

Discrimination and Public Law: Promoting equalities for a fairer and more equal Wales

Speech delivered to the Public Law Project Wales Conference by Jeremy Miles AC/AM, Counsel General for Wales, on 26 March 2018

Thank you very much for asking me to open today's conference. It is a real pleasure to speak to you today in my role as Counsel General for Wales, and in particular at such a challenging, but exciting time, for public law in Wales.

As both Counsel General and a constituency Assembly Member, I know first hand that the work of the Public Law Project is now more important than ever. Providing and improving access to public law remedies for some of the most vulnerable people in our society is a crucial endeavour at any time, but particularly during times of deepening austerity, rapid technological change and a mass ageing society. So, before I go any further I would like to put on the record my thanks to all those here who contribute, in so many ways, to the valuable, and critical, aims, of the Public Law Project.

Turning to the title of today's conference, "*Discrimination and Public Law: Promoting equalities for a fairer and more equal Wales*". Before I go on to discuss the Welsh Government's role in this area, and my own views on the subject, I thought it would be useful to look to history as a timely reminder of what '*change*' and '*movement*' in the field of equalities can actually mean.

Next year will mark the 100 year anniversary of the Sex Disqualification (Removal) Act 1919. As some of you will know, in four short sections this Act achieved more than most other pieces of legislation. Its stated aim was to 'amend the law with respect to disqualification on the grounds of sex' and for the first time provided women with access to the professions, including the legal profession, enabled women to sit on juries and act as magistrates and, incredibly, to receive a degree from university following completion of their studies.

And women in Wales, then as now, were at the forefront of the struggle for equality. Gwyneth Bebb, who was the sixth woman to study law at Oxford University, graduated with first class honours in 1911. I say graduate, but due to the laws of the time Gwyneth was unable to graduate, or be awarded her degree, simply because of her gender.

She went on to bring the famous test case of "*Bebb v the Law Society*" in 1914, to demand that the Law Society enable her, and three other women, to take the entrance exams necessary to qualify as a solicitor. The court ruled against her on the basis that "*women were incapable of carrying out a public function in common*

law, a disability that must remain unless and until Parliament changed the law". And thankfully Parliament did change the law. Despite losing the case, the positive publicity generated by the case forced Parliament into action and provided women with the access to the professions, and to participation in public life, for the first time. Access we all now take for granted.

The story of Gwyneth Bebb is a powerful one. The story of a woman with strength and intellect, who was prepared to challenge the barriers and injustices she faced because of her gender. It also illustrates some of the key themes I want to emphasise and return to today. Firstly, that change and progress cannot be taken for granted, it must be fought for. Secondly, that the law, and in particular public law, can change and enhance people's lives in so many ways. And thirdly, that the law, and legislation, can't be looked at in the abstract. Changes in the law are not a panacea, the reforms they effect need to be accompanied by societal and cultural changes embedded in our local and wider communities. This is the way to effect real change.

Which brings me on to the role that Government can play in advancing equalities for a fairer and more equal Wales.

Given the timing of this speech it would be remiss of me not to mention Brexit. As you all know, Brexit poses the most significant political and constitutional challenge this country has faced for decades. As well as the numerous legal, structural and financial questions it throws up, it's vital that we recognise the role the European Union plays, and has played, in advancing the field of equality. Only by working closely with our European neighbours can we uphold the values which we secured as part of the consensus for progress following the trauma of war. We must not allow the UK's exit from the European Union to undermine this.

The Welsh Government is engaging with the UK Government's Equality Office as part of the EU exit process. These talks are ongoing and are aimed at ensuring that there is no rowing back from the equalities duties and safeguards we enjoy as a result of the UK's withdrawal from the EU.

The UK Government has committed to consult the devolved administrations on the approach to equalities post Brexit. This will include, where necessary, the need to agree a common approach (or frameworks) across the United Kingdom.

The Welsh Government will hold the UK Government to this commitment. The people of Wales did not vote for fewer equalities rights as part of their decision to leave the European Union. We will therefore do everything in our power to protect those rights.

