



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

THE RIGHT HON. THE LORD BURNETT OF MALDON

LEGAL WALES

12 OCTOBER 2018

1. It is a great pleasure to be invited to speak at the 2018 Legal Wales Conference in Aberystwyth. It is an even greater pleasure to have the opportunity publicly to pay tribute to my predecessor, Lord Thomas of Cwmgiedd, on what has become his home turf following his appointment as Chancellor of Aberystwyth University.
2. Lord Thomas' closing speech at last year's conference was one of his last acts in office as Lord Chief Justice. The year has flown by, but this is my first opportunity in Wales to say how grateful I am for all he has done for the law in Wales, and continues to do.
3. It is clear from the prominent role he has played today and the many hats that he wears, that his service to Legal Wales may still be in its infancy. Of great importance and interest, and at the heart of his work at the moment, is his chairmanship of the Commission on Justice in Wales, of which he and others spoke this morning. The large numbers of responses to the call for evidence shows the deep interest in the subjects under consideration shown by the legal and political communities in Wales. I look forward to its conclusions and findings with interest.

4. I regret to say that I cannot claim to have the same Welsh roots as Lord Thomas and many of you here today. I am a Celt through and through but my Celtic stock is Irish and Scottish. Try as I might, I can find no Welsh forebears – my loss, I know. But with that signal deficiency in mind, may I nonetheless make a few observations on my experiences of Wales, as Lord Chief Justice of Wales one year into office, before briefly looking ahead to the future.

5. I travelled to Cardiff a week after taking office for the meeting of the Association of Judges of Wales and the legal service at Llandaff Cathedral and then returned in early December to sit in the Court of Appeal Criminal Division with the presiding judges. I was able through these visits to meet many, if not quite all, the judges in Wales, experience the warm welcome of the Welsh legal community and have discussions with the First Minister, Counsel General and Permanent Secretary. But the highlight of the visit was to swear in Sir Wyn Williams as the inaugural President of Welsh Tribunals at a ceremony in the imposing court 1 at Cardiff Crown Court attended by a galaxy of Welsh legal figures.

President of Welsh Tribunals

6. The celebration with which he was welcomed into the office of President of Welsh Tribunals was a true recognition of his many talents and vast experience in Legal Wales. The creation of the office itself is a powerful indication of a separate developing tribunal system. You heard from Sir Wyn last year when he outlined his thoughts on the role which he had been carrying out in a non-statutory capacity for some months. In particular, he referred to the new duties which would fall upon him. They include, “*the need to develop innovative methods of resolving disputes that are of a type that may be brought before those tribunals.*”

Given the nature of the disputes that come before the Tribunals that is especially important.

7. There has been much to do in achieving a more efficient and smooth-running service.

May I give two examples:

- I. The cross-deployment of tribunal members and judges between the Welsh Tribunals and the First-tier and Upper Tribunals was authorised by the Wales Act 2017. It enables judges of one jurisdiction to sit in the tribunals of the other. The practicalities have taken a good deal of detailed consideration by officials and judges but its value to the administration of justice is obvious.
 - II. In looking for new members of the Residential Panel (England) an expression of interest has included members of the Welsh Residential Panel and Agricultural Land Tribunal. Four Welsh Judges were successful in their applications to be cross-deployed. They are being booked to sit from November onwards. That is the first use of this new power.
8. More generally a further innovative development, mirroring the practice in the United Kingdom Tribunals and the English and Welsh courts, is to provide for cross-ticketing between the various Welsh Tribunals. That leads to greater flexibility, enables greater efficiency in the disposal of business and, importantly, widens the experience and skills of the judges bringing greater job satisfaction.

9. There is much still to be done. The rules and procedures governing tribunals in Wales have developed piecemeal over time with matters such as the process for appointments and investigating conduct issues being different from the generality. The consequences of the Wales Act 2017 have not been taken into account fully by the rules, including the existence of the President of the Welsh Tribunals and the extended scope of the Welsh Assembly's competencies. This last point is particularly relevant now the reserved powers model of devolution has come into force.

10. Therefore, I welcome the Law Commission's decision to review the law surrounding the Welsh Tribunals in a piece of work expected to start in 2019. It is an important task that will help lead to clarity in the arrangements for the administration of justice in this part of the system in Wales.

