

Standards in Public Life 2 November 2015

National Assembly for Wales – A Beacon for Standards

The National Assembly for Wales Commissioner for Standards (Gerard Elias QC): Ladies and gentleman, welcome. Thank you very much for attending the second Commissioner for Standards lecture. Housekeeping first: I have to tell you that, if you hear a fire alarm, it is not a practice—you are to file out quietly and you will be directed where to go by staff.

I'm embarking, as Commissioner for Standards, on my sixth and final year of my six-year appointment, and perhaps this is a moment when I may reflect on the last five years—it seems to have gone in a flash. As the first Commissioner for Standards appointed under the 2009 Measure, I was given unprecedented powers of investigation in relation to any complaint made to me about the conduct of any Assembly Member. At the same time, the Measure ensured that the Commissioner was in no way under the control of the National Assembly, and thus I've been able to exercise my duties and responsibilities with the invaluable assistance of a genuine independence. The kernel of the Commissioner's role was concisely set out in the 2009 Measure: promoting, encouraging and safeguarding high standards of conduct in the public office of Assembly Member. And, of course, we've tried to reflect that into standards in public life more generally in Wales.

Over the last five years, we have reviewed and amended the processes for bringing and handling complaints, making matters, I think, easier to understand for the public generally and for complainants in particular, whilst, of course, safeguarding the proper rights of Members. At the same time, in stages, we have reviewed and amended the Code of Conduct for Assembly Members in many important areas, such as the registration and declaration of financial and other interests, and I believe we've brought a greater transparency to them, ensuring, of course, that the Nolan principles still shine through. I say 'we', because, of course, these changes have been brought about with the consent of the National Assembly, and, in some instances, this has required Members to assume a greater burden upon themselves than had applied hitherto. This acceptance of change, which allows greater scrutiny by the public and brings more transparency reflects very much to the credit of Assembly Members, and, along

with the record of admissible complaints over the last five years, enables it to be said, I believe, that, in the area of standards in public life, the prevailing culture in the National Assembly for Wales is one that recognises the imperative need to uphold the reputation of the institution as well as of its Members.

Of course, we can't be complacent about this. Vigilance, as I've said many times in my five years, must always be the watchword, and it was in order to raise the profile of standards in public life that I launched the standards Commissioner lecture, and I make no apology, ladies and gentlemen, for insisting that the National Assembly must be a beacon, a leader, in standards in public life in Wales, and the lecture is another opportunity to place standards in public life firmly in the public arena.

It is thus, with great pleasure, that I invited Lord Thomas of Cwmgiedd to give the second such lecture. I can think of no-one better fitted to deliver the message than the Lord Chief Justice of England and Wales. Lord Thomas needs no introduction from me. A very proud Welshman, brought up in Breconshire, he's remained very closely associated with Wales, and is no stranger, of course, to this National Assembly. It's therefore with my sincere personal thanks that I invite Lord Thomas to address us. [*Applause.*]

Lord Chief Justice of England and Wales (The Right Honourable The Lord Thomas of Cwmgiedd): It is really both a pleasure and a privilege to have the opportunity of giving this second lecture. I'm particularly glad to do so because the first of these lectures, the inaugural lecture, was given by my predecessor, Lord Judge. It was, in fact, the last public speech he made as Chief Justice, coming at the very end of his term of office. I'm making it essentially midway through my term of office, but at a time when a great deal is happening, on which I wish to touch briefly.

But, before turning to that, I wanted to say two things. First, it is a great pleasure to have been invited by Gerard Elias to give this lecture. I do not think one can underestimate the importance of standards, in the broadest sense of the word, in public and in other aspects of life. Wales has, I think, been truly fortunate in obtaining the services—if I can put it that way, because, in a sense, we all serve the state—of Gerard Elias in taking on the inaugural role. He has made an enormous contribution to the position of the Assembly, because dealing with this issue is sometimes an uncomfortable role, which has to be done with authority but also with charm, and he's acquitted it, if I may say so, with enormous skill. I have no doubt it's going to be a hard act to follow, because, very wisely, the Assembly has said this is a fixed-term post

and we must move on. It will be a hard act to follow, but it will be really essential that someone of stature and, above all, of independence takes on the role, steps up to the plate, however hard an act it will be to follow.

The second thing I would wish to say is that it's a great pleasure to be here in this building. I once spent quite a lot of my working life in another building designed by Richard Rogers, the Lloyds building in London. It took a bit of time to get used to, and one or two of the design features were not as good as they should have been. For example, he didn't realise that everyone left the building at 1 o'clock and came back at 2 o'clock—a problem that insurance brokers have in common with courts. But, I understand this building has been a magnificent building to work in, with possibly one or two minor adjustments. More importantly, it's been a symbol of the importance of the National Assembly, and therefore it's a particular pleasure to be able to speak here. And I do say it not only as the Lord Chief Justice, but as someone who was born and brought up here in Wales and has taken the closest interest in what has happened.

