



Y Cyngor Cyfiauwrnder Gweinyddol a  
Thribiunlysoedd **Pwyllgor Cymru**  
Administrative Justice & Tribunals Council  
**Welsh Committee**

Hyrwyddo Cyfiauwrnder Gweinyddol  
Advancing Administrative Justice

# REVIEW OF TRIBUNALS OPERATING IN WALES

This Report is made to the Welsh Ministers pursuant to paragraph 19(4) of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 and must be laid before the National Assembly for Wales by the Welsh Ministers pursuant to paragraph 19(6) of that Schedule.

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## Chair's Foreword



This, the first special report initiated by the Welsh Committee of the Administrative Justice and Tribunals Council, raises matters of serious concern – but also opportunities for improvements in the cost-effectiveness of tribunals and of the administration of public services to which they relate. It highlights the urgent need for strong and informed leadership in a specialist, but crucial area of the devolution agenda that bears directly on the rights of citizens and the quality of citizen-centred public services delivery.

Wales has inherited a patchwork of tribunals that, as we make clear, evolved in an *ad hoc* way prior to devolution. This has resulted in a number of deficiencies that mar much good practice. The most pressing issue is the lack of a “separation of powers”. When citizens seek redress the process should be – and should be seen to be – truly independent of the body appealed against. This is a fundamental principle that is recognised internationally and that is in process of being firmly embedded in the tribunal system across the UK – except, presently, in Wales. Wales cannot afford to fall behind or potentially expose itself to considerable embarrassment.

If for no other reason, continuing with current arrangements is not a comfortable option; but there are other strong arguments for immediate change. As devolution evolves, the range and complexity of remedial actions – and the legislation giving rise to them – will continue to grow. To respond appropriately and cost-effectively there needs to be a single focal point of knowledge and expertise capable of establishing consistent and defensible policies and practices, rather than *ad hoc* and dispersed action.

Our primary recommendation is that there should be such a single focal point and that it should cover matters of general policy, practice guidelines and overall administration. This could be achieved in a number of ways that meet the particular circumstance of devolution in Wales, but we see its location within the office of the First Minister as the best option. Such a move would offer the element of independence from service departments that we see as essential, while keeping the concern for administrative justice close to the Cabinet as a whole. Given such a development, the more detailed matters to which we refer in the report could readily be addressed in a systematic way.

We recognise that the issues we highlight in this report are not of Wales’ making, but the solutions lie wholly within our hands. We most strongly urge that early and appropriate action be taken.

A handwritten signature in black ink that reads "Ad Webb".

**Sir Adrian Webb**  
Chairman – Welsh Committee of the AJTC

# Executive Summary and Recommendations

The Welsh tribunals have developed on an *ad hoc* basis, which has led to a fragmented system. There is wide variation across a number of areas, including appointment processes, budgets, training and appraisal and support for users, for no principled reason. In many cases, responsibility for tribunals and their administration lies with the departments whose decisions it is the tribunals' duty to consider. This is clearly unacceptable. Citizens in Wales have the right to expect that all tribunals are (and are seen to be) independent, accessible and designed with their needs in mind.

The problems highlighted in this report are not the failings of any individual tribunal. In fact, there are some individual instances of best practice and innovation. For the most part, the problems stem from the unplanned way in which tribunals have been established, without regard to an overarching policy or a conception of tribunal independence. This is further complicated by the nature of devolution and the establishment of a completely different structure for cross-border tribunals. There is a lack of overall oversight and co-ordination of Welsh tribunals.

Our recommendations are designed to promote a more integrated, user-focused system, in which Welsh tribunals conform to the principles outlined in Part 2 of this report. They are divided into two categories. The core recommendations are aimed at establishing the scrutiny mechanisms and institutions needed to reform the tribunal and administrative justice system in Wales. The other recommendations outline what we consider should be the early priorities for reform.

## CORE RECOMMENDATIONS

### Welsh Assembly Government

#### *Tribunal Independence and Impartiality*

Most Welsh tribunals are not sufficiently independent from the departments or agencies whose decisions they are considering. This needs to be put right by the Welsh Assembly Government as a matter of urgency. The people of Wales are entitled to a tribunal system that is independent, compatible with the European Convention on Human Rights and in line with the Welsh Assembly Government commitment to citizen-centred services.

## *Administrative Justice Focal Point*

While tribunal reform is necessary, it should not stand alone. What matters to citizens is the quality of the system as whole. There is an opportunity for the Welsh Assembly Government to lead the way in establishing a central administrative justice focal point, including the policy and administration of tribunals, to consider the development of the whole administrative justice system from a user perspective. Given the need for whole-of-government working, the Department for the First Minister and Cabinet is the most suitable location for tribunal and administrative justice policy and administration.

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### **Recommendation 1:**

**That the Welsh Assembly Government establish a focal point for administrative justice in the Department for the First Minister and Cabinet (p. 28).**

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### **Recommendation 2:**

**That in order to ensure that tribunals are seen to be properly independent and impartial, the Welsh Assembly Government transfer policy and administrative responsibility for tribunals to this focal point in the Department for the First Minister and Cabinet, which has no specific responsibility for any of the government decisions under dispute (p. 28).**

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### **Recommendation 3:**

**That the Welsh Assembly Government ensure that the procedures for the selection of tribunal members are open, fair and based on merit, and that all appointments are made by the Welsh Ministers or the Lord Chancellor (p. 28).**

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## *Rationalisation*

There is potential for combining the jurisdictions of some tribunals according to subject matter to achieve economies of scale, administrative efficiency and improve opportunities for members to sit regularly. This should ultimately lead to a better experience for tribunal users, and better value for taxpayers.

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### **Recommendation 4:**

**That the Welsh Assembly Government and Local Authorities consider the appropriate amalgamation of Welsh tribunal jurisdictions according to subject matter (p. 29).**

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## Tribunal Judiciary

Improved communication and working between the Welsh tribunal judiciary is an important step in establishing a more integrated, joined-up tribunal system. Tribunal reform needs strong leadership from the tribunal judiciary, members and support staff, who will be essential to its successful implementation. Communication and collaboration between Welsh tribunals with cross-border tribunals should be improved.

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**Recommendation 5:**

**That the judicial leaders and administrators of each Welsh tribunal work together on issues of common interest and towards implementing the recommendations in this report (p. 30).**

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## National Assembly

The National Assembly should become a key partner in oversight of the administrative justice system. We would welcome measures to ensure co-ordinated scrutiny of the implementation of our recommendations across government.

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**Recommendation 6:**

**That the National Assembly scrutinise and monitor the Welsh Assembly Government's implementation of the recommendations in this report, including holding a debate in plenary (p. 30).**

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## OTHER RECOMMENDATIONS

The following recommendations outline areas for further work and reform on which we consider the National Assembly, Welsh Assembly Government, Local Authorities and the tribunal judiciary and administrators should focus, at least initially.

### Accessibility

#### *Information*

Further work is needed to determine exactly how information is currently being delivered to tribunal users, the methods that are most helpful to the user, and how the current situation could be improved and standardised where possible.

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**Recommendation 7:**

**That the Welsh Assembly Government and the Welsh tribunal judicial leaders and administrators work together to ensure that the information provided to tribunal users is clear, comprehensive and accessible.**

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## *Procedures*

Tribunal procedures should be enabling and take account of the fact that there is often an inequality of arms between the government and tribunal user. Welsh tribunals should continue to operate at minimum cost to tribunal users and information about any fees and costs should be readily available to tribunal users.

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### **Recommendation 8:**

**That the Welsh Assembly Government and the Welsh tribunal judicial leaders and administrators work together to ensure in the first instance that tribunal forms and procedures are clear and simple and designed for the convenience of tribunal users.**

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## *Advice and Representation*

It is uncertain whether the advice and assistance available to tribunal users, and users of the administrative justice system more generally, is adequate, accessible and comprehensive across Wales. While outside the scope of this report, this is an important issue that warrants significant further research and study.

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### **Recommendation 9:**

**That the Welsh Assembly Government conduct a review of the general and specialist advice available to tribunal users, and whether there are any gaps in advice provision.**

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## *Engagement with Users*

The tribunal judiciary and the government should engage effectively with tribunal users and seek their feedback, so that practices and procedures can be tailored to meet the needs of tribunal users.

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### **Recommendation 10:**

**That the Welsh tribunal judicial leaders and administrators and Welsh Assembly Government ensure that there is an appropriate strategy to engage with tribunal users for each tribunal jurisdiction.**

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## *Complaints Policy and Procedure*

All tribunals should have a complaints policy and procedure in relation to the performance of both the members and administration, based on complaint handling guidance provided by the Public Services Ombudsman for Wales.

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### **Recommendation 11:**

**That the Welsh Assembly Government and Welsh tribunal judicial leaders establish a complaints policy and procedure for all Welsh tribunals, based on guidance from the Public Services Ombudsman for Wales.**

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## *Welsh Language*

There should be consistent and adequate level of Welsh language services across Welsh tribunals. All Welsh tribunals should adopt a common Welsh Language Scheme. As well as ensuring that all tribunals are operating to the same standards, a common scheme could reduce the administrative burden of each tribunal creating and publishing its own scheme and allow for joint Welsh language training initiatives.

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### **Recommendation 12:**

**That the Welsh Assembly Government and Welsh tribunal judicial leaders and administrators work with the Welsh Language Board and the Tribunals Service to formulate a common Welsh Language Scheme for all Welsh tribunals.**

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## *Hearing Venues*

In arranging hearing venues, accessibility for users should be the primary concern. There should be a common Welsh tribunal policy for hearing venues to promote consistent standards, including standards on the maximum distance from parties, access to transport links, disability access, refreshment facilities, and separate waiting rooms for parties.

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### **Recommendation 13:**

**That the Welsh Assembly Government and Welsh tribunal judicial leaders and administrators formulate a policy on standards for hearing venues, focused on the needs of tribunal users.**

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## *Annual Reports and Performance Monitoring*

To ensure greater public accountability, we consider that all Welsh tribunals should produce a yearly account of their activities. The level of detail required and information should be proportionate to the level of tribunal activity.

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### **Recommendation 14:**

**That the Welsh tribunal judiciary and administrators ensure that all Welsh tribunals collect consistent performance management data and produce a yearly account of their activities.**

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## Efficiency & Effectiveness

### *Resources and Support*

The resources, administrative and other support available to Welsh tribunals vary significantly, even taking account of the differing caseloads and complexity of subject matter. A more streamlined and amalgamated system would be able to take advantage of economies of scale and spread resources more fairly across tribunals. For example, it would allow the pooling of administrative and support staff, hearing venues, IT systems and Secretariat accommodation.

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#### **Recommendation 15:**

**That the Welsh Assembly Government explore ways in which tribunal resources can be deployed more efficiently.**

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### *Training and Appraisal*

The quality and experience of tribunal members has a significant direct impact on the experience of tribunal users and the quality of judicial decision-making. Appropriate training should be provided for tribunal members and staff and standards of judicial performance should be set and monitored.

The low caseloads of some Welsh tribunals mean that members are not sitting frequently enough to retain proficiency and that there is a need to review the number of tribunal members in some jurisdictions. In order to increase sitting opportunities for members, the possibility of appointing members to more than one jurisdiction should be explored.

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#### **Recommendation 16:**

**That the Welsh Assembly Government ensure that tribunals have an adequate budget for training, appraisal and the monitoring of member performance.**

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#### **Recommendation 17:**

**That the Welsh tribunal judicial leaders and administrators ensure that tribunals have appropriate training, appraisal and performance monitoring systems in place.**

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#### **Recommendation 18:**

**That the Welsh Assembly Government, the Welsh tribunal judicial leaders and administrators explore options to ensure that tribunal members are given the opportunity to sit frequently enough to maintain knowledge and skills.**

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## Coherence

### *Framework for establishing new tribunals*

Guidelines are needed to ensure that tribunals do not continue to develop in an *ad hoc* and unstructured way. The guidelines should apply to all Welsh Assembly Government Departments and the Department for the First Minister and Cabinet should be consulted on the establishment of any new tribunals.

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**Recommendation 19:**

**That the Welsh Assembly Government adopt a consistent and coherent approach to the establishment of new tribunals.**

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### *Appeals*

There is wide variation in appeal rights and routes from Welsh tribunals. In some jurisdictions appeal can be made only on a point of law, and in others appeal is permitted both on alleged errors of law and fact. Appeal is either to the Upper Tribunal, or to the High Court on appeal or judicial review.

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**Recommendation 20:**

**That the Welsh Assembly Government ensures that there are appropriate rights of appeal from tribunals.**

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### *Improving Original Decisions*

Tribunals are an integral part of the administrative justice system. It is important that the process from original decision, through internal and external complaint mechanisms, tribunals, courts and the Ombudsman are coherent and complementary. It is equally important that lessons are learnt from tribunal decisions and incorporated back into the system. For this to happen, there need to be good channels of communication between tribunals and original decision-makers.

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**Recommendation 21:**

**That the Welsh tribunal judicial leaders and administrators, the Welsh Assembly Government and Local Authorities work together to ensure that lessons learnt from tribunal decisions lead to improvements in original decision making, and thereby to better and more efficient service to the Welsh public.**

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# Introduction

## Background

1. As the Welsh Committee of the Administrative Justice & Tribunals Council (AJTC) our role is to keep under review the administrative justice system, tribunals and inquiries in Wales. In fulfilling our role regarding tribunals, we may report on:
  - The constitution and working of listed tribunals<sup>1</sup> operating in Wales;
  - Any other matter relating to listed tribunals operating in Wales that we determine to be of special importance;
  - Any particular matter relating to tribunals in Wales that is referred to us by the Welsh Ministers or the Lord Chancellor<sup>2</sup>.

This report is made under the second of these powers.

2. We initiated a review of devolved tribunals operating in Wales in November 2008 as a result of:
  - Our observations of the complexity and fragmentation of tribunals in Wales, with significant differences in the way the various devolved tribunals operate and are administered;
  - Instances of reform relating to devolved tribunals being considered in an *ad hoc* and disjointed way;
  - An apparent lack of independence of Welsh tribunals, with responsibility for tribunals and their administration lying with those whose decisions it is the tribunals' duty to consider;
  - Discussions with users.

## Process

3. In conducting this review, we have:
  - Researched both devolved and cross-border tribunals, including distribution of a questionnaire to all Welsh tribunals aimed at collecting detailed and consistent information on a range of issues such as caseload, member appointments, training and information provided to tribunal users;
  - Formulated principles by which to analyse this information and judge the performance of these tribunals;
  - Made recommendations for reform.

1 "Listed tribunals" are the First-tier Tribunal and Upper Tribunal established by the Tribunals, Courts and Enforcement Act 2007 and tribunals listed by orders made by the Lord Chancellor, the Scottish Ministers and the Welsh Ministers.

