

Legal Identity and Welsh Language Rights:

A report by Big Voice London 2012



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Foreword note by the Chief Executive of the Supreme Court and the Big Voice London Project Co-ordinator

“For the second year running, the UK Supreme Court has provided support to the Big Voice volunteers and students. We have been very pleased to do so, and I am delighted to have been asked to write a Foreword to this report, produced by the participants in Big Voice 2012.

Since the Supreme Court opened its door in October 2009 we have been keen to develop an outreach and engagement strategy which brings young people into contact with their highest Court, particularly young people who might otherwise not have thought of visiting the Supreme Court, or engaging with the issues the Court considers. Big Voice, targeting as it does schools from diverse cultural backgrounds, and different parts of London, has been one of the most effective ways of achieving our policy objective. And it is very clear from what is written in these papers that the students have learnt and reflected on some hugely important issues over the last twelve months.

For the students, this represents additional work over and above their day to day studies and other commitments. They are all to be commended for “staying the course” and for making that sacrifice of time and effort. I would also like to pay tribute to all the volunteers who have assisted them throughout the last few months, and for those individuals who have made time to talk to students, and answer their questions.

The topics they have chosen to study include some of the most challenging social issues of our time. Many commentators have written and spoken on these subjects, but none of them have found “the answer”. The students have read, listened and analysed. The views they express are, of course, their own and not that of any individual, or institution with which they have worked. But those views should be regarded as making a real contribution to the debates that we as a society should be having.

I believe and hope that they will all have found this experience both useful and enjoyable. We have certainly enjoyed providing them with support and opening some doors for them.”

Jenny Rowe

Chief Executive, The Supreme Court of the United Kingdom

“It has been an honour to work with Big Voice London for a second year. For me the highlight of this year has been seeing the breathtaking performance of two of our students in the ‘Just Rights’ moot final; this symbolised just how magnificently young people can understand and use the laws of their country if they are given the tools to do so.

Before I began working with the project, like many of our students, I felt that law was a relatively closed world. However, over the last two years I have seen so many speakers give up their time to share their passion for access to the law that I feel incredibly proud to be part of such a positive legal culture and community. Going forward we need a stronger infrastructure to allow more young people to access the legal world in the way our students have done.

Over the last year our young people, from diverse cultural backgrounds and different parts of London, have worked together to form a team. As a community we have learned about equality and rights in South Africa and in Northern Ireland, Scotland and Wales. I hope that we will all feel the responsibility of the knowledge shared with us and carry it forward to make the world a better place.”

Jennifer Blair

Coordinator, Big Voice London

Introduction

Big Voice London

Big Voice London launched in January 2011. Student barrister Jennifer Blair originally approached the Supreme Court about their youth outreach programme and developed the project with their advice and support. Jennifer recruited a team of committed volunteers, who approached state schools in London, targeting those in areas with the highest child poverty, to gather together a group of 40 sixth form students with an interest in law.

Big Voice London is volunteer-led and volunteers are generally post-graduate law students committed to youth access. Big Voice is unique in the way it specifically addresses the issue of engagement of young people with the legal system. The project endeavours to empower students from socio-economically disadvantaged backgrounds by linking them up with legal policy makers, so that they have a voice in our society.

Big Voice in 2012

We have seen wonderful developments to the project in 2012, including the creation of the 'Just Rights' human rights mooting competition, where our young people were paired up with law students to compete together as junior and senior counsel. This allowed young people with no legal background to receive mentoring as they learned to make legal arguments at a high level. We are grateful to Lord Reed and the Supreme Court for hosting the final and excited that they have agreed to do so again in 2013.

This year we have built on our 2011 comparative study of post-Apartheid South Africa, to also research the innovative legal developments taking place in Northern Ireland, Scotland and Wales. We had the privilege to take part in research trips to Bangor, Belfast and Edinburgh, which have given us wonderful ideas to take forward for our work in future.

Our Students

Our students apply to join the project and taking part in Big Voice London represents a significant commitment of attendance at weekly sessions during term time between January and December 2012, as well as participation in an overnight research trip, all in the context of the heavy pressures of their study at sixth form.

The support and cooperation of the schools and colleges we work with is essential for the project, because it allows the students to feel supported and to have their work recognised. This year our students primarily attend City and Islington Sixth Form College, Hackney Community College, Mulberry School for Girls, Nower Hill high School, St Angela's & St Bonaventure's Sixth Form Centre and St Dominic's Sixth Form College.

Three Spotlights on the Legal System

At the heart of our work is a focus on equality and access to justice. Our students explore these topics from different perspectives in each of their three groups.

Diversity and the Law: explored the barriers affecting access to the legal professions as well the role of culture in legal defences. They challenged discriminatory concepts and explored issues like privilege, empowerment and affirmative action.

Legal Agency: focused on access to law following the Woolf reforms, human rights and the criminal justice system, with a particular study into police powers, protests, accountability and the use of restraints in detention.

Legal Heritage: looked at the impact of art, architecture and literature on the creation of legal identity, exploring the students' own diverse legal heritage and the impact of language rights and devolution on Welsh legal identity.

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We are extremely grateful for the good will and assistance we have received during this project and particularly for the assistance of Bangor University Law School with Welsh translation.

Volunteers have given up their time to bring the project to life. Expert facilitation training was provided by EquaEd. The coordinator team have been Alex Cisneros, Ariana Gale, Jennifer Blair and Maleeka Bokhari. Our group leaders have been: Adam Muckle, Ben Mills, Dimitra Kamarinou, Esmá Komur, Frances Bennett, Lucy Rezler-Kennedy, Michelle Murray, Ruth Hennessy, Sarah Hirech, Sasha Wickham, Sophie Charles, Wendy Bremang, Zahra Afshar. We would also like to thank our legal volunteer Nargees Choudhury and our legal events volunteer Rob Patmore.

Speakers have offered the students expert insights into their work and their professional journeys. Thank you to: Bernard Hogan-Howe the Metropolitan Police Commissioner; Lord Reed from the Supreme Court; Adam Wagner; Tom Cleaver; Jonathan Rubin; Gwion Lewis; Glenys Roberts; Sara Mansoori; Lucy Moorman; Dr David McIlroy; Sham Qayyum; Jai Sharda; Brian Kennelly; Jennifer Agyekum; Aled Griffiths, Dr Osian Rees, Carys Aaron and Huw Pritchard from Bangor University; District Judge Williams from Caernarfon County Court; Meri Huws the Welsh Language Commissioner; Mr Justice Roderick Evans from the High Court; The Law Commission; Emily Thornberry MP; Baroness Helena Kennedy QC and Lord Kerr from the Supreme Court.

There are many others, without whom our project would not have been possible. We would particularly like to thank: EquaEd, Sarwan Singh and City University, BPP Law School, City and Islington Sixth Form College, Hackney Community College, Mulberry School for Girls, Nower Hill high School, St Angela's & St Bonaventure's Sixth Form Centre, St Dominic's Sixth Form College, Islington Council, Kensington Unitarian Church, Gray's Inn, Paul McEvoy from McEvoy Sheridan Solicitors, our main funder Lexis Nexis and the Supreme Court.

‘Cenedl heb iaith, Cenedl heb galon’; ‘A nation without a language is a nation without a heart’

Introduction

Since the Government of Wales Act 2006 devolved legislative powers to Wales, we have seen the beginnings of a new Welsh legal jurisdiction.¹ This is an exciting time for Welsh law and the Welsh language is at the heart of these developments.

There are two sides to the argument for the inclusion of the Welsh language in legal proceedings in Wales. One is an argument based on practicality – that it is important for those who are more fluent in Welsh than English to be able to access the law and their rights – and one is based on heritage and equality – that Welsh is a fundamental part of Welsh identity and so refusing provision for Welsh speakers in the legal system would be disproportionate and discriminatory.

While we appreciate that there are many people in Wales who do not speak Welsh, we believe that it is important to realise the rights of those who have fought for so long to have their native language recognised. This briefing paper is informed by research into the current position of Welsh legal identity, a learning visit to the Law School at Bangor University and comparative studies of language rights in Canada and South Africa.

Summary

As we go on to discuss, our main recommendations are:

- The Practice Direction on the use of Welsh in civil courts should be amended to remove the discretion to award costs against a Welsh speaker who does not give prior notice, but allocation questionnaires in Wales should clearly ask, in Welsh, if a party wishes to speak Welsh;
- The Ministry of Justice should commission a pilot to explore the option of bilingual juries and Jury Summons documents should ask whether jurors are able to take part in a bilingual trial;
- More legal infrastructure, including a full appellate system for Welsh cases, should be established in Wales;
- Restrictions on employees speaking Welsh at work should be treated as a breach of trust and confidence by employment tribunals, taking into account the Welsh Language (Wales) Measure 2011;
- Medical and social care services should be available in both English and Welsh; bilingual documents should be developed in these fields to integrate new technical Welsh terms into Welsh speakers’ vocabularies;
- A seat on the Supreme Court should be allocated to a Welsh judge and the Court of Appeal should consider sitting in Wales to hear significant Welsh cases.