When the Government of Wales Act came into force—the original Government of Wales Act, the 1998 Act—I'd just been appointed as one of the presiding judges of what was then the Wales and Chester circuit. With my fellow presiding judge, Mr Justice Maurice Kay, we were then concerned with what change this would make. We looked at court procedures to see if they had taken account of the changed constitutional position. But, because of the limited nature of the powers then conferred on the Welsh Assembly and its very strange corporate identity, if one thinks back to what it was in 1998, these were largely confined to seeing we had in place procedures to deal with devolution issues—not that there were any at that time—to ensuring the administrative court sat in Wales, which was a huge advance, and training the judges to help attune them to the change.

Over the years, I've had the pleasure of watching the three phases of Welsh devolution; the Richard Commission, the separation of the Assembly as the legislative power and the Welsh Government, the further Commission under Sir Emyr Jones Parry, and the final Commission under Sir Paul Silk. It's been very interesting to see how, over what is in constitutional terms a very short period of time, things have changed, and, in particular, the huge change that was brought about by the coming into force of Part 4 of the 2006 Act. I thought it would therefore be helpful this morning to look at how the constitutional changes have been reflected in the way in which the three branches of the state must act together and must attain the highest possible standards.

Now, as the judiciary, we have adapted. For example, here in Wales, the most obvious visible sign of change is that now judges sit more in Wales to do Welsh cases. I think we've been largely successful in relation to the administrative court, although my complaint, which I bang on about as often as I can, is that the Welsh legal profession based here in Wales is not strong enough yet, and steps are needed to strengthen it.

Secondly, we've done quite a lot to try and help the development of the number of tribunals that have been left as part of the devolution settlement under the responsibility of the Government in Cardiff. I think we've now made progress. Third, and surprising it may be to some, over the last year, we've been able to ensure that those appointed to judicial office in Wales have either a proper knowledge of the different position of Wales and Welsh law, or a willingness to learn. But fourth—and this is really what I want to speak about—is the need to develop relationships with both the executive Government in Cardiff, in Cathays Park, and the Assembly here, because Wales is, in a sense, unique in that it has two of the three branches of the state, namely a legislature and an executive, but it shares a judiciary with England. It is an aspect of public life that I think is very important to examine.

But I wish to examine it, first of all, by turning to what is the basis of the principles upon which the judiciary work, and that is our independence. Now, judicial independence, even if you go to the most autocratic state you can imagine, is taken as an absolute must. You may have the greatest suspicion as to the fact that judges aren't independent. Everyone believes in it. I think there is no country in the world that doesn't espouse this ideal. But in most democracies where judicial independence is properly established, one sees, I think, two aspects of it. One is the individual independence of a judge, most clearly enunciated in the oath that each of us takes when taking up judicial office—the obligation to do right to all manner of people, after the laws and usages of this realm, without fear or favour, affection or ill will.

But there is also the important aspect of institutional independence, and that is something that has undergone a very profound change over the last 10 years in relation to the Government at Westminster and in Whitehall. One of the great aspects of that change has resulted from the reform to the office of Lord Chancellor. As those who are intimately familiar with the operation of the constitution of the United Kingdom would know, prior to 2005, the Lord Chancellor was almost the living embodiment of the denial of the separation of powers. He was a judge who sat and presided over very important cases. He was speaker of the upper house of the legislature and he was a Cabinet Minister. So, in this one person there was a denial of the

separation of powers, and sometimes it is important to affirm that our constitution worked perfectly well with that. Why I say it's so important is that when the position of the Lord Chancellor was reformed—so, he ceased to be a judge and he ceased to be speaker of the house—we had to do something to bridge the gap. One of the paradoxes of the last 10 years is although the Constitutional Reform Act gave the judiciary a greater independence from Government, it has in fact meant that we've had to engage more closely with Government. It's a strange paradox, but it is very evident in Whitehall and Westminster, and I believe that it's very important to Cardiff. But it can only be done if there is an absolute and clear understanding of standards in public life. Before different branches of the state can engage together, you've got to understand the respective roles and responsibilities, and you have to act with complete integrity.

What we have been trying to do over the past few years is to try in London to put the position with regard to Westminster and Whitehall on a much firmer and more regulated basis and also to try and work out how we do this here in Cardiff, because the judiciary in Wales operates as the third branch of the state here. For example, two areas that illustrate the sort of engagement in which the judiciary is engaged are giving technical advice on the choices that can be made in legislation and, secondly, trying to ensure that, when legislation is passed, there is the machinery to give effect to it. Sometimes, this is relatively straightforward—just educating judges by sending a circular around—but, on other occasions, it requires detailed training and requires changes to the rules. It is this interaction that I think has come to the fore in relation to Cardiff with the changes to the law of landlord and tenant that have been reflected in the housing Bill.

That, I think, has illustrated, in my view, the real need for a proper engagement and how that can only be done by an understanding of standards in public life. Now, why do I say that? Normally, people take standards in public life to refer to ethical codes of conduct, and one cannot but underline the absolute importance of those. For many years, we were able to operate without them. Most parts of our constitution—and, actually, the constitutions of most countries—operated without a written code. It may surprise you to know that, until 2004, the judiciary had no formal written code of conduct. Being here in Cardiff, it's a great pleasure to be able to say that it was Sir Malcolm Pill who actually led the work in drafting our code of conduct. I think what we did was follow in the footsteps of some Commonwealth countries but in advance of most of continental Europe. That isn't to say we didn't have standards. We had very clear standards, but they weren't written down anywhere.