2 Tribunals, Courts and Enforcement Act 2007, Schedule 7, para 14.

## Definitions

4. The definition of what constitutes a tribunal is not easy. At its broadest, a tribunal is ‘something that decides or determines’. However, for the purposes of this Review, the term ‘tribunal’ refers to:
  - Tribunals listed under the Administrative Justice and Tribunals Council (Listed Tribunals) (Wales) Order 2007;
  - The First-tier and Upper Tribunal, where they have jurisdiction in Wales;
  - Tribunals listed under the Administrative Justice and Tribunals Council (Listed Tribunals) Order 2007, where they have jurisdiction in Wales.
5. Not all the bodies listed under these Orders are called tribunals – some are called authorities, commissioners, committees, panels or adjudicators as well as tribunals. They come in a wide variety of shapes and sizes, cover a diverse range of jurisdictions and have various powers and expertise.
6. In this document ‘Welsh tribunal’ means a tribunal listed under the Administrative Justice and Tribunals Council (Listed Tribunals) (Wales) Order 2007 (‘the Order’)<sup>3</sup> as well as those tribunals concerned with devolved subject areas. The following tribunals appear in the Order:
  - Adjudication Panel for Wales;
  - Board of Medical Referees;
  - Forestry Committees for Wales;
  - Independent Review of Determinations Panels (IRDP) in Wales;
  - National Health Service Independent Complaints Panels;
  - Parking Adjudicators in Wales<sup>4</sup>;
  - Registered Nursery Education Inspectors Appeal Tribunal;
  - Registered School Inspectors Appeal Tribunal;
  - Residential Property Tribunal for Wales;
  - School Admission Appeal Panels for Wales;
  - School Exclusion Appeal Panels for Wales;
  - Social Services Independent Complaints Panels;
  - Special Educational Needs Tribunal for Wales (SENTW);
  - Valuation Tribunals in Wales.

3 The Order contains a list of tribunals for which the Welsh Ministers are the ‘authority responsible’. The Welsh Ministers are the ‘authority responsible’ for listing a tribunal if:

- (a) All of the tribunal’s functions are exercisable only in relation to Wales; and
- (b) at least one of the following powers is exercisable by the Welsh Ministers:
  - (i) the power to appoint the members of the tribunal; or
  - (ii) the power to make procedural rules for the tribunal.
- (c) In the case of a tribunal that exercises functions in relation to Wales and also exercises those or other functions in relation to somewhere other than Wales, the Welsh Ministers are the authority responsible for the tribunal to the extent that it exercises functions in relation to Wales, if at least one of the following powers is exercisable by the Welsh Ministers:
  - (i) the power to appoint the members of the tribunal who exercise the tribunal’s functions in relation to Wales;
  - (ii) the power to make procedural rules for the exercise of the tribunal’s functions in relation to Wales.

4 The Parking Adjudicators in Wales have been abolished and replaced by the Traffic Penalty Tribunal adjudicators.

7. For the purposes of this report, we have also classified the following as Welsh tribunals:
  - Mental Health Review Tribunal (MHRT) for Wales;
  - Agricultural Land Tribunal (ALT) (Wales);
  - Traffic Penalty Tribunal (when conducting hearings in Wales).

While these tribunals are not listed under the Welsh Order, they deal with devolved subject matter and are sponsored by the Welsh Assembly Government or Welsh Local Authorities.

8. It is the Welsh tribunals on which this review is focused, and on which we have collected detailed information and made recommendations for reform. In doing so, we have only considered current arrangements. Potential issues from further devolution are outside our scope. Similarly, we are aware of some cross-over between the work of ombudsmen and tribunals. We have chosen to consider this matter at a later date.

### **Stakeholder Engagement**

9. Since our inception we have met with most of the Presidents and Regional Chairs of tribunals operating in Wales. Where possible, we have also observed at least one hearing in each jurisdiction and have attended tribunal user group meetings, in order to experience first-hand how the system operates. We have met with various officials in the Welsh Assembly Government, the Welsh Local Government Association and others to discuss the review and test our recommendations.
10. At our conference in June 2009 in Cardiff, our Chair made a presentation on this review, and some of the key questions in the breakout group exercise were aimed at eliciting views on:
  - The main issues affecting both devolved and cross-border tribunals in Wales;
  - The most urgent issues that any tribunal reform process in Wales should address;
  - Aspects of tribunals in Wales that should not be lost in any reform process;
  - Opportunities for uniquely Welsh arrangements for devolved tribunals.

# Part 1 – The Tribunal Landscape in Wales

***‘Because tribunals were administered by sponsoring Government Departments, where substantive areas of government have been devolved, the tribunals within those areas have been devolved too.’***

*His Honour Judge Gary Hickinbottom speaking at the Council on Tribunals’ Wales Conference in Cardiff on 21 June 2007<sup>5</sup>.*

11. The tribunal landscape in Wales is complicated, with devolved tribunals being administered by various Welsh Assembly Government departments or Local Authorities, and cross-border tribunals by the UK Tribunals Service or UK government departments.

## Welsh Tribunals

12. The devolution of some tribunals operating in Wales arose as a result of the Government of Wales Act 1998, which created the National Assembly for Wales and devolved executive responsibility for key policy areas such as education, health, social and housing policy to it. This included the transfer of executive responsibility for tribunals concerned with these policy areas as they operated in Wales. With devolution, the National Assembly also gained the ability to create new tribunals and appeal mechanisms in some devolved policy areas. With the Government of Wales Act 2006, and allocation of primary legislative functions to the National Assembly, there are further opportunities for difference and innovation in Welsh tribunals.
13. To date, however, the Welsh tribunals are in large part legacies of Westminster laws and policy, whereby tribunals developed in an *ad hoc* fashion without being underpinned by any theoretical framework. That is, they were set up to meet specific needs and not according to a rational pattern. Our research, outlined below, shows that they remain unchanged from when Sir Andrew Leggatt conducted a review of tribunals in England and Wales in 2002 and found that:

*...the present collection of tribunals has grown up in an almost entirely haphazard way. Individual tribunals were set up, and usually administered by departments, as they developed new statutory schemes and procedures. The result is a collection of tribunals, mostly administered by departments, with wide variations of practice and approach, and almost no coherence<sup>6</sup>.*

14. For some of the cross-border tribunals operating in Wales, this situation has been remedied by the creation of a Tribunals Service to provide independent administrative support, and by the introduction of the Tribunals, Courts and Enforcement Act 2007 which provides for a new unified structure for many tribunals. The Welsh Assembly Government has decided that devolved tribunals will not join the Tribunals Service or the new unified tribunal structure.

<sup>5</sup> ‘Tribunal reform: the issues for Wales’ in Adjust, July 2007 at [http://www.council-on-tribunals.gov.uk/adjust/item/comment\\_reformwales.htm](http://www.council-on-tribunals.gov.uk/adjust/item/comment_reformwales.htm) (accessed on 4 June 2009)

<sup>6</sup> ‘Tribunals for Users: One System, One Service’, Report of the Review of Tribunals by Sir Andrew Leggatt, March 2001, p.15, para 1.3



## Cross-Border Tribunals

15. While it is not the intention of this review to look in detail at the operation of cross-border tribunals<sup>7</sup>, they constitute a substantial proportion of the delivery of administrative justice through tribunals in Wales. The size and scale of these tribunals means that they are important to the context in which Welsh tribunals operate. Reforms have, sometimes unintended, impacts on Welsh tribunals. A list of the larger and more significant of these tribunals is at Appendix B. To date, there has been little formal or informal interaction between cross-border tribunals and devolved Welsh tribunals.
16. As a result of the recommendations in the Leggatt Review of Tribunals in 2001<sup>8</sup> and subsequent White Paper in 2004<sup>9</sup> many of these cross-border tribunals have undergone significant reform, which began in April 2006 with the creation of a unified Tribunals Service to provide administrative support. The reform process was extended under the Tribunals, Courts and Enforcement Act 2007 and included:
  - The creation of a unified tribunal structure;
  - The creation of the Upper Tribunal, leading to new and rationalised rights of appeal;
  - The establishment of the office of Senior President as a senior judicial office to provide focus and leadership for tribunals covered by the Act;
  - The ability to 'cross-ticket' and assign tribunal judges and members across different jurisdictions.
17. On 3 November 2008 two new unified tribunals were established, consisting of a First-tier and an Upper Tribunal. Initially, these tribunals comprised:
  - Three First-tier Chambers – Social Entitlement; Health, Education and Social Care; War Pensions & Armed Forces Compensation;
  - The Administrative Appeals Chamber of the Upper Tribunal.
18. In April 2009 further tribunals were transferred into the new structure leading to the creation of a First-tier Tribunal Tax Chamber, and Upper Tribunal Finance and Tax Chamber. In June 2009 the Lands Chamber of the Upper Tribunal was established. In September 2009 the General Regulatory Chamber of the First-tier Tribunal was commenced (comprising Estate Agents appeals; Consumer Credit Appeals Tribunal; Transport and Charity Tribunals). The government has also announced that the Asylum and Immigration jurisdiction will join the new structure<sup>10</sup>. It is intended that eventually most of the tribunal jurisdictions administered by central government will be incorporated into the new structure.

<sup>7</sup> A cross-border tribunal is one which has jurisdiction in both England and Wales.

<sup>8</sup> 'Tribunals for Users: One System, One Service', Report of the Review of Tribunals by Sir Andrew Leggatt, August 2001.

<sup>9</sup> 'Transforming Public Services: Complaints, Redress and Tribunals', A White Paper produced by the Department for Constitutional Affairs, Cm 6243, published July 2004.

<sup>10</sup> 'Immigration Appeals Government Response to Consultation: Fair decisions; faster justice', UK Border Agency and Tribunals Service, published 8 May 2009, at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/immigrationappeals/>. (accessed on 20 October 2009)

19. As part of the reforms, the Employment Tribunal and Employment Appeal Tribunal are administered by the Tribunals Service. In recognition of their different needs and role in adjudicating disputes between parties, as opposed to disputes between citizen and state, it was decided that they would form a separate pillar of that organisation and not join the unified tribunal structure<sup>11</sup>.
20. Joint Upper Tribunal and Administrative Court facilities have been established in Cardiff, and a number of suitable venues have been identified around Wales to ensure accessibility for Welsh tribunal users. The Tribunals Service organisation includes a 'Wales and the South West' business area and offices in Wales. It also has a number of permanent hearing centres (Newport, Cardiff, Swansea, Colwyn Bay and Wrexham) and temporary hearing venues (including Carmarthen, Haverfordwest, Aberystwyth, Newtown, Caernarfon and Llangefni) in Wales.
21. The Tribunals Service has its own Welsh Language Scheme, and is able to handle telephone calls and letters in Welsh and arrange for appeal hearings in Welsh, and all Tribunals Service buildings in Wales have bilingual signage, leaflets and notices. It operates a single website for all the tribunals that it administers – [www.tribunals.gov.uk](http://www.tribunals.gov.uk) – with dedicated areas for each jurisdiction.
22. There are also a number of cross-border tribunals that currently remain outside the Tribunals Service. These include the Copyright Tribunal, the Competition Appeal Tribunal and the Traffic Commissioners. The Traffic Commissioner for Wales and the West Midlands has raised a number of issues in his Annual Report for 2008/09 associated with cross-border operations in his jurisdiction:

*Although there are eight Traffic Areas for Great Britain, there are seven Traffic Commissioners. I am the Traffic Commissioner with two distinct Traffic Areas... Compliance services for Wales (are) serviced from the Birmingham office. Statistics are compiled separately for Wales, and hearings are heard in Wales; apart from this, the Welsh Traffic Area is treated as an adjunct of the West Midland Traffic Area. By way of illustration, budgets allocated for operator seminars are based on the offices and commissioners... Sadly the result of Wales being treated differently to England is that the standards of regulation in parts of Wales are sometimes lower<sup>12</sup>.*

<sup>11</sup> 'Transforming Tribunals Consultation Paper', Ministry of Justice, CP30/07, published 28 November 2007, p.22, para 99.

<sup>12</sup> Traffic Commissioners' Annual Report for 2008/09 <http://www.dft.gov.uk/pgr/roads/tpm/trafficcommissioners/annualreports/> p. 67. (accessed on 20 October 2009)

## Some statistics at a glance...

Tens of thousands of Welsh citizens are affected by tribunal decisions every year.

### *Cross-Border Tribunals*

In **Wales** in 2008/09 the:

- Social Security and Child Support jurisdiction of the Social Entitlement Chamber dealt with 15,291 appeals, employed 35 judges (5 of which were salaried) and 71 members
- Employment Tribunal dealt with 8,917 cases, employed 12 judges (3 of which were salaried) and 50 members
- Asylum and Immigration Tribunal dealt with 11,367 cases (including English cases), employed 36 judges (10 of which were salaried) and 4 members<sup>13</sup>.

In **England** in 2008/09 the:

- Special Educational Needs and Disability jurisdiction of the Health, Education and Social Care Chamber received 3,115 appeals (2,313 were withdrawn), decided 992 cases, and comprised 160 members
- Mental Health Review Tribunal jurisdiction of the Health, Education and Social Care Chamber received 22,964 cases (10,393 were withdrawn), decided 14,998 cases and comprised 999 members<sup>14</sup>.

UK wide in 2008/09 the Tribunals Services dealt with **568,153 cases**, employed **2,737 staff** and had net operating costs of **£310 million**<sup>15</sup>.

### *Welsh Tribunals*

In 2008/09 the:

- Special Educational Needs Tribunal for Wales registered 96 appeals and decided 37 cases, employed 5 staff and comprised 13 members
- Mental Health Review Tribunal for Wales registered 1,450 applications (211 were withdrawn) and comprised 90 members (the President is salaried)
- Adjudication Panel for Wales received two referrals from the Ombudsman, and no appeals against the decisions of standards committees and comprised 8 members (including the President)
- Residential Property Tribunal for Wales received 208 cases (11 were withdrawn) and comprised 42 members.

Due to differences in the way in which expenditure is recorded by Welsh tribunals (or not recorded at all in some cases), it is impossible to estimate the combined operating budget of Welsh tribunals.

<sup>13</sup> These figures were supplied by the Tribunals Service.

<sup>14</sup> Tribunals Service Annual Report and Accounts 2008/09, HC599, p.121

<sup>15</sup> Tribunals Service Annual Report and Accounts 2008/09, HC599, p.8

## Our Survey of Welsh Tribunals

23. In early 2009 we distributed a survey to all Welsh tribunals, in order to collect detailed and consistent information on a range of issues such as caseloads, budgets, information for tribunal users and Welsh language capability. The detailed results of this survey are at Appendix C. The data we collected reveal a fragmented tribunals system which has developed in an *ad hoc* fashion. Not only are there no guiding or common principles but the way in which these tribunals operate differs greatly.
24. The information we have collected was provided by representatives of each tribunal. While some efforts have been made to check whether it is correct, we cannot vouch for its accuracy. In some instances there are also differences in statistical and data collection methods between tribunals.
25. The tribunals operating in Wales cover a variety of jurisdictions, as listed in Table 1 (p.42), ranging from particular bodies such as the Board of Medical Referees which adjudicates appeals concerning whether or not a fire fighter should be retired; to the Mental Health Review Tribunal (MHRT) for Wales which reviews the cases of patients detained under Mental Health Act powers; and the School Exclusion Appeal Panels which hear appeals against the permanent exclusion of students from schools. The Welsh Assembly Government has also established a number of independent panels to review initial decisions. These include, for example, the Independent Social Services Complaints Panels<sup>16</sup> and Independent Review of Determinations Panels<sup>17</sup>. Both of these are listed under The Administrative Justice and Tribunals Council (Listed Tribunals) (Wales) Order 2007 and are included in this review.
26. It is also interesting to note that while some of the tribunals in Wales have operated for many years, with the Agricultural Land Tribunal dating from 1947, there have also been much more recent additions to the landscape, with the Special Educational Needs Tribunal for Wales (SENTW) coming into existence as recently as 2003. The Department for Children, Education, Lifelong Learning and Skills, the Department of Health and Social Security, the Department for Social Justice and Local Government and the Department for Rural Affairs all sponsor various tribunals, depending on the jurisdiction of the tribunal.
27. Tribunals were asked to provide details of the way in which they are organised, with the responses suggesting that, generally speaking, there are four structures:
  - a. A single tribunal covering the whole of Wales, with a single judicial leader;
  - b. A single tribunal covering the whole of Wales, with no overall judicial leader;
  - c. Tribunals organised on a regional basis, headed by a President for each region<sup>18</sup>;
  - d. Tribunals organised on a regional basis, with each panel hearing being headed by a Chair but no overall leader.