¹ With slight differences in the court system, particularly with tribunals, c.f. Accessible Bilingual Legislation for Wales (2012) Hughes and Davies, Statute Law Review 33(2), 103-121, p.108-109.

Equality and Welsh Language

While devolution in Scotland has focused on political independence and in Northern Ireland has focused on religion, language sits at the heart of Welsh identity. The fight for language equality can only be understood against the background of oppression Welsh speakers have faced. For example, the Welsh Acts of Union stated that:

“all Justices... and Ministers of the Law, shall proclaim and keep the Sessions Courts...and all other Courts in the English Tongue...and all...Juries and Inquests...to be given and done in the English Tongue... henceforth no Person or Persons that use the Welsh Speech or Language, shall have or enjoy any manner Office or Fees within this Realm of England, Wales, or other the King’s Dominion, upon Pain of forfeiting the same Offices or Fees” (Section 20, Laws in Wales Act 1536).²

The use of Welsh in schools was strongly discouraged, for example through beating children who spoke Welsh,³ particularly following the 1847 Reports of the Commissioners of Enquiry into the State of Education in Wales, which stated:

“The Welsh language is a vast drawback to Wales and a manifold barrier to the moral progress and commercial prosperity of the people. Because of their language the mass of the Welsh people are inferior to the English in every branch of practical knowledge and skill. [...] It is the language of old fashioned agriculture, of theology and of simple rustic life, while all the world about him is English.”⁴

This oppression continued for 400 hundred years and yet, perhaps mainly due to the use of the Welsh-language Bible in Sunday Schools, by 1901, 50% of the population in Wales still spoke Welsh and there were still pockets of Wales where people spoke only Welsh (known as monoglot communities).⁵

However, due to a growing hostility to ‘nationalism’ during the World Wars, industrial migration and the spread of English-language media through radio and television, by 1991 there were no Welsh monoglot communities remaining and only 18.7% of the population could speak Welsh.⁶ Yet, the passionate Welsh language equality movement, buoyed up by the creation of the Welsh Assembly and devolved powers, helped mainstream Welsh language through education, the media and public sector work, which has resulted in an increase in Welsh speaking to 20.8% in 2001.⁷ A significant proportion of school students in Wales learn Welsh as a first language (16.3% in 2011)⁸ and the Welsh Language Act 1993 gives parties the right to speak Welsh in court:

“In any legal proceedings in Wales the Welsh language may be spoken by any party, witness or other person who desires to use it, subject in the case of proceedings in a court other than a magistrates’ court to such prior notice as may be requires by rules of court...” s 22(1)⁹

Perhaps most significantly, the Welsh Language (Wales) Measure 2011 has made Welsh an official language in Wales.¹⁰

2 Available online at: <http://owain.vaughan.com/1535c26/#section1>.

3 C.f. http://www.bbc.co.uk/wales/history/sites/themes/society/language_education.shtml to find out more about beatings based on the cruel ‘Welsh not’.

4 Part 2:66; available online at: <http://www.llgc.org.uk/index.php?id=thebluebooks>.

5 Welsh Language Presentation (2012) Welsh Language Commissioner, Big Voice Conference, Bangor University.

6 A Statistical Overview of the Welsh Language (2011) Hywel M. Jones, the Welsh Language Board, p.13; available online: <http://www.comisiynyddygydraeg.org/English/Publications%20List/A%20statistical%20overview%20of%20the%20Welsh%20language.pdf>.

7 Ibid.

8 Ibid, p.4

9 Available in full online at: <http://www.legislation.gov.uk/ukpga/1993/38/section/22>.

10 At Part 1, available online at: <http://www.legislation.gov.uk/mwa/2011/1/enacted>.

Welsh in Welsh Courts

Section 22 of the Welsh Language Act 1993 states that Welsh may be used in court proceedings, subject to such prior notice as may be required.¹¹ This is elaborated on in court Practice Directions, for example, the difficult to find practice direction on civil cases states that costs can be ordered against a party who does not give the court notice of their intention to speak Welsh, even though ‘the existing practice of conducting a hearing entirely in the Welsh language on an ad hoc basis and without notice will continue to apply when all parties...consent’.¹² We feel that this Practice Direction is inappropriate as it could potentially punish a Welsh speaker from seeking to use their own language in court and so it should be amended urgently.

However, it would be helpful for allocation questionnaires in Wales to specifically ask, in Welsh, whether a party intends to speak in Welsh. This would put the onus to check on the courts and on parties’ legal representatives, rather than on individuals with no legal training.

South African Comparison

Language rights in South Africa are entrenched in their transformative Constitution for their 11 national languages.¹³ However, only English and Afrikaans are used in courts, otherwise people are at the mercy of the translation services. In South Africa, as in the UK, there have been widespread concerns about the quality and accuracy of translation services, including examples where translators have twisted a witness’ statement.¹⁴

This may be less of a problem in Wales, where a number of people in the courtroom are likely to speak Welsh, but we were very interested to hear about the proposal in South Africa to develop an ICT programme to automatically and correctly translate national languages without bias.¹⁵ We foresee resources being a barrier to developing this to allow for bilingual proceedings in Wales at present, but we would be very interested to follow South Africa’s progress.

Bilingual Juries in Wales

During our visit to Wales in November 2012 we heard from District Judge Williams from Caernarfon County Court that the overwhelming majority of judges in Wales speak fluent Welsh and that simultaneous translation has now been made available in Welsh courts.¹⁶ However, Welsh is not given equal status to English when Welsh speakers have to use translators and this reflects continuing discrimination, so for example recent months have seen a Defendant fined when he was denied access to Welsh court forms.¹⁷

11 Available online at: <http://www.legislation.gov.uk/ukpga/1993/38/section/22>.

12 Practice Direction relating to the use of the Welsh language in cases in the civil courts in Wales, available online at: <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/welshpd>.

13 Constitution of the Republic of South Africa, Chapter 1, Section 6; available online at: <http://www.info.gov.za/documents/constitution/1996/a108-96.pdf>.

14 Communicating across cultures in South African law courts: towards an information technology solution (2008) Kashula, Mostert and Ralarala, Stellenbosch Papers in Linguistics PLUS, Vol.36, 89-104; page 95, para 4; c.f. in the UK where there has been recent chaos with the lack of regulation of court translators – Court interpreter checks ‘non-existent’ (2012) Angus Crawford, BBC News: <http://www.bbc.co.uk/news/uk-19186942>, despite national guidance on the use of interpreters: www.justice.gov.uk/courts/interpreter-guidance.

15 Ibid; page 93, para 2.

16 A development that was being campaigned for over a long time, c.f. Hansard from 1874 online at: <http://hansard.millbanksystems.com/commons/1874/jun/26/observations>.

17 For more information on Jamie Bevan’s case visit the Welsh Language Society’s website: <http://archif.cymdeithas.org/english/>.

Advantages of offering a bilingual jury option

There are strong arguments for giving Defendants in criminal proceedings the option of requesting a bilingual jury, where one can be arranged.¹⁸ A bilingual jury would:

- Be able to understand the evidence of all witnesses, whether given in English or Welsh;
- Avoid delays that might occur waiting for a translator to become available;
- Vitiating the 'Chinese whispers' risk that a translator might make a mistake;
- Put the jury in a better position to judge the credibility of a witness statement;
- Gain a fuller understanding of the case, since some concepts are either totally untranslatable or the translation does not adequately import cultural context;
- Be able to talk confidently in the jury room in whichever language the jurors are most comfortable with;
- Symbolise the proper recognition and equal status of the Welsh language, finally taking steps to make right a background of oppression.

Disadvantages with bilingual juries

Conversely there could be significant problems with a move to introduce bilingual juries:

- Since less than half of the 3.06 million people living in Wales speak fluent Welsh, then this would narrow the pool of potential jurors who could participate in a bilingual jury and jurors are supposed to be selected randomly from the electoral register;¹⁹
- A bilingual or Welsh-speaking jury might not reflect Welsh society at large, where it remains a minority language;
- Some regions of Wales have a much lower percentage of Welsh speakers than others and so it might be very difficult to find a local bilingual jury. At the same time it would be unreasonable to expect either jurors or witnesses to travel across Wales for the benefit of the Defendant.²⁰
- In truth far fewer people than the number who self-identify as Welsh speakers in a census may be fully bilingual. For example, people may forget much of the language they learned in school or only have a school-level vocabulary and so it would be difficult to test this before a trial started.

A number of the students in our group speak a second language and we would emphasise that even where a person is apparently fluent in two languages, this does not necessarily amount to 'bilingualism'. It can be very difficult to switch quickly from one language to another – a concept known in linguistics as 'code-switching'.²¹ However, it may be that Welsh speakers are more familiar with this than most people with a second language, since Welsh and English media, official documents and road signs are prevalent in Wales.

18 C.f. Bilingual Lawmaking and Justice: a report on the lessons for Wales from the Canadian experience of bilingualism (2001) Legislation Committee, Office of the Counsel General; p.10 onwards.

