

Commission on Justice in Wales
Oral Evidence Session
13th December 2018

Present:	Commission members	Secretariat team
Professor Thomas Watkin (TW) Dr Catrin Fflur Huws (CFfH) Nerys Hurford (Translator)	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

Question area: Balance for law schools between the specific needs of Wales and educating students in the context of common law

- CFfH: Mae sefyllfa addysg uwch yn y Deyrnas Unedig oherwydd ffioedd addysgu wedi creu sefyllfa lle mae'r farchnad yn arwain y ddarpariaeth yn lle'r brifysgol yn cynnig gwasanaeth. Mae'r gyrrwyr o ran ymchwil ac effaith o ran ymchwil rhyngwladol yn mynd yn erbyn y syniad o ddadansoddi manwl cyfraith penodol. Mae prifysgolion yn ceisio denu cynulleidfa mor eang a phosib. Gan hynny, mae pwyslais ar hybu cyfraith rhyngwladol a chyfraith fasnachol, h.y. cyfraith fel pwnc sydd yn croesi ffiniau cenedlaethol. Mae'n fwy newydd a niche, ac mae'r darpariaeth ar gyfer cyfraith Cymru yn cael ei gweld fel cael ei dysgu i Gymry Cymraeg. Mae cyfraith Cymru yn cael ei anwybyddu mewn gwerslyfrau Cymraeg. Mae'n ddibynnol iawn ar unigolion.
- The position of higher education in the United Kingdom due to tuition fees has created a situation where the market is leading the provision instead of the university offering a service. The drivers of research and impact in terms of international research go against the idea of detailed analysis of a particular law. Universities in Wales try to attract students from across the world. Therefore there is an emphasis on teaching international and commercial law that cross national boundaries. position of law in Wales can be at odds with a notion of traditional law. It is more new and niche, and the provision for Welsh law is seen as being taught to Welsh speakers. Welsh law is ignored in Welsh language textbooks. It is very dependent on individuals.*
- TW: I can't see a problem with Welsh law schools placing some emphasis on Welsh law. Many international students graduate here and return to qualify within their own jurisdictions. The notion that English students will struggle due to studying Welsh law seems odd. The truth is that there has not been a readiness across England and Wales to embrace the law as affected by devolution. It does not have a place within textbooks. If we are a single jurisdiction the teaching of law within the context of devolution should be included. The unwillingness of research funding exercises to recognise the writing of core textbooks as being worthwhile has militated against the development of Welsh law textbooks.
- CFfH: Mae'n dibynnu ar unigolion os yw cyfraith tir yn adlewyrchu cyfraith landlordiad a thenantiaid Cymru. Mae dallrwydd bron yn fwriadol tuag at gyfraith Cymru er bod gan bobl y gallu i'w ddysgu. Mae'n dibynnu ar ba unigolion sy'n dysgu cyfraith tir mewn Prifysgolion. Mae awduron gwerslyfrau yn anwybyddu cyfraith Cymru yn llwyr. Mae yna lyfrau am gyfraith cynllunio a chyfraith tir sy'n anwybyddu cyfraith Cymru. Dwi ddim yn gwybod y sefyllfa mewn Prifysgolion eraill, mae yna ddiddordeb mawr ym Mhrifysgol Bangor ond dwi ddim yn gwybod am y lleill. Dwi'n dysgu Cyfraith Cymru o'r safbwynt bod gan gyfraith Cymru feddylfryd gwahanol ac hefyd gwahaniaethau ymarferol. Rwy'n credu y dylai fod datblygiad pellach mewn meysydd cyfreithiol eraill. Mae yna feddylfryd gwahanol o sut mae gweithredu polisiau gwahanol mewn cyfraith trosedd a mae mwy y gellid ei wneud o fewn pynciau craidd a phwysleisio bod cyfraith Cymru yn datblygu.
- It depends on individuals if land law reflects the law of landlords and tenants in Wales. There is almost a deliberate blindness towards Welsh law although people have the ability to learn it. It depends on which individuals teach land law in universities. The authors of textbooks completely ignore Welsh law. There are books about planning law and land law that ignore Welsh law. I don't know the situation in other universities, there's a lot of interest at Bangor University but I don't know about the others. I am teaching Welsh law from the perspective that Welsh law has a different mind set and also practical*

differences. I think there should be further development in other areas of law. There is a different mind set about how to implement different policies in criminal law and there is more that could be done within core subjects and emphasising that Welsh law is developing.