In parallel with that, we also established the mechanism for dealing with infringements of ethical standards. Everyone who is a student of constitutional history knows that, since the Act of Settlement of 1701, Parliament has always been able to remove judges for misbehaviour. Although it has actually never done so, that's not necessarily because the judiciary have been so well behaved. But we needed a much tighter system of discipline and of organisation to deal with the enforcement of a much clearer code of ethics. I think that, therefore, by saying that the judiciary only came to this late, it helps underline how important the changes have been in the last few years.

But it isn't only for judges that you need codes of conduct. One of the very big tasks that is being undertaken in London at the moment is to provide a code of conduct and standards for bankers. Now, you might ask why. Obviously, people were very concerned about what had happened in respect of the 2008 crisis, and, no doubt, there were some people who had behaved wholly unethically, and it is to address in part the ethical standards of the market that the governor of the bank and Dame Collette Bowe are leading work, through the Banking Standards Board, in establishing standards in that very important aspect of our life. But it's not only ethical standards; it is also standards of competence applicable to the day-to-day conduct of banking.

Therefore, when one looks at what you mean by 'standards in public life', I think it's fundamental that we look at it from the point of view of ethical standards but also standards of competence in the performance of duties. Both are part of standards in public life. In particular, if one is looking at standards in the judiciary, standards in the Government, and standards in the legislature, it is absolutely critical that those two aspects of standards in public life are brought together. For example, without high ethical standards, an institution will fall into disrepute. I don't really need to say much about that. The events of Westminster over the summer, I think, illustrate how very, very important high ethical standards are. But your own code of conduct, which I think has been brilliantly drafted, and the principles of acting with honour, freedom from external inducements and incentives, and behaviour in accordance with the general principles in conduct in public life, must be the centrepiece of dealing with ethical standards. But I don't need to add more about that. Lord Judge spoke eloquently about this and how it related to judicial standards when he was here. I want to say a little bit more about the standards that go not only to that, but the standards of the way in which an institution must have competence. Now, I say 'institutions' because I think, when you are building any nation and giving confidence in a democracy, it is very important that people have confidence, not only in high ethical standards but actually in the ability of an institution to

carry through its allotted work.

About 15 years ago I gave the Lord Morris of Borth-y-Gest lecture and dealt with the lack of institutions in Wales. I think that it was apparent that Wales had suffered from a lack of indigenous institutions. There was a problem in developing indigenous institutions—the establishment of a proper executive government here, the establishment of an assembly, and the proper operation of the third branch of government, the judiciary. I thought then—and my views have not changed—that, actually, you test whether we have met proper standards of public life, both individually and through our institutions, as to whether actually we have created public confidence. I think one of the reasons, looking at it from the point of view of the judiciary, which has been my primary responsibility, is to ensure that we established in Wales a distinct identity for the judiciary, which had an understanding, as one of the powers of the state, to interpret laws and make decisions that were fair and just but had a proper regard to Wales and its distinct national identity. Now, although the issue of a separate judiciary for Wales is entirely a political matter on which I will express no view at all, as I have made clear, I think that the judiciary as a whole takes the view that it has a particular and distinct responsibility in relation to Wales as one of the three institutions that comprise the Government of Wales in its broadest sense.

How, then, do you build the judiciary's position, as I have described it, and its relationship with both the executive branch of Government in Cathays park and the legislative branch of Government here? Now, there are obviously areas where our standards can be directed and are the same. Two obvious illustrations are, for example, the Welsh language. We have an identity of interest. There is no real difference between what the judiciary wants to do and what the executive and the legislature want to do, which is to provide proper bilingual laws to enable them to be understood and enforced through the courts. Another example, though possibly less obvious, is diversity. I think every institution now recognises that diversity is very, very important as a standard of public life as instilling confidence in an institution. I don't want to address this subject at any length as I have dealt with it on a number of occasions recently, but I firmly take the view that diversifying the judiciary is absolutely central to its legitimacy. Although there are people who have slightly different views as to the pace at which this should proceed, I have no doubt that there is a proactive responsibility upon the judiciary to proceed to ensure that the judiciary is as diverse as possible, taking into account the principles of appointment on merit. But the same must be true of the executive Government and also of the Assembly.

I've taken the Welsh language and diversity as two examples where, in building a polity, you can see that our interests are the same; we have the same standards. But there are areas where, although we share the same standards in public life, our interests must be and remain different. I think one of the most important is to return, for a moment, to matters political. The judiciary has to be independent of politics. When you cease to be a practitioner and are appointed a judge, you give up freedom and the most important freedom you give up is the freedom to express political views. To my mind, there is nothing more disastrous for a judiciary, for its independence and its standing in society, than for it to become involved in political issues. It's most keenly illustrated in the UK at the moment by the issues over the Human Rights Act. But here in Wales, I think there is something I should say, because no doubt someone at some stage will ask me about the Wales Bill, so I thought I ought to anticipate it.