<sup>16</sup> These panels deal with complaints about social services where the complaint is not resolved at an earlier stage.

<sup>17</sup> These panels provide a review process which prospective adopters can use when they do not agree with the qualifying determination made by their adoption agency.

<sup>18</sup> This is the present structure of the Valuation Tribunals for Wales. However, the Welsh Assembly Government has consulted on proposals to merge the four tribunals into a single tribunal.

28. The number of members appointed to a tribunal at any given time and the composition of panels differ greatly among the tribunals, a fact hardly surprising given the different workloads and subject matter. With the exception of the Valuation Tribunals, which consist entirely of lay members, most tribunals comprise a mixture of legal and other members, with most members requiring professional or practical experience in the field in question. Tribunals usually consist of three members, however in some tribunals they can consist of up to five members. The composition of each tribunal is shown in Table 2 (p.46).
29. The responses received with regard to questions on remuneration and allowances are set out in Table 3 (p.48). In three cases the President of a Tribunal receives a salary (MHRT for Wales, Traffic Penalty Tribunal and Residential Property Tribunal<sup>19</sup>) whereas other members of the tribunal panels receive fees, which in some circumstances are paid at a daily rate and in others are allocated per case. In a couple of situations, the members receive no sort of remuneration other than for loss of earnings.
30. The rules governing the selection of members are neither uniform nor consistent, with some appointments being the responsibility of Welsh Ministers and some the responsibility of the Lord Chancellor. Further to this, in some tribunals it is the Local Authority that decides on the appointment of members. The way in which this responsibility is allocated is shown in Table 4 (p.49). Similarly, the responsibility for the making of procedural rules is either with the Welsh Ministers or the Lord Chancellor, depending upon the tribunal.
31. The ability of tribunals to appoint advisers demonstrates the way in which the procedural rules can differ greatly from one tribunal to another. Some procedural rules allow for the tribunal to consult an expert, as with, for example, the Adjudication Panel for Wales. The Independent Review of Determinations Panel Rules provide that the panel must be advised by a social worker, and may also be advised by a legal adviser. On the other hand, various tribunals indicated that they are not able to appoint additional advisers at all, with this being the case for the MHRT for Wales, the Residential Property Tribunal, Valuation Tribunals for Wales, School Admission Appeal Panels and School Exclusion Appeal Panels. Although the SENTW cannot currently use advisers, they are seeking to amend their regulations so that the use of expert witnesses is permitted.
32. Our survey asked several questions about the training and appraisal of members of the tribunals. The responses revealed that the responsibility for training of members is in some cases that of the judicial head, in others that of the support staff of the tribunal and in others it falls to the Local Authority. In the majority of cases the funding for training comes from the tribunal's overall budget. The different tribunals offer different forms of training to members. Many have regular annual training events (SENTW, Adjudication Panel, MHRT for Wales, Residential Property Tribunal, Independent Social Services Complaints Panels, Traffic Penalty Tribunal, Valuation Tribunal for Wales) although some tribunals arrange training on a locally determined basis (School Admission Appeal Panels and School

19 The Vice-President of the Residential Property Tribunal also receives a salary.

Exclusion Appeal Panels). There are also less formal training methods, such as circular letters highlighting developments in the law and best practice and other tribunal members benefit from 'on the job' training.

33. In some tribunals there exists a formal mechanism for the appraisal of members, with, for example, the President and members of the Adjudication Panel for Wales being appraised on an annual basis, and the President of the Agricultural Land Tribunal (Wales) being subject to a formal process. Similarly, the Chairmen and Deputy Chairmen of the MHRT for Wales are assessed by a First-tier Tribunal Circuit Judge, and they in turn assess the members. The Residential Property Tribunal has a system of appraisals, but due to the small caseload it is difficult to conduct the necessary observations. Otherwise, however, it appears that the majority of tribunal members are not assessed on any regular or formal basis, although the Valuation Tribunals for Wales are attempting to establish an appraisal system.
34. Comparison of the workloads of the Welsh tribunals is inherently difficult, given that not only do the tribunals have different processes, but also because available statistics concerning caseload do not reflect the complexity or duration of cases. As indicated in Table 5 (p.54), the Valuation Tribunals for Wales deal with the most cases on a yearly basis; however, it has indicated that it is able to schedule up to 30 cases per day, whereas one case in front of the Adjudication Panel may last for several days.
35. This difference in caseload and complexity of work also means that the expenditure of tribunals varies greatly, as it impacts upon the amount spent on fees, administrative work and rent. Comparison of the expenditure of different tribunals is further complicated by the use of different calculations for determining expenditure. It also has to be noted that different tribunals benefit from different levels of support from the government, which in some cases provides offices and staff to assist the tribunals, as outlined in Table 7 (p.57).
36. The survey asked several questions with regard to the way in which hearings operate. A common feature of all the tribunals is that hearings tend to be heard in informal settings that are convenient for the user. The Agricultural Land Tribunal (Wales) holds hearings in local hotels, which allow site visits to take place easily, and the Traffic Penalty Tribunal allows users to state a preference as to where their hearing will take place. For the MHRT for Wales, the venue of the hearing is usually in the hospital where a patient is detained.
37. Responses to the survey revealed that the majority of tribunals have a degree of flexibility with regard to the nature of hearings, as indicated in Table 8 (p.63). Approximately half of the tribunals responded that they normally hold hearings in private, primarily when the tribunals are dealing with vulnerable users or sensitive information. For most of these tribunals, however, it remains possible to hold hearings in public where certain conditions are met. Equally, of the tribunals that habitually hold hearings in public, there is discretion to hold hearings in private.

38. Over half the tribunals publish their decisions, with some publishing in local newspapers and with others sending decisions to relevant organisations, but those tribunals dealing with sensitive personal matters generally do not publish their decisions. A few tribunals reported that they make either an audio or written transcript of the hearing which in most cases can be accessed.
39. Although roughly half of the tribunals indicated that they are able to award costs, predominantly in cases where a person has acted frivolously or vexatiously, none of the tribunals reported that they were able to enforce their orders. The range of support available from the tribunal clerk ranges from making administrative arrangements through to offering advice on procedure or on points of law. In the MHRT for Wales the clerk is often the caseworker who has overseen the gathering of reports and assembling of witnesses, and for the Adjudication Panel for Wales the clerk can offer advice on procedure but not on points of law.
40. There are a number of different appeal routes from the decisions of tribunals. In some cases, a person has a right of appeal to the Upper Tribunal, for example from the Special Educational Needs Tribunal (Wales). In tribunals such as the Traffic Penalty Tribunal, there is no right of appeal other than to request a judicial review. Appeal from certain tribunals must be made to the High Court.
41. As seen in Table 8 (p.63), with the exception of SENTW, all the tribunals responded that there are no restrictions on the parties being accompanied by a representative, either legal or otherwise. In the case of SENTW, there is a restriction of one representative per party. The only Welsh tribunal where legal aid is available for applicant representation is the MHRT for Wales, although in other tribunals it may be possible to obtain legal advice for preparation.
42. Information about the tribunals is often made available to users via the internet, although fewer than half of the tribunals responded that they have comprehensive websites, as indicated in Table 10 (p.68). Information about tribunals without their own full website can sometimes be found on different sites, such as the Welsh Assembly Government website. SENTW has a dedicated helpline for users, and other tribunals indicated that information can be obtained simply by calling the tribunal telephone line. Leaflets and booklets are also published by tribunals, although the type of information contained varies from tribunal to tribunal.
43. The majority of tribunals are equipped to deal with Welsh language appeals, as shown in Table 11 (p.69), even though there is limited demand for Welsh language services. SENTW indicated that it has heard hearings conducted in Welsh. While the Adjudication Panel for Wales indicated that there have been no hearings conducted in the Welsh language, a number of participants have given evidence in the Welsh language. A few tribunals do not have a record of the number of Welsh speaking tribunal members.

44. Interaction with users by the tribunals is relatively limited, although there are some exceptions. SENTW and the Traffic Penalty Tribunal operate tribunal user groups, and representatives of the Valuation Tribunals for Wales participate in the Valuation Office Agency Ratepayers Forum. SENTW also indicated that parties are invited to complete a satisfaction survey following their case. The Chairman of the MHRT for Wales sits on a number of committees with user representatives.
45. The tribunals were asked to provide information about their complaints procedure, with Table 12 (p.73) showing the responses. SENTW's complaints policy is available to the public on request and is on its website, as is the policy of the Traffic Penalty Tribunal. For some tribunals, users also have recourse to the Public Services Ombudsman for Wales ['the Ombudsman']. For the Adjudication Panel for Wales, the Ombudsman will be the first point of contact in misconduct cases and where complaints are being made against the social services, users will have the option to go to the Ombudsman. The Ombudsman can investigate complaints of maladministration against the School Admission and Exclusion Appeal Panels, but only has the power to make recommendations. Similarly, the Ombudsman can investigate complaints about the maladministration of appeals by the Valuation Tribunal Service for Wales, but this power does not extend to looking at the tribunal's judicial decision-making function.



## Part 2 – Principles for Tribunals

### Background

46. In formulating principles by which to judge the operation of Welsh tribunals we have taken account of the Welsh Assembly Government's commitment to citizen-centred service delivery, international human rights principles and previous initiatives to outline principles and standards for tribunals in the United Kingdom.

### *Policy Context in Wales*

***'Credibility and reputation depends on continued dialogue with well-informed citizens. This should include simple and speedy processes for complaint and redress. Organisations must be mature enough to apologise when things go wrong, put things right and provide suitable redress.'***

*Beyond Boundaries: Citizen-Centred Local Services for Wales, Welsh Assembly Government, 2006, p.58*

47. In formulating principles we considered the Welsh Assembly Government citizen-centred approach to the design and provision of public services. This policy framework was enunciated in 'Making the Connections: Delivering Beyond Boundaries'<sup>20</sup> and requires, among other things:
- Speedy and appropriate redress mechanisms, requiring organisations to ensure that systems of complaint and redress are simple, accessible and congruent across organisational and sectoral boundaries;
  - A citizen-centred approach that incorporates the needs of services users as the primary concern;
  - Well-informed citizens that have meaningful, diverse ways to express their expectations, experiences and needs within all spheres of government.

### *Human Rights Legislation*

48. Our principles are also grounded in a consideration of human rights legislation, namely the Human Rights Act 1998 which incorporates the European Convention on Human Rights into domestic law. Compatibility with Convention rights is built into the devolution settlement. Section 81 of the Government of Wales Act 2006 specifically provides that the Welsh Ministers cannot act incompatibly with Convention rights, and section 94 provides that it is outside the Assembly's competence to pass legislation which is incompatible with Convention rights.

<sup>20</sup> 'Making the Connections: Delivering Beyond Boundaries: Transforming Public Services in Wales', Welsh Assembly Government, November 2006, at <http://new.wales.gov.uk/topics/improvingservices/strategy/deliveringbb/?lang=en> (accessed on 3 September 2009).

49. The principle of independence is reflected in Article 6 of the ECHR. This holds that 'in the determination of his civil rights and obligations... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.' Article 6 does not apply to all of the tribunals operating in Wales, as 'its central focus is not administrative law... but criminal law and private law (that is, rights that arise between individuals such as contractual rights).'<sup>21</sup>
50. However, as argued by Sir Andrew Leggatt, who was asked to consider whether the administrative and practical arrangements for supporting tribunals meet the requirements of the ECHR for independence and impartiality:

*A narrowly ECHR-based approach would, we think, lead to an absurd result. It would be possible for a government to argue that it is acceptable for there to be an inferior standard of fairness, or of independence and impartiality, in a tribunal case because it involved not a dispute in private law between individual citizens to which the ECHR applied, but a dispute between the citizen and the state itself in an area to which the ECHR did not apply. That is an untenable position...<sup>22</sup>.*

51. In many cases tribunals are the only realistic or practicable remedy a citizen has against a government decision. In the UK at least, it has been firmly accepted that they are 'an alternative to court, not administrative, processes'<sup>23</sup>. Thus to hold tribunals to a standard of independence that is less than that of a court would be illogical at best, and unjust at worse.

### **Franks Report**

52. In 1957 the Report of the Committee on Administrative Tribunals and Enquiries (the 'Franks Report') outlined three principles for the tribunal system. These were **openness**, **fairness** and **impartiality** – procedures should be open to scrutiny if they are to retain public confidence; they should provide a fair hearing at which citizens should state their case and be informed of all the evidence; and tribunals should reach their decisions demonstrably free from all personal interest and bias. The report emphasised that impartiality within the system meant 'the freedom of tribunals from the influence, real or apparent, of Departments concerned with the subject matter of their decisions'<sup>24</sup>.

<sup>21</sup> Tribunals for Users, One System, One Service, HMSO 2001, p.26, para 2.14.

<sup>22</sup> Tribunals for Users: One System, One Service, HMSO 2001, p.27, para 2.17.

<sup>23</sup> Tribunals for Users: One System, One Service, HMSO 2001, p.27, para 2.18.

<sup>24</sup> Report of the Committee on Administrative Tribunals and Enquiries, 1957 (Reprinted by HMSO 1993), p.5, para 25.

## **Leggatt Report**

53. In 2000 Sir Andrew Leggatt was asked to look at tribunals across the United Kingdom and ‘to recommend a system that is **independent, coherent, professional, cost-effective** and **user friendly**’<sup>25</sup>. As well as the principles outlined in the Franks Report, the emphasis of this review shifted to accessibility and meeting the needs of tribunal users. As stated in the report of the review titled ‘Tribunals for Users: One System, One Service’ (the ‘Leggatt Report’):

*It is important to remember that tribunals exist to serve the users, not the other way around. They need to be accessible by the variety of users they are intended to help. In order to make the tribunal experience a positive one for users they need advice and support at all stages of the appeal process*<sup>26</sup>.

54. Consequently, the Leggatt Review considered the help given to tribunal users to prepare and present their cases, the information provided to them by the tribunal, and the degree to which tribunals actively engaged with users, including tribunal user groups.

55. As well as the need for independent and transparent appointment systems for tribunal members (in order, among other things, to be compliant with the European Convention on Human Rights and Human Rights Act 1998), the report also argued for strong judicial leadership, modern merits-based appointment processes and a competency based training and appraisal system.

56. A central premiss of the Leggatt Review was the desirability of coherence and the creation of a tribunal ‘system’, as well as that tribunals should be efficient and ensure best value use of government resources and taxpayer funds.

## **Framework of Standards for Tribunals**

57. In 2002 the Council on Tribunals (predecessor organisation to the AJTC) published its ‘Framework of Standards for Tribunals’. The purpose of this framework is to ‘provide advice [to tribunals], to promote good practice and to highlight problems’ as well as to ‘...provide tribunals with clear guidance on the Council’s expectations and priorities’<sup>27</sup>. This document was based on its supervision and observation of tribunals across Great Britain for over forty years. The three principles outlined in the framework are:

- 1) **Tribunals should be independent and provide open, fair and impartial hearings**
- 2) **Tribunals should be accessible to users and focus on the needs of users**
- 3) **Tribunals should offer cost effective procedures and be properly resourced and organised**

<sup>25</sup> Tribunals for Users: One System, One Service, HMSO 2001, p.5, para 1.