Legislation

11. There are no doubt other areas relating to the justice system in Wales that require additional clarity. A particular focus of mine in this first year has been to question the arrangements for publishing legislation affecting Wales. This covers not only those Acts passed by the Assembly but a myriad of secondary legislation, historic UK Parliamentary Acts now affected by devolved competencies, and Wales only legislation passed in Westminster. I was surprised to learn last year that no complete data base of Welsh secondary legislation accessible to the public was available. It is a topic on which I have engaged with the Welsh Government. As technical Welsh law becomes different in Wales from England it is absolutely vital that there is ready access to it.

12. The importance of this topic was explained with clarity by Lord Lloyd Jones in a speech he gave in March¹. Indeed, it has been recognised by the Law Commission and by the Welsh Government who have published a consultation on a draft legislation (Wales) Bill which would impose a duty on the Counsel General to keep the accessibility of Welsh Law under review and on the Welsh Ministers to prepare a programme setting out what they intend to do to improve the accessibility of Welsh law.
13. Much has been made of the desire to codify and consolidate the Welsh statute book and this is an admirable aim. A body of law, set out clearly, in simple, intelligible language (I should say languages, recognising the equal footing of the Welsh language) is a firm foundation for access to justice. The Counsel General's talk this morning on this topic was timely and welcome.
14. It is essential that any such programme not only improves the position for the future, but also takes on the task of resolving what has gone before whilst it is still capable of remedy. It is my hope that this effort continues to gain momentum and that you will all continue to stress the need for clear, accessible legislation for Wales to whoever will listen – the Welsh Government, the Assembly, and the legal publishers.

JCCW and Wales Training Committee

15. It has also been my pleasure over the course of the year to preside over the work of the Judges' Council Committee for Wales, the only sub-committee of the Judges' Council which I chair. The commitment of the Welsh judges on that body to improving the administration of justice in Wales is truly commendable. I will mention three examples:

¹ <https://www.supremecourt.uk/docs/speech-180308.pdf>

- I. First, the determination of those judges to ensure that Welsh cases are heard in Wales. It has long been an aim of the judiciary of England and Wales to uphold and improve local justice. In practical terms, this has seen careful monitoring of sittings of the High Court and the Court of Appeal and sending the strong message that the judiciary are prepared to hear cases where they arise. All divisions of the High Court sit in Wales, including the Administrative Court and so too, although less often, do both divisions of the Court of Appeal. Indeed, I shall be sitting in the Criminal Division of the Court of Appeal in Swansea later this year. There is also now a designated civil judge for North Wales. HHJ Catherine Howells is based in Mold and Wrexham but travels the length and breadth of North Wales to hear cases, from Caernarfon in the far west to Wrexham on the border with England. This demonstrates our commitment to Wales outside Cardiff and the other major cities.

- II. Secondly, the contribution of our judges to the various rules committees. This allows for practical measures to be put in place reflecting the special character of justice in Wales. The importance of Welsh input has been recognised by the requirement for the appointment of a judge to the Civil Procedure Rules Committee “*who has particular experience of the law applicable in Wales*”. This is certainly true of HHJ Jarman QC who took up his seat in March of this year. This dedicated input is already bearing fruit with the next update of the civil procedure rules containing provisions reinforcing the principles that the Welsh language has official status in Wales and that any legal proceedings in Wales may use the Welsh language. Importantly, there are provisions to confirm that “*Any document placed before the court in civil proceedings in or having a connection with Wales may be in the English or Welsh language.*”

III. Finally, the Wales Training Committee of the Judicial College has been working hard to prepare judges sitting in Wales for the major changes to housing law. Seminars were given in different parts of the country earlier this year in a concerted effort to ensure our judiciary remains prepared to serve the people of Wales in applying the new law. In addition, an eLetter, aimed at judges sitting in Wales, is produced three times a year by the Welsh judiciary.