- TW: I think the argument is that you should teach the basics of common law so that students can adapt their learning to the jurisdiction to which they return. Students from countries like Canada have been willing to study law here, perhaps because they know that they have to adapt their learning to the multiple jurisdictions at home.
- Landlord and tenant is generally an optional albeit popular subject, but many subjects where a distinct Welsh law is developing are not core subjects. However, as long as one is learning how the law operates in a common law jurisdiction, students should be able to adapt their learning to other similar jurisdictions.

Question area: Encourage more Welsh speaking students to study through the medium of Welsh

- TW: Mae angen sicrhau bod nhw'n cael eu dysgu yn yr un modd: defnyddio gwrslyfrau, mynd i ddarlithoedd. Mae prinder gwrslyfrau a llenyddiaeth yn effeithio ar y dewis. Mae'r broblem yn dechrau cyn cyrraedd y brifysgol. Weithiau, mae unigolion yn dewis astudio'r gyfraith fel pwnc am lefel A ac yn symud i goleg chweched dosbarth er mwyn gwneud hynny. Yna, mae'r gyfraith yn cael ei dysgu trwy'r Saesneg. Mae hynny'n golygu bod myfyrwyr yn anhebygol o newid yn ôl i'r Gymraeg wrth gyrraedd y brifysgol.. Mae angen i'r neges bod modd iddynt astudio'r pwnc trwy'r Gymraeg gyrraedd cyn i fyfyrwyr gyrraedd y chweched dosbarth. Mae hyn yn ei hun yn broblem, ac yna mae'r broblem o ddifyg llenyddiaeth yn gwneud pethau'n waeth. Hefyd, mae'n rhaid i fyfyrwyr sy'n astudio trwy y Gymraeg wneud mwy o waith trwy ddysgu termau yn y ddwy iaith. Mae'r broblem yn cael ei datrys os oes llenyddiaeth. Os nad oes, byddai'r broblem yn debyg i'r sefyllfa mewn ysgolion genhedlaeth yn ôl.
- TW: *It is necessary to ensure that they are taught in the same way: using textbooks, going to lectures. The lack of textbooks and literature affects the choice. The problem begins before reaching university. Sometimes, individuals choose to study law as a subject for A level, and move to a sixth-form college to do so. There, Law is taught through the medium of English. That means that students are unlikely to switch back to Welsh at University. The message that they can study through the medium of Welsh needs to get through before students reach the sixth form. This is a problem in itself, and then the problem of the lack of literature makes things worse.. Moreover, students studying through the medium of Welsh have to do more work by learning terms in both languages. The problem is solved if there is a literature. If there is not, the problem becomes similar to that in schools a generation ago.*
- CFfH: Mae ffurflen canolwyr ar gyfer Inns of Court yn gofyn faint o addysg oedd trwy'r Saesneg. Mae'n rhaid mynd allan o Gymru i gynhwysofel bargyfreithiwr. Mae Saesneg yn iaith ddominyddol. Mae 'na wefannau dwyieithog gyda'r fersiwn Gymraeg heb ei diweddarau. Y neges yw gwnewch bethau trwy gyfrwng y Gymraeg ond mae'n gystadleuol am y 165 o training contracts yng Nghymru bob blwyddyn. Mae Llywodraeth Cymru yn hybu pobl i fynd i Rhydychen a Chaergrawnt felly dyw'r manteision o addysg Gymraeg ddim yn cael ei bwysleisio. Dyw myfyrwyr ddim yn gweld y manteision.
- *Referee forms for Inns of Court ask how much education was in English. There is a need to get out of Wales to qualify as a barrister. English is a dominant language. There are bilingual websites where the Welsh version has not been updated. The message is to do things through the medium of Welsh but it is competitive for the 165 of training contracts in Wales each year. The Welsh Government is encouraging people to go to Oxford and Cambridge so the benefits of Welsh-medium education are not being emphasised. Students don't see the benefits.*

Question area: Use of technology to share resources in Welsh language teaching

- CFfH: Defnydd helaeth wedi ei wneud o fideo gynhadledda i addysgu rhwng prifysgolion. Mae'r realti bod prifysgolion hefyd yn cystadlu yn erbyn ei gilydd eto yn broblem.
- *Extensive use has been made of video conferencing for teaching between universities. The reality is that universities are also competing against each other which again is a problem.*
- TW: Un peth sydd yn help yw e-lyfrau sy'n arbed cost. Mae hwn yn broblem hefyd oherwydd o'r hyn dwi'n clywed gan Wasg Prifysgol Caergrawnt yw bod e-lyfrau ddim yn boblogaidd yn y dyniaethau. Yn

y gyfraith mae myfyrwyr yn dueddol o defnyddio llyfrau go iawn. Os defnyddio e-lyfrau dylen nhw fod yn e-lyfrau go iawn trwy ddefnyddio hyperlinks, a nid PDF o lyfr go iawn. Mae'n rhaid bod yn fodlon symud gyda'r dechnoleg a newid sut mae pethau'n cael eu gwneud, ac nid yn unig defnyddio'r technoleg i wneud pethau fel yn y gorffennol. o .

