competition for students makes common work problematic.

EE – I had anticipated greater levels of partnership working when I came to the sector. The reasons for the current situation are largely historic. With the break up of the University of Wales and the introduction of fees a culture of competition grew up between us. That is the reality of the situation and so initiatives such as the Law Council are crucial. It is enormously difficult to ensure we work in partnership. in a world where resource is limited and we are coming to a crucial point with the SQE. We work in partnership with Aberystwyth and Bangor and, on Economic and Social Research Council (ESRC) programmes, with Cardiff. We are taking a lot of initiatives in Swansea, on skills, technologically driven work and legal tech. The law schools are quite disparate in terms of scale and what they deliver. Bangor and Aberystwyth don't have a Legal Practice Course programme, for example. We need to support what we're doing as a small country and share it through collaboration, but there needs to be give and take. There is collaboration on Welsh language issues through Coleg Cymraeg Cenedlaethol.

UK – Cardiff does collaborate with other universities, such as the GW4 group with Exeter, Bristol and Bath, and with Swansea on ESRC programmes. There is collaboration on doctoral programmes and other ad hoc examples include the Welsh Centre of International Affairs which runs an annual lecture programme. With the support of Coleg Cymraeg Cenedlaethol we could do more and it would be beneficial. Welsh medium would be one area of collaboration, and areas of law requiring reform where there could be joint work across the institutions. Colleagues tend to be reluctant to share materials within institutions, let alone across institutions. There could be sharing across institutions if ownership and other issues were considered. You need people willing to work across institutions with workload allocation and credit for the work being given.

TJ – The University of South Wales has delivered a Welsh law module in the Welsh medium in collaboration with Bangor University and Coleg Cymraeg Cenedlaethol, but the uptake was minimal to continue it for a third year.

UK – The universities work in clinical terms in different areas, such as housing and healthcare, and we could try to plug gaps rather than to compete regarding access to justice, to provide a broader service to the public.

JGO – Bangor University's written submission to the Commission summarises this. We have received support from Coleg Cymraeg Cenedlaethol for a Welsh citizenship module. It is an exciting time for a new Wales this could be expanded into other areas like Welsh literature to enable students to develop a better understanding of Wales and a knowledge of Welshness beyond their own discipline. It wouldn't have to be through the medium of Welsh. With a bit of join up a module could be produced for use across Welsh law schools. I have given lectures to students in Aberystwyth by video link. I am working on

proposals to change agricultural law and the use of arbitration and I would like to work with colleagues in other institutions and to link in with practitioners to develop the idea, which is where the Law Council could come in.

NG – Acknowledging the general environment of competition in higher education poses some challenges to a collaborative ethos. There are doctoral schemes in South Wales and South West Wales with inter-university collaboration, which is very worthwhile and effective. New areas are being developed, with a focus on particular areas in particular institutions, with as much funding as possible. We need an institutional structure where academics have particular roles to develop on an institutional, rather than a personal, basis, with a framework in place to yield something concrete. A Law Council could direct things and move away from the accidental collaboration we see now by taking a proactive role. For example, research on commercial law and public and administrative law could feed into post doctoral research, which may benefit all departments in Wales and the Assembly and the Law Council. Regarding geographic dispersal, we can look to comparative models in Canada and Australia and learn from them.

EE – There are mooted competitions annually in the English and Welsh languages.

4) The Department for Education in England published in 2015 the average salaries five years after graduation of 2009-2010 law graduates. None of the Welsh law schools was in the top 40. What is your assessment of the factors contributing to this?

UK – I haven't been able to find this report and I don't understand or know the methodology for it. The key issue for us would be the destination of students. Around 40% of our graduates go overseas, to well-paid jobs? Are those going overseas included? One question would be the comparative salary levels in the sector in Wales. We do send students to magic circle firms and top chambers, but not in the numbers Bristol and Warwick do.

EE – This is the Longitudinal Education Outcomes (LEO) approach, which is devastating for Wales. None of the Welsh law schools, regardless of the status of the institution, made the top 40. This approach favours areas such as London and the South East of England because it is based on average salaries in the legal profession five years after qualification. How can Wales compete fairly on this basis? There is another approach. Under the current Teaching Excellence Framework (TEF), the approach was DELI, superseded by new DELI, which looks at the destination of higher education leavers and assesses whether students are in graduate level jobs. Welsh universities have done better in that, because it is not comparing salaries five years down the line with salaries for legal professionals in London. Current TEF subject level pilots are predicated on the LEO approach, which is self-evidently unfair for the institutions in Wales. Surprisingly this is potentially double or more weighted over and above the quality of the teaching. None of the Welsh law schools are likely to make the gold standard under this methodology. This is no reflection on the quality of teaching, but of an inherently flawed approach.