It is plainly here—and one only had to be shown this morning's *Western Mail* to realise—that it is a subject of intense political and, no doubt, popular interest. But judges cannot become involved, save in the most limited sense. The form and content of the Bill is, I think, now, clearly intensely political. Sometimes, the form of legislation will be a matter on which the judges can comment and we do so on ranges of legislation. Can you operate, for example, a system of review? Can this be done within the timescale that is required? Or, on sentencing options, sometimes we give advice as to what the consequences would be. But that I regard as highly technical advice. There is one area on which I have expressed a view in relation to the Wales Bill and that is the meaning of the word 'jurisdiction'. But beyond that, I do not believe it's proper for a judge to go, and hence, it seems to me that it has been important to encourage those who can give expert assistance—namely the Wales Governance Centre on the constitution—to help with what are difficult questions of a technical nature, but are so close to politics that it is impossible for a judge to become involved. That's why I've said I'm not going to tell you whether I agree with their views or not, but actually, the fact that you need an expert debate carried on by those who have a freedom not open to a judge is terribly important.

I mention this subject because it takes one back to the position of standards in public life. The judge, although part of the polity and a part of the three branches of Government, can only approach certain issues from that standpoint. That is a standard we have to accept. As Members of the Assembly, I speak more directly to you than those who are members of the Executive. It seems to me that your responsibilities and standards are, in this respect, very

different from a judge; your job is politics; it's to take an interest in the various different strands. But where the standards in public life, I think, become important, is how you then operate in what I think is best described as a professional manner in making good law. I think that sometimes, if I may be bold as to say—and I make this criticism even more of the Westminster Parliament—there is not enough attention to the making of good legislation. I regard that duty as a part of standards in public life that is of the greatest possible importance to our polity.

Everyone, I think, is agreed that legislation ought to be clear. It ought to be concise and it ought to be intelligible. It's easy for me to say that. If I was looking at the equivalent standard in the judiciary, one would say, 'Well, our job is to decide cases fairly, quickly and cost effectively'. I'm sure many of you would turn around and say that cases in the courts take far too long; the decision wasn't right and in any event, it costs far too much.

However, I think that one has to aspire and be clear about what standards one is adhering to. It seems to me that one of the things that is very important is your recent report on making laws in Wales—the report of the Constitutional and Legislative Affairs Committee—which makes the centrepiece of the job of a legislature, which is to improve the quality of legislation. It is one of the most important standards of public life that those who become Members of the Assembly ought to aspire to. It may not be what the public thinks of as standards in public life; they might think about the kind of favour that you get done for someone being out of the question. In some countries, you would take money coming under the counter as another part of standards. However, I think, just as with the bankers, you have to look at them and say, 'Well, we expect them to be honest, but we also expect them to be competent.' I believe that one of the great, important principles of public life is that, although you bring the political mix, actually, public life demands that you pay the closest attention to the quality of the legislation that you produce.

The report of the Law Commission, which I think is making a huge contribution to Wales, is trying to get over this standard of public life—whatever political differences there are, you must legislate well. It is easy for me to say so, and I know that you all have your very different political views with which you come at legislation. However, the professional job, the standard of producing good legislation, I think, is the centrepiece of it.

Now, there are many ways in which this can be done. A small, vigorous nation can do things that a big nation with a long history cannot do. You can think innovatively, you can break the

mould of Westminster—it is quite extraordinary that in Westminster, for example, they don't use word processing on the floor of the house. If you're amending something, even the most elementary contract, you use word processing, but, of course, that wasn't invented at the time when many of the current conventions were thought about. So, there is a huge legacy that you are not saddled with.

I had the great pleasure of sharing a platform earlier this year with Sir Geoffrey Palmer, a very vigorous former Prime Minister of New Zealand, and I think there's quite a lot one can learn from New Zealand, quite apart from rugby. Some of the ideas that he put forward—for example, a legislation office is something worth looking at as part of the performance of this very important standard: to produce good legislation.

Now, how does this come back to the area in which I began, which is the three branches of government and how they work together? It seems to me that if a legislature has the ordinary high standards of ethical conduct, but also an understanding of its duty to produce good legislation, and a judiciary that is prepared to help in looking at technical issues and questions of how you bring matters about, as long as everyone understands the respective roles—that your job is politics and the judges' job is to step absolutely clear of politics—there is a huge amount that can be done together in building a structure of law and of policy that is, potentially, of enormous value to the development of a nation, in particular its prosperity and its economy.

So, with that understanding of our respective roles, I very much hope that, over the coming years, there will be much more and much closer co-operation. With Westminster and with Whitehall, we now have clear codes of conduct on which we engage and give evidence to the House of Commons or House of Lords. We are in the process of, and have nearly completed, drafting applicable codes of conduct for dealing with Government departments. We have a general understanding with the Ministry of Justice, with which we have dealt for many years, but we thought we ought to write it down. I very much hope that, with that common understanding, accepting that each side has to understand the differences and have very high ethical standards, I do believe that the engagement between the institutions in the judiciary and the legislature can go forward.