19 Information on the population of Wales available from Wales Online (July 2012): <http://www.walesonline.co.uk/news/wales-news/2012/07/16/population-of-wales-hits-3-06-million-according-to-census-data-91466-31404604/>; the rules for jury selection are set out in s 3 Juries Act 1974: <http://www.legislation.gov.uk/ukpga/1974/23>. On the other hand, c.f. Random selection, linguistic rights and the jury trial (2002) Parry, Criminal Law Review 805.

20 Ibid. S 2(2) Juries Act 1974 requires consideration to convenience and travelling distances to be given during jury summoning.

21 C.f. Linguistic Code-Switching (2009) Ed. Bullock and Toribio, Cambridge University Press

International Comparison

International comparisons in this area are helpful. For example in Ireland, where Irish is constitutionally the official language and 41.4% of people state that they speak Irish,²² in *Ma Carthaighe v Eire* [1999] it was held that there is no right to an Irish-speaking jury.

On the other hand, in New Brunswick, Canada, where French and English are the official languages and about 30% of people speak French, there is a right to a bilingual jury.²³



Recommendation

In this instance about half of our group feel strongly that bilingual juries are an issue of fundamental, political equality and so the option to request a bilingual jury should be made available. Conversely, the other half of our group feel that the procedural challenges in this area would be extremely difficult to overcome and could result in delays to trials.

A consultation paper was issued in 2005 exploring bilingual juries and in March 2010 the Government announced it would not go ahead with bilingual juries because it could be contrary to the random selection principle.²⁴

We recommend that the Ministry of Justice reconsiders its decision and commissions a pilot, in a region of Wales with a higher Welsh-speaking population, to test the effectiveness of this proposal further. We recommend that Jury Summons documents in Wales specifically ask recipients if they would be confident to undertake a bilingual trial.

Use of Welsh in Higher Courts

When *Williams v Cowell* was appealed to the upper tribunal, the claimant in the case requested that the tribunal use its discretion to allow the appeal be held in Wales, so it could be conducted bilingually, as the first hearing had been, or alternatively in Welsh in London.²⁵ The President of the Employment Appeal Tribunal dismissed both applications, stating there was no evidence that Mr Williams would be prejudiced if the appeal were conducted in English.

During our visit to Bangor we were lucky enough to hear from the Welsh Language Commissioner Meri Huws, who stated that it was important for a healthy language to have status in the community and the courts. In our view, if the decision in *Cowell* were made again today, we hope that it would be made differently and that courts, up to and including the Court of Appeal, would consider sitting in Wales. We feel this is especially important where a case has started in the Welsh language, which may give rise to a legitimate expectation

22 According to the 2011 Census, more analysis is available online:
<http://www.irishtimes.com/newspaper/ireland/2012/0330/1224314100321.html>.

23 C.f. *Bilingual Lawmaking and Justice*, a report on the lessons for Wales from the Canadian experience of bilingualism (2001) Office of the Counsel General; available online at: <http://www.scribd.com/doc/91769025/Bilingual-Lawmaking-e> and *Legislative Drafting and Language in Canada* (2007) Lortie and Bergeron QC, Oxford University Press, *Statute Law Review*, 28(2), 83-118.

24 "The Use of Bilingual (English and Welsh-speaking) Juries in Certain Criminal Trials in Wales" (2005) Office for Criminal Justice Reform and Written Ministerial Statements (March 2010) Mr Jack Straw, available online at: <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100309/wmstext/100309m0001.htm>.

25 *Williams v Cowell* (Stables no.1) [1999] WL 477829

that it will continue the same way, making it unreasonable for a higher court to withhold its discretion in this situation. As Sir Emyr Jones Parry stated, “as devolution progresses, full account must be taken of the role and standing of the judiciary in Wales”.²⁶

Moreover, as we heard from Mr Justice Roderick Evans, there is a strong feeling in Wales that the time has come to have their own appellate courts, because this legal infrastructure would meet the needs of Wales following the establishment of the Welsh Assembly and increase the opportunities for Welsh lawyers to practice and develop in their own nation.

The Right to Speak Welsh in the Workplace

The Welsh Language (Wales) Measure 2011 enshrines a ‘freedom’ to speak Welsh.²⁷ Yet, a freedom does not have the same protection as a right, such as those protected by the Equality Act 2010 or the Human Rights Act 1998. Language is one of the 20 devolved areas the Welsh Assembly can legislate on, but so far regulation in this area has focused on the public sector.²⁸ The Welsh Language Strategy states:

*“The workplace is one of the key areas which determines language use...The workplace has a role in building the confidence of Welsh speakers to use the language in other areas of their lives, and that developing the status of the language in the workplace was important in terms of underlining the value of Welsh-medium education”.*²⁹

Historically if a person wanted to argue that they should have a right to speak Welsh at work then this would have to be argued on the basis of racial discrimination. In *Cowell v Williams* in 1998,³⁰ an employment tribunal unanimously found that sacking a chef for communicating with another member of staff in Welsh amounted to direct racial discrimination, since the refusal to allow him to speak in his mother tongue put him at a disadvantage, even though he could also speak English. Similarly, when a branch of Thomas Cook in Bangor (an area where 70% of people speak Welsh) insisted that work-related conversations with colleagues must be conducted in English, the Director of the Commission for Racial Equality in Wales, Mr Chris Myant, said that Thomas Cook’s policy was ‘quite probably’ in breach of the Race Relations Act.³¹

It seems to us that the issue in these cases is one of language equality more than racial equality. We feel that at this time there is a risk that a heavy-handed approach to private businesses might divide the community, when political pressure from the Welsh Language Commissioner and Welsh-speaking communities can have a powerful impact.

In an employment context we would encourage the courts to treat restrictions on language freedom as a breach of the relationship of trust and confidence between employer and employee, since these restrictions seem to be imposed as an inappropriate method of control. In the future there may come a time where language rights could be further protected, for example by giving effect to them in the same way as human rights.

26 All Wales Convention Report (2009), para 3.9.25; available online at:

<http://allwalesconvention.org/getinformed/thereport/thereport/?lang=en>.

27 Section 111, available online at: <http://www.legislation.gov.uk/mwa/2011/1/part/6/enacted>.

28 Ibid, Schedules 5 – 8.

29 A living language: a language for living (Action Plan 2012-13) Welsh Language Strategy 2012-2017, p.12; available online at: <http://wales.gov.uk/newsroom/welshlanguage/2012/120301iaithfyw/?lang=en>.

30 *Cowell v Williams* (Stables No.2) [2001] no. EAT/0904/97

31 Thomas Cook Welsh rule ‘unlawful’ (2007) BBC News, <http://news.bbc.co.uk/1/hi/wales/6739935>.

Welsh and Access to Services

If Welsh is to have equal status to English in Wales then public services, as well as state forms, need to be available in both English and Welsh. The Welsh Language Commissioner informed us that there is concern in Wales at present that NHS staff are not required to respond to members of the public in Welsh, if requested. The NHS Wales Informatics Service promotes Welsh language equality through online medical services, focusing on:

- Children under the age of seven raised in Welsh speaking homes;
- Elderly people who only speak Welsh;
- People with learning difficulties; and
- People with mental health problems.³²

This suggests that people are only able to access Welsh in the health services if they are in a position of additional vulnerability. We believe that Welsh speakers should have more rights than this and have access to Welsh-speaking services across the board. We are also concerned that these steps appear to be predominantly being taken by NHS IT services, suggesting that communications from Welsh speakers would need to be written online, which would discriminate against people with low literacy and IT literacy.

As additional technical words in Welsh are developed, we would like to see more bilingual forms in areas like the NHS to quickly integrate new words into Welsh-speakers' vocabularies.

Conclusion

With increased devolution we are seeing a move away from justifications of practicality to an acceptance that the Welsh language is a fundamental part of Welsh national identity. In our view the time has come for a Welsh Supreme Court judge to join the Northern Irish Justice and two from Scotland who have seats on the bench of the Supreme Court.

We understand that after the current recruitment period there will not be another vacancy on the Supreme Court for a number of years and so we support the recommendation of Mr Justice Roderick Evans, that in this intervening period the Supreme Court could potentially offer a temporary seat to a senior Welsh judge, should they adjudicate on a Welsh case with constitutional significance and public importance for Wales.³³



32 For more details visit their website: <http://www.wales.nhs.uk/nwis/page/52556>.

33 As could have been done, for example, in the recent case surrounding the Local Government Byelaws Bill; c.f. <http://www.bbc.co.uk/news/uk-wales-politics-19886579>.

Hunaniaeth Gyfreithiol a Hawliau'r laith Gymraeg:

Adroddiad gan Big Voice London 2012



Gyda Chefnogaeth Garedig:

Rhagair gan Brif Weithredwr y Goruchaf Lys a Chydlynnydd Prosiect Big Voice London

“Am yr ail flwyddyn yn olynol, mae Goruchaf Lys y DU wedi darparu cefnogaeth i wirfoddolwyr a myfyrwyr Big Voice. Rydym yn falch iawn gwneud hynny, ac mae'n bleser cael y cyfle i ysgrifennu rhagair ar gyfer yr adroddiad hwn, sydd wedi ei gynhyrchu gan gyfranogwyr Big Voice 2012.