As well as the ongoing Brexit negotiations, 2018 also marks a significant year for Human Rights. As some of you will know, the 10th December 2018 is the 70th Anniversary of the creation of the Universal Declaration of Human Rights. The Declaration established the first internationally agreed definition of human rights, drafted by representatives from the 50 member states of the UN. Famously, the United Kingdom was the first country to sign the Convention and its lawyers (including Welsh lawyers) were instrumental in its drafting. The Welsh Government believes that Wales, and the wider United Kingdom, should remain at the forefront of Human Rights protection across the world.

So I am pleased that the UK Government's plans to reform human rights legislation are currently on hold until the UK's withdrawal from the EU is finalised. The UK Government has confirmed that it intends to remain a signatory to the European Convention on Human Rights for the duration of this Parliament.

However, we are very alert to the temporary nature of this commitment. The Welsh Government has said on numerous occasions that we will oppose any diminution of the rights currently enjoyed by the people of Wales.

This of course includes plans to repeal the Human Rights Act, which also celebrates its twentieth anniversary this year. Despite the way it is sometimes caricatured by sections of the media, I consider the Act to be an inclusive piece of legislation, one which protects all our citizens and allows people to challenge inequality and injustice, and hold those in power to account. This was recently illustrated during the second inquest into the Hillsborough disaster, where families of the victims were able to use the Human Rights Act to seek, and gain the justice, they so richly deserved.

Moving away from the European stage, I want to emphasise that the Welsh Government is committed to advancing equality in Wales. We are clear that promoting equality is not just a matter of sensible social policy, it also makes firm practical and economic sense. It enables people from all parts of Wales, and from all sections of Welsh society, to participate in Wales' economic, social and cultural activity. In simple terms, it enables as many people as possible to reach their potential, irrespective of age, gender, gender identity, sexual orientation, race, disability or any other characteristic. This is one of our most basic moral obligations. And it is therefore incumbent on the Welsh Government (and the National Assembly for Wales) to use its devolved powers to further this cause. Whilst overarching equalities issues remain reserved to the UK Parliament, the Welsh Government and the National Assembly do have powers which can be used to advance equalities issues. These range from the encouragement and observance of existing equal opportunities requirements within Wales, to establishing balance and representation on the boards of public authorities in Wales.

The Welsh Government recognises it must be seen as an example. With this in mind, the First Minister has recently asked my colleague Julie James AM, Leader of the House, to conduct a rapid review of the Welsh Government's gender and equalities policies. This review will be supported by the equalities charity, Chwarae Teg, and amongst other things will pull together and analyse all our existing work in this area to understand where we can do more, investigate the best practice policies from other governments across the globe, consider how we move gender to the forefront of government decision making and to work with local government in Wales to create a national, and sustainable response, to period poverty. Our aim is to make Wales the safest place to be a woman in the whole of Europe.

The Welsh Government has also committed nearly three hundred thousand pounds to mark the Centenary of Women's Suffrage with a range of activities planned throughout 2018 focusing on the themes of Celebrate; Educate; Participate. This will include a project, run in conjunction with the Women's Equality Network Wales, to celebrate the "top 100" Welsh women. The celebrations will culminate with events on the 14th December 2018, the 100th anniversary of the first General Election where women were able to participate and vote en masse.

We are also reviewing our Framework for Action on Independent Living and have sought the views of people who are impacted and assisted by the Framework. This includes engagement with disabled people, through a series of Welsh Government run workshops, consultation with a variety of disability groups and a targeted online survey. A steering group, chaired by the Chief Executive of Disability Wales, has been overseeing the review of the Framework.

Our Refugee and Asylum Seeker Plan is also out for consultation, which is aimed at tackling the inequalities and poverty experienced by these valued communities. Within our devolved powers, we want to improve access to help, advice and other services for refugees and asylum seekers across Wales.

It is vital that we as a Government listen and learn from those affected by disadvantage of any kind. This is the only way to deliver change in the right areas, and in the most effective way possible.

When it comes to legislation, Wales has taken a different and unique path from the rest of the United Kingdom in so many ways, most notably the Well-Being of Future Generations (Wales) Act 2015. This piece of legislation seeks to change the way Wales as a nation operates, with the aim of improving the social, economic, environmental and cultural well-being of all those who live here.