- *TW: One thing that helps is e-books which save costs. This is also an issue because from what I hear from Cambridge University Press e-books are not popular in the humanities. In Law students tend to use real books. If e-books are used they should be a proper e-books with hyperlinks, and not a PDF of a real book. We must be willing to move with the technology and change how things are done, and not just use the technology to do things as in the past.*

Question area: Accessibility of Welsh law

- CFFH: Nid yw cyfraith Cymru mor hawdd i'w ganfod a chyfraith yng Nghymru a Lloegr. Mae myfyrwyr yn cael llawer o'i gwybodaeth o werslyfrau sy'n anwybyddu cyfraith Cymru. Mae'r adnoddau cynradd yno ond mae myfyrwyr yn ddibynnol ar werslyfrau. Mae myfyrwyr wedi mynegi bod rhaid iddyn nhw fynd i adnoddau cynradd i ffeindio'r wybodaeth yn hytrach na mynd i werslyfrau. Mae'n fwy o sialens. Mae'r rhai sydd yn frwdfrydig yn derbyn y sialens ond mae rhai yn ei weld yn rhy anodd. Mae gan gyhoeddwyr, academyddion, y Cynulliad a Llywodraethau Cymru, a San Steffan gyfrifoldeb i wneud pobl yn ymwybodol bod yna gyfraith Cymru a chyfraith Lloegr. Mae'r newyddion yn dueddol o anwybyddu bod y sefyllfa yn wahanol yng Nghymru.
- *Welsh law is not as easy to find as the law of England and Wales. Students get much of their information from textbooks that ignore Welsh law. The primary resources are there but students are dependent on textbooks. Students have indicated that they have to go to primary resources to find the information rather than go to textbooks. It's something they find more of a challenge. Those who are enthusiastic accept the challenge, but some see it as too difficult. Publishers, academics, the Assembly and the Welsh Government, and Westminster Government have a responsibility to make people aware that there is Welsh law and English law. The news tends to ignore the fact that the situation is different in Wales.*
- TW: Much of the discussion turns on the difficulty that only primary sources are available bilingually. The key thing is that students, practitioners and the public generally do not turn to primary sources as their first point of reference, but rather to a book or an online source. If one could encourage Welsh academics to embrace publishing on Welsh law then that would transform the situation. Regrettably, one of the things that is excluded from the legislative competence of the Assembly is the Research Councils, so that they cannot be required to have due regard to the needs of Wales. Wales and Welsh needs are often only considered at the end of the planning stage rather than considered from the outset.
- CFFH: Mae mesur safon ymchwil yn digwydd ar lefel ganolog. Nid yw'n cymryd i ystyriaeth materion lleol, mae'n edrych at effaith rhyngwladol. Mae'n pwysleisio safbwynt gwyddonol yn hytrach na safbwynt cyfreithiol.
- *Measuring the quality of research is centralised. It does not take account of local issues, it looks at international impact. It emphasises a scientific rather than a legal viewpoint.*

Question area: Increase number of law textbooks referring to Welsh law

- TW: In trying to develop books on Welsh law, due to the approach taken by research assessments, the activity is more attractive to practitioners rather than to academics. The recent books on Welsh public law have been written by practitioners, and not one bid has been received from an academic. The books in the Welsh language have also mainly been written by practitioners with little take up from the academic community. There is also a commercial issue as the market is small and is not attractive to publishers. One London publisher did begin to look at treating Welsh law as a loss leader to ensure that its publications were comprehensive, but it came to nothing. The problem therefore has various dimensions. It is difficult to find other small countries or devolved regions in a similar predicament, because they generally have their own legal systems. That degree of separation in the administration of justice impacts on the way law is taught within their universities and a literature follows. The sense of identity has an effect on teaching. Over a decade ago, a report by 'critical friends' on legal research at Cardiff University opined that Cardiff could not plead what was termed 'the Belfast principle', that is that its legal academics could not claim to be meeting the needs of Wales as could their counterparts

in Northern Ireland, the distinction being that there was no separate jurisdiction.