Ers i'r Goruchaf Lys agor ei ddrwsau yn Hydref 2009 rydym wedi bod yn awyddus iawn i ddatblygu strategaeth allgysylltu sy'n dod a phobl ifanc mewn cysylltiad â'u llys uchaf, yn arbennig pobl ifanc na fyddai fel arall yn meddwl am ymweld â'r Goruchaf Lys, nac yn ymwneud â'r materion mae'r Llys yn eu hystyried. Mae Big Voice, sy'n targedu ysgolion o gefndiroedd diwylliannol amrywiol, ac o wahanol rannau o Lundain, wedi bod yn un o'r ffyrdd mwyaf effeithiol i gyflawni ein hamcan polisi. Ac mae'n amlwg iawn o'r hyn sydd wedi'i ysgrifennu yn y papurau hyn bod y myfyrwyr wedi dysgu ac adlewyrchu ar rhai materion o bwys mawr yn ystod y deuddeg mis diwethaf.

Ar gyfer y myfyrwyr, mae hyn yn cynrychioli gwaith ychwanegol tu hwnt i ofynion eu hastudiaethau dyddiol ac ymrwymadau eraill. Maent i'w canmol am ddyfalbarhau ac am wneud yr aberth amser ac ymdrech. Hoffwn hefyd dalu teyrnged i'r gwirfoddolwyr sydd wedi rhoi cymorth iddynt dros y misoedd diwethaf, ac i'r unigolion hynny sydd wedi rhoi eu hamser i drafod â'r myfyrwyr, ac i ateb eu cwestiynau.

Mae'r testunau y maent wedi eu dewis i'w hastudio ymysg rhai o faterion cymdeithasol mwyaf heriol ein hoes. Mae amryw o sylwebwyr wedi ysgrifennu a siarad am y testunau hyn, ond nid oes yr un ohonynt wedi darganfod "yr ateb". Mae'r myfyrwyr wedi darllen, gwrandao a dadansoddi. Wrth reswm, mae'r syniadau a'r farn y maent yn eu mynegi yn eiddo iddynt hwy ac nid i unrhyw unigolyn, na sefydliad sydd wedi gweithio â hwy. Ond dylai'r syniadau a'r farn hynny gael eu hystyried fel cyfraniad gwirioneddol i'r trafodaethau y dylem ni fel cymdeithas fod yn eu cael.

Rwy'n credu ac yn gobeithio eu bod nhw wedi darganfod y profiad yn un gwerthfawr a phleserus. Rydym yn bendant wedi mwynhau darparu cefnogaeth ac agor rhai drysau iddynt."

Jenny Rowe

Prif Weithredwr, Goruchaf Lys y Deyrnas Unedig

“Mae wedi bod yn anrhydedd gweithio gyda Big Voice London am ail flwyddyn. I mi, uchafbwynt y flwyddyn oedd gweld perfformiad gwefreiddiol dau o'n myfyrwyr yn rownd derfynol ymryson 'Just Rights'; amlygodd hyn pa mor wych y gall pobl ifanc ddeall a defnyddio cyfreithiau eu gwlad os ydynt yn cael yr offer i wneud hynny.

Cyn i mi ddechrau gweithio â'r prosiect, fel llawer o'n myfyrwyr, roeddwn i'n teimlo bod y gyfraith yn fyd cymharol gaeedig. Fodd bynnag, dros y ddwy flynedd diwethaf rwyf wedi gweld cymaint o siaradwyr yn rhoi eu hamser i rannu eu hangerdd dros fynediad at y gyfraith fel fy mod yn hynod o falch bod yn rhan o ddiwylliant a chymuned gyfreithiol mor gadarnhaol. Wrth symud ymlaen rydym angen isadeiledd cryfach i ganiatáu mynediad at fyd y gyfraith i fwy o bobl ifanc yn yr un ffordd â'n myfyrwyr ni.

Dros y flwyddyn olaf mae ein pobl ifanc, o gefndiroedd diwylliannol amrywiol ac o rannau gwahanol o Lundain, wedi gweithio â'i gilydd i greu tîm. Fel cymuned rydym wedi dysgu am gydraddoldeb a hawliau yn Ne Affrica ac yng Ngogledd Iwerddon, yr Alban a Chymru. Rwy'n gobeithio y byddwn i gyd yn teimlo cyfrifoldeb y wybodaeth a rannwyd â ni, ac y byddwn yn barod i'w ysgwyddo er mwyn gwneud y byd yn well."

Jennifer Blair

Cydlynnydd, Big Voice London

Big Voice London

Lansiwyd Big Voice London ym mis Ionawr 2011. Cysylltodd Jennifer Blair, myfyrwraig bargyfreithiol, yn wreiddiol â'r Goruchaf Lys ynglŷn â'u rhaglen allgysylltu â phobl ifanc, a datblygodd y prosiect gyda'u cyngor a'u cefnogaeth. Recriwtiodd Jennifer dîm o wirfoddolwyr ymrwymedig, aeth at ysgolion y wladwriaeth yn Llundain, gan dargedu'r rhai mewn ardaloedd â'r nifer uchaf o dlodi plant, i gasglu at ei gilydd grŵp o 40 o fyfyrwyr chweched dosbarth gyda diddordeb yn y gyfraith.

Caiff Big Voice London ei arwain gan wirfoddolwyr sydd ar y cyfan yn fyfyrwyr cyfraith ôl-raddedig sydd ag ymrwymiad i roi mynediad i ieuencid. Mae Big Voice yn unigryw yn y ffordd y mae'n mynd i'r afael yn benodol ag ymrwymo pobl ifanc â'r gyfundrefn gyfreithiol. Mae'r prosiect yn ymdrechu i rymuso myfyrwyr o gefndiroedd cymdeithasol-economaidd ddifreintiedig drwy eu cysylltu â llunwyr polisi cyfreithiol, fel bod ganddynt lais yn ein cymdeithas.

Big Voice yn 2012

Rydym wedi gweld datblygiadau bendigedig i'r prosiect yn 2012, gan gynnwys creu cystadleuaeth ymryson hawliau dynol 'Just Rights', ble cafodd ein pobl ifanc eu paru â myfyrwyr y gyfraith i gystadlu â'i gilydd fel prif gwmsler a chwnsler iau. Caniataodd hyn i bobl ifanc oedd â dim cefndir cyfreithiol i dderbyn mentora wrth iddynt ddysgu sut i wneud dadl gyfreithiol ar lefel uchel. Rydym yn gwerthfawrogi cyfraniad yr Arglwydd Reed a'r Goruchaf Lys am gynnal y rownd derfynol ac yn gyffrous eu bod wedi cytuno i wneud hynny eto yn 2013.

Y flwyddyn hon rydym wedi adeiladu ar ein hastudiaeth gymharol yn 2011 â De Affrica ol-apartheid, drwy ymchwilio i'r datblygiadau cyfreithiol arloesol sy'n cael eu gwneud yng Ngogledd Iwerddon, yr Alban a Chymru. Cawsom yr anrhydedd i gymryd rhan mewn teithiau addysgol i Fangor, Belfast a Chaeredin sydd wedi rhoi syniadau gwych i ni ar gyfer ein gwaith i'r dyfodol.

Ein Myfyrwyr

Mae'r myfyrwyr yn gwneud cais i ymuno â'r prosiect ac mae cymryd rhan yn Big Voice London yn golygu ymrwymiad sylweddol o ran mynychu sesiynau wythnosol yn ystod y tymor rhwng Ionawr a Rhagfyr 2012, yn ogystal â chymryd rhan mewn teithiau ymchwil dros nos, i gyd yng nghyd-destun pwysau gwaith eu hastudiaethau yn y chweched dosbarth.

Mae cefnogaeth a chydweithrediad yr ysgolion a cholegau sy'n gweithio â ni yn hanfodol i'r prosiect, gan ei fod yn caniatáu i fyfyrwyr gael cefnogaeth a chydabyddiaeth i'w gwaith. Y flwyddyn hon mynychodd rhan helaeth o'n myfyrwyr City and Islington Sixth Form College, Hackney Community College, Mulberry School for Girls, Nower Hill high School, St Angela's & St Bonaventure's Sixth Form Centre a St Dominic's Sixth Form College.

Tri Chwyddwydr ar y Gyfundrefn Gyfreithiol

Calon ein gwaith yw canolbwyntio ar gydraddoldeb a mynediad at gyfiawnder. Mae ein myfyrwyr yn archwilio'r testunau hyn o wahanol safbwyntiau ym mhob un o'r tri grŵp.

Amrywiaeth a'r Gyfraith: archwiliwyd y rhwystrau sy'n effeithio ar fynediad at y proffesiynau cyfreithiol yn ogystal â rôl diwylliant mewn amddiffyniadau cyfreithiol. Heriwyd cysyniadau gwahaniaethu ac archwiliwyd materion megis braint, grymusrwydd a gweithredu cadarnhaol.

Asiantaeth Gyfreithiol: canolbwyntiwyd ar fynediad at y gyfraith yn dilyn diwygiadau Woolf, hawliau dynol a'r gyfundrefn gyfiawnder troseddol, gydag astudiaeth benodol ar rymoedd yr heddlu, gwrthdystiadau, atebolrwydd a'r defnydd o ataliaeth mewn dalfeydd.