<sup>26</sup> Tribunals for Users: One System, One Service, HMSO 2001, p.43, para 4.1.

<sup>27</sup> Framework of Standards for Tribunals, Council on Tribunals, November 2002, p.2 at <http://www.council-on-tribunals.gov.uk/standards/framework.htm> (accessed 3 September 2009).

## Principles for Welsh Tribunals

### *Principle 1: Independence and Impartiality*

58. Tribunals should be independent and impartial, and perceived as such. A tribunal should be able to reach decisions according to law without pressure, or suspicion of pressure, from either the body or person whose decision is being appealed, from any party to a dispute or from anyone else.
59. Tribunal members should be independent, and the procedures for their selection and appointment should be fair, open and based on merit.

### *Principle 2: Accessibility to Users*

60. The Welsh Assembly Government's citizen-focused approach to public services requires that tribunals should be designed and organised with regard to the needs of the citizen.
61. In order that tribunals be accessible:
  - Users must know of their right to seek redress;
  - Users must be provided with information about tribunal processes and procedures;
  - Users should be provided with sufficient advice, assistance and, in some cases, representation;
  - There must be equality of access to justice in the Welsh Language;
  - Procedures should be informal and enabling;
  - Hearing venues should be conveniently located and arranged for tribunal users, and accessible for those with disabilities;
  - Costs and fees should be minimal;
  - All efforts should be made to engage with tribunal users;
  - There should be policies in place for users to complain about the service provided;
  - Tribunals should produce an annual report of their activities to ensure public accountability.

### ***Principle 3: Efficiency and Effectiveness***

62. Tribunals must provide cost efficient services to ensure good value to the taxpayer. This is particularly the case in the current economic and funding climate. Some indicators of efficiency are:
- That proceedings are proportionate to issues under consideration;
  - There is speedy and well organised determination of cases;
  - There are appropriate levels of administrative support;
  - Tribunal resources, including judicial time, accommodation and hearing venues are properly utilised.
63. Effectiveness is about producing desired good-quality outcomes and depends on:
- Well organised and clear judicial leadership and structure of the tribunal;
  - Tribunal members receiving appropriate induction, training and appraisal;
  - Appropriate numbers and types of tribunal members.

### ***Principle 4: Coherence***

64. The Welsh Assembly Government 'Making the Connections' agenda requires that systems of redress, such as tribunals, are 'congruent across organisational and sectoral boundaries'. This applies on a number of different levels:
- Tribunals overall should have a coherent structure;
  - There should be a common framework or principles to guide the establishment of new tribunals;
  - There should be appropriate and consistent avenues for appeal or review of tribunal decisions.
65. Tribunals are an integral part of the administrative justice system. It is important that the process from original decision, through internal and/or external complaint mechanisms, tribunals, courts and ombudsmen are coherent and complementary. It is equally important that the lessons are learnt from tribunal decisions and incorporated back into the system, so as to improve frontline decision making and enhance the service to the public.

## Part 3 – Recommendations

66. Our recommendations are designed to promote a more integrated, user-focused system, in which Welsh tribunals conform to the principles outlined in Part 2 of this report. They are divided into two categories. The core recommendations are aimed at establishing the scrutiny mechanisms and institutions needed to reform the tribunal and administrative justice system in Wales. The other recommendations outline what we consider should be the early priorities for reform.

### CORE RECOMMENDATIONS

#### Welsh Assembly Government

***‘The challenge for the Assembly is to create an administrative justice system in Wales which delivers to the Welsh public a service as good as, if not better than, that being proposed in England [notwithstanding that] there are functions being carried out in Wales over which it has no control.’***

*‘Public Service or Pale Shadow? Issues for the Future of the Tribunals Service in Wales’ Carolyn Kirby, Chair of the Mental Health Review Tribunal for Wales, p.106*

#### ***Tribunal Independence and Impartiality***

67. Most Welsh tribunals are not sufficiently independent from the departments or agencies whose decisions they are considering. This needs to be put right by the Welsh Assembly Government as a matter of urgency. For cross-border tribunals this situation was remedied by the creation of a Tribunals Service as an executive agency of the Ministry of Justice as recommended in the Leggatt Review.
68. However, we do not consider it appropriate for the Welsh tribunals to join the UK Tribunals Service. The increased powers of the Welsh Assembly Government and National Assembly under the Government of Wales Act 2006 allow for ever increasing divergence between policy and practice in England and Wales. Also, the small scale of Welsh tribunals means that Welsh issues could potentially be lost in such a large organisation.
69. Other UK jurisdictions have also recognised the need for reform. In Scotland, the government has announced that it will create a separate Scottish Tribunals Service for devolved Scottish tribunals. In Northern Ireland an agency agreement<sup>28</sup> has been made transferring, on a phased basis, the responsibility for the administration of Northern Ireland tribunals to the Northern Ireland Court Service, which is currently an agency in the Ministry of Justice. When devolution of policing and justice powers takes place, the Northern Ireland Court Service would be transferred to the new Northern Ireland Department of Justice. However, neither of these options is right or practicable in Wales, having regard to the differences in scale and in the respective devolution settlements.

70. Given the relatively small size and scope of the Welsh tribunals, a separate executive agency is not the most efficient or economical solution. Rather, policy and administrative responsibility for all Welsh tribunals should be transferred to an area of the Welsh Assembly Government which has no specific responsibility for any of the government decisions under dispute. This would also have the advantage of increasing cost effectiveness by creating economies of scale and spreading resources more fairly across Welsh tribunals.
71. There should be open, independent and impartial recruitment processes for all tribunal members, either by judicial or Welsh Assembly Government public appointment processes. Currently, the appointment processes for tribunal members vary but they are often administered by the government departments or Local Authorities whose decisions are under review and in some instances they are not on a merit-based selection process. If this situation is not remedied, we consider that the government will be vulnerable to legal challenge. To ensure manifest independence appointments should be made by either the Welsh Ministers (who already have a public appointments unit) or the Lord Chancellor.

#### ***Administrative Justice Focal Point***

72. While tribunal reform is necessary, it should not stand alone. What matters to citizens is the quality of the system as whole, and how they are treated from the start of the process (the original decision from government, and the reasons given for the decision) to the end (potentially an appeal to the High Court or Upper Tribunal). When formulating policy for tribunals, consideration must be given to this broader administrative justice context. Strong and informed leadership is needed to ensure the system as a whole is focused on the needs of the citizen, and that disputes are resolved in a way which is proportionate to the issues under consideration.
73. There is an opportunity for the Welsh Assembly Government to lead the way in establishing a central administrative justice focal point, including the policy and administration of tribunals, to consider the development of the whole administrative justice system from a user perspective. This focal point should:
  - Be separate from subject specific policy departments, not just to ensure tribunal independence, but also in order to take an overarching view, to connect different parts of the system, and to promote best practice across local and national government;
  - Be a centre of expertise in administrative justice and provide leadership on administrative justice and tribunal legislative and policy development, reform and research;
  - Co-ordinate disparate initiatives and developments across the Welsh Assembly Government;
  - Act as a point of contact for internal and external stakeholders, including the advice sector and advocacy groups, tribunal members and judiciary and the Ombudsman.

74. Initially we explored the possibility that the Counsel General's office might be the most appropriate area to contain this focal point. However, we are advised that the constitutional arrangements do not allow for the Counsel General to take up this role. In any case, given the need for whole-of-government working, we consider that the Department for the First Minister and Cabinet is the most suitable location for tribunal and administrative justice policy and administration.

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**Recommendation 1:**

**That the Welsh Assembly Government establish a focal point for administrative justice in the Department for the First Minister and Cabinet.**

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**Recommendation 2:**

**That in order to ensure that tribunals are seen to be properly independent and impartial, the Welsh Assembly Government transfer policy and administrative responsibility for tribunals to this focal point in the Department for the First Minister and Cabinet, which has no specific responsibility for any of the government decisions under dispute.**

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**Recommendation 3:**

**That the Welsh Assembly Government ensure that the procedures for the selection of tribunal members are open, fair and based on merit, and that all appointments are made by the Welsh Ministers or the Lord Chancellor.**

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## **Rationalisation**

75. The unification and rationalisation of tribunals has been considered as part of tribunal review processes in a number of jurisdictions – including the UK, Scotland<sup>29</sup>, Canada<sup>30</sup>, Australia<sup>31</sup> and New Zealand<sup>32</sup>. As discussed in Part 1 of this report, a new unified tribunal structure has been implemented for UK cross-border tribunals, including those operating in Wales<sup>33</sup>. However, given the scale of Welsh tribunals and their disparate jurisdictions, along with the current devolution settlement, we are not convinced of the merits of a similarly unified system in Wales. Nevertheless, given the low caseload in Wales, we do

29 'Future of the Administration and Supervision of Tribunals in Scotland', the Administrative Justice Steering Group, 6 October 2008, at <http://www.ajtc.gov.uk/news/227.htm> (accessed 20 October 2009)

30 In 1996 the province of Quebec established the Administrative Tribunal of Quebec (QAT), which saw the amalgamation of a number of tribunal jurisdictions in Quebec <http://www.ta.q.gouv.qc.ca/english/index.jsp> (accessed 20 October 2009).

31 In March 2008 the Queensland government announced its intention to establish an amalgamated civil and administrative tribunal which it aims to have in place by the end of 2009. In Victoria there is a combined Victorian Civil and Administrative Tribunal (VCAT) and in New South Wales an Administrative Decisions Tribunal (ADT). In 1998 there was an attempt to establish an amalgamated tribunal at a Commonwealth level, but this was defeated in the Senate. In Western Australia, the Administrative Review Tribunal Taskforce, Western Australian Civil and Administrative Review Tribunal Taskforce report on the establishment of the State Administrative Tribunal, Perth, May 2002.

32 Tribunals in New Zealand: Issues Paper, New Zealand Law Commission, Wellington, New Zealand, January 2008.

33 This new system came into existence in November 2007 under the Tribunals, Courts and Enforcement Act 2007 and reform is still on-going, with additional jurisdictions being added in stages.



consider that there is some potential for combining the jurisdictions of some tribunals by subject matter to achieve economies of scale, administrative efficiency and improving opportunities for members to sit regularly. This should ultimately lead to a better experience for tribunal users, and better value for taxpayers.

76. An obvious possibility is the creation of an 'Education Tribunal', combining the jurisdictions of the Special Educational Needs Tribunal, School Admission Appeal Panels and School Exclusion Appeal Panels. The importance of access to education cannot be overestimated, and a high quality, independent tribunal in this area is of particular consequence. This is especially so with the recent decision to give children the right to appeal to SENTW and existing provision for some children to appeal to School Exclusion Appeal Panels.
77. Currently, Admission and Exclusion Appeal Panels are administered by individual Local Authorities with little interaction between them. There is also no central collation of data or record of outcomes and most importantly, they are not properly independent. On the other hand, our survey results and visits to hearings reveal that SENTW is well administered, operates effective user groups, and comprises expert and legally qualified members. It would seem well placed to cope with an expanded education jurisdiction, given appropriate additional resources. This arrangement would be unique to Wales, and we consider that the number of cases and quality of judiciary and support staff would allow the creation of a centre of excellence and best practice.
78. Other possible jurisdictions that could benefit from amalgamation include the Valuation Tribunals, Residential Property Tribunal and the Agricultural Land Tribunal (Wales) to form a 'Land and Local Taxation Tribunal'. There are some significant difficulties associated with this, not the least of which is that the Lord Chancellor is responsible for the procedural rules and appointments in some of these jurisdictions and the Welsh Ministers for others. Additionally, a number of problems have been identified with the operation of the Valuation Tribunals in a Welsh Assembly Government sponsored review by Martin Rolph, and these have not yet been resolved<sup>34</sup>. However, if these issues can be resolved, we consider that there are substantial benefits to be had from the creation of a land and tax tribunal.

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**Recommendation 4:**

**That the Welsh Assembly Government and Local Authorities consider the appropriate amalgamation of Welsh tribunal jurisdictions according to subject matter.**

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<sup>34</sup> Review of Valuation Tribunals in Wales, Welsh Assembly Government, March 2007, at <http://neu.wales.gov.uk/dsjlg/publications/localgov/valuation/item?lang=en&ts=1> (accessed on 6 October 2009).

## Tribunal Judiciary

79. While there have been previous attempts, there is currently no structured interaction between the judicial leaders of each Welsh tribunal, and little informal interaction. Improved communication and working between the Welsh tribunal judiciary is an important step in establishing a more integrated, joined-up tribunal system. Tribunal reform needs strong leadership, not just from the National Assembly and government, but from the tribunal judiciary, members and support staff, who will be essential to its successful implementation. We also consider that communication and collaboration between Welsh tribunals with cross-border tribunals should be improved. There is scope for the creation of a forum for Welsh tribunals and cross border tribunals to share best practice and discuss common issues.
80. A group comprising the leaders of each Welsh tribunal should be established to share best practice, discuss common problems and issues, and promote consistency in practice across tribunals where possible. This group would play an integral role in implementing many of the recommendations in this report and promoting a holistic view of the delivery of administrative justice in Wales.

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### **Recommendation 5:**

**That the judicial leaders and administrators of each Welsh tribunal work together on issues of common interest and towards implementing the recommendations in this report.**

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## National Assembly

81. We consider that the National Assembly should become a key partner in oversight of the administrative justice system. The issues highlighted in this report, such as a lack of tribunal independence, the opportunities for more effective, efficient and economical practices, and the lack of user-friendly information, point to the need for National Assembly scrutiny of administrative justice and tribunal policy and administration.
82. The current Committee structure in the National Assembly does not work well for the oversight of administrative justice as a whole. The four scrutiny Committees, while cross-departmental, are structured around: Communities and Culture; Enterprise and Learning; Health, Wellbeing and Local Government; and Sustainability. While the Children and Young People and Legislation Committee may consider aspects of administrative justice, their remit does not extend to all parts of the administrative justice system. We would welcome measures to ensure co-ordinated scrutiny of the implementation of our recommendations across government.

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### **Recommendation 6:**

**That the National Assembly scrutinise and monitor the Welsh Assembly Government's implementation of the recommendations in this report, including holding a debate in plenary.**

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## OTHER RECOMMENDATIONS

The following recommendations outline areas for further work and reform on which we consider the National Assembly, Welsh Assembly Government, Local Authorities and the tribunal judiciary and administrators should focus, at least initially.

### Accessibility

#### *Information*

83. Individuals learn of their right to appeal or apply to a tribunal in a number of different ways – for example, they might receive this information in a letter containing the original decision, they might access a tribunal website, or may be advised by an advocate or advice provider. Similarly, they may learn about tribunal procedures and forms in a variety of different ways – including receiving booklets and leaflets from the tribunal, advice from administrative staff of the tribunal or advice from an advocate. Parents appearing before SENTW are provided with a DVD detailing what to expect at the hearing. Our survey results also reveal that there are a variety of ways by which the tribunal's decision is recorded and communicated to users.
84. Different methods of communication will be appropriate for different audiences and tribunals, and much will depend on the subject matter and level of complexity of the issues under consideration. Any information should be designed with the needs of tribunal users in mind and the forms and procedural rules of tribunals should be as short, clear, simple and up to date as possible. Information should always be available in Welsh, and other languages where appropriate.
85. We believe that further work is needed to determine exactly how information is currently being delivered to tribunal users, the methods that are most helpful to the user, and how the current situation could be improved and standardised where possible. This could include, for example, an identification of the most effective strategies by surveying or interviewing tribunal users.