- CFFH: Rwy'n tybio byddai datganoli trosedd i Gymru yn agor llawer o gyfleoedd i'r adrannau cyfraith, troseddeg a heddlu i weld sut ma polisiau Llywodraeth Cymru yn gweithredu yn wahanol i Loegr. Mae eisoes sail ymchwil ac addysgu i hyn ym meysydd cyfraith ieuencid. Byddai datganoli Cyfiawnder troseddol yn gwneud i bobl sylweddoli bod cyfraith Cymru a Lloegr yn wahanol oherwydd hynny sy'n denu sylw myfyrwyr i ddechrau. Byddai hyn yn arwain at fwy o ymwybyddiaeth o feddylfryd wahanol a gweld bod yna gyfraith arwahan yng Nghymru. Byddai'n gwneud dysgu cyfraith Cymru yn fwy diddorol a pherthansol.
- *I believe that devolving criminal justice to Wales would open up many opportunities for the law, criminology and police departments to see how Welsh Government policies are operating differently to England. This is already underpinned by research and teaching in the areas of youth law. Devolution of criminal justice would make people realise that the law in England and Wales is different, and that's what initially attracts the attention of students. This would lead to a greater awareness of a different mentality and see that there is separate law in Wales. It would make Welsh law learning more interesting and relevant.*
- TW: Criminal law is a core subject but criminal justice is not. The devolution of criminal justice would probably be enthusiastically embraced as this would lead to the possibility of comparative studies, the significance of which would not be limited to Wales. Some devolution of criminal justice could therefore be a spur towards academic studies and publications.
- CFFH: Mae'n dibynnu ar be sy'n cael ei ddysgu ar gyrsiau ymarferol cyfreithiwy. A ydy polisiau yn mynd i ymddangos ar Solicitors Qualifying Examination (SQE)? Os ddim mae'n mynd i liwio be sy'n cael ei ddysgu.
- *It depends on what is taught on the legal practice courses. Are policies going to appear on the Solicitor Qualifying Examination (SQE)? If not, it is going to impact what is being taught.*

Question area: Increase the number of law textbooks through the medium of Welsh

- TW: This is a question debated for over 20 years. The publishing initiative by the Coleg Cymraeg Cenedlaethol is probably the most successful so far although the books are being largely written by practitioners. However, there is no clear business plan to approach it in a way which is not entirely dependent on subsidy. The economics of the task have not been looked at to see if it could be self supportive. Self publication through the universities could well be self financing. I say this on the basis of experience elsewhere where for a print run of 200-300 copies per volume, the unit costs of hard copy books with high quality paper is between £10 to £15, so that paperbacks would be even less.
- CFFH: Mae yna anghysoneb o fewn cyd-weithio rhwng prifysgolion. Nid yw cynhyrchu gwerslyfrau Cymraeg yn sicrhau mantais i'r cynghorau ymchwil. Mae'n cael ei weld fel defnyddio llawer o adnodd ar gyfer grwp bychan. Mae adrannau yn meddwl nad yw'n defnydd da o adnoddau. Yr anhawster i geisio cyd-weithio yw bod yna ymdeimlad o gystadleuaeth. Er mwyn datrys y broblem o gyd-weithio mae'n rhaid i brifysgolion weld mantais economaidd iddyn nhw fel sefydliad yn hytrach na gwasanaeth i gymdeithas.
- *There is a disparity within inter-university working. The production of Welsh language textbooks does not guarantee an advantage with the the research councils. It is seen as using a lot of resource for a small group. Departments think that it is not a good use of resources. The difficulty in trying to work together is that there is a sense of competition. In order to solve the problem of co-operation, universities must see economic advantage for them as an organisation rather than a service to society.*
- TW: There may be fears attaching to doing research work through the medium of Welsh. My own experience of the Research Excellence Framework is that when work is submitted in Welsh it is put to someone suitable to review. The problem is that in all likelihood you are only sent one piece and therefore cannot be as clear on overall standards. That is also true for contributions written in other languages; for instance written work about Italian law in the UK which I have also been involved in assessing. There is a fear, justified or not, that writing in Welsh will not be treated in the same way as writing in English, whereas in fact it is treated fairly, but with the caveat about comparison which I already mentioned.
- CFFH: Mae ysgrifennu mewn iaith nad yw'n Saesneg yn golygu eich bod yn creu risg bod eich gwaith yn mynd i gael llai o effaith. Y syniad yw ei bod yn saffach cyflwyno erthyglau Saesneg i'r REF gan ei

fydd yn haws i'r panel ddarllen. Dyna yw realti'r sefyllfa. Dim diffyg annogaeth ar un lefel ond pam mae'n dod lawr i'r cwestiwn pa rai i roi mewn i'r REF mae'n fwy tebygol bod erthyglau Seisneg yn cael eu dewis.

