

**Commission on Justice in Wales**  
**Oral Evidence Session**  
**13<sup>th</sup> December 2018**

<b>Present:</b>	<b>Commission members</b>	<b>Secretariat team</b>
Professor Iwan Davies (ID) Professor Dan Wincott (DW)	Lord Thomas of Cwmgiedd, Chair Simon Davies Professor Elwen Evans QC Dr Nerys Llewelyn Jones Juliet Lyon CBE Sarah Payne CBE Professor Rick Rawlings	Andrew Felton, Secretary to the Commission Dave Gordon Chris James Rhys Thomas
<b>Question area: Redesign the curriculums of law school degrees in light of the rise of technology-driven legal practice</b>		
<ul style="list-style-type: none"> <li>• ID: In terms of Chief Justice Menon’s lecture, legal education in Singapore and Wales share a common heritage in the person of Professor Lee Sheridan. Menon CJ quoted Lee Sheridan in the lecture. He established and was head of the Law School in Cardiff and was the key consulting expert resulting in the establishment of the Law School in Swansea. The substantive point that Menon CJ made was the power of imagination, unity of purpose and the courage for and power of change. Menon CJ was concerned with defining “what” is a law school. The democratic conditions in Singapore are very different to the situation in Wales. By way of counter balance to his lecture, I refer the Commission to a Canadian study by Roderick Macdonald and Thomas McMorro published in the Alberta Law Review and entitled “Decolonizing Law Schools”. Here they are concerned not so much as defining what a law school is, but who is a law school. In this respect they put the human rather than the machine to the foreground in developing law schools. Law schools in Wales are competitive and they need to embrace imagination, the power and courage to change and unity of purpose.</li> <li>• If you were to deconstruct law schools, there are five or six areas of activity that they focus on and what you do in practical terms depends on the areas of activity and priority for the respective law school. What impact should law schools have on the world, where do they see themselves, how do they operate in the context of their respective university, what role should a law school have in the context of the law and how do Welsh universities develop society in Wales? We need to decide what area of priority we give to the law schools. I believe in allowing talented creative focused people the opportunity to express themselves and take their law school with them to respond to changes. There is no uniform law school in Wales and they don’t look the same or operate at the same scale. Some are barely viable so what you do depends on the resources you have. When Lee Sheridan was appointed to Cardiff in the 1960s he translated the degree qualification to the LLB. It depends where the universities see themselves in the world. The approach of Menon CJ is a particular and perhaps overly prescriptive approach.</li> <li>• DW: DW: Menon CJ’s speech highlighted technology and legal education as well as ethics and the importance of education in developing ethical lawyers. There is a tension between these two things. Those at the cutting edge of technology haven’t always adhered to the highest ethical standards. I would clarify that I’m not a lawyer by academic background but what strikes me about the law school is that the important work going on is not always around the formal curriculum. Students’ understanding as part of the process of becoming lawyers is often shaped by extra curricula activity in which they are involved. This shapes their ethics much more than what can be taught in a classroom. The existing dominant approach to legal education has a heavy hand of history lying on it. Even in a large law school there is particular effort around core topics and these risk making the law school backward looking. The relatively new law school at York has developed a practice based approach to legal education. It brings in what has previously and is elsewhere extra curricula activity to the core of the curriculum. Technological change is moving at a pace and is disruptive. There is a role for universities to address this. But it’s not clear to me that law schools and universities are dealing with this or indeed are well placed to deal with it. A more interdisciplinary approach is needed. In Cardiff University there is a social science and computer science lab bringing big data and Artificial</li> </ul>		

Intelligence into social sciences education. Perhaps going back to the “law and...” model of educational approach is a way forward. How you reconsider the curriculum of a law school to integrate those issues poses a greater challenge. The Solicitors Qualifying Examination (SQE) is already bringing challenges. The scale of resources needed to properly work through a new curriculum is greater than the gift of law schools alone. Any attempt to address effectively the challenges raised by the SQE will need the engagement of those higher up in universities who are able to take resource decisions and set the environment and context for law schools. Disruptions are also affecting other areas like business schools.

**Question area: Improved partnership working between the Welsh law schools. Views on the proposal for a Law Council of Wales**