Treftadaeth Gyfreithiol: edrychwyd ar effaith celf, pensaerniaeth a llenyddiaeth ar hunaniaeth gyfreithiol, archwiliwyd treftadaeth gyfreithiol amrywiol y myfyrwyr eu hunain ac effaith hawliau ieithyddol a datganoli ar hunaniaeth gyfreithiol yng Nghymru.

Yr Awduron

Y bobl ifanc gymrodd rhan yn y prosiect a gyfrannodd tuag at y papur hwn oedd:

Treftadaeth Gyfreithiol

Lota Bantic

Henna Begum

Amena Charles

Vian Hilli

Victoria Macher

Lucy Michaeloudis

Lovelace Odoi

Sultana Begum

Sabina Sultana

Y gwirfoddolwyr oedd yn ymdrin â hwyluso, cydlynu a chyfrannu at y papur hwn oedd:

Adam Muckle, Alex Cisneros, Jennifer Blair, Maleeka Bokhari a Michelle Murray.



Cydnabyddiaethau

Rydym yn gwerthfawrogi'n fawr yr ewyllys da a'r cymorth yr ydym wedi ei dderbyn yn ystod ein prosiect ac yn arbennig i Ysgol y Gyfraith Prifysgol Bangor am eu cymorth â'r cyfieithu i'r Gymraeg.

Gwirfoddolwyr yw'r rhai sydd wedi rhoi eu hamser i wireddu'r prosiect. Cafwyd hyfforddiant hwyluso arbenigol gan EquaEd. Y tîm cydlynu oedd Alex Cisneros, Ariana Gale, Jennifer Blair a Maleeka Bokhari. Ein harweinwyr tîm oedd: Adam Muckle, Ben Mills, Dimitra Kamarinou, Esmá Komur, Frances Bennett, Lucy Rezler-Kennedy, Michelle Murray, Ruth Hennessy, Sarah Hirech, Sasha Wickham, Sophie Charles, Wendy Bremang, Zahra Afshar. Hoffem hefyd ddiolch i'n gwirfoddolwr cyfreithiol Nargees Choudhury a'n gwirfoddolwr digwyddiadau cyfreithiol Rob Patmore.

Mae Siaradwyr wedi cynnig golwg arbenigol i'r myfyrwyr am eu gwaith a'u profiad proffesiynol. Diolch i: Bernard Hogan-Howe Comisiynydd yr Heddlu Metropolitan; yr Arglwydd Reed o'r Goruchaf Lys; Adam Wagner; Tom Cleaver; Jonathan Rubin; Gwion Lewis; Glenys Roberts; Sara Mansoori; Lucy Moorman; Dr David McIlroy; Sham Qayyum; Jai Sharda; Brian Kennelly; Jennifer Agyekum; Aled Griffiths, Dr Osian Rees, Carys Aaron a Huw Pritchard o Brifysgol Bangor; y Barnwr Rhanbarth Williams o Lys Sirol Caernarfon; Meri Huws Comisiynydd y Gymraeg; Mr Ustus Roderick Evans o'r Uchel Lys; Comisiwn y Gyfraith; Emily Thornberry AS; y Farwnes Helena Kennedy CF a'r Arglwydd Kerr o'r Goruchaf Lys.

Mae llawer mwy sydd wedi cyfrannu at gyflawni'r prosiect. Hoffem ddiolch yn arbennig i: EquaEd, Sarwan Singh a City University, BPP Law School, City and Islington Sixth Form College, Hackney Community College, Mulberry School for Girls, Nower Hill high School, St Angela's & St Bonaventure's Sixth Form Centre, St Dominic's Sixth Form College, Islington Council, Kensington Unitarian Church, Gray's Inn, Paul McEvoy o Gyfreithwyr McEvoy Sheridan Solicitors, ein prif noddwr Lexis Nexis a'r Goruchaf Lys.

'Cenedl heb iaith, Cenedl heb galon'

Cyflwyniad

Ers i Ddeddf Llywodraeth Cymru 2006 ddatganoli grymoedd deddfwriaethol i Gymru rydym wedi gweld dechreuad awdurdodaeth gyfreithiol Gymreig newydd.¹ Mae'n gyfnod cyffrous i gyfraith Gymreig ac mae'r iaith Gymraeg yng nghalon y datblygiadau hyn.

Mae dwy ochr i'r ddadl dros gynnwys yr iaith Gymraeg mewn achosion cyfreithiol yng Nghymru. Mae un yn ddadl sydd wedi ei sylfaenu ar ymarferoldeb - ei bod yn bwysig i'r rhai sydd yn fwy rhugl yn y Gymraeg nag yn y Saesneg gael mynediad at y gyfraith a'u hawliau - ac un sydd wedi ei sylfaenu ar dreftadaeth a chydarddoldeb - bod y Gymraeg yn rhan sylfaenol o hunaniaeth Gymreig ac felly byddai gwrthod darpariaeth ar gyfer siaradwyr Cymraeg yn y gyfundrefn gyfreithiol yn anghymesur ac yn wahaniaethol.

Tra ein bod yn gwerthfawrogi bod llawer o bobl yng Nghymru sydd ddim yn siarad Cymraeg, rydym yn credu ei bod yn bwysig sylweddoli hawliau'r rhai sydd wedi brwydro dros gymaint o amser i gael cydnabyddiaeth i'w hiaith frodorol. Mae'r papur briffio hwn yn ganlyniad i ymchwiliad i safle presennol hunaniaeth gyfreithiol Gymreig, taith addysgiadol i Ysgol y Gyfraith Prifysgol Bangor ac astudiaeth gymharol o hawliau ieithyddol yng Nghanada a De Affrica.

Crynodeb

Fel y trafodir isod, ein prif argymhellion yw:

- Dylid diwygio'r Cyfarwyddyd Ymarfer ar ddefnyddio'r iaith Gymraeg mewn achosion yn y llysoedd sifil er mwyn diddymu'r disgrisiwn i ddyfarnu costau yn erbyn siaradwr Cymraeg sydd ddim yn rhoi hysbysiad o flaen llaw o'u bwriad i wneud hynny, ond dylai holiaduron dyrannu ofyn yn glir, yn Gymraeg, os yw parti yn dymuno siarad Cymraeg;
- Dylai'r Weinyddiaeth Gyfiawnder gomisiynu peilot i ymchwilio i'r opsiwn o ddefnyddio rheithgorau dwyieithog a dylai dogfennau Gwŷsio Rheithgor ofyn a yw'r rheithwyr yn gallu cymryd rhan mewn achos dwyieithog;
- Dylai mwy o isadeiledd cyfreithiol, gan gynnwys system apeliadol llawn ar gyfer achosion Cymreig, gael ei sefydlu yng Nghymru;
- Dylai cyfyngiadau ar weithwyr sy'n siarad Cymraeg yn y gweithle gael eu trin fel eu bod yn torri ffydd a hyder gan dribiwnlysoedd cyflogaeth, gan gymryd i ystyriaeth Mesur y Gymraeg (Cymru) 2011;
- Dylai gwasanaethau iechyd a gofal cymdeithasol fod ar gael yn Saesneg a Chymraeg; dylid datblygu dogfennau dwyieithog yn y meysydd hyn er mwyn cyfannu termau technegol Cymraeg newydd i eirfa siaradwyr Cymraeg;
- Dylai sedd yn y Goruchaf Lys gael ei chlustnodi i farnwr/es Cymreig a dylai'r Llys Apêl ystyried eistedd yng Nghymru i wrando ar achosion Cymreig arwyddocaol.

¹ Gyda rhai amrywiaethau yn y system llysoedd, yn arbennig tribiwnlysoedd, c.f. Accessible Bilingual Legislation for Wales (2012) Hughes and Davies, Statute Law Review 33(2), 103-121, t.108-109 neu'r erthygl cyfrwng Cymraeg Deddfwriaeth Hygyrch a Dwyieithog i Gymru (2012) Hughes a Davies, Statute Law Review 33(2), 122-140, t.128

Cydraddoldeb a'r Iaith Gymraeg

Tra bod datganoli yn yr Alban wedi canolbwyntio ar annibyniaeth wleidyddol a Gogledd Iwerddon wedi canolbwyntio ar grefydd, mae iaith yn ganolbwyntio i hunaniaeth Gymreig. Gellir ond deall y frwydr dros gydraddoldeb ieithyddol yng nghyd-destun y gorthwrwm a wynebwyd gan siaradwyr Cymraeg. Er enghraifft, roedd y Deddfau Uno yn datgan:

"all Justices... and Ministers of the Law, shall proclaim and keep the Sessions Courts...and all other Courts in the English Tongue...and all...Juries and Inquests...to be given and done in the English Tongue...henceforth no Person or Persons that use the Welsh Speech or Language, shall have or enjoy any manner Office or Fees within this Realm of England, Wales, or other the King's Dominion, upon Pain of forfeiting the same Offices or Fees" (Adran 20, Laws in Wales Act 1536).²