- *Writing in a language that is not English means that you create a risk that your work is going to have less impact. The idea is that it is safer to submit English language articles to the REF as it will be easier for the panel to read. That is the reality of the situation. There is no lack of encouragement at one level but when it comes down to the question of which ones to put into the REF it is more likely that English articles are selected.*

Question area: Welsh language capability

- TW: When I first came to work for the Welsh Government it was the most bilingual environment in which I had ever worked. There was no difficulty in recruiting quality bilingual staff. That was also my experience in recruiting staff in Bangor University; I could recruit high quality staff who were bilingual. However, there is a suspicion always that you can't recruit bilingual staff at the right level. Ironically, part of the problem now is that the establishment of the National Assembly, the Welsh Government and S4C has drawn quite a large number of bilingual lawyers from the relatively small pool. However, it is in the interest of these organisations to ensure succession planning. The Welsh Government did have a rolling programme of telling students about the importance of bilingualism in legal services. We invited students to come to Cathays Park and Cardiff Bay to see Welsh law-making in action. Then came 'austerity' and the initiative came to an end. Things can be done to spread the message by organisations that have benefitted greatly from having bilingual lawyers.
- CFfH: Mae 'na wahaniaeth rhwng gweithio'n ddwyieithog a gweithio yn Saesneg a chyfieithu i'r Gymraeg. Mae angen i'r Llywodraeth a'r Cynulliad arwain y ffordd. Nid yw'r archif genedlaethol wedi archifo fersiwn Gymraeg Comisiwn Richard.
- *There is a difference between bilingual working and working in English and translating to Welsh. The Government and Assembly need to lead the way. The National Archive has not archived the Welsh version of the Richard Commission report.*

Question area: Collaboration between universities on Welsh language teaching and material and the role of the Coleg Cymraeg

- CFfH: Mae'r Coleg wedi annog datblygiadau i weithredu ond digwyddodd mewn cyfnod lle roedd Prifysgolion yn dechrau cael eu rheoleiddio yn fwy gan y farchnad. Mae'n rhoi cyfrifoldeb ar y Coleg Cymraeg sy'n arwain at brifysgolion i deimlo bod llai o gyfrifoldeb arny'n nhw. Ond mae'r Coleg yn tynnu'r brifysgolion at ei gilydd.
- *The Coleg has encouraged developments to take place but it has happened at a time when universities were beginning to be regulated more by the market. It places a responsibility on the Coleg which leads to universities to feel less responsible. But the Coleg draws the universities together.*
- TW: It is something of a tragedy that devolution occurred at roughly the same time as the federal University of Wales collapsed. Not that there was much co-operation even then, but there was the opportunity of working together. The Coleg Cymraeg Cenedlaethol is perceived by many as a new funding body with universities competing for that funding. I have seen a great variation in attitude across the sector over the years, and a lot depends on individual heads of schools. At one point, two members of what is now the Coleg's law panel were heads of schools. Now by and large there are no senior members on the panel. Quite often funding decisions are now taken outside of the law schools as they are now not fully in charge of their budgets. Sharing resources across the sector is the way forward and it has been tried with lecturers travelling between universities, but a great deal can change regarding willingness to do this when there is a change in a head of law school.
- CFfH: Mae'r prifysgolion i gyd yn teimlo eu bod yn cystadlu. Ychydig iawn o brifysgolion sydd gyda staff sy'n aros yn yr un lle ac yn datblygu galluoedd. Mae angen i'r prifysgolion unigol allu ymrwymo i hyn a bod yna fantais i'r brifysgol a'r staff. Mae angen i adrannau a sefydliadau weld gwerth cyfraith Cymru.
- *All the universities feel that they are competing. There are very few universities with staff who remain in the same place and develop expertise. The individual universities need to be able to sign up to this and there is a benefit to the university and staff. Departments and organisations need to see the value*

of Welsh law

- TW: Collaboration in Welsh medium education needs to be imposed from above. The need is not just for lawyers who can deal with devolved Welsh Law through the medium of Welsh, but also for lawyers who can conduct cases and provide their services generally through the medium of Welsh to meet the requirements of the Welsh Language Acts and Measure.
- CFfH: Mae'n rhaid i hyn fod yn gydradd rhwng y prifysgolion. Y risg yw os oes gan adran lawer o siaradwyr Cymraeg yna y teimlad yw ein bod ni'n defnyddio ein hadnoddau i gynnal adrannau mewn prifysgolion eraill.
- *This has to be equal between the universities. The risk is that if a department has many Welsh speakers then it is felt that we are using our resources to support departments in other universities.*