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#### **Recommendation 7:**

**That the Welsh Assembly Government and the Welsh tribunal judicial leaders and administrators work together to ensure that the information provided to tribunal users is clear, comprehensive and accessible.**

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#### *Procedures*

86. Tribunal procedures should be enabling and take account of the fact that there is often an inequality of arms between the government and tribunal user. In many cases a person appearing before a tribunal will be unrepresented, and the procedures for tribunals should recognise and accommodate for this, as should training for tribunal members in conducting hearings.

87. Another important factor from the perspective of the tribunal user is any fees or costs associated with the hearing. We consider that Welsh tribunals should continue to operate at minimum cost to tribunal users, and that information about any fees and costs is made readily available to tribunal users.

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**Recommendation 8:**

**That the Welsh Assembly Government and the Welsh tribunal judicial leaders and administrators work together to ensure in the first instance that tribunal forms and procedures are clear and simple and designed for the convenience of tribunal users.**

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**Advice and Representation**

88. There is a disparity in advice services available for tribunal users, and the help and assistance offered to them, for both Welsh and cross-border tribunals. For example, parents and young people wishing to appeal to SENTW have access to specialist support from organisations such as SNAP Cymru, which in some cases includes an advocate to represent them at the hearing. A person wishing to appeal a decision regarding social services and benefit entitlements may have access to specialist advice and representation from organisations such as an independent advice agency or a Local Authority Welfare Rights Unit.
89. Legally aided representation is only available, as of right, in asylum cases and mental health review cases. Legal help services sponsored by the Legal Services Commission or Local Authorities may be available in a number of other cases (such as for employment, benefits, housing and other disputes) but this will not usually include representation before a tribunal. The Welsh Assembly Government has introduced advocacy services for children and young people and other vulnerable groups.
90. There are a number of different initiatives across the Legal Services Commission, Welsh Assembly Government, not-for-profit sector and Local Authorities. However, it is uncertain whether the advice and assistance available to tribunal users, and users of the administrative justice system more generally, is adequate, accessible and comprehensive across Wales. While outside the scope of this report, this is an important issue that warrants significant further research and study. Any projects in this area would need to consider the current work being undertaken by other organisations, including the Welsh Assembly Government, on the funding for advice services in Wales<sup>35</sup> and the Legal Services Research Centre<sup>36</sup>.

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**Recommendation 9:**

**That the Welsh Assembly Government conduct a review of the general and specialist advice available to tribunal users, and whether there are any gaps in advice provision.**

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<sup>35</sup> See Consultation on Establishing an Alternative Advice Services Commissioning Model for Local Authority and Assembly Government Funding in Wales, <http://www.dglegal.co.uk/consultations.html> (accessed on 8 October 2009).

<sup>36</sup> For current Legal Services Research Centre projects, see <http://www.lsrc.org.uk/projects.htm>.

## *Engagement with Users*

91. In order to promote a citizen-centred approach to tribunal services, it is important that the tribunal judiciary and the government engage effectively with tribunal users and seek their feedback, so that practices and procedures can be tailored to meet their needs.
92. Different strategies may be needed for different jurisdictions. Where caseloads and user numbers are quite low, there is scope at least to offer users an opportunity to complete a customer survey at the end of proceedings. Tribunal user groups should also be utilised in some of the larger tribunals.

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### **Recommendation 10:**

**That the Welsh tribunal judicial leaders and administrators and Welsh Assembly Government ensure that there is an appropriate strategy to engage with tribunal users for each tribunal jurisdiction.**

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## *Complaints Policy and Procedure*

93. Our survey revealed that many tribunals do not have complaints policies or collect information on the number and type of complaints that they have received, or seek feedback from those attending hearings or who have been otherwise involved with tribunals. This situation should be remedied, as effective monitoring of complaints provides a valuable source of feedback in highlighting areas where improvement is needed.
94. All tribunals should have a complaints policy and procedures in relation to the performance of both the members and administration, based on complaint handling guidance provided by the Public Services Ombudsman for Wales<sup>37</sup>. With the establishment of a centralised administration for tribunals, it may be more resource effective to institute a common complaints policy for all tribunals. This would also ensure that lessons learnt from complaints lead to improvement in future practices across all Welsh tribunals.

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### **Recommendation 11:**

**That the Welsh Assembly Government and Welsh tribunal judicial leaders establish a complaints policy and procedure for all Welsh tribunals, based on guidance from the Public Services Ombudsman for Wales.**

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## *Welsh Language*

95. Tribunal users who wish to conduct proceedings in the Welsh language should be able to expect a consistent and adequate level of service across Welsh tribunals. Our survey results suggest that while most tribunals are equipped to deal with Welsh language appeals, some tribunals are better prepared and resourced in this area than others.

<sup>37</sup> The Public Services Ombudsman for Wales has issued a number of guides to public bodies on complaint handling, remedy, and good administration. These are available on the Ombudsman's website at <http://www.ombudsman-wales.org.uk/en/guidance-to-public-bodies/>.

96. We consider that all Welsh tribunals should adopt a common Welsh Language Scheme, outlining the way in which they will give effect to the principle established by the Welsh Language Act 1993 that, in the conduct of public business and the administration of justice in Wales, the Welsh and English languages should be treated on a basis of equality. As well as ensuring that all tribunals are operating to the same standards, a common scheme could reduce the administrative burden of each tribunal creating and publishing its own scheme and allow for joint Welsh language training initiatives.
97. There should also be consistency in Welsh language training for tribunal members. In designing this training scheme, regard should be had to the work of the Lord Chancellor's Standing Committee on the Welsh Language. The Training Protocol for Justice Agencies in Wales endorsed by the Standing Committee in July 2008 should be implemented in Welsh tribunals.

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**Recommendation 12:**

**That the Welsh Assembly Government and Welsh tribunal judicial leaders and administrators work with the Welsh Language Board and the Tribunals Service to formulate a common Welsh Language Scheme for all Welsh tribunals.**

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### *Hearing Venues*

98. Our survey revealed that the majority of Welsh tribunals utilise hotels and other temporary venues for tribunal hearings. We understand this practice, given the small caseloads of most tribunals which make it neither viable nor economical for Welsh tribunals to lease permanent hearing centres. We also recognise that formal courtroom facilities are often not appropriate for tribunal hearings, especially where there is a need for informality such as in SENTW and School Exclusion cases. However, in some cases there may be scope to utilise Tribunals Service hearing venues and less formal court service facilities.
99. In arranging hearing venues, accessibility for users should be the primary concern. We were encouraged that most Welsh tribunals responded to our survey by indicating that hearing venues are chosen based on convenience for the parties. We consider that there should be a common Welsh tribunal policy for hearing venues to promote consistent standards. This could include standards on the maximum distance from parties, access to transport links, disability access, refreshment facilities, and separate waiting rooms for parties.

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**Recommendation 13:**

**That the Welsh Assembly Government and Welsh tribunal judicial leaders and administrators formulate a policy on standards for hearing venues, focused on the needs of tribunal users.**

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## *Annual Reports and Performance Monitoring*

100. We were concerned to find that most Welsh tribunals do not produce annual reports. Moreover, not all Welsh tribunals collect and collate accurate data on issues such as caseload, case outcomes and tribunal expenditure. The way in which data are collected is also inconsistent across tribunals. For example, some tribunals measure caseload by financial year, and others by calendar year.
101. To ensure greater public accountability, we consider that all Welsh tribunals should produce a yearly account of their activities, including information such as: number and types of appeals and any trends; member and staff numbers; details of training for members and staff and information about complaints. It should also include, where possible, feedback to original decision makers.
102. The level of detail required and information should be proportionate to the level of tribunal activity and a full report may not be needed in some cases. For example, the Adjudication Panel for Wales normally produces an Annual Report. However, owing to the small number of cases before the tribunal in 2008/09, it instead opted to issue a letter to interested stakeholders, briefly summarising the tribunal's activities for the year.

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### **Recommendation 14:**

**That the Welsh tribunal judiciary and administrators ensure that all Welsh tribunals collect consistent performance management data and produce a yearly account of their activities.**

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## **Efficiency & Effectiveness**

### *Resources and Support*

103. The resources and administrative and other support available to Welsh tribunals vary significantly, even taking account of the differing caseloads and complexity of subject matter. A more streamlined and amalgamated system would be able to take advantage of economies of scale and spread resources more fairly across tribunals. For example, it would allow the pooling of administrative and support staff, hearing venues, IT systems and Secretariat accommodation.
104. Combined administrative support also means that there is scope for sharing staff and resources between tribunals to cope with peaks and troughs in demand and volatile workloads. The savings generated by this new system could then be re-invested for projects to improve the tribunal system, for example, improving the assistance and information available to tribunal users.

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### **Recommendation 15:**

**That the Welsh Assembly Government explore ways in which tribunal resources can be deployed more efficiently.**

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## *Training and Appraisal*

105. The type, frequency and quality of training, appraisal and performance management systems for tribunal members vary widely. We are concerned about this situation, as the quality and experience of tribunal members has a significant direct impact on the experience of tribunal users and the quality of judicial decision making.
106. As a minimum, we consider that programmes of induction and training should be provided for tribunal chairs, members and staff. Tribunal chairs should be specially trained in the skills of chairing, and guidance should be provided regularly to members upon matters of law and practice. Training in diversity and equal treatment issues is also important.
107. Standards of judicial performance should be set and monitored. All chairs and members should participate in a review of their performance at appropriate intervals to identify areas of good performance and areas for improvement. These reviews should be undertaken by suitably experienced colleagues, who are appropriately trained to be able to give constructive feedback. In formulating training and appraisal schemes, regard should be had to the work of the Judicial Studies Board.
108. We are also concerned that the low caseloads of some Welsh tribunals mean that members are not sitting frequently enough to retain proficiency and that there is a need to review the number of tribunal members in some jurisdictions. In order to increase sitting opportunities for members, the possibility of appointing members to more than one jurisdiction should also be explored.

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### ***Recommendation 16:***

**That the Welsh Assembly Government ensure that tribunals have an adequate budget for training, appraisal and the monitoring of member performance.**

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### ***Recommendation 17:***

**That the Welsh tribunal judicial leaders and administrators ensure that tribunals have appropriate training, appraisal and performance monitoring systems in place.**

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### ***Recommendation 18:***

**That the Welsh Assembly Government, the Welsh tribunal judicial leaders and administrators explore options to ensure that tribunal members are given the opportunity to sit frequently enough to maintain knowledge and skills.**

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## Coherence

### *Framework for establishing new tribunals*

109. Many of the problems we have identified are the result of the *ad hoc* and unstructured way in which tribunals have developed. We consider that guidelines are needed to ensure that tribunals do not continue to develop in this way. These guidelines should establish, among other things:

- That before a new tribunal is set up, consideration is given to whether a tribunal is the most appropriate redress mechanism rather than internal or external review, the Ombudsman or the courts;
- Whether jurisdiction should be given to an existing tribunal, or whether a new tribunal should be created;
- That any new tribunals conform to the principles outlined in Part 2 of this report.

110. The guidelines should apply to all Welsh Assembly Government Departments and the Department for the First Minister and Cabinet should be consulted on the establishment of any new tribunals.

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#### **Recommendation 19:**

**That the Welsh Assembly Government adopt a consistent and coherent approach to the establishment of new tribunals.**

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### *Appeals*

111. Our survey results reveal that there is wide variation in appeal rights and routes from Welsh tribunals. In some jurisdictions appeal can be made only on a point of law, and in others appeal is permitted both on alleged errors of law and fact. Appeal is either to the Upper Tribunal, or to the High Court on appeal or judicial review.

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#### **Recommendation 20:**

**That the Welsh Assembly Government ensures that there are appropriate rights of appeal from tribunals.**

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### *Improving Original Decisions*

112. Tribunals are an integral part of the administrative justice system. It is important that the process from original decision, through internal and external complaint mechanisms, tribunals, courts and the Ombudsman are coherent and complementary. It is equally important that lessons are learnt from tribunal decisions and incorporated back into the system. For this to happen, there need to be good channels of communication between tribunals and original decision makers.

113. The SENTW user groups are a good example of effective feedback from tribunal to original decision-makers. Meetings are held twice a year at three locations around Wales and attended by Local Authority original decision makers, among others. They provide an opportunity for the tribunal President to highlight areas where original decisions have fallen short and to discuss important decisions by the tribunal that may have an impact on the work of Local Authorities<sup>38</sup>.

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**Recommendation 21:**

That the Welsh tribunal judicial leaders and administrators, the Welsh Assembly Government and Local Authorities work together to ensure that lessons learnt from tribunal decisions lead to improvements in original decision making, and thereby to better and more efficient service to the Welsh public.

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## Appendix A: Membership of the AJTC Welsh Committee



**Professor Sir Adrian Webb (Chair):** Chair of the Pontypridd and Rhondda NHS Trust until the end of March 2008. Was also a non-executive member of the Welsh Assembly Government's Executive Board until recently. He was Vice-Chancellor of the University of Glamorgan until December 2005. He was previously an academic at the London School of Economics and Professor of Social Policy at Loughborough University. He has held many committee and advisory roles both in Whitehall and in Wales, including HM Treasury's Public Service Productivity Panel, and has chaired several national enquiries. He was a member of the Review Team which reported to the Welsh Assembly Government in 2006 on Local Service Delivery (the "Beecham Review"), and Chair of the review of Post 14 Education in Wales (the Webb Review, published as "Promise and Performance" in December 2007). He grew up in and currently lives in South Wales.



**Bob Chapman:** Part-time management consultant working mainly in the legal sector, and a Member of the Board of Consumer Focus Wales. Following 25 years in advice work at Citizens Advice Bureaux and local authority Welfare Rights Units he joined the Legal Services Commission where he became the Acting Wales Director before taking early retirement in 2007. He is a school governor, and was until recently a member of the Trustee Board of Shelter Cymru (Welsh Housing Aid Ltd.)



**Gareth Lewis:** Member of the Employment Appeal Tribunal and a Member of Council of the University of Wales. He was previously a part-time Director of the Office of the Independent Adjudicator for Higher Education, Secretary of University College, Cardiff and Deputy Principal and Clerk to the Board of the Royal Welsh College of Music and Drama.



**Rhian Williams-Flew:** Qualified mental health nurse and registered social worker. She is a Mental Health Act Commissioner for the Care Quality Commission, a Mental Health Act Reviewer for Healthcare Inspectorate Wales and a member of the First-tier Tribunal, (Mental Health) in England. She was previously a freelance investigator of complaints made by social service users and carers and a Regulatory Inspector for the Commission for Social Care Inspection.



**Peter Tyndall:** Public Services Ombudsman for Wales. *Ex officio* member of the AJTC Welsh Committee. He was Chief Executive at the Arts Council of Wales from 2001 to 2008 and before that Head of Education and Cultural Affairs with the Welsh Local Government Association.



**Ann Abraham:** UK Parliamentary Ombudsman and Health Service Ombudsman for England. *Ex officio* member of the AJTC and its Welsh and Scottish Committees. *Ex officio* member of the Commission for Local Administration in England. Chair of the British and Irish Ombudsman Association 2004-2006 and currently a member of its Validation Committee.