TJ – Students in Wales are just as capable, but there is a different market in Wales, compared to places like Manchester and Glasgow, where salaries are more competitive due to the developing legal sectors.

JGO – The types of careers chosen by students is an issue. Our students' counterparts in England are more specialist. Commercial law firms have said our students need to be more corporately and commercially aware. We have therefore introduced a company law module, which is set out in our written submission to the Commission.

NG – This is quite worrying, especially for a subject like law. There are various factors to assess quality and salary is only one way of assessing the benefits of a higher education experience. The nature of the service economy in Wales could explain some of this. This is a wider issue to address and the law schools in Wales could help to develop it. I support the comments made by JGO about orientating students to commercial law subjects. We have a close tie between law and criminology and there is a danger of one-sidedness with this. It is important to have a more sophisticated engagement with commercial law. Some of this may be explained by the market created in higher education, which doesn't reflect the natural market with too much emphasis on the immediate school leaver. There are questions regarding the institutional framework for higher education in Wales within which we are operating. We could be preparing students to be ready for an advanced service sector, to iron out the differences in salary over a 10 to 20 year period.

TJ – We are developing new links and looking at opening up routes to develop courses that reflect the application of legal skills and knowledge in a range of associated careers. The introduction of the SQE provides more scope for creativity within curricula. For example, we are introducing a sports law and business degree which allows students to develop expertise in a specific, worthy, and developing career area.

EE – We are looking to ensure graduates have the skills to mark them out as graduates with the skills that firms are looking for. Legal tech is in some ways a shorthand for this: making graduates more flexible for the future needs of the sector.

UK – In preparation for the SQE, we have developed a separate stream for people going into the law in the UK, with skills to enhance their employability.

5) What impact do you think a change in governance arrangements in Wales (creation of a separate legal system) would have on student numbers (domestic and international) applying to study in Wales?

Wyn Williams referred to a second scenario which assumed that any change in governance arrangements would make it more difficult to practise across the border as in Scotland and that the substantive law would be separated.

UK – I think that the first scenario would push to an international market, to a Qualifying Law Degree, and would potentially limit the attractiveness of the courses to students from overseas. The second scenario requires a clarity of message regarding devolved governance issues. So long as we have a clear message, it would not impact on the recruitment of student numbers. In North America local law is regularly very different. A law degree has a much broader reach. I see it as a positive.

EE – There could be positives.

TJ – I think the first scenario could be managed discretely. Northern Ireland, for example, has a mechanism for Scottish lawyers to transfer through CPD in areas of divergence. The challenge would be to suitably balance the structure of the courses – particularly at undergraduate level. Welsh Universities will need to retain the ability to attract students from other jurisdictions (particularly England) whilst servicing the needs of the Welsh legal profession. Both scenarios are manageable. The second scenario would not be insurmountable, particularly if you have codification.

JGO – Providing LLB law degrees from Welsh law schools continue to be recognised in England, it wouldn't be an issue. If they were not recognised, then it would be a problem.

NG – There are creative possibilities regarding a different configuration, for example of arbitration services. It could be beneficial for the profile of Welsh universities at large. You could retain common law principles within a revised curriculum, offered at international level to continue to attract the overseas market. A separate jurisdiction could be an advantage in attracting students. Wales could be developed as a centre of legal expertise more generally. If managed properly and carefully, it could be very beneficial for the legal sector and the service sector in Wales more generally.

6) What is your role and contribution to building the capacity of the legal sector in Wales, including contact and collaboration with legal practitioners?

UK – We teach undergraduate LLB and Legal Practice Course and BPP programmes and we are the only Russell Group university to offer the Bar exams. We have extensive collaboration with practitioners through Continuing Professional Development (CPD). We offer placements with law firms and barristers' chambers in Cardiff and mini pupillages with top chambers in London and we have a mentoring scheme we run with the legal services department in the Welsh Government. Alumni are very active to provide opportunities for students to work with them.

EE – We do all those things, apart from the Bar exams. The law schools have a role supporting the legal sector, but there is a risk that with all the challenges the sector faces it is something that may get lost sight of. We seek to support the legal professions in a range of ways. In Swansea, law is homed in its own college enabling an appropriate

flexibility of approach.

TJ –At undergraduate level we offer LLB courses, including a Legal Practice Course. We are diversifying our portfolio, including introducing the sports law and business degree noted earlier. This will be complemented with the running of a master class series oriented to the profession, to play a significant role in developing important areas like safeguarding through CPD. We are broadening access to the legal sector, working with partner colleges with those who may not have opted for the degree route. A certificate of higher education in legal studies can provide a gateway into the profession for people who would not have otherwise have done so. We arrange work placements, where law firms come in, and a legal futures event for a two way dialogue between employers and students. We are working with the Legal Wales Foundation to host its annual conference on 11 October. Building these links and networks is crucial. We all share a civic responsibility and a Law Council for Wales would be helpful with that.