I have concentrated on the position of the legislature and the judiciary. I thought that it would be better to speak of those here in this building, but *mutatis mutandis*, if I can drop in some Latin, which is always very useful, the same applies to the relationship with the Executive.

Providing that the standards are adhered to—the standards of competence and of ethics—I do believe that a great deal can be done to ensure that the respective branches of government do work closely. And I think the people of Wales actually have a right to expect this. They expect the Assembly to produce—. They expect the Government, the Executive, to introduce or propose legislation that will work. They expect that to be scrutinised to the highest standards, not only from the ordinary perspective of it being done ethically, but also the standards of competence and detailed scrutiny. Then they expect the judges, at the end, to interpret this properly and fairly. I hope that we are taking steps—but no doubt you will tell me if we're not—to ensure that the judiciary will fulfil its part of the bargain in upholding these standards that are so important to our society as a whole. I very much hope also that, for example by the recent report you produced, there is a real understanding of the need to produce good legislation and for the executive to introduce good legislation. But we've got to work together. We've got to understand our respective roles, and how they're different, and not seek to trespass on each other's. But by maintaining high standards, and by a true understanding of each other's roles, I hope that when Gerard Elias's successor comes to introduce maybe his third or fourth lecture on standards in public life, one will see that we've translated the standards into a much broader acceptance and a much more practical acceptance, so it benefits the people of Wales not merely by having people who behave ethically, but who actually work together to produce a better polity. Thank you.

Gerard Elias QC: May I thank Lord Thomas for an insightful address to us. I'm very pleased that he should have reflected standards not only as the ethical, but as the performance, because as you know, the approach that I certainly have taken, and in my latest annual report have indicated, is that it's the confidence of the public in the institution that is so vital, which comes about, of course, because Members behave ethically or do not, but also because they have confidence in what is being delivered for them. So, I think there's a very important aspect that I shall look forward to developing in my last year.

Now I'm going to invite Mick Antoniw, who's the Chair of the Standards of Conduct Committee of the National Assembly, to come and join us on the stage, and invite any questions from any of you about aspects of standards of public life in Wales, which we shall endeavour to deal with. As you know, neither the Lord Chief Justice nor I are permitted to descend into, or is it ascend into the political arena, but we shall hear the questions and deal with them as we may.

Mick Antoniw AM: [*Inaudible.*]—here as well.

Gerard Elias QC: Of course. Questions may be asked, of course, in English or Welsh, and there will be simultaneous translation, and you have your headphones if necessary. So, is there a first question, please? Yes. If you could give your name and the organisation that you work for, that would be helpful.

Mr Chick: Hi, I'm John Chick. I work at the Assembly. I'm the head of the Members' Business Support team. I'm just wondering whether the Commissioner anticipates how the new Assembly Members that we get next year will be inducted and made aware of the code of conduct.

Gerard Elias QC: I hope there will be a formal induction. I know we have the Chief Executive officer here, who has carried out inductions in the past for new Members. I know there will be inductions for new Members in May, and I think we're going to have quite a number of new Members, inevitably, because of retirements from the existing cohorts. I certainly hope that aspects of standards will form part of the general induction that Members get. Perhaps I shouldn't give away too much, but if I say that, in the past, Members may not have been as anxious to come to hear talk about standards as they may have been to come to hear talk about other aspects of their induction, but I think, Mick, perhaps, as Chair of the committee, you could endorse the importance to Members of getting involved in this area.

Mick Antoniw AM: Well, I do. I'm sure that it will be a major part of it for a whole new number of Members. We see amongst a lot of the people who are potential candidates, who may end up here, that there will be a wide range of particular skills as well. But, equally to that, part of the way in which we've actually looked at conduct and standards is to look ahead. Of course, as the responsibilities of this body actually increase, as its powers actually increase and then a focus appears on that, there's a need for almost even greater vigilance in that. Of course, I think one of the great reforms that Gerard has introduced in his thinking about our code is that what it actually does is put a far greater deal of responsibility on the Assembly Members themselves to determine what they have to declare, what they have to say, what are the lines, rather than attempting—badly, I think, as has, perhaps, happened in many legislatures over the years—to try to write down every possible example of what you should or shouldn't do. Sometimes it's easier to go back to what are the fundamental principles that people have to understand and adhere to, and understand what it is they are committing themselves to.

Gerard Elias QC: Lord Thomas, is there any formal induction for new judges?