**Robert Grindrod**

Secretary to the Welsh Committee  
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## Appendix B: Cross-border Tribunals Operating in Wales

- First-tier Tribunal
  - Social Entitlement Chamber
  - Health, Education and Social Care Chamber (excluding the Special Educational Needs and Mental Health jurisdictions)
  - War Pensions & Armed Forces Compensation Chamber
  - Tax Chamber
  - General Regulatory Chamber
- Upper Tribunal
  - Administrative Appeals Chamber
  - Tax and Chancery Chamber
  - Lands Chamber
- Adjudicator to HM Land Registry
- Asylum and Immigration Tribunal
- Competition Appeal Tribunal
- Copyright Tribunal
- Employment Tribunal
- Employment Appeal Tribunal
- Family Health Services Appeal Authority
- Gender Recognition Panel
- Immigration Services Tribunal
- Information Commissioner
- Information Tribunal
- Special Immigration Appeals Commission

## Appendix C: Welsh Tribunals Survey Results

1. In early 2009 a survey was distributed to all Welsh tribunals aimed at collecting detailed and consistent information on a range of issues such as caseload, member appointments, training and information provided to tribunal users. Below is the information that was provided by representatives of each tribunal. While some efforts have been made to check its factual accuracy, there may be errors in the information provided. In some instances there are also differences in statistical and data collection method between tribunals, particularly in relation to caseloads.
2. Overall, the data collected reveals that Welsh tribunals have developed in an *ad hoc* way, which has led to a fragmented tribunal system. There appear to be no guiding or common principles for the operation of existing tribunals, or the establishment of new ones. There is a wide variation in the level of help, support and information available to tribunal users, varying levels of judicial and administrative resources and different routes of appeal. In some cases this can be justified by differing subject matter and caseload (demand); in others there seems to be no principled reason for the variations.

### Jurisdictions

3. The 'Welsh' tribunals operating in Wales comprise a variety of different jurisdictions. Here is a summary of the definition given by each tribunal:

**Table 1: 'Welsh' tribunals operating in Wales**

Tribunal	Brief description of jurisdiction
Adjudication Panel for Wales (est. 1 October 2002)	To consider whether elected members or co-opted members of county, county borough and community and town councils, police, fire and rescue and national park authorities in Wales have breached their authority's statutory code of conduct.
Agricultural Land Tribunal (Wales) (est. 1947)	To make judgments in disputes between agricultural landlords and tenants under the Agricultural Holdings Act 1986 and drainage disputes in respect of ditches under the Land Drainage Act 1991.
Board of Medical Referees*	To adjudicate appeals to medical referees under the Firefighters' Pension Scheme, the New Firefighters' Pension Scheme and the Firefighters' Compensation Scheme <sup>39</sup> .
Forestry Committees for Wales (est. 2006)*	To review the refusal or conditions of a felling licence, to appeal against a restocking notice, to review felling directions.

<sup>39</sup> Determinations will be, for example, whether or not a firefighter should be retired from service on medical grounds, whether a firefighter's disability was caused by a qualifying injury sustained through his or her duties, or a firefighter's degree of disablement for the purposes of injury benefits.

Tribunal	Brief description of jurisdiction
Independent Review of Determination Panels (est. 2005)	To provide a review process which prospective adopters can use when they do not agree with the qualifying determination made by their adoption agency.
Independent Social Services Complaints Panels (est. 1 April 2006)	To further consider a complaint about social services (where certain criteria are met).
Local Health Boards in Wales in respect of their functions under the National Health Service (Service Committees and Tribunal) Regulations 1992*	To review the decisions of Local Health Boards in respect of their disciplinary functions under the NHS (Service Committees and Tribunal) Regulations 1992 <sup>40</sup> .
Mental Health Review Tribunal for Wales (est. 1959)	To review the cases of patients detained under the Mental Health Acts and to direct the discharge of any patients where the statutory criteria for discharge have been satisfied.
Registered Nursery Education Inspectors Appeal Panels (est. 1999)*	To hear appeals by Registered Nursery Inspectors against a decision to remove their name from the Register of Inspectors or to alter their conditions of registration
Registered School Inspectors Appeal Panels (est. 1999)*	To hear appeals by Registered School Inspectors against a decision to remove their name from the Register of Inspectors or to alter their conditions of registration.
Residential Property Tribunal (est. 1977)	To decide appeals against fair rent determinations, adjudicate in disputes about enfranchisement of freehold and leasehold renewals, and deal with a wide range of other housing matters.
School Admission Appeal Panels (est. 1998)	To consider appeals against a decision by an admission authority or governing bodies to refuse a child admission.
School Exclusion Appeal Panels (est. 1996)	To hear appeals against permanent exclusions.
Special Educational Needs Tribunal for Wales (est. 1 September 2003)	To hear and decide appeals from parents against decisions made by Welsh Local Education Authorities about children's special educational needs and to hear and decide parents' claims of disability discrimination in Welsh schools.
Traffic Penalty Tribunal (est. July 1999)	To hear and decides appeals brought against Penalty Charge Notices issued by local authorities in England (outside London) and Wales that operate civil parking enforcement.
Valuation Tribunals for Wales	To deal with appeals arising from Non-Domestic Rating Valuation and Council Tax banding, Council Tax liability and drainage rates.

\* *These tribunals have very small caseloads (on average, less than 2 cases a year) and have not been included in the detailed information below.*

40 The NHS (Service Committees and Tribunal) Regulations 1992 were revoked on 1 April 2004, with the commencement of the General Medical Service contract. Transitional Regulations came into force on 1 April 2004 to deal with outstanding cases. Matters that were covered under the Regulations are now included in the General Medical Service contract Regulations, and it is for the Local Health Boards to determine disciplinary matters under the contract.

## Structure and Leadership

4. Tribunals were asked to provide details of the tribunal structure and leadership arrangements. Responses seemed to fall into four broad categories:
  - a. A single tribunal covering the whole of Wales, with a single judicial leader (SENTW, MHRT for Wales, Adjudication Panel for Wales, ALT (Wales), Residential Property Tribunal, Traffic Penalty Tribunal);
  - b. A single tribunal covering the whole of Wales, with no overall judicial leadership (Independent Social Services Complaints Panel, Independent Review of Determination Panels);
  - c. Tribunal organised on a proposed regional basis, headed by a President for each region (Valuation Tribunals for Wales<sup>41</sup>);
  - d. Tribunal organised on a regional basis, with each panel hearing being headed by a chair, but no overall leadership (School Admission Appeal Panels, School Exclusion Appeal Panels).
5. The judicial head of the tribunal is referred to in most cases as the Tribunal President. However, the term Chairman is used in the ALT (Wales) and MHRT for Wales<sup>42</sup>. The Traffic Penalty Tribunal is a special case, in that it operates as a single tribunal for local authorities in England and Wales, and is headed by a Chief Adjudicator.

## Relationships with Departments

6. The various tribunals are sponsored by a variety of Welsh Assembly Government Departments.
7. The Department for Children, Education, Lifelong Learning and Skills directly sponsors SENTW, the Registered School Inspectors Appeal Panels and Registered Nursery Education Inspectors Appeal Panels. This Department is also responsible for Admissions Appeals and Exclusion Appeals policy and rules, but not for the funding and administration of these panels, which falls to Local Authorities and Admission Authorities.
8. The Department of Health and Social Services sponsors the MHRT for Wales, the Independent Social Services Complaints Panels, the Independent Review of Determination Panels and Local Health Boards in Wales in respect of their functions under the National Health Service (Service Committees and Tribunal) Regulations 1992.
9. The Department for Social Justice and Local Government sponsors the Adjudication Panel for Wales, the Valuation Tribunals for Wales and the Board of Medical Referees established under the Firefighters' Pension Scheme (Wales) Order 2007.

<sup>41</sup> However, the Welsh Assembly Government has recently consulted on whether there should be a single tribunal covering the whole of Wales.

<sup>42</sup> It is reported that this causes confusion in the MHRT for Wales. The Mental Health Act 2007 provides that the MHRT for Wales be headed by a President, but this section has not yet been commenced. The legal member chairing each panel is known as the President of the panel, while the judicial lead for the whole tribunal is known as the Chairman.



10. The Department for Rural Affairs sponsors the Agricultural Land Tribunal for Wales and the Forestry Committees for Wales. The Department for the Environment, Sustainability and Housing sponsors the Residential Property Tribunal.
11. The sponsoring arrangement for the Traffic Penalty Tribunal is quite complicated. The Department for Economy and Transport is responsible for traffic management policy in Wales. Individual Local Authorities are responsible for determining whether to operate a criminal or civil traffic management system, and in Wales, eight Local Authorities have signed up to the civil (decriminalised) system. Where a Local Authority opts in to the civil traffic management system, they must provide for adjudication of disputes. In practice, civil enforcement authorities (Local Authorities) have become members of the PATROL Joint Committee, comprising all the civil enforcement authorities across England and Wales and including a recently established Executive Sub-Committee (Wales). Its functions are to appoint adjudicators to the Traffic Penalty Tribunal and provide the adjudicators with administrative staff and accommodation and hearing venues. Because the Joint Committee has no corporate status and cannot therefore contract, one of the constituent Councils has been appointed Lead Authority to enable goods and services to be provided on behalf of the Joint Committee. Initially Manchester has been appointed the Lead Authority.

### **Tribunal Members**

12. As part of the survey, tribunals were asked to provide information on the following:
  - Number and types of tribunal members;
  - Member qualifications and/ or experience;
  - Tribunal composition.
13. The survey responses revealed a large variation in the total number of members appointed to each tribunal. This is unsurprising given the differences in the caseload of the tribunals (discussed below). Some tribunals such as the School Admission Appeal Panels and the School Exclusion Appeal Panels are organised by individual local authorities on an *ad hoc* basis, and there is no record of the number of people that regularly sit on these panels. Table 2 includes the total number of members for each tribunal at the time at which the survey was completed, as supplied by the tribunals<sup>43</sup>.
14. The composition and types of members on each tribunal is varied. Most tribunals comprise of a mixture of legal and other members. The exception is the Valuation Tribunals, which consist entirely of 'lay' members, although these members do have training and the support of a Statutory Clerk. While other tribunals may refer to 'lay' members, there is normally a statutory or other requirement that these members have practical experience in a given field or professional qualifications.

<sup>43</sup> Certain tribunals are excluded as they have no members appointed, rarely sit etc.

15. Many of the tribunals (MHRT for Wales, Adjudication Panel for Wales, SENTW, ALT (Wales), Residential Property Tribunal) include a legal Chair, who is required to have at least seven years experiences as a barrister or solicitor. Some tribunals require specialist professional expertise, such as the MHRT for Wales, which includes a medical member, and the Residential Property Tribunal, which includes a surveyor. Others require members with practical experience in a given field, such as the Independent Social Services Complaints Panels, where expert members must have experience in the provision of social services. Exclusion Appeal Panels must include a head teacher or other person currently working in education management, and a school governor with the requisite experience.
16. Most tribunals consist of three members, but there are a number of exceptions. For example, Traffic Penalty Tribunal cases are heard by a single adjudicator, Exclusion Appeal Panels and Admission Appeal Panels comprise either three or five members, and the Independent Review of Determination Panels can comprise four or five members.

**Table 2: Composition of tribunals**

Tribunal	Total Members	Composition of tribunal
Adjudication Panel for Wales	8	Legal Chair Two members
Agricultural Land Tribunal (Wales)	26	Legal Chair 1 member from 'Farmers Panel' 1 member from 'Landowners Panel'
Independent Review of Determinations Panels	28	4 or 5 panel members considered by the Welsh Ministers to be suitable, by virtue of their skills, qualifications or experience. The panel must include social workers with at least five years post-qualifying experience in adoption and family placement work; and where practicable, persons with personal experience of adoption.
Independent Social Services Complaints Panels	41	Lay chair Lay member Expert member
Mental Health Review Tribunal for Wales	90 (approx.)	Legal chair Medical member 1 Member
Residential Property Tribunal	42	Legal chair Professional member (surveyor) Lay member

Tribunal	Total Members	Composition of tribunal
School Admission Appeal Panels <sup>44</sup>	–	3 or 5 members 1 or 2 Education members 1 or 2 Lay members
School Exclusion Appeal Panels <sup>45</sup>	–	Lay chair 1 or 2 educational practitioners 1 or 2 school governors
Special Educational Needs Tribunal for Wales	12	Legal chair 2 members
Traffic Penalty Tribunal	31 (Eng and Wales)	Legal Adjudicator
Valuation Tribunals for Wales	238	Lay chair 2 Lay members <sup>46</sup>

### Remuneration and Allowances

17. The survey results revealed that members of all tribunals are generally reimbursed for travel and subsistence expenses<sup>47</sup>. However, this is where the common ground ends, as illustrated in Table 3.
18. Members of the Valuation Tribunals for Wales, the Exclusion Appeal Panels, the Admission Appeal Panels and non-legal members of the ALT (Wales) are not remunerated, except for loss of earnings in certain circumstances. All other tribunal members receive some form of remuneration, though this varies considerably.
19. The judicial heads of both the MHRT for Wales and the Traffic Penalty Tribunal are paid a salary, as are the President and Vice Presidents of the Residential Property Tribunal. All other members are paid a fee for services, in some cases measured in hours, and others, in days. The fees for legal members range from £360 for the Chair of an ALT (Wales) hearing, to £575 for legal members hearing restricted cases before the MHRT for Wales. The fees for other members range from £153.75 for the Independent Social Services Complaints Panels, to £240 for the Adjudication Panel for Wales. Some tribunals pay members for preparation for the hearing and reading time (Adjudication Panel for Wales, Chairs of the ALT (Wales), IRDPs), while others do not (MHRT for Wales, SENTW). This may, to some degree, explain the variation in fee levels.

<sup>44</sup> Panels are established on an *ad hoc* basis, and there is no central record of member numbers.

<sup>45</sup> Panels are established on an *ad hoc* basis, and there is no central record of member numbers.

<sup>46</sup> Although there is provision with the agreement of both parties for the tribunal to comprise only two members.

<sup>47</sup> Exclusion Appeal Panels – ‘any costs associated with membership of the panel will be met by the Local Authority’. Admission Appeal Panels ‘in certain circumstances’.

**Table 3: Tribunal remuneration and allowances**

Tribunal	Fees	Including prep/reading time?
Adjudication Panel for Wales	President, £467 per day Legal member, £392 per day Member, £240 per day	One day's fee for reading and preparation, with additional time for more complex cases
Agricultural Land Tribunal (Wales)	Chairman and Deputy Chairmen, £365 for 7 hours <sup>48</sup> Members are not paid a fee but are paid a financial loss allowance of £30.40 for less than 4 hours and £60.80 for over 4 hours	Chairs are paid for reading and preparation time, but members are not
Independent Review of Determinations Panels	Fees are negotiated before the panel hearing	Yes
Independent Social Services Complaints Panels	Lay Chair, £307.50 per hearing Lay member, £153.75 per hearing Expert member, £205 per hearing	The paid fee covers these elements of the process
Mental Health Review Tribunal for Wales	Legal (restricted), £575 per day Legal (non-restricted), £447 per day Medical member, £447 per day, £174 per examination Member, £209 per day Appraisal Fee, £370 Tribunal Chairman's Salary per annum (3 days a week) £71,400	No
Residential Property Tribunal	Chair, £405 per day Professional members (surveyor), £288 per day Lay members, £187 per day	No, although if a matter is complex the tribunal President can use their discretion to allow a further day or half day, depending on the circumstances
School Admission Appeal Panels	No, except for loss of earnings.	–
School Exclusion Appeal Panels	No, except for loss of earnings.	–
Special Educational Needs Tribunal for Wales	President, £571.25 for 8 hours work Chairs (legal members), £459 for between 6-12 hours work	No
Traffic Penalty Tribunal	Chief Adjudicator (full time/salaried) £101,400 Part-Time Salaried Adjudicator (salaried) £54,756 Part-Time Fee Paid Adjudicators, £415 per day	Preparation and reading time would only be paid for in exceptional circumstances and by prior agreement with the Chief Adjudicator
Valuation Tribunals for Wales	No, except for loss of earnings	–

## Appointments

20. The survey results revealed that the procedure for appointing tribunal members differs significantly between tribunals as illustrated in Table 4. In some cases, the Welsh Ministers are the authority responsible for appointment, and in others the Lord Chancellor. In some cases, the Welsh Ministers and Lord Chancellor share responsibility, with the Lord Chancellor responsible for legal appointments, and the Welsh Ministers for other members. Local authorities also play a significant role in the appointment processes for some tribunals. The length of appointment is typically four or five years, with the option for reappointment.
21. Most tribunal members are appointed following a merit selection process, however, this is not always the case. For example, the tribunal members elect the Presidents and Chairpersons of the Valuation Tribunals<sup>49</sup> and Admission and Exclusion panel members are appointed at the discretion of Local Education Authorities.