16. I would also like to give a special mention to another judge I have had the pleasure of working closely with. Indeed, she accompanied me on my first foray into Wales as Lord Chief Justice. It was with great pleasure on Wednesday that we received the oaths of Lady Justice Nicola Davies on her appointment by HM The Queen to the Court of Appeal. She followed the trail blazed by Lord Lloyd Jones last year when he went to the Supreme Court of taking the oath in both English and Welsh. Some present heard what I said on that occasion, but I repeat the core of her remarkable achievement. The first Welsh woman to take silk; the first Welsh woman to be appointed to the High Court and then as a presiding judge; and now the first Welsh woman to go to the Court of Appeal.

Looking ahead

17. I shall turn to the future in just a moment. But first, let me reflect on some of what you have heard today.

18. You have listened to expert speakers on a variety of topics including housing law, agricultural law, safeguarding, and commercial law in Wales. You have considered the approach in other jurisdictions in relation to expert witnesses. The past and the future

have been explored through the efforts of the Welsh Legal History Society and Professor Uta Kohl's session on how IT and the law work together. And the Lord President of the Court of Session gave you insight from a different devolved system.

19. The breadth of the programme demonstrates some of the distinct features of the law in Wales. The success of the conference owes much to the efforts of many, but our special thanks should go to the conference director Keith Bush QC who led the planning and organisation of today's event.

20. Our Courts and Tribunals are going through a radical programme of modernisation. I prefer to talk about modernisation rather than reform, because in many ways the current programme is about making good the deficiencies of decades of under-investment. I often say that there should be nothing surprising, still less worrying, about moving to on-line digital systems of the sort we use in every other activity in our lives.

21. That said, the programme has three essential features:

- I. The first is to improve the administration of justice by making what we do more efficient and more sensitive to the needs of those we serve. I do worry that some approach questions of change primarily through the lens of their special interests, the legal world included, and overlook that what we do is in the service of the public.
- II. The second is to widen access to justice, essentially making it easier for people to vindicate their legal rights. Enabling most people to deal with civil and family courts and tribunals using on-line systems will transform access to justice. And the careful

use of technology, without undermining the administration of justice, to avoid unnecessary physical attendance at a court will be welcome for most.

III. The third is to improve the physical conditions for those who use and work in our courts and the tribunals. I have spoken publicly of the woeful condition of too much of the court estate as a result of historic spending. It continues to trouble me that for many years the maintenance budget was not spent in full, something that I trust will not happen again. The aim is to have an estate which is in a decent condition. The public, quite apart from judges, staff and professionals, deserve no less. It would be invidious to identify some of the worst in Wales but there are many that require urgent attention to basic problems.

22. The successful elimination of almost all paper from our criminal courts, a quite remarkable achievement, must be replicated in civil, family and tribunals. We have a public who are used to banking on their smart phones, managing utilities online, dealing with most public services online and communicating remotely. Whilst provision must be made for those who cannot take full advantage of the digital realm, the courts must not be left behind as the world embraces digitalisation.

23. There have been some astonishingly successful pilots relating to on-line divorce and the grant of probate. Those many thousands who have used the new systems have overwhelmingly been satisfied with the experience. So too in the tribunals. Similarly, the ability to file civil money claims on-line has been successful and welcomed. I hope to see significant developments in the civil and family jurisdictions by this time next year. I plant this thought. The aggravation and cost of suing over relatively modest sums, which are

nonetheless of substantial significance to the individuals or businesses concerned, inhibits many from doing so. When the process can be undertaken on-line and subject to new simplified rules – that is the aim - are we not likely to see an increase in properly brought claims? And encouragingly, the ability to respond on-line seems also to be stimulating earlier settlement.

24. The details of the modernisation programme are engaging the attention of many judges who are working collaboratively with the court service and the Ministry of Justice to achieve developments that are reliable, workable and which respect the interests of justice and core values of the rule of law. There is a vast amount of work still to be done but enormous progress has been made.

25. I finish with the reflection that after one year as Lord Chief Justice of Wales I have come to value even more the dedication of the judiciary in Wales, the vigour and skill of the legal professions in Wales and the thriving legal academic community working in Welsh universities. The need for each to develop a distinct, or at least modified, identity from their English counterparts will grow as the Welsh Assembly legislates within its sphere of competence with the consequent divergence between English and Welsh law. All components of Legal Wales are well-placed to do so.