Lord Thomas: Yes, but what is interesting at the moment, in Westminster, is that there is a significant new intake. For example, the Justice Committee is almost entirely new. Westminster has something known as the Industry and Parliament Trust, which is a body established by industry to try to make certain that those Members of Parliament who don't know something about a particular area are taught about it, and can go and immerse themselves in, say, a particular industry. We've recently joined that, so that members of the Justice Committee, for example, can come and sit in in courts. I think it is—going back to my central theme, which is competence, apart from anything else—very important when you're legislating about something that you actually understand the business about which you are legislating. Whether you can persuade someone here to fund such a matter I leave to you, but certainly, I think it is a very important thing to do, to ensure that you've got those who deal with a particular area who have a deep and proper understanding of it. I would say that, no doubt, it can be done through Mrs Justice Nicola Davies, or our office in London and my private secretary. If a Member of the Assembly wants to come and sit in a court to see what actually happens—we're now doing this for Members of Parliament, and we would be quite happy to do the same for Members of the Assembly.

Gareth Hughes: Diolch yn fawr. Gareth Hughes o *gylchgrawn Golwg*. Wrth i fwy a mwy o bwysau a Deddfau ddod allan, sut ydych chi'n gweld y sefydliadau yng Nghymru yn datblygu pan mae'r Deddfau yma'n dod? Sut mae'r gyfraith yn mynd i newid? A oes yna draddodiad newydd yn mynd i godi o ran y gyfraith yng Nghymru ar ôl inni weld cymaint o Ddeddfau newydd?

Gareth Hughes: Thank you very much. Gareth Hughes from *Golwg* magazine. With more and more pressure and legislation being passed, how do you see institutions in Wales developing when these laws are enacted? How will the law change? Will a new tradition be established in relation to the law in Wales with so much new legislation being enacted?

Gerard Elias QC: Lord Thomas.

Lord Thomas: May I respond in English, as it's easier for me? Each legal system operates within the culture of that society or state. There is no doubt about the way in which laws have developed. As we live in an increasingly globalised world, many areas of law are coming together—for example, the law relating to much commercial activity. That operates on a globalised basis, but quite a lot of law is so closely bound with the individual societies that you do need in those circumstances to ensure that the judges develop the law with an understanding of the nation concerned. [*Interruption.*] Sorry, I sit in a court of this sort of size

without anything, so I hope you can all hear. But that's why, in a sense, it's very important that at the levels of the judiciary where decisions are made that are referable to a particular part of a nation, the judiciary actually understands it. It's one of the reasons why I was extremely concerned that people who are appointed as judges who sit in Wales actually understand the path Wales has now gone down—it has a different legislature and is forming different laws—and that will be reflected in the way Welsh society operates.

Similarly, I think, when you go up the tree, say to the Supreme Court of the United Kingdom, it is very important that you have a judge there who actually understands Wales because inevitably, although large swathes of law are transnational, areas of it are not. The law has to be developed with an understanding of society—you have to understand the society in which you operate, or you cannot develop law correctly. Although I hope, as I was trying to say, that the Assembly will pass excellent laws that need very little interpretation, that would be an utopian landscape that no-one can really think of, so the judge is going to have to bring his interpretative skills, but it must be an interpretation by people who are grounded in the society that has its own legislature.

Mick Antoniw AM: As we pass more and more laws, and I think more complex laws, one of the issues I think we have to look at as an Assembly is also the whole issue of people understanding what is happening and what it's passing, but also to have people who actually have access to justice as well. You know, we can pass whatever we want and so on, but if people don't have access to that then they don't have any affinity with them. For me, the law has always been really the oil of society—what enables society to actually work—and the quality of that oil, to some extent, contributes to the quality of society.

Interestingly, we of course do have a Minister in Welsh Government who has responsibility for justice, and at the very moment I'm chairing a stakeholder group looking at those areas that the next Welsh Government should perhaps be focusing on looking to give attention to, but also on how aspects of the way law develops within Wales we can potentially do different, perhaps in the areas of administrative justice. The fact that a certain amount of tribunal responsibility already lies with Wales—there you have an embryonic jurisdiction that already actually exists. So, the issues of what their role is, how they operate, whether we continue with the adversarial role, particularly bearing in mind that many of these bodies, particularly in the area of administrative justice, exists in an environment where there is now frequently little assistance or support available to individuals to ensure—. So, within that environment, who has the responsibility for ensuring that people actually get justice? So, I think there are a lot of

opportunities for us to start looking at how we might in areas do things that are different, but also whilst recognising that what we don't want to be doing is creating artificial divisions that actually may not necessarily be to the advantage of Wales within the context of legal developments.

Gerard Elias QC: Thank you very much for the question. Is there any other question, please? Yes, sir.

David Richards: David Richards from the Welsh Government. I appreciated very much the link that Lord Thomas made between standards and values and good law, because it puts values on the front foot rather than something that you turn to when something goes wrong. It's been just hugely important from a public life and standards perspective as devolution has progressed. Is there more that we can do in public life in Wales and the UK to promote our codes of conduct and our standards and values as something that pushes us up, or pushes us on to be better, rather than something that we need when there's a problem?

Gerard Elias QC: Well, I think, as I said in introducing this, part of my task, if you like, is to ensure that standards are brought to the table and discussed in areas that go beyond ethics and so on. I'm certainly keen to express that view as often as I can and to Members individually and in groups. But what else can we do, Lord Thomas?