**Table 4: Appointment of tribunal members**

Tribunal	Authority Responsible for Member Appointment	Length of Appointment
Adjudication Panel for Wales	Welsh Ministers	5 years with provision for reappointment, subject to satisfactory performance appraisal, up to a maximum of 10 years
Agricultural Land Tribunal (Wales)	Lord Chancellor	5 years and may be renewed subject to satisfactory performance until the age of 70 years
Independent Review of Determinations Panels	Welsh Ministers	Panel members are not appointed for a time limited period. They remain on the approved list until they ask to be removed
Independent Social Services Complaints Panels	Welsh Ministers	4 years, can be re-appointed for a maximum of 10 years
Mental Health Review Tribunal for Wales	Lord Chancellor	The Chairman, being salaried, is a permanent appointment. All other members are appointed for terms of 4 years but as they can only be stood down on certain specific grounds, the appointments are in effect permanent
Residential Property Tribunal	Lord Chancellor appoints legal members. Welsh Ministers appoint expert and lay members	5 years, and can be renewed in 5 year increments, unless there is cause not to or the member does not wish to renew

<sup>49</sup> Except that, if the tribunal fails to make an appointment after a specified period of time, the Welsh Ministers have a duty to appoint tribunal presidents and chairpersons after undertaking the required consultation.

Tribunal	Authority Responsible for Member Appointment	Length of Appointment
School Admission Appeal Panels	Local Education Authorities appoint panel members for community and voluntary controlled schools. Governing Bodies are responsible for voluntary aided and foundation schools. Joint arrangements can be made	No restriction <sup>50</sup>
School Exclusion Appeal Panels	Local Education Authorities	No restriction <sup>51</sup>
Special Educational Needs Tribunal for Wales	Lord Chancellor appoints the President and Chairpersons, Welsh Ministers appoint tribunal members	5 years, which can be renewed
Traffic Penalty Tribunal	The PATROL Joint Committee has delegated the appointment process to the Chief Adjudicator and the Lord Chancellor's judicial appointments department. Appointments are made with the consent of the Lord Chancellor	Adjudicators appointed for a term not exceeding 5 years, can be re-appointed for a further term
Valuation Tribunals for Wales	This is delegated to the local authorities in their area of jurisdiction and the President of Valuation Tribunals jointly, or by the Welsh Ministers. The LA plays no other role	6 years, with option to re-apply for a further term

<sup>50</sup> The law does not restrict the length of time panel members may serve but the admission authority should regularly review panel membership. It is good practice to change members regularly eg. every three years, to tie in with the duty to advertise for lay members.

<sup>51</sup> There are no legal restrictions and it is left to the authority responsible to determine the length of appointment.

## Procedural Rules

22. The survey indicated that there are various authorities responsible for creating procedural rules for Welsh Tribunals. The Welsh Ministers are responsible for issuing procedural rules for the: Adjudication Panel for Wales<sup>52</sup>; Residential Property Tribunal; Independent Review of Determination Panels; Independent Social Services Complaints Panel; Valuation Tribunals for Wales; SENTW; School Admission Appeal Panels and School Exclusion Appeal Panels. The Lord Chancellor makes the procedural rules for the MHRT for Wales, the ALT (Wales) and the Traffic Penalty Tribunal.

## Advisers

23. Some tribunals are able to appoint expert advisers to assist in their determinations, while others are not.
24. The Adjudication Panel for Wales indicated that where any question arises on which it would like the assistance of an expert, it may make arrangements for a suitably qualified person to enquire into and report on the matter and, if necessary, to attend the hearing and to give evidence. A copy of the expert's report is supplied to each party before the hearing or any resumed hearing.
25. Legislation requires that the Independent Review of Determinations Panel must be advised by a social worker<sup>53</sup>. The Panel may also, where it considers it appropriate, be advised by a legal adviser with knowledge and expertise in adoption legislation and any other person whom the Panel considers has relevant expertise in relation to the determination being considered.
26. The Agricultural Land Tribunal (Wales) Chairman has the discretion, rarely exercised, to nominate two Assessors from a panel of professional experts nominated by the Royal Institute of Chartered Surveyors. In drainage cases a Technical Report prepared by a qualified drainage engineer is requested. A copy of the expert's Report is supplied to each party and the expert attends the hearing to give evidence,
27. The Traffic Penalty Tribunal indicated that although not expressly provided for by regulations, when the need arises, there is capacity for the Chief Adjudicator to appoint a special adviser.
28. The Independent Social Services Complaints Panels, MHRT for Wales, Residential Property Tribunal, SENTW<sup>54</sup>, Admission Appeal Panels and Exclusion Appeal Panels indicated that they are unable to appoint advisers.

<sup>52</sup> The President of the Adjudication Panel has statutory powers to give directions as to the practice and procedure to be followed by tribunals drawn from the Panel. Such directions must reflect the provisions of regulations made by Welsh Ministers in respect of tribunals. In addition, it is a statutory function of the President of the Adjudication Panel to issue guidance on how tribunals are to reach decisions.

<sup>53</sup> Within the meaning of Part IV of the Care Standards Act 2000 with appropriate qualifications, skills and experience.

<sup>54</sup> However, SENTW indicated that they are looking to amend their Regulations to give the tribunal the power to call witnesses, including expert witnesses.

## Training and Appraisal

29. Tribunals were asked to give details of training for tribunal members, specifically:
- Who is responsible for the training of tribunal members?
  - How is tribunal training funded?
  - How is the training budget determined?
  - How frequent are training events?
30. Survey responses revealed significant variations in the provision of training. In some cases, responsibility for training falls to the judicial head (Adjudication Panel, MHRT for Wales, Residential Property Tribunal, Traffic Penalty Tribunal, Valuation Tribunals), or to tribunal support staff (SENTW, ALT (Wales)), and in others to the sponsoring department or Local Authority (Admission Appeal Panels, Exclusion Appeal Panels, Independent Social Services Complaints Panels).
31. In most cases, the funding of training for tribunal members is allocated from the tribunal's overall budget, which is provided by either the Welsh Assembly Government or Local Authorities. In the case of School Admission Appeal Panels, where 'a Local Authority is required to allocate reasonable funds to governing bodies of schools which are admission authorities... it is for the LA to decide whether these funds should be allocated to schools as earmarked allocations which are additional to, and separate from, their budget shares.' So in the case of Admission Appeal Panels, there is scope for a separate training budget, but this is dependent upon the decision of the Local Authority.
32. As expected, the frequency and type of training events diverges greatly between tribunals. For example, some tribunals have regular annual training events (SENTW, Adjudication Panel for Wales, MHRT for Wales, Residential Property Tribunal, Independent Social Services Complaints Panels, Traffic Penalty Tribunal, Valuation Tribunals for Wales), or biennial events (ALT (Wales)). Others arrange training on a locally determined basis (School Admission Panels and School Exclusion Panels). Some tribunals indicated that they provide specific training for tribunal Chairs (School Admission Panels and Valuation Tribunals). Other training includes circular letters to members informing them of developments in the law and best practice (MHRT for Wales) and 'on the job' training, where new members are asked to sit as observers on different types of tribunal hearings in order to gain experience (Valuation Tribunals for Wales).



33. The survey responses revealed decreasing integration of training events and resources compared to English equivalent tribunals. For example, the Adjudication Panel for Wales previously participated in an annual joint training event with the Adjudication Panel for England. However, the tribunal indicated that as a consequence of the tribunal reforms in England, it was unlikely that such an event would be held in 2009. The Valuation Tribunals for Wales indicated that in the past they have participated in modular training delivered by the VTS for England and have also shared joint training sessions for Presidents and Chairs. However, this arrangement is currently suspended. ALT Wales are having a joint training event with ALT England in 2010.
34. Tribunals were asked to provide details of their appraisal arrangements. Survey responses revealed that with few exceptions, review and appraisal of tribunal members does not exist, or happens infrequently. With the exception of the following, the tribunals surveyed indicated that they did not have a formal appraisal or review process.
35. The President and members of the Adjudication Panel for Wales are appraised on an annual basis (depending on the availability of suitable hearings). There is an appraisal process for the Chairmen and Deputy Chairmen of ALT (Wales), but no formal review and appraisal process for other members. There is an appraisal system for Rent Assessment Committee members, but it is difficult to operate due to the small caseload of the tribunal. The Valuation Tribunals for Wales and the SENTW are in the process of establishing appraisal systems.
36. The MHRT for Wales Chairman and two deputies are appraised by a Circuit Judge from the First-tier Tribunal (Mental Health) in England. They then appraise the other members on a two-year rotation. This is considered a useful opportunity to review performance and discuss issues, but is limited in that due to budgetary constraints, any remedial training needs identified at appraisals are unmet.

### **Caseload**

37. Survey information showed that the caseloads of the Welsh Tribunals vary significantly, as illustrated in Table 5 below. While the data indicates significant variation between the caseloads, it is only helpful to a point in understanding the workload of the tribunals, as the complexity and length of cases varies significantly between tribunals. For example, the Valuation Tribunals for Wales will often schedule several cases in a day, with most of the cases being settled prior to hearing, whereas some of the Adjudication Panel cases encompass complex legal issues and run for a number of days.

**Table 5: Tribunal caseload**

Tribunal	Year	Appeals received	Appeals registered	Cases decided	Cases withdrawn	Cases conceded
Adjudication Panel for Wales <sup>55</sup>	2005/06	13	–	4	2	–
	2006/07	6	–	8	0	–
	2007/08	4	–	8	1	–
Agricultural Land Tribunal (Wales) <sup>56</sup>	2005/06	12	–	3	12	3
	2006/07	16	–	1	5	9
	2007/08	12	–	1	8	2
Independent Review of Determinations Panels	2007/08	2	–	1	1	–
Independent Social Services Complaints Panels	2006/07	61	–	38	23*	–
	2007/08	48	–	35	13*	–
Mental Health Review Tribunal for Wales <sup>57</sup>	2006	1,296	–	1,036	195	–
	2007	1,370	–	1,090	203	–
	2008	1,450	–	1,139	211	–
Residential Property Tribunal	2006	123	–	–	8	–
	2007	103	–	–	unknown	–
	2008	108	–	–	11	–
School Admission Appeal Panels <sup>58</sup>	n/a	n/a	n/a	n/a	n/a	n/a
School Exclusion Appeal Panels <sup>59</sup>	n/a	n/a	n/a	n/a	n/a	n/a
Special Educational Needs Tribunal for Wales	2005/06	157	150	48	79	35
	2006/07	138	118	36	58	31
	2007/08	98	94	28	46	18
Traffic Penalty Tribunal	2006	146	142	79	1	59
	2007	209	205	136	3	61
	2008	152	149	85	0	54
Valuation Tribunals for Wales	2005/06	25,484	25,484	1,258	16,100	–
	2006/07	11,607	11,607	1,537	13,518	–
	2007/08	6,556	6,556	1,061	8,017	–

\* This figure includes discontinued cases

55 Includes both cases received from the Public Service Ombudsman for determination and appeals against the decisions of local authority Standards Committees.

56 The ALT (Wales) deals with both applications and appeals.

57 The MHRT for Wales deals with applications rather than appeals. The patient has the right to ask to withdraw an application, and an application is automatically cancelled if the patient is discharged from detention before the application is heard.

58 While this information is not currently available, the new School Admission Appeals Code provides that admission forums must provide an annual report to the Welsh Assembly Government which provides the number of appeals received, and the number that were successful.

59 This information is not currently collected in Wales, but the Welsh Assembly Government will start to collect some of it in 2008/09.

## Outcomes

38. Tribunals were asked for figures on the number of appeals that were upheld or dismissed over the past three years. Not all tribunals maintain a record of these figures, but for those that do the results are presented below in Table 6.

**Table 6: Tribunal outcomes**

Tribunal	Year	Upheld	Dismissed
Adjudication Panel for Wales	2005/06	4	0
	2006/07	5	3 <sup>60</sup>
	2007/08	7	1
Agricultural Land Tribunal (Wales)	2005/06	0	3
	2006/07	1	0
	2007/08	1	1
Independent Review of Determinations Panels <sup>61</sup>	2007/08	0	1
Independent Social Services Complaints Panels <sup>62</sup>	–	–	–
Mental Health Review Tribunal for Wales <sup>63</sup>	2006	41	995
	2007	79	1,011
	2008	83	1,056
Residential Property Tribunal	n/a	n/a	n/a
School Admission Appeal Panels	n/a	n/a	n/a
School Exclusion Appeal Panels	n/a	n/a	n/a
Special Educational Needs Tribunal for Wales	2005/06	41	7
	2006/07	28	8
	2007/08	23	5
Traffic Penalty Tribunal	2006	41	38
	2007	54	82
	2008	31	54
Valuation Tribunals for Wales	2006/07	708	829
	2007/08	209	852

<sup>60</sup> One of these cases was quashed as the notice from the Standards Committee was inadequate and the tribunal had no powers to amend.

<sup>61</sup> The Independent Review of Determination Panel makes recommendations and these figures represent the number of times the panel has recommended or not that an adoption agency reconsider its decision.

<sup>62</sup> The Independent Social Services Complaints Commission makes recommendations and does not record this information.

<sup>63</sup> The MHRT for Wales deals with applications rather than appeals. Patients are either discharged (indicated in the table above as 'upheld') or their detention is confirmed (indicated in the table above as 'dismissed').