For the first time, there will be a statutory requirement for sustainability to be at the heart of public decision making. Its aim is to bring to an end short term decision

making, and hardwire the long term impact of policies and priorities into the decision making process in Wales. A truly landmark piece of legislation.

And the sceptics amongst you may quite rightly say, 'well you would say that wouldn't you'. However, I am not the only one who speaks highly of this piece of legislation, which is illustrated neatly by the following quote from a leading UN representative:

The Wales future generations Act captures the spirit and essence of two decades of United Nations work in the area of sustainable development and serves as a model for other regions and countries. 'One Wales, One Planet' captures it all. We hope that what Wales is doing today the world will do tomorrow.

The challenge for all bodies subject to the act which includes Welsh Government is to make sustainability a mainstream universal part of our decision making. None of us should underestimate how ambitious and challenging a task this is. And Wales has also taken a different path with the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 which is designed to improve the public sector response to gender-based violence, domestic abuse and sexual violence. Its aim is to ensure a consistent approach to the preventative, protective and supportive measures offered to victims of such abuse or violence. The Act recognises that whilst women are disproportionately impacted by all forms of intimate violence, all people can be affected regardless of their age, ethnicity, religion, disability, sexual orientation or gender identity.

Again, this is an example of legislation leading and driving change. However, its success will largely be dependent on accompanying changes to the way society views these issues. The 2015 Act is one major piece of a large and complex jigsaw – by driving this change, we hope that we in Wales can find and connect those other pieces more quickly than others.

The Welsh Government has also looked for innovative ways to tackle issues of inequality. One very recent example is the Public Health (Minimum Price for Alcohol) (Wales) Bill which is currently working its way through the scrutiny process in the Assembly. This Bill seeks to address the harms caused by hazardous and harmful drinking in Wales by introducing a minimum price for the sale and supply of alcohol. This is a social justice issue. Academic research has shown that despite drinkers in the most deprived groups drinking less on average, this group experiences almost three times as many deaths and twice as many hospital admissions per drinker when compared with those in more affluent groups. Sustaining a mainstream, unofficial part of our decision making.

The aim of the Bill is therefore to bring about a reduction in harmful drinking by those most affected by it – i.e. the most vulnerable in our society. This is an example of a legislative proposal which, on the face of it, has a fairly narrow remit, but which we hope will bring about much wider societal change and contribute towards the Welsh Government's wider aim of reducing health inequalities throughout Wales.

And finally the Childcare Funding (Wales) Bill which seeks to deliver the key Welsh Government commitment to deliver 30 hours of free early education and childcare to the working parents of 3 and 4 year olds in Wales. One of the aims of this Bill is to enable parents, and in particular mothers, to return to work after having a child (if they wish). It is an example of using legislation to level the playing field in the competitive labour market. We know that women with children, or childcare responsibilities, face a glass ceiling in terms of their employment prospects. This flagship policy is an attempt by Government to break this ceiling.

But again, legislation on its own is not enough. Whilst we recognise how hard fought legal change always has been. A legal system that outlaws discrimination is not the end of the journey to an inclusive society, it's just the starting point. The larger challenge lies ahead. Removing these barriers to entry into the workplace (and elsewhere) requires buy in from employers, fellow employees and of course our wider communities. Whilst Government can, and will, assist people to fulfil their potential, advancing equality for all is a task for us all.

Political and social change cannot simply be achieved by changing the words of a statute. Laws can set messages and instigate change, but unless you also change the attitudes and mind sets of communities up and down Wales, alone they will achieve very little. This is a challenge for each one of us. not only to embed changes in the law, but also changes in the way our society views people from different backgrounds or with particular disadvantages.

We must speak to a modern Wales, a Wales where there are no neat boundaries between North and South, rich and poor, old or young. A Wales for each of us, regardless of gender, sexuality, race or disability. A Wales which will continue on its journey to equality not down a narrow path to similarity, but instead on an open road to glorious variety.

Diolch yn fawr. Thank you very much.