Lord Thomas: I think that people are entitled to expect people of high competence who have a responsibility for governance. It's taken for granted, I think, that you would never appoint someone as a judge who actually was not a competent lawyer. I do think that what we need to do is to be sure that you have, both in the executive branches of government and in the legislative branches of the government, what you expect is an environment that attracts the ablest. How you bring that about, I think, is beyond a view that I can publicly express, but it is critical that really good people go into politics. It's critical that really good people go into government, and there are many factors that influence that because the institutions of government, whatever view you may take of the operation of the market, still play a huge role in people's lives, and you need to be sure that there are people there who have the standards of integrity, of ethical behaviour and of competence that are of the highest order, or a nation doesn't prosper. But how you solve it, I think, would be for me to venture into the political, rather than just saying, 'Well, I have clear views as to what should happen, but I can't express them'.

Gerard Elias QC: Mick, perhaps you can.

Mick Antoniw AM: Well, I think—and I'd say this across all the parties of people I've met—that I've not come across anyone yet in the Assembly—I say that, putting the word 'yet' in because it implies that it might change—. But people are here for, I think, the highest of reasons. In wanting the highest quality, standards and competence, what we also mustn't forget is that this is a democratic institution to represent people. I thought it was great, after 30 years as a lawyer, having to listen to the anti-lawyer jokes that you hear everywhere, the first time I came to an institution where someone was saying, 'Yippee, we've got a lawyer coming here'. It was quite sort of invigorating. That having been said, it's equally important that we don't want all our institutions to be nothing but lawyers. There are some incredibly competent and able people around who are not lawyers, who work in a variety of jobs and industries, and it's important that they are attracted into this institution for their skills and the life experience that they actually bring into it. I've been a critic for many years of the trade unions not doing enough to bring bright, active, working people into politics. I think, in some ways, our institution—I'd make this a criticism perhaps of Westminster—has become imbalanced, and I think it is something that needs to be restored. So, you know, it's not about creating a pathway just for lawyers; I think it's very useful and important that we do have people with legal skills here, but also that we are representing the many other skills, expertise and life understandings that people have, so that the institution represents and that people have an affinity and can have and understand a relationship with it.

Gerard Elias QC: Thank you. Ian.

Ian Murphy QC: [*Inaudible.*—the barrister and member of the public, the purpose of the code and the general standards of conduct, how difficult would it be to translate that into an objective assessment of competence, which is obviously something that's extremely desirable? How do you, as a Commissioner, make judgments about competence?

Gerard Elias QC: Well, as you will have seen, I was going to raise this with my two guests because I think it is an important aspect. As I say in my annual report, Ian, as you will perhaps have read, I paid a visit to my counterpart in the US Senate, and she and I receive about the same number of complaints from members of the public annually—that's to say somewhere in the order of 30—and both of us have about half of those complaints from members of the public who are complaining about the performance of the Member in question. That is to say, when it may be something as simple as 'Not answering my letters', 'Not answering the

telephone to me', or to the more complex, 'Not taking up an issue that I am raising with them'.

Of course, I certainly have been very slow to jump on a Member for what I call performance issues, because it's very difficult not to get involved in the democratic process if you are telling Members, 'This is what you must do: you must answer letters, you must respond by such and such a time'. Bringing in such a regime would put a huge onus on Members. Maybe it's the right thing to do, but the view that my counterpart in the US Senate and I take is, certainly, there is greater pressure—and it's another aspect, I think, not quite the one that the Lord Chief Justice was referring to today—but it is another aspect of performance that Members may feel they have a standard to reach and to maintain in order to ensure that the public has confidence in the institution.

Now, coming back to your question again, establishing a code that will deal with that, I think, is very, very difficult. We certainly do require Members to, as I put in this year's annual report, 'If you're not answering your letters, if you're not answering your constituents, if you're not doing what your constituent may legitimately expect; well, then you are lowering the reputation of the institution and lowering the reputation of Members, and that's obviously something we want to get away from'. But, actually, regulating it; maybe over time—. Mick, perhaps I can come to you first—.

Mick Antoniw AM: Yes. I think ongoing training is part of this. We have to recognise what the actual role of Assembly Members is, and people will come in and require training, just like lawyers when they actually start taking responsibility for their practices—you know, they've been great lawyers, but they've never actually run what is, effectively, a business—what happens is that you do have ongoing professional development and training. I think that's an area, that—I know it has already started being discussed within the committees, particularly with regard to chairpersons and so on—but I think that's an ongoing issue that, you know, I think we can develop.

What I would say though is that we have to be very, very cautious of the line in terms of where standards actually, then, begin to intrude on the right of our democratic election system. That is, at the end of the day, the ultimate people who decide whether the person you elect is the person you want—is up to it—has always got to be the people who take the vote and take the decision to actually put you there. It's very important we don't intrude into that. But, once people are here, I think there are very many ways in which we can actually assist them to actually carry out their task to, I think, the highest level that is reasonably possible.