- DW: There are elements of collaboration and competition between law schools in Wales. I do not accept that there is no collaboration. That said the capacity of law schools is an issue. I arrived in Cardiff 10 years ago and at that time we had a law school producing no PhD students and there was no funding to support PhD students. Over the next few years we won resources from the Arts and Humanities Research Council (AHRC) and there has been a stream of studentships coming through that route. The Economic and Social Research Council (ESRC) also supports doctoral training in law, and has probably supported more PhD candidates than the AHRC in Welsh law schools in recent years. The partnership model is a critical element to that funding. As part of that, Cardiff included collaboration with Swansea in the area of environmental law in its bids for funding. Increasingly academic lawyers tend to have PhDs and more are now being produced. Collaboration is challenging both in terms of how to maximise it and to minimise competition. Collaboration would increase if resource was given to support it. The Coleg Cymraeg has led to collaboration in Welsh medium provision. Colleagues do collaborate but incentivisation is a key feature. The Commission’s Law Council proposal could be helpful, but there is a risk it becomes a forum for non collaboration. When I arrived in Cardiff I felt it was proud to be a Russell Group university but a bit embarrassed it was in Wales. I have the sense it saw itself as a law school of England and Wales. The idea that it would have a mission for the city of Cardiff and the nation of Wales was not absent but was not as strong as it might have been. That sense has changed substantially. There was a project of work involved in changing the sense that to be engaged with Wales was seen to be inward looking and parochial. There is a legacy effect against collaboration with other Welsh universities. I suspect there is a wider dilemma for the Commission as this wouldn’t have been the case if there was a separate Welsh jurisdiction. I’m from Scotland and there is a sense of the rooted Scottish mentality in the separate jurisdiction whilst in Wales there is a need to conjure up a new mentality.
- ID: There is collaboration in doctoral research programmes where Universities have levered in research funding, particularly in the context of life sciences and engineering. In research relating to law in the broadest sense, there has not to date been an intervention by the Welsh Government. There are national research networks that have clear focus and areas of priority in presenting Wales in some subjects. In these national networks the pool of PhD students is less institutionally aligned and more enthused instead by their subject areas. They collaborate almost naturally. The National Research Networks show where collaboration can work and are an interesting precedent in the area of law scholarship. In a post Brexit world, where does government focus building capacity? Innovate UK encourages regions and areas to showcase their own innovative capability. We haven’t measured our own strengths in this area. Coleg Cymraeg Cenedlaethol is a good example of collaboration and a funding initiative to build capacity for Welsh language teaching. Could a model like the Coleg Cymraeg Cenedlaethol be one relevant to supporting the emergence of a Welsh jurisdiction? How do we develop and continue to develop authoritative texts for such a thing? In 10 years, the Welsh university education environment has changed and there has been the demise of the University of Wales. The quality mechanisms of the universities were reflective of the universities themselves, and that was the problem of the University of Wales. It is difficult to have a single quality audit mechanism that expresses the missions of the various universities in Wales. Quality assurance is important to ensure compliance and there are technical challenges with this. The federal system has had its day. In addition, there are now four higher education systems in the UK. Is there something about operating in an inter-connected world that can differentiate our offering in Wales? We now have

autonomy in a framework of inter-connectivity. That said, the Welsh system is still very small and as a comparator the University of Manchester is the same size, in terms of turnover, as the research intensive Welsh Universities of Aberystwyth, Bangor, Cardiff and Swansea put together.

- DW: The Law Council proposal goes beyond the university sector. For collaboration amongst universities, I can see merit in a forum that brings universities together with other important aspects of the law in Wales. In that dimension, the proposal could be developed and that might be one of the ways in which university members of the Council could be drawn to collaborate in an effective way. I would want a clearer sense of the aim of the Council. Bringing people together is good but it needs to have a clear purpose. The heads of law schools used to talk to the Permanent Secretary and have regular meetings. They were interesting and helpful conversations but I was left with the impression that something was sought from us but it was always not clear what that was. It is important to avoid a sense of a lack of clarity. There is a danger sometimes that people have an idea of the law school and what happens internally but it doesn't match the reality of the life of law schools. The idea that academics would be able to provide clear and accessible statements of Welsh law as it stood in any particular time does not recognise the expertise of law schools.
- ID: I am not sure how much more the Council would offer over the Legal Wales Foundation if the latter was properly resourced.

**Question area: Increase the earning capacity of Welsh law graduates**

- DW: The quickest way to raise the earning capacity of Welsh law graduates is to get them to join 'magic circle' law firms and leave Wales! This is a significant dilemma in the context of Wales being the least economically successful part of the UK. How can we find a way to make the practice of law in Wales generate more money? Schools and legal practices would, in an ideal world, work together. And it's an issue not just for law schools but for business schools, science and innovation and others. Universities need dynamic business partners. They can't solve this issue on their own because it's an issue of the economic dynamism of Wales. There is an important role for the Universities here – but a clear overall strategy is needed, with the place of the Universities within it clearly and carefully defined.
- ID: There is quite a lot of disquiet in relation to the new funding framework potentially where this is linked to the Longitudinal Earnings Outcome ("LEO") data. The reason for this is that Welsh law schools are based in some of the economic poorest area of the UK where earnings are by definition likely to be lower. In any event, performance indicators are now available through Unistats and in the light of this the information provided to prospective students by the Teaching Excellence Framework is questionable. In terms of the LEO, there are few private school students in Welsh universities and this again impacts upon earnings. I draw the Commission's attention to the fact that prior attainment is the highest indicator of earnings potential. A number of Welsh law schools are concerned to widen access for legal education and as a result, A level points are lower. There are wide differences to earnings potential among law schools in the UK. For example, the median salaries for graduates from Oxford, Cambridge, UCL and LSE are double those from Lancaster, Liverpool and Leicester.

