

October 6, 2023

Speech by Lady Chief Justice: 2023 Legal Wales Conference

Introduction

1. Prynawn da. It is a great honour to have been asked to address you at the close of another very successful Legal Wales Conference. It is a particular pleasure, as this is my first such address as Lady Chief Justice of Wales. That I have deep roots in Wales makes it all the more special for me. My great-grandfather's uncle, Henry Lascelles Carr, moved as a journalist from Yorkshire via Liverpool to South Wales, where he became in turn the sub-editor, editor and then owner of the Western Mail, Wales' oldest daily newspaper. Not content with that, he went on to chair the board of the Royal Hotel Company here in Cardiff, as well as to become one of its City councillors. My great-grandfather, Sir Emsley Carr, joined him in the newspaper business. He went on to be High Sheriff for South Glamorgan in 1938, and the rest – as they say – is history. Coming to Cardiff today is always special for me, returning to a place with a long-standing family connection.

2. Wales is not just part of my family history. It is a jurisdiction with which I became very familiar as a judge. From my early days as a High Court Judge, I sat in Wales, in the Crown Court in Cardiff. To give just one example that sticks in my mind, I presided there in 2015 over a prison cellmate murder trial, involving a defendant who was being held in a distant high-security hospital. I experienced then, at first-hand, the local resourcing challenges of getting him to court on time and appropriately supported. I also remember sitting as a member of the Court of Appeal's Criminal Division in Cardiff, with the great

Sir Christopher Pitchford. I very much look forward to sitting in Wales again in the future – in both the Court of Appeal’s Criminal and Civil Divisions. I hope that that both will sit in Wales as much as possible, something that should be facilitated by the increasing use of digital filing and case management.

3. As a judge in Wales, one cannot but be aware of its legal history. Whether it is the great codification in the Laws of Hywel Dda in the Medieval Period, the influence of Edward Littleton, sometime Chief Justice of North Wales and then of the Court of Common Pleas, amongst other things, or the more recent contribution paid by legal scholars, such as the incomparable Glanville Williams, it is a truly rich history. It is a history that with Welsh devolution from 1998 has been revived. For the first time since the Laws of Wales Acts of 1535 to 1542, we see a growing body of distinct Welsh law, both substantive and procedural. That this is so brings into ever sharper focus the pressing needs of the courts and tribunals to adapt to ensure that they can deliver timely, practical and effective justice in Wales.

4. Significant steps have been taken to achieve this already. In that respect I must pay tribute to the indefatigable work of my predecessors, not least Lord Thomas and Lord Burnett, as well as the work done by successive Masters of the Rolls and Senior Presidents of Tribunals. We very much need to build on their work to ensure that our rich legal history can become a properly prosperous legal future. The recent creation of the position of President of Welsh Tribunals, held first by Sir Wyn Williams, and now Sir Gary Hickinbottom, is important in this regard.

5. I want to spend a little time now highlighting some of the ways in which we can do this, and, in doing so, secure effective access to justice. Let me start by emphasising the question of language. It is a matter of fundamental principle that individuals, whether they be litigants, witnesses, or members of the public with no direct interest in a particular dispute, can readily understand what goes on in our courts and tribunals. For litigants, it is a fundamental matter of access. The ability to understand proceedings, the precise claim being made or the nature of the defence being advanced, and the evidence being deployed on all sides, is required by principles of due notice, effective participation and equality of arms. Linguistic access to justice is quite simply inherent in the right to a fair trial. For the public, that they are able easily to understand what goes on in our courts and tribunals is required by the principle of open justice. Linguistic exclusion is inconsistent with a proper commitment to open justice.

6. I have a heightened awareness of this is through my time at the Judicial Appointments Commission. Since 2016, the JAC has operated a specialised Welsh Language Scheme, which gives effect to section 3 of the Welsh Language Act 1993. The Scheme explains how candidates can communicate in Welsh or English, according to their choice. Where Welsh language skills are required for a judicial appointment, the JAC has access to Welsh-speaking panellists, joined by Welsh-speaking members of the judiciary allocated to the JAC as necessary. Additionally, for vacancies in Wales, candidates are expected to demonstrate an understanding, or the ability to acquire the understanding of, the administration of justice in Wales, including legislation applicable to Wales and Welsh devolution arrangements. I also draw on a different facet of my personal experience. I come from a bilingual background, albeit English and German, rather than English and Welsh! An appreciation of the nuance and

difference between and across languages, and of the importance of the respective cultures with which they are inextricably intertwined and reflect, is something of which I am acutely aware.

7. As we all know, the significance of the need to use Welsh was for too long under-recognised. English is a foreign language for many Welsh people; in North West Wales in particular, Welsh is the main, and sometimes only, language spoken. Any party has a right to use the Welsh language, and parties are required to assist the court to that principle into effect; a point recently emphasised by the introduction of dedicated provision to that effect in the Civil Procedure Rules as well as its updated Practice Direction on the use of the Welsh language in the civil courts in or having connection with Wales. I pay tribute to the excellent Welsh Language Unit based in the County Court at Caernarfon.