JGO – Bangor has a global procurement network and we have had an annual law fair since 2013 where alumni return and it is growing. We have internships with law firms and chambers, which is referred to in our submission. Our students are conversant with practice in, and outside, England and Wales. We are very keen to ensure students are not limited to England and Wales or common law jurisdictions, but have international modules too.

NG – Our primary take is that the civic functions of law schools in Wales include a role towards building a more advanced service economy in Wales. It is a strategic field that is quite open. We have not had the institutional structures in place to develop this and we need to develop them across Wales. We need Welsh legal materials, in public administration and law, developed through collaboration and shared to better serve the needs of Wales across the nation. We have developed a number of employability programmes in Aberystwyth. The head of department could refer us to the person leading this. There are also international aspects to this, with Wales's importance as a jurisdiction enhanced by having an international profile. We collaborate with practitioners on public international law in relation to humanitarian law. The civic functions of law schools are important and there needs to be more strategic thought given to the infrastructure in future. This goes beyond law schools, to an institute of legal language for example.

Simon Davies asked for ideas regarding what collaboration on civic responsibility could involve.

TJ – It could include PLE, with a particular focus on extending public knowledge of routes to access of justice within each Universities geographical and professional footprint.

UK – My wife has been a solicitor in a national firm in Cardiff for ten years and trained at a magic circle firm and she has never encountered a devolved issue in practice. If Wales wants a specific legal identity, could there be compulsory CPD on the Welsh legal system

for those practising in Wales? This is something the universities could collaborate on.

7) What is your role and contribution to ensuring people have access to justice in Wales?

TJ – We have specific projects underway, including the innocence project, legal advice clinics and pro bono work. The concern with extending these activities is that they need to be pedagogically of value and within the resource constraints: their primary function is the education of our students. The waiting list for new clients for the clinic is up to 6 months. Assisting firms or charities undertaking pro bono work may be another way forward and universities can play a role in this.

UK – There is a research dimension to this, with a very strong research theme related to access to justice, particularly in Wales. We have the work of the Wales Governance Centre, law clinics and pro bono work. We cannot cope with the demand. We spend as much as we can, but we have to balance against the needs of the school. We cannot do it as a public service, it has to be beneficial to the students.

JGO – We do a lot of research work, particularly though Dr Sarah Nason.

NG – Pro bono is a useful element for students. We do a lot of research on access to justice, including advanced research on public administration. We have a project on elderly care led by Professor John Williams. Some of it is third party funded. There is a concern that access to justice projects would be very time and resource intensive to the detriment of the primary functions of the law school of developing legal capacity and doing all the things we have already discussed.

EE – This is an important part of the civic mission of law schools and of universities. We have established and built capacity in our law clinic and students work at court help desks and give advice at food banks and charities. We provide welfare training. We support a children's rights agenda through, for example, PLE events, street law, and the children's legal centre. We engage with children at primary and secondary schools. These sorts of engagements are good for students. It helps them hone their skills in a carefully monitored environment. This sort of work is resource intensive.

TJ – Our clinic is supported because it is linked to modules.

UK – Some staff give up their time, for example to deal with immigration appeals or miscarriages of justice.

8) What is the impact on Welsh universities resulting from the Welsh Government's policy of funding Welsh students in English universities?

UK – In relation to undergraduates, we know who our direct competitors are from UCAS data. Some of it is geographical – the Western side of the UK, Aberystwyth, Swansea, Bristol, Exeter, Southampton, Birmingham, Liverpool and Manchester – with the marketization of higher education. In that sense it does make a difference, but the makeup of the university is very mixed with students from across the UK.

TJ – 40% of Welsh students study elsewhere in the UK. The incentives to study in Northern Ireland and Scotland mean that more of them stay within their domestic universities.

JGO – There has been a change in the Welsh Government's policy.

NG – I agree with what has been said. I think there is increased room for the funding of the postgraduate level to improve student employability for Welsh domestic students. Postgraduate courses could be incentivised differently to develop the legal sector in Wales. There are creative opportunities to look at developing collaborative programmes with North American and European universities to develop a Welsh solution to this by allowing Welsh students based in Wales to benefit from the horizon expanding experiences that students get when they leave to study elsewhere.

In response to Lord Thomas commenting on an impact of the policy being the best students are leaving Wales, there was a general view that the encouragement to the brightest and best students to go to universities outside Wales suggested that Wales is second best.