**Question area: Impact of potential change in governance arrangements in Wales (creation of a separate legal system) on student numbers (domestic and international)**

- ID: A potential change in governance should not affect universities. The topography of what happens on the ground is worth noting. We are a net importer of English students with a third more coming to Wales than Welsh domiciled students going to England. Grants don't make a difference as to where students decide to go. Fees levels in Wales have in the recent past, been less than those charged in England. The fundamental issue is the attraction of Welsh law schools. Data from 2013 to 2016 shows that 11,000 applications were made by Welsh domiciled students to Welsh universities per annum to study law but only around 1,500 students stay in Wales to pursue legal education. A number of Welsh students go to England to study law - the draw of Oxford, Cambridge and jobs in 'magic circle' firms are clear. What is important for Welsh law schools is to focus not only on the curriculum but also on extra curricular activities that give a wider experience for students. The nature of legal education should not change with a separate jurisdiction. In fact Wales could be part of an international dimension promoting the common law as a system of law within the common law world.

**Question area: Use of international common law system to create a global brand for Welsh law schools and attract international students**

- DW: Welsh law schools already have students that come from Malaysia, Canada, Kenya, West Indies and from across the Commonwealth. There is a risk that the Welsh curriculum could be presented as narrow and inward looking. My sense is that this risk can be addressed by being self confident and ensuring how the curriculum develops and still remains part of the common law system. The SQE is the big issue currently. The offer now is on the basis of having an education in the law of England and Wales. Equally, in Wales, the Government and the National Assembly for Wales are more open to universities than in England. This provides access to a law making system and is attractive from wherever you come from to study. That would be of interest to people from Canterbury, Calgary and Kuala Lumpur. When I was head of Cardiff law school I was often asked to play a part of Welsh Government pitches for global companies. The nature of the legal sector in Wales was part of economic development pitches to international businesses looking to invest in Wales. Wales has cultural affinity to people globally. International students are important in the world in which we live now and importantly Wales is part of the international common law family.
- ID: The SQE provides an opportunity to reimagine the legal curriculum. The current curriculum is easy to understand and the competitive element in terms of the offering is less. The question is how the law schools operate in the wider university environment. How difficult will the landscape become? The policy landscape is currently complex.

**Question area: Research Excellence Framework exercise support for specific research for Wales**

- DW: This is a double-edged matter. There is a danger that research on Welsh issues and funding specific to Wales is seen as parochial, although there may also be advantages to Welsh universities of doing research on Welsh issues. The issue comes from being a small nation with close relationships and making a significant impact. Impact is a major issue for leveraging financial support for law schools. To me, the evidence suggests that Welsh universities have done particularly well in aspects of REF related to impact.
- ID: The impact element is important and the definition of impact should help Welsh law schools contextualise research on jurisdictional matters in respect of Wales and there is a perception from the Higher Education Funding Council for Wales to support studies relating to Wales. Under anticipated legislation to support post compulsory education it is likely that quality related funding supporting research will come under the auspices of a new research and innovation committee, a semi autonomous body hypothecating funding. It is important to remember that currently the funding pot to support quality research in Wales is only slightly over £1m and this is not going to change the research landscape relating to law in Wales. Scale matters and scale in Wales is still small. We need to talk about nurturing capacity in Welsh law schools. The National Research Network concept is good and a means of attracting global talent to Wales. The concept of a Welsh jurisdiction in global terms could work. Michael Cronin talked about 'micro cosmopolitanism' and I see a Welsh jurisdiction as being a part of that micro cosmopolitanism.
- DW: My sense is that law schools across the UK have not been too good at winning research grants. They may have had the feeling they didn't really need those sorts of grants. There are all sorts of changes that mean more and more academics are minded to apply for funding. Welsh law has changed dramatically and keeping up with that takes longer to keep on top. I would point to a number of changes that are already well in train in terms of the government funding environment that may be particularly challenging for Wales. A number of autonomous funding councils have recently become an advisory body for one council, UK Research and Innovation. The process of centralisation has created thematic areas for funding such as international development, and enhanced industrial performance in the UK. These priorities are primarily set in Whitehall. The role of devolved governments in setting these priorities could be clarified and developed. The mechanisms and processes associated with these new funds are still being developed. I would expect that they will become clearer over the coming period. I have concerns about the capacity of Welsh universities – and particularly the law schools - to make the most of the new funding coming from these large-scale funds.

**Question area: Impact on Welsh universities due to Welsh Government's policy of funding Welsh**

### **students in English universities**

- ID: We live in a market economy of higher education. We are net importers of students from England. It would be a disaster for Wales if the UK Government failed to fund students from England coming to Wales. The arrangement is reciprocal, even if the precise level of funding varies a little. Welsh universities have a huge global resonance. The “Seren initiative” pushes people to look outside Wales. This needs to be corrected by making sure Welsh institutions are involved in that initiative.
- DW: There is merit in exploring the possibility of having new schemes in Welsh universities that offer particular opportunities to specific cohorts of students.
- ID: There is evidence that Welsh medium education students go to England for their undergraduate qualification. Where this occurs, our challenge is to attract students back to Wales as postgraduates. The extent of this challenge should not be underestimated as postgraduates tend to stick where they had their undergraduate education.