Nid oedd y defnydd o Gymraeg mewn ysgolion yn cael ei gefnogi, er enghraifft roedd plant oedd yn siarad Cymraeg yn cael eu curo,³ yn arbennig yn dilyn Adroddiadau Comisiynwyr yr Ymchwiliad i Gyflwr Addysg yng Nghymru 1847, oedd yn datgan:

"The Welsh language is a vast drawback to Wales and a manifold barrier to the moral progress and commercial prosperity of the people. Because of their language the mass of the Welsh people are inferior to the English in every branch of practical knowledge and skill. [...] It is the language of old fashioned agriculture, of theology and of simple rustic life, while all the world about him is English."⁴

Parhaodd y gorthrymder am 400 can mlynedd. Er hynny, efallai yn bennaf oherwydd y defnydd o'r Beibl Cymraeg mewn Ysgolion Sul, erbyn 1901, roedd 50% o boblogaeth Cymru yn parhau i siarad Cymraeg ac roedd dal ardaloedd yng Nghymru ble'r oedd pobl yn siarad Cymraeg yn unig (adwaenir fel cymunedau uniaith).⁵

Fodd bynnag, yn sgil agwedd gynyddol elyniaethus i 'genedlaetholdeb' yn ystod y Rhyfeloedd Byd, mudo diwydiannol a lledaeniad y cyfryngau Saesneg drwy radio a theledu, erbyn 1991 nid oedd unrhyw gymunedau uniaith Gymraeg yn bodoli a dim ond 18.7% o'r boblogaeth oedd yn gallu siarad Cymraeg.⁶ Er hynny, cynorthwyodd mudiadau angerddol dros gydraddoldeb y Gymraeg, wedi eu calonogi gyda sefydlu Cynulliad Cymru a grymoedd datganoledig, i gyflwyno'r Gymraeg i'r brif ffrwd drwy addysg, y cyfryngau a gwaith y sector gyhoeddus, sydd wedi llwyddo i gynyddu'r nifer o siaradwyr Cymraeg i 20.8% yn 2001.⁷ Mae canran arwyddocaol o fyfyrwyr ysgol yng Nghymru yn dysgu Cymraeg fel iaith gyntaf (16.3% yn 2011)⁸ ac mae Deddf yr Iaith Gymraeg 1993 yn rhoi hawl i bartion siarad Cymraeg yn y llys:

"In any legal proceedings in Wales the Welsh language may be spoken by any party, witness or other person who desires to use it, subject in the case of proceedings in a court other than a magistrates' court to such prior notice as may be requires by rules of court..." a 22(1)⁹

Efallai, yn fwy arwyddocaol, mae Mesur y Gymraeg (Cymru) 2011 yn gwneud Cymraeg yn iaith swyddogol yng Nghymru.¹⁰

2 Ar gael ar-lein ar: <http://owain.vaughan.com/1535c26/#section1>.

3 C.f. http://www.bbc.co.uk/wales/history/sites/themes/society/language_education.shtml er mwyn darganfod mwy am y gamdriniaeth yn sgil y 'Welsh not' creulon.

4 Rhan 2:66; ar gael ar-lein ar: <http://www.llgc.org.uk/index.php?id=thebluebooks>.

5 Cyflwyniad ar yr Iaith Gymraeg (2012) Comisiynydd y Gymraeg, Cynhadledd Big Voice, Prifysgol Bangor.

6 Darlun Ystadegol o Sefyllfa'r Gymraeg (2011) Hywel M. Jones, Bwrdd yr Iaith Gymraeg, t.13; ar gael ar-lein: <http://www.comisiynyddygyymraeg.org/Cymraeg/Rhestr%20Cyhoeddiadau/Darlun%20ystadegol%20Cymraeg.pdf>

7 Ibid.

8 Ibid. t.4

9 Ar gael yn llawn ar-lein ar: <http://www.legislation.gov.uk/ukpga/1993/38/section/22>

10 Rhan 1, ar gael ar-lein ar: <http://www.legislation.gov.uk/mwa/2011/1/enacted>.

Cymraeg yn Llysoedd Cymru

Mae adran 22 Deddf yr Iaith Gymraeg 1993 yn datgan bod modd defnyddio Cymraeg mewn achosion llys, yn amodol ar roi unrhyw hysbysiad o flaen llaw ble bod angen.¹¹ Caiff hyn ei fanylu arno yng Nghyfarwyddiadau Ymarfer y Llys. Er enghraifft, mae'r cyfarwyddyd ymarfer ar achosion sifil, sy'n anodd ei ddarganfod, yn nodi y gellir dyfarnu costau yn erbyn parti sy'n methu rhoi hysbysiad o flaen llaw o'u bwriad i siarad Cymraeg, er 'bydd yr ymarfer presennol o gynnal gwrandawriad yn gyfan gwbl yn y Gymraeg ar sail ad hoc a heb rybudd yn parhau'n ddilys pan fo pob parti... yn cytuno'.¹² Rydym o'r farn bod y Cyfarwyddyd Ymarfer hwn yn amhriodol gan fod posibilrwydd cosbi siaradwyr Cymraeg am geisio defnyddio eu hiaith eu hunain yn y llys ac felly dylid ei ddiwygio ar frys.

Fodd bynnag, byddai'n ddefnyddiol i holiaduron dyrannu yng Nghymru ofyn yn benodol, yn Gymraeg, os yw parti yn bwriadu siarad Cymraeg. Byddai hyn yn rhoi'r cyfrifoldeb i'w wirio ar y llys a chynrychiolaeth gyfreithiol y partion, yn hytrach nag ar unigolion heb hyfforddiant cyfreithiol.

Cymhariaeth â De Affrica

Mae hawliau ieithyddol yn Ne Affrica wedi eu hymwreiddio yn eu Cyfansoddiad trawsnewidiol ar gyfer eu 11 iaith genedlaethol.¹³ Fodd bynnag, dim ond Saesneg ac Afrikaans a ddefnyddir yn y llysoedd, fel arall mae pobl ar drugaredd y gwasanaeth cyfieithu. Yn Ne Affrica, fel yn y DU, mae gofid cyffredinol ynglŷn ag ansawdd a chywirdeb gwasanaethau cyfieithu, gan gynnwys enghreifftiau ble mae cyfieithwyr wedi ystumio datganiadau tystion.¹⁴

Efallai bod hyn yn llai o broblem yng Nghymru, ble mae nifer o bobl yn y llys sy'n debygol o allu siarad Cymraeg, ond roeddem â chrym ddiddordeb clywed am gynnig yn Ne Affrica i ddatblygu rhaglen Dechnoleg Gwybodaeth sy'n cyfieithu ieithoedd cenedlaethol yn awtomatig, yn gywir a heb duedd.¹⁵ Rydym yn rhagweld y byddai adnoddau yn rhwystr ar gyfer datblygu hyn er mwyn caniatáu achosion dwyieithog yng Nghymru ar hyn o bryd, ond byddem â diddordeb mawr dilyn y datblygiad yn Ne Affrica.

Rheithgorau Dwyieithog yng Nghymru

Yn ystod ein hymweliad â Chymru yn Nhachwedd 2012 clywsom gan y Barnwr Rhanbarth Williams o Lys Sirol Caernarfon bod rhan helaeth o'r barnwyr yng Nghymru yn siarad Cymraeg rhugl a bod cyfieithu ar y pryd nawr ar gael yn llysoedd Cymru.¹⁶ Fodd bynnag, nid yw'r Gymraeg â statws cydradd â'r Saesneg tra bod siaradwyr Cymraeg yn gorfod defnyddio cyfieithwyr ac mae hyn yn adlewyrchu gwahaniaethu o hyd, er enghraifft yn ystod y misoedd diwethaf gwelwyd Diffynnydd yn cael dirwy pan wrthodwyd iddo gael ffurflenni llys Cymraeg.¹⁷

11 Ar gael ar-lein ar: <http://www.legislation.gov.uk/ukpga/1993/38/section/22>

12 Cyfarwyddiadau Ymarfer ar Ddefnyddio'r Iaith Gymraeg mewn Achosion yn y Llysoedd Sifil yng Nghymru, ar gael ar-lein ar: <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/welshpd>.

13 Cyfansoddiad Gweriniaeth De Affrica, Pennod 1, adran 6, ar gael ar-lein ar: <http://www.info.gov.za/documents/constitution/1996/a108-96.pdf>

14 Communicating across cultures in South African law courts: towards an information technology solution (2008) Kashula, Mostert and Ralarala, Stellenbosch Papers in Linguistics PLUS, Cyf.36, 89-104; tudalen 95, para 4; c.f. yn y DU mae anhrefn diweddar wedi bod gyda diffyg rheoliadau ar gyfer cyfieithwyr yn y llysoedd – Court interpreter checks 'non-existent' (2012) Angus Crawford, BBC News: <http://www.bbc.co.uk/news/uk-19186942>, er bod canllawiau cenedlaethol ar gyfer defnyddio cyfieithwyr: www.justice.gov.uk/courts/interpreter-guidance.