8. Here the work of the Judicial College comes into sharp focus. Funding is already being provided for the training of Welsh judges on new Welsh legislation. As time goes on and, as was noted by the Law Commission in 2016 [1], English and Welsh law increasingly diverges on devolved matters as their respective governments introduce legislation to give effect to new policies, that training will need to expand. It will also, as the CPR evolves to make provision for discrete English and Welsh procedure, need to broaden its scope as civil procedure becomes increasingly responsive to the needs of the evolving Welsh legal jurisdiction. We see this already through CPR Pt 7, which makes provision for the issue or transfers of claims against Welsh public bodies under CPR Pt 7 to the civil courts in Wales. We also see it in CPR Pt 56, where landlord and

tenant claims under the Renting Homes (Wales) Act 2016 are concerned. As the jurisdiction evolves, so must our justice system, its procedures and the training we give our judges.

9. Another development, and probably for the slightly longer term, that we – and perhaps Legal Wales or the recently created Law Council of Wales – could look at, is the use of artificial intelligence to promote Welsh language accessibility of our courts. One of the stated aims of the Law Council is to look at the use of legal technology and innovation. This may be particularly apt here, with an opportunity to work with the judiciary in this area, as we look to refocus our work on technological innovation within the courts and tribunals.

10. At one time automated language translation was perhaps not entirely accurate. Recent developments, though, have demonstrated significant improvements in automated translation. The availability of neural machine translation, a form of AI, has brought the possibility of low-cost, speedy and accurate translation within the reach of courts across the world. Such translation could be used to enable judges, parties, witnesses, as well as members of the public attending court, to take part effectively in and access proceedings in the language most appropriate to their individual circumstances. It could also be used to facilitate media access in Welsh to all proceedings in our courts through, for instance, automated judgment translation; something my great-grandfather and his uncle would undoubtedly have appreciated. The central point though is that we should consider, perhaps more than we have in the past, how we can use targeted, discrete, technological innovation to improve access to justice.

11. But improving access to justice in Wales is not just a matter of training and the astute utilisation of technology. It is also a question of infrastructure. Justice is at its most effective when it is delivered locally. Technology is part of the answer here, of course. It is, however, neither the only answer, nor a complete answer. Not least when it is considered that not everyone has access to technology, whether for economic or other reasons.

12. The answer lies in ensuring that our courts are fit for purpose, and readily accessible, including by public transport. That they are properly equipped and that HMCTS has the appropriate level of resources to manage them effectively. It is, as my predecessor Lord Burnett was at pains to stress, a question of ensuring that the roofs do not leak. It is about getting the basics right, so that our courts and tribunals can deliver justice locally. More work needs to, and must be done, in this area, if we are to have the infrastructure that the public deserves.

13. I am all too aware that this is something that each new Lord or Lady Chief Justice stresses as they take up office. Lord Burnett did so when he first addressed you in 2018. That that is the case should not leave us sceptical of progress. It is more a case of understanding: understanding the extent to which improvements are needed and being realistic concerning the effort, timescale and funding required to implement them. I am confident that working with HMCTS, the Welsh Government, the Law Council for Wales, and central Government, improvements to our infrastructure will be made. Whether they will go far enough remains to be seen.

14. With that in mind I should also say something about the Tribunals. Justice in Wales is not simply a matter of what goes on in the courts. It is equally and importantly delivered in the Unified Tribunals, that is the First-tier and Upper Tribunals, and the Welsh Tribunals. It is important to me that the work of the courts and the two sets of Tribunals complements each other. Historically, there have been problems when different courts have competed, or their work has overlapped or, putting at its lowest, the jurisdictions have been non-complementary. We have recently seen problems arise where the jurisdiction to resolve property disputes has fallen to be dealt with by both the First-tier Tribunal and the County Court. Litigants had to go to both to secure complete justice in their cases. Work by the Civil Justice Council, which I am delighted to see now has dedicated Welsh representation on it, helped to improve matters, but more needs to be done. Proposals to reform the Welsh Tribunals will no doubt play an important part here, as will the guidance of their distinguished Senior President.

15. For my part, I want to see the development of the courts and tribunals. and their judiciaries, into an increasingly unified whole. The work started, as long ago now as 2015, by Lord Thomas and Sir Ernest Ryder, the then Senior President of Tribunals [\[2\]](#), to create what was called 'One Judiciary'. We need to give effect to greater cross-deployment between the Courts and Tribunals' judiciaries, and improved training to facilitate that, and through that the development of a single judiciary. It is now ten years since the Crime and Courts Act 2013, which made provision for the development of 'One Judiciary'; we must now take advantage of and build upon its provisions to deliver the benefit to the public that it was intended to give.

16. I have only been able to touch on a small number of subjects today. Each is focussed, as you are, on improving the delivery of justice in Wales. I much enjoyed my recent meeting with the First Minister, which left me in no doubt as to his commitment to, and interest in, the administration of justice and the rule of law in Wales. I also had the opportunity to meet with the Counsel General and Minister for the Constitution this morning. Working together, I am sure that over the course of my time as Lady Chief Justice, we can continue to do so in order to ensure that Wales has a fit and proper justice system for the 21st century.

17. May I end where I started, on a personal note. I may have saved the best until last. For perhaps my greatest claim to Welsh fame is the fact that my grandfather, Harry Carr, kept the wicket for Glamorgan. I can assure you that I will be batting for Wales. Diolch. Thank you [3].

Dame Sue Carr, Lady Chief Justice
Legal Wales
6 October 2023

[1] Law Commission, *Form and Accessibility of the Law Applicable in Wales*, (2016) at 7.

[2] Sir Ernest Ryder, *In the shadow of Magna Carta*, (2015) at [27] and following.

[3] With grateful thanks to Dr John Sorabji for his assistance in the preparation of this speech.