Lord Thomas: I'll give two separate answers. As regards what I would regard as responding to constituents, there is quite a sensible way in which one can actually have benchmarks: what people are entitled to expect. It's good for the Member, I dare say, to know what he should aspire to or she should aspire to, and it's also good for the constituent. You know, no doubt, you get bombarded by e-mails, and it would be terrible if everyone thought you had to respond to them instantly, because you'd never actually do your job, but if you had a sort of timescale—. What people can expect—. Particularly with the split between the functions here and functions in Westminster, it is actually quite useful to have some form of clear guide to what the public is entitled to expect from those here. Of course, it's not for me to say what they should expect of people in Westminster.

Secondly, I do think as regards competence, I completely agree with the Chairman that it's very, very important in a democracy that you leave the choice—you have to leave the choice to the people. But, there are two things that are important. One is that you make it an institution to which people aspire to join: 'This is a club', if you want to put it that way, 'that I'd like to be a member of. I really think this is a summit of achievement'. That's one thing that I think is terribly important, and that is the ethos of the place. Secondly, that when people come and they have a responsibility, then you help them actually learn. You certainly don't want a place full of lawyers—I can think of nothing worse. Look at many American legislatures that are packed full of them. But you do need your bankers; you do need your industrialists and you need people who represent all walks of life. They come here and they do, actually, when they aspire to a particular responsibility, need the help in learning about the business outside this place in which they have an interest. For example, if you have a responsibility, say, in respect of the environment, one would expect the Assembly to be able to help with an arrangement, such as the Industry and Parliament Trust, for the person concerned to see both sides of the story. I think the aspiration that this is a place I really would like to be a member of and, secondly, where you take an interest, to provide as much help as possible are two ways in which I think you can raise standards, but you must leave the choice to the people. The people are never wrong.

Gerard Elias QC: Yes, perhaps the last question, please.

Rachel Flint: Hello. I'm Rachel Flint from the *Daily Post*. I just wondered if there is such a thing as a pointless or even harmful law or piece of legislation.

Gerard Elias QC: Is there such a thing as a pointless or harmful piece of legislation? [*Laughter.*]

Lord Thomas: There was a piece of legislation that was proposed in the last Parliament at Westminster that was described as being completely pointless by some of the members of the House of Lords. I can't say whether I agree with them or not. My position has to be that all legislation passed by Parliament is something that Parliament thought was needed and therefore has to be enforced. It would be presumptuous of me, as a judge, to take any other view than entire judicial respect for the democratic will of the people in legislating in the way they've done. Maybe one of the others can answer that question, but mine has to be an utter respect. If you want to see a debate about whether a piece of legislation was thought by some of those opposing it to be pointless, there was a very good example in the last few months of the last Parliament at Westminster.

Gerard Elias QC: Would a politician ever admit such a thing? I'll ask Mick.

Mick Antoniw AM: I think there is, sometimes, legislation, where you may not have needed legislation to achieve something, but it's felt appropriate to do it, because it raises the profile. I think what we also have—and we've seen it within this Assembly—is legislation that, to some extent, is aspirational, culture-changing legislation. I'd say that of the organ transplantation legislation. That, effectively, has put into a legislative framework, an aspiration for something that I think is a very civilising piece of legislation. You could say that you need, specifically, to have legislation to do that. Well, the answer might be, 'No, there might be other ways you could increase people's commitment to take up', and so on, but it provided a framework for a debate that I think has incredibly successfully changed the way we think about a very important issue.

I think there's another very important piece of legislation that I still think even the Welsh Government hasn't quite appreciated the importance of, and that is the Well-being of Future Generations (Wales) Act 2015. In some ways, it's a bit of a mix between European framework legislation and traditional British legislation, and now the Welsh legislation has been the leader that sets a framework within which all other legislation and all other duties that are carried out—including the many, many statutory instruments and other forms of sub-legislation that take place—have to take place, with a broad social objective.

Often, whether you think a piece of legislation is good or bad, useful or useless, depends on your politics and what you think of it. I won't deny that I think there are certain pieces of

legislation that I think are absolutely horrific and I've spoken about them in the Assembly, but that's because of my view of what that legislation is about and its impact. Other people will take different views. What is very clear, though, is that I think the last five years have been a very important learning experience for a new legislature. What I will say is, for such a small body, the quality of legislation and scrutiny and that learning process, I think, has been quite incredible to witness. I've sat in on legislation during Westminster sessions and so on, and sometimes it has its good and sometimes its bad points, but I think the overall quality has been excellent and I think, with the new intake of fresh blood and so on, we're beginning to find our feet as a quality legislature.

Gerard Elias QC: Thank you very much. I'm going to bring questions to an end, but thank you very much for the very helpful questions from all of you. Lord Thomas has come from one important engagement; I know he goes on to another important engagement. But, on the top floor here, before he goes, there is a finger buffet and some tea or coffee. Lord Thomas has very kindly indicated that he will be very approachable by anyone who wants to continue the debate. You're all invited to join us, but I would like to thank both Mick Antoniw and the Lord Chief Justice—particularly, of course, the Lord Chief Justice for the lecture and for giving us such an immense amount to think about in taking these matters forward. Thank you very much indeed. [*Applause.*]