15 Ibid. tudalen 93, para.2

16 Datblygiad a mygrchwyd amdano dros amser hir, c.f. Hansard o 1874 ar-lein ar: <http://hansard.millbanksystems.com/commons/1874/jun/26/observations>.

17 Am fwy o wybodaeth ynglŷn ag achos Jamie Bevan ymwelwch â gwefan Cymdeithas yr Iaith Gymraeg: <http://archif.cymdeithas.org/english/>

Manteision Cynnig Rheithgorau Dwyieithog

Mae dadleuon cryf dros roi dewis i Ddiffynnydd mewn achos troseddol i wneud cais am reithgor dwyieithog, ble mae modd ei drefnu.¹⁸ Byddai rheithgor dwyieithog yn:

- Gallu deall tystiolaeth yr holl dystion yn Gymraeg neu Saesneg;
- Osgoi oedi a all ddigwydd wrth aros am gyfieithwyr i fod ar gael;
- Dirymu'r risg o 'sibrwd tseniaidd' y gall cyfieithydd wneud camgymeriad;
- Rhoi'r rheithgor mewn gwell sefyllfa i farnu hygredd datganiad y tyst;
- Llwyddo i gael dealltwriaeth fwy cyflawn o'r achos, gan nad oes modd cyfieithu rhai cysyniadau neu nid yw cyfieithiad yn llwyr gyfleu'r cyd-destun diwylliannol;
- Gallu siarad yn hyderus yn yr ystafell rheithgor ym mha bynnag iaith mae'r rheithwyr yn fwyaf cyfforddus ynddo;
- Cyfleu cydnabyddiaeth lawn o statws cydradd y Gymraeg, gan gymryd camau i wneud yn iawn am y cefndir o orthrwm.

Anfanteision Rheithgorau Dwyieithog

Ar y llaw arall gall fod problemau sylweddol gyda chyflwyno rheithgorau dwyieithog:

- Gan fod llai nag hanner yr 3.06 miliwn o bobl sy'n byw yng Nghymru yn siarad Cymraeg rhugl, byddai hyn yn lleihau'r nifer o reithwyr posib a allai gymryd rhan mewn rheithgor dwyieithog ac mae rheithwyr i fod i gael eu dewis ar hap o'r gofrestr etholiadol;¹⁹
- Efallai na all rheithgor dwyieithog neu gyfrwng Cymraeg adlewyrchu'r gymdeithas Gymreig gyfan, ble mae'n parhau'n iaith leiafrifol;
- Mae rhai rhannau o Gymru â chyfran llawer llai o siaradwyr Cymraeg nag eraill ac felly byddai'n anodd iawn dod o hyd i reithgor dwyieithog lleol. Yn ogystal, byddai'n afresymol disgwyl i unai reithwyr neu dystion deithio ar draws Cymru er budd y Ddiffynnydd.²⁰
- Mewn gwirionedd mae llawer llai o bobl na'r nifer sy'n cydnabod eu hunain eu bod yn siaradwyr Cymraeg yn y cyfrifiad yn llwyr ddwyieithog. Er enghraifft, gall pobl anghofio llawer o'r iaith y gwnaethant ddysgu yn yr ysgol neu sydd â geirfa lefel ysgol yn unig a byddai'n anodd profi hyn cyn i'r treial ddechrau.

Mae nifer o'r myfyrwyr yn ein grŵp yn siarad ail iaith ac rydym am bwysleisio hyd yn oed ble mae'n debyg bod person yn rhugl mewn dwy iaith, nid yw hyn o reidrwydd yn golygu 'dwyieithrwydd'. Gall fod yn anodd newid yn sydyn rhwng un iaith a'r llall - cysyniad a adwaenir fel 'cyfnwid codau'.²¹ Fodd bynnag, efallai bod siaradwyr Cymraeg yn fwy cyfarwydd â hyn na'r rhan fwyaf o bobl ag ail iaith gan fod cyfryngau, dogfennau swyddogol ac arwyddion ffyrdd Cymraeg a Saesneg yn gyffredin yng Nghymru.

18 C.f. Bilingual Lawmaking and Justice: a report on the lessons for Wales from the Canadian experience of bilingualism (2001) Swyddfa'r Cwnsler Cyffredinol; t.10 ymlaen

19 Gwybodaeth ynglŷn â phoblogaeth Cymru ar gael oddi ar Wales Online (Gorffennaf 2012): <http://www.walesonline.co.uk/news/wales-news/2012/07/16/population-of-wales-hits-3-06-million-according-to-census-data-91466-31404604/>; mae'r rheolau ar gyfer dewis rheithgor wedi eu gosod yn a3 Deddf Rheithgorau 1974: <http://www.legislation.gov.uk/ukpga/1974/23>. Ar y llaw arall, c.f. Random selection, linguistic rights and the jury trial (2002) Parry, Criminal Law Review 805.

20 Ibid. mae a 2(2) o'r Ddeddf Rheithgorau 1974 yn ei gwneud yn ofynnol i ystyried cyfleustra a phellter teithio wrth wysio rheithwyr

21 C.f. Linguistic Code-Switching (2009) Gol. Bullock a Toribio, Cambridge University Press

Cymhariaeth Ryngwladol

Mae cymariaethau rhyngwladol yn y maes yma'n ddefnyddiol. Er enghraifft yn Iwerddon, lle mae'r Wyddeleg yn iaith gyfansoddiadol swyddogol ac 41.4% o bobl yn nodi eu bod yn siarad Gwyddeleg,²² yn achos *Ma Carthaighe v Eire [1999]* dyfarnwyd bod dim hawl cael rheithgor sy'n siarad Gwyddeleg.

Ar y llaw arall, yn New Brunswick, Canada, ble mai Ffrangeg a Saesneg yw'r ieithoedd swyddogol a thua 30% o bobl yn siarad Ffrangeg, mae hawl cael rheithgor dwyieithog.²³



Argymhelliad

Yn yr achos yma mae tua hanner ein grŵp yn teimlo'n gryf bod rheithgorau dwyieithog yn fater o gydraddoldeb gwleidyddol sylfaenol ac felly dylai'r dewis i wneud cais am reithgor dwyieithog fod ar gael. Ar y llaw arall, mae hanner arall ein grŵp o'r farn y byddai heriau gweithdrefnol yn y maes yn rhai hynod o anodd ei goresgyn ac fe allai arwain at oedi mewn achosion.

Cyhoeddwyd papur ymgynghori yn 2005 oedd yn archwilio rheithgorau dwyieithog ac ym Mawrth 2010 cyhoeddodd y Llywodraeth na fyddent yn mynd yn eu blaen â rheithgorau dwyieithog gan y byddai'n groes i'r egwyddor o ddewis ar hap.²⁴

Rydym yn argymhell y dylai'r Weinyddiaeth Gyfiawnder ail-ystyried eu penderfyniad a chomisiynu peilot, mewn rhanbarth o Gymru sydd â phoblogaeth uchel o siaradwyr Cymraeg, i brofi effeithiolrwydd y cynnig ymhellach. Rydym yn argymhell y dylai dogfennau Gwŷsio Rheithgor yng Nghymru ofyn i dderbynyddion yn benodol a fyddent yn hyderus i ymgymryd ag achos dwyieithog.

Defnydd o'r Gymraeg yn y Llysoedd Uwch

Pan apelwyd Williams v Cowell i'r uwch driwlynys, gwnaeth yr hawlydd gais i'r triwlynys ddefnyddio ei ddisgresiwn i ganiatáu'r achos gael ei gynnal yng Nghymru, fel bod modd ei gynnal yn ddwyieithog, fel ag yr oedd y gwrandawriad cyntaf, neu ar y llaw arall yn Gymraeg yn Llundain.²⁵ Gwrthododd Llywydd y Tribiwnlys Apêl Cyflogaeth y ddau gais gan nodi bod dim tystiolaeth y byddai Mr Williams o dan anfantais petai'r apêl yn cael ei gynnal yn Saesneg.

Yn ystod ein hymweliad â Bangor roeddem yn lwcus i glywed gan Meri Huws, Comisiynydd y Gymraeg, a nododd ei bod yn bwysig i iaith iachus gael statws yn y gymuned ac yn y llysoedd. Yn ein barn ni, petai'r penderfyniad yn Cowell yn cael ei wneud heddiw, rydym yn gobeithio y byddai'n cael ei wneud yn wahanol ac y byddai'r llysoedd, hyd at a gan gynnwys y Llys Apêl, yn ystyried eistedd yng Nghymru. Rydym o'r farn bod hyn yn arbennig o bwysig ble mae achos wedi dechrau yn yr iaith Gymraeg, a all godi disgwyliad dilys y byddai'n

22 Yn ol cyfrifiad 2011, mwy o ddadansoddi ar gael ar-lein:

<http://www.irishtimes.com/newspaper/ireland/2012/0330/1224314100321.html>.

23 C.f. Bilingual Lawmaking and Justice, a report on the lessons for Wales from the Canadian experience of bilingualism (2001) Swyddfa'r Cwnsler Cyffredinol; ar gael ar-lein ar: <http://www.scribd.com/doc/91769025/Bilingual-Lawmaking-e> a Legislative Drafting and Language in Canada (2007) Lortie and Bergeron QC, Oxford University Press, Statute Law Review, 28(2), 83-118.

24 "The Use of Bilingual (English and Welsh-speaking) Juries in Certain Criminal Trials in Wales" (2005) Office for Criminal Justice Reform and Written Ministerial Statements (Mawrth 2010) Mr Jack Straw, ar gael ar-lein ar: <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100309/wmstext/100309m0001.htm>

25 Williams v Cowell (Stables no.1) [1999] WL 477829

parhau yn yr un ffordd, gan ei gwneud yn afresymol i lys uwch wrthod ei ddisgresiwn yn y fath sefyllfa. Fel nodwyd gan Syr Emyr Jones Parry, “wrth i ddatganoli ddatblygu, mae’n rhaid rhoi ystyriaeth lawn i rôl a statws y farnwriaeth yng Nghymru.”²⁶

Yn ogystal, fel y clywsom gan yr Ustus Roderick Evans, mae teimlad cryf yng Nghymru bod yr amser wedi dod i Gymru gael llysoedd apeliadol ei hun, gan y byddai’r isadeiledd cyfreithiol hwn yn ymateb i anghenion Cymru yn dilyn sefydlu Cynulliad Cymru a’r cyfleoedd cynyddol i gyfreithwyr Cymreig ymarfer a datblygu yn eu cenedl eu hunain.

Yr Hawl i Siarad Cymraeg yn y Gweithle

Mae Mesur y Gymraeg (Cymru) 2011 yn cynnwys y ‘rhyddid’ i siarad Cymraeg.²⁷ Er, nid yw rhyddid â’r un warchodaeth a hawl, megis yr hawliau a ddiogelir gan Ddeddf Cydraddoldeb 2010 neu’r Ddeddf Hawliau Dynol 1998. Mae iaith yn un o’r 20 maes datganoledig y gall y Cynulliad ddeddfu arno, ond mae rheoliadau yn y maes wedi canolbwyntio ar y sector gyhoeddus hyd yn hyn.²⁸ Mae Strategaeth y Gymraeg yn nodi:

“...y gweithle yw un o’r meysydd allweddol sy’n pennu pa iaith y mae pobl yn ei defnyddio...[mae] gan y gweithle rôl o ran ennyn hyder ymhlith siaradwyr Cymraeg i ddefnyddio’r iaith mewn agweddau eraill ar eu bywydau. Nodwyd hefyd fod datblygu statws yr iaith yn y gweithle yn bwysig o safbwynt pwysleisio gwerth addysg cyfrwng Cymraeg.”²⁹

Yn hanesyddol os oedd person am ddadlau y dylent gael yr hawl i siarad Cymraeg yn y gwaith yna byddai’n rhaid iddynt ddadlau ar sail gwahaniaethu hiliol. Yn *Cowell v Williams* yn 1998,³⁰ dyfarnodd tribiwnlys cyflogaeth yn unfrydol bod diswyddo cogydd am gyfathrebu ag aelod arall o staff yn Gymraeg yn gwahaniaethu ar sail hil uniongyrchol, gan fod gwrthod rhoi hawl iddo siarad yn ei famiaith yn ei roi o dan anfantais, er ei fod hefyd yn gallu siarad Saesneg. Yn ogystal, pan fynodd cangen o Thomas Cook ym Mangor (ardal ble mae 70% o bobl yn siarad Cymraeg) y dylai trafodaethau yn ymwneud â gwaith gyda chyd-weithwyr gael eu cynnal yn Saesneg, dywedodd Cyfarwyddwr y Comisiwn Cydraddoldeb Hiliol yng Nghymru, Mr Chris Myant, bod polisi Thomas Cook ‘fwy na thebyg’ yn groes i’r Ddeddf Cysylltiadau Hiliol.³¹

Mae’n ymddangos i ni fod y materion yn yr achosion hyn yn rhai o gydraddoldeb ieithyddol yn hytrach na chydaddoldeb hiliol. Rydym o’r farn ar hyn o bryd bod risg y gall triniaeth lawdrwm tuag at fusnesau preifat rannu’r gymuned, pan gall pwysau gwleidyddol gan Gomisiynydd y Gymraeg a’r gymuned Gymraeg gael effaith rymus.

Mewn cyd-destun cyflogaeth byddem yn annog y llysoedd i drin cyfyngiad ar ryddid ieithyddol fel ei fod yn torri’r berthynas o ffydd a hyder rhwng y cyflogwr a’r gweithiwr, gan ei bod yn ymddangos bod y cyfyngiadau hyn yn cael eu gosod fel dulliau amhriodol o reolaeth. Yn y dyfodol efallai daw amser pan fydd hawliau ieithyddol yn cael eu diogelu ymhellach, er enghraifft drwy roi effaith iddynt yn yr un ffordd â hawliau dynol.

26 Adroddiad Confensiwn Cymru Gyfan (2009), para 3.9.25; ar gael ar-lein ar: <http://wales.gov.uk/docs/awc/publications/091118thereportcy.pdf>

27 Adran 111, ar gael ar-lein ar: <http://www.legislation.gov.uk/mwa/2011/1/part/6/enacted>

28 Ibid, Atodlenni 5 – 8

29 Iaith fyw: iaith byw (Cynllun Gweithredu 2012-13) Strategaeth y Gymraeg 2012-2017, t.12; ar gael ar-lein ar: <http://wales.gov.uk/docs/dcells/publications/120430wlsactionplan1213cy.pdf>

30 *Cowell v Williams* (Stables No.2) [2001] no. EAT/0904/97

31 *Thomas Cook Welsh rule ‘unlawful’* (2007) BBC News, <http://news.bbc.co.uk/1/hi/wales/6739935>

Cymraeg a Mynediad i Wasanaethau

Os yw'r Gymraeg i gael statws cydradd â'r Saesneg yna mae angen i wasanaethau cyhoeddus, yn ogystal â ffurflenni gwladol, fod ar gael yng Nghymraeg a Saesneg. Hysbyswyd ni gan Gomisiynydd y Gymraeg bod pryder yng Nghymru ar hyn o bryd nad yw'n ofynnol i staff y GIG ymateb i aelodau'r cyhoedd yn Gymraeg, os oes cais am hynny. Mae Gwasanaeth Gwybodeg GIG Cymru yn hyrwyddo cydraddoldeb y Gymraeg drwy wasanaethau meddygol ar-lein, gan ganolbwyntio ar:

- Plant o dan saith mlwydd oed sydd wedi eu magu mewn cartrefi sy'n siarad Cymraeg;
- Yr henoed sydd ond yn gallu siarad Cymraeg;
- Pobl ag anawsterau dysgu; a
- Pobl â phroblemau iechyd meddwl.³²

Mae hyn yn awgrymu y gall pobl ond cael mynediad i wasanaethau iechyd yng Nghymraeg os ydynt mewn sefyllfa fregus dros ben. Rydym o'r farn y dylai siaradwyr Cymraeg gael mwy o hawliau na hyn a chael mynediad i wasanaethau cyfrwng Cymraeg drwyddi draw. Rydym hefyd yn bryderus bod y camau hyn yn ymddangos fel eu bod yn cael eu gwneud gan wasanaeth TG y GIG sy'n awgrymu bod angen i siaradwyr Cymraeg gyfathrebu drwy ysgrifennu ar-lein, gan wahaniaethu yn erbyn pobl â lefel isel o lythrennedd a gallu TG.

Wrth i eirfa dechnegol ychwanegol gael eu datblygu yn Gymraeg, byddem yn hoff o weld mwy o ffurflenni dwyieithog mewn meysydd megis y GIG i gyfannu geiriau newydd yn gyflym i eirfa siaradwyr Cymraeg.

Casgliad

Gyda chynnydd mewn datganoli rydym yn gweld symudiad oddi wrth gyfiawnhad ymarferoldeb i dderbyn nawr bod y Gymraeg yn rhan sylfaenol o hunaniaeth Gymreig. Yn ein barn ni mae'r amser wedi dod i farnwr/es Cymreig y Goruchaf Lys ymuno â'r Ustus o Ogledd Iwerddon a'r ddau o'r Alban sydd â seddi ar fainc y Goruchaf Lys.

Rydym ar ddeall na fydd swydd wag yn y Goruchaf Lys am sawl blwyddyn yn dilyn y cyfnod recriwtio presennol ac felly rydym yn cefnogi argymhelliad yr Ustus Roderick Evans, y byddai modd yn y cyfamser i'r Goruchaf Lys gynnig sedd dros dro i uwch farnwr Cymreig, os ydynt yn dyfarnu ar achos Cymreig ag arwyddocâd cyfansoddiadol a phwysigrwydd cyhoeddus i Gymru.³³



32 Am fwy o wybodaeth ymwelwch â'u gwefan: <http://www.wales.nhs.uk/nwis/tudalen/53437>

33 A allai fod wedi cael ei wneud, er enghraifft, yn yr achos diweddar ynglŷn â'r Bil Is-ddeddfau Llywodraeth Leol (Cymru); c.f. <http://www.bbc.co.uk/news/uk-wales-politics-19886579>.