## Support and Resources

39. The survey results revealed that a number of Welsh tribunals operate administratively from Welsh Assembly Government buildings, with support staff also provided by the Welsh Assembly Government (Adjudication Panel for Wales, Agricultural Land Tribunal (Wales), Independent Review of Determinations Panels, Independent Social Services Complaints Panels (ISSCP), MHRT for Wales, Residential Property Tribunal and SENTW). In some of these tribunals, support staff provided by the Welsh Assembly Government also have other responsibilities that are unrelated to their role in supporting the tribunal.
40. The four statutory Valuation Tribunals in Wales work under the administrative umbrella of the Valuation Tribunal Service for Wales. Neither the School Admission Appeal Panels nor the School Exclusion Appeal Panels have a central administration. Local Authorities provide administrative and other support as the need arises. The Traffic Penalty Tribunal is supported from Manchester, with staff and accommodation provided by PATROL, a coalition of the Local Authorities that have adopted a civil traffic management system.
41. The desire to operate as informally as possible means court and other formal hearing centres are not generally used for hearings, which are generally held in locations convenient to users. For example, SENTW indicated that hearings are not normally held more than 90 minutes travelling time from the parental home. The ALT (Wales) holds hearings in hotels near to the land in question, as site visits are made by the tribunal. The Traffic Penalty Tribunal allows appellants to state a preference for where their hearing is heard on the Notice of Appeal form, giving a first, second and third preference.
42. In the MHRT for Wales the venue of the hearing depends on the location of the patient. Where a patient is detained in a hospital, the hearing will be held in the hospital. Where a patient is based in the community, the hearing can be held at a variety of venues, such as hospitals, community mental health team offices or residential/care homes. A few hospital venues have dedicated rooms for the use of the tribunal. In all cases the tribunal requires (but does not always get) a private room with a large table and at least ten chairs with a separate room to be used as a waiting room for the attendees and witnesses. It is virtually unknown for this tribunal to pay for hearing accommodation.
43. As expected, because of the variations in caseload and case complexity, total expenditure varies considerably between tribunals – see Table 7 for details. There appears to be no common method for calculating total expenditure and some of the figures provided by tribunals do not include all expenditure, for example, where administrative support from Welsh Assembly Government cannot be separately attributed.

**Table 7: Tribunal expenditure**

Tribunal	Accommodation	Support Staff	Total Expenditure
Adjudication Panel for Wales	The support staff are located within the Welsh Assembly Government offices in Cathays Park, Cardiff. Hearings are normally in a hotel close to the respondent/appellant. Where a case is determined by written representations only, a meeting room is hired in a location convenient for the Panel members. Expenditure on hearing accommodation: £2,480 (05/06) £4,000 (06/07) £4,705 (07/08)	The Adjudication Panel (and its tribunals) is supported by four members of the Assembly Government's Local Government Policy Division, Partnership and Ethics Team. In practice, all staff concerned have other responsibilities and duties unrelated to the Adjudication Panel work. The amount of time spent on Adjudication Panel work varies in line with caseload. The Head of the Partnership and Ethics Team currently fulfils the statutory functions of the Registrar to the Panel.	£69,928* (05/06) £79,691* (06/07) £79,713* (07/08) * Approximate figures only. Certain administrative support costs are not separately attributed to Adjudication Panel work within the Assembly Government's Departmental Running Costs budget.
Agricultural Land Tribunal (Wales)	The tribunal operates from WAG owned premises in Llandrindod Wells. Hearings are held in hotels across Wales.	Secretary, provided by the Welsh Assembly Government.	£36,891 (05/06) £53,222 (06/07) £47,931 (07/08)
Independent Review of Determinations Panels	Panel hearings are held in temporary rented accommodation. Expenditure on hearing accommodation: £862 (08/09)	Panel administered by the Welsh Assembly Government, which must make suitable arrangements for the clerking of the panels.	£14,000 (07/08) £3,500 (08/09)

Tribunal	Accommodation	Support Staff	Total Expenditure
Independent Social Services Complaints Panels	Support staff operate from the Business Services Centre, Mamhilad, Pontypool. Hearings are held in various buildings across Wales as appropriate, public buildings are used whenever possible. Expenditure on hearing accommodation: £2,998.61 (06/07) £4,451.86 (07/08)	Manager: 0.5 Secretariat Officers: 2 Social Services staff administer the panels under the umbrella of Independent Complaints Secretariat, which also has responsibility for NHS Panels (but as a separate function).	£397,000 over the past three years
Mental Health Review Tribunal for Wales	The secretariat utilises office space within the WAG building at Cathays Park. Where a patient is detained in hospital, the hearing will be held in the hospital. Where a patient is based in the community, the hearing can be held at a variety of venues, such as hospitals, community mental health team offices or residential/care homes.	1 Higher Executive Officer (branch manager / clerk to the tribunal) 6 Executive officers who act as caseworkers and also clerk hearings 5 Team Support Staff. The branch is overseen by senior management within the WAG Department of Health and Social Services.	£1,147,000 (06/07) £1,309,000 (07/08) £1,340,000 (08/09) NB. This does not include secretariat costs
Residential Property Tribunal	Two offices and a hearing room at Southgate House in Cardiff. Otherwise, the tribunal uses hotels, community centres etc	2 Clerks based in Cardiff	£132,021 (2006) £124,707 (2007) £197,000 (2008) (estimated due to an increase in training)
School Admission Appeal Panels <sup>64</sup>	–	–	–
School Exclusion Appeal Panels <sup>65</sup>	–	–	–

64 Accommodation is organised locally and temporarily, there are no permanent support staff, and total expenditure is not available centrally.

65 Accommodation is organised locally and temporarily, there are no permanent support staff, and total expenditure is not available centrally.

Tribunal	Accommodation	Support Staff	Total Expenditure
Special Educational Needs Tribunal for Wales	The tribunal operates from premises leased by WAG in Llandrindod Wells. Hearings are held in hotel accommodation across Wales.	1 Tribunal Manager (Secretary) 2 Appeals Team Manager 2 Team Support	£363,353 (05/06) £345,118 (06/07) £316,960 (07/08) NB – This figure includes secretariat costs
Traffic Penalty Tribunal	The tribunal secretariat and support functions operate from premises in Manchester. Hearings in the following venues in Wales: Caernarfon (The Galeri) Denbigh (Denbighshire Voluntary Services Council) Llandudno (St Georges Hotel) Swansea (Express by Holiday Inn)	Support staff for Wales are not separately accounted for. England and Wales Support Staff: 1 Tribunal Manager 1 Appeals Manager 1 Technology Manager 1 Technology Officer 1 Communications Officer 1 Information Officer 4 Appeals Coordinators 4 Appeals Administrator 1 Secretary to the Chief Adjudicator	Expenditure in relation to Wales is not separately accounted for. England and Wales expenditure: £2,150,346 (05/06) £2,149,580 (06/07) £2,255,506 (07/08)
Valuation Tribunals for Wales	The East and South Wales Valuation Tribunals are co-located in the same premises at Gold Tops, Newport, but operate independently of each other. The West Wales VT is housed in Carmarthen, in a property owned by WAG. The North Wales VT Office is based at Rhos-on-Sea, Colwyn Bay, and lies within a Government building complex <sup>66</sup> .	The Valuation Tribunal Service for Wales (VTSW) provides an administrative support framework, staff and members training. The complement of 20 full-time staff include 4 Statutory Clerks and 7 Tribunal Officers	£1.092m (05/06) £1.264m (06/07) £1.01m (07/08)

<sup>66</sup> The location of the North Wales VT will be reviewed ahead of the Welsh Assembly Government's move to the new purpose built complex planned for Llandudno Junction.

## Hearings

44. The Welsh tribunals surveyed were asked to provide details on whether:
- Hearings are normally held in public or private;
  - The tribunal has the power to award costs;
  - The tribunal has the power to enforce its orders;
  - Decisions are published;
  - The tribunal is supported by a clerk and, if so, the role of the clerk;
  - The hearing is recorded (audio or written transcript) and, if so, whether a copy is available to the parties.

A summary of the responses is at Table 8.

### *Private or public*

45. About half of the tribunals surveyed normally hold hearings in private, typically those dealing with vulnerable groups and/or sensitive issues. In some cases, while hearings are normally in private, the tribunal has the discretion to decide that it will be in public. For example, while hearings before the MHRT for Wales are normally private, this can be altered where a patient requests that the hearing be in public and the Tribunal is satisfied that that would be in the interests of the patient. SENTW hearings are normally in private, unless both parties request otherwise and the President orders that the hearing should be in public<sup>67</sup>.
46. Of the tribunals that normally hold hearings in public, the tribunal often has the discretion to determine that proceedings, or part of the proceedings will be held in private. For example, Adjudication Panel for Wales hearings will normally be held in public except where the tribunal considers that publicity would prejudice the interests of justice, or where the respondent or appellant agrees that the allegations may be dealt with by way of written representations.

### *Costs*

47. Roughly half the tribunals surveyed indicated that they are able to award costs. In most cases, this power is only exercisable where a person has acted frivolously or vexatiously or where their conduct has been wholly unreasonable (Adjudication Panel for Wales, ALT (Wales), SENTW and the Traffic Penalty Tribunal).

### *Enforcement*

48. None of the tribunals surveyed have powers to enforce their orders. The Independent Social Services Complaints Panels and Independent Review of Determinations Panels can be distinguished in that they make recommendations to the original decision-makers, rather than binding determinations.



### ***Published decisions***

49. Just over half of tribunals publish their decisions, and the extent to which decisions are made widely available varies considerably. For example, the Adjudication Panel for Wales publishes its decisions in one or more newspapers circulating in the area of the relevant authority and a copy of the full decision is published on the Panel's website<sup>68</sup>. Copies are also sent to relevant parties. Copies of the ALT (Wales) decisions are sent to several organisations, and may be obtained from the tribunal Secretary on request. While SENTW does not publish its decisions, it is in the process of producing an anonymised digest of decisions that will be available on the tribunal's web-site. Those tribunals that deal with sensitive personal issues or vulnerable groups generally do not publish their decisions.

### ***Role of Clerk***

50. The role and qualifications of the tribunal clerk vary across tribunals. In some, the clerk plays an active role in advising the tribunal on, among other things, points of law, for example, School Admission Appeal Panels, School Exclusion Appeal Panels and Valuation Tribunals. In others, the clerk makes the administrative arrangements for the hearing and/or drafts the minutes of the proceedings, for example, ALT (Wales), IRDP, Residential Property Tribunal, SENTW and the Traffic Penalty Tribunal. The Secretary of the ALT Wales attends all hearings and carries out the role of the clerk, including ensuring that bio-security rules are followed at site inspections.
51. For the MHRT for Wales, the clerk is often the caseworker who has overseen the gathering of reports and assembling of witnesses in the period prior to the hearing. On the day of the hearing the clerk ensures the availability of suitable accommodation for the tribunal and liaises with the attendees to ensure all are present. The clerk is responsible for obtaining the patient's medical records for the use of the tribunal and for facilitating the tribunal's liaison with the hospital during the period of the hearing. They ensure that all the correct forms are fully completed after the decision and are responsible for the transcription of the forms back at the office and for the distribution of the decision forms to the appropriate parties. They will also inform Medical Records and/or the hospital ward of the patient's status following the hearing and before leaving the hospital premises.
52. For the Adjudication Panel for Wales, the role of the clerk is to ensure the smooth running of the tribunal hearing and to advise the tribunal on matters of procedure. The clerk is not legally qualified and so cannot advise the tribunal on points of law. The clerk also administers the taking of the oath/affirmation and records the tribunal proceedings. The clerk is a member of the Adjudication Panel Support Unit within the Assembly Government.

<sup>68</sup> Where a Panel hears evidence in private, amendments may be made to the text of the written decision report in order to preserve confidentiality.

53. The clerk plays an active role in School Admission Appeal Panels, and makes the necessary administrative arrangements for hearings, explains the basic procedures to appellants, and ensures that the relevant facts, as provided by both the appellant and the admission authority, are presented and recorded at the hearing. The clerk also provides an independent source of advice on procedure, the Codes and the law and will tactfully intervene to assist the panel with procedure, if necessary. Other responsibilities include recording the proceedings, attendance, decisions, voting outcomes and reasons and notifying all parties of the panel's decision in writing.

#### ***Recording of hearings***

54. A number of tribunals indicated that they make either an audio or written transcript of the hearing. Adjudication Panel hearings are recorded (audio) and a copy of the recording is available on request. Written transcripts are not made available as a matter of course, but a request for a transcript for the purposes of an appeal to the High Court would be considered sympathetically. A written transcript is made of the Independent Review of Determinations Panels hearings. Traffic Penalty Tribunal hearings are recorded, but the release is subject to the agreement of the Adjudicator and, unless the need is related to a disability issue, is made available at a cost to cover transcription. Audio recordings of SENTU hearings are made and copied to parties on request.

**Table 8: Tribunal hearing arrangements**

Tribunal	Restrictions on legal repres.?	Legal aid available?	Generally public or private hearings?	Power to award costs?	Power to enforce orders?	Decision published?	Supported by a clerk?
Adjudication Panel for Wales	No	No	Public	Yes	No	Yes	Yes
Agricultural Land Tribunal (Wales)	No	No	Public	Yes	No	Yes	Yes
Independent Review of Determinations Panels	No	No	Private	Yes	No	No	Yes
Independent Social Services Complaints Panels	No	No	Private	No	No	No	No
Mental Health Review Tribunal for Wales	No	Yes	Private	No	No	No	Yes
Residential Property Tribunal	No	No	Public	Yes	No	Yes	Yes
School Admission Appeal Panels	No	No	Private <sup>69</sup>	No	No	No	Yes
School Exclusion Appeal Panels	No	No	Private	No	No	No	Yes
Special Educational Needs Tribunal for Wales	Yes	No	Private	Yes	No	No	Yes
Traffic Penalty Tribunal	No	No	Public	Yes	No	Only significant decisions	Yes
Valuation Tribunals for Wales	No	No	Public	No	No	Yes	Yes

69 Unless grouped for multiple hearings.

## Appeals

55. There are a number of different appeal routes from the decisions of tribunals, as set out in Table 9 below. For cross-border tribunals operating in Wales that have joined the new two-tier tribunal system, appeal is now to the Upper Tribunal, with leave, on a point of law. An Upper Tribunal hearing centre and administrative facilities has been established in Cardiff, alongside the Administrative Court facilities, to deal with these appeals. There is also scope to hold hearings in a number of different locations around Wales for the convenience of the parties.
56. As part of the survey, the tribunals were asked whether there is a right of appeal from their decisions, whether on the facts or a point of law, and if so, where this right of appeal lies. A right of appeal to the Upper Tribunal lies from some Welsh tribunals, even while they remain outside the tribunal reform process – SENTW, MHRT for Wales<sup>70</sup> to the Administrative Appeals Chamber and some jurisdictions of the Valuation Tribunal to the Lands Chamber. There is a mixture of appeal rights from other Welsh Tribunals. In some cases, there is no right to appeal, apart from applying for judicial review (Adjudication Panel for Wales when acting as an appeal tribunal, School Exclusion Appeal Panels and the Traffic Penalty Tribunal). In others, appeal is to the High Court.

<sup>70</sup> Tribunals, Courts and Enforcement Act 2007, s32. Where a new right of appeal to the Upper Tribunal is created in England in relation to a tribunal that joins the First-tier Tribunal, appeals from the equivalent Welsh Tribunal will also normally be to the Upper Tribunal.

**Table 9: Tribunal appeals**

Tribunal	Appeal?	On facts, point of law?	Where to?
Adjudication Panel for Wales	Case tribunals and interim case tribunals, yes  Appeal tribunal, no	Both	To the High Court
Agricultural Land Tribunal (Wales)	Yes	Point of Law	To the High Court
Independent Review of Determinations Panels <sup>71</sup>	No	–	–
Independent Social Services Complaints Panels <sup>72</sup>	No	–	–
Mental Health Review Tribunal for Wales	Yes	Point of Law	With Leave to the Administrative Appeals Chamber of the Upper Tribunal
Residential Property Tribunal	Yes	General right of appeal	To the High Court
School Admission Appeal Panels	No	–	–
School Exclusion Appeal Panels	No	–	–
Special Educational Needs Tribunal for Wales	Yes	Point of Law	With Leave to the Administrative Appeals Chamber of the Upper Tribunal
Traffic Penalty Tribunal	No	–	–
Valuation Tribunals for Wales	Rating appeals, yes  Council Tax appeals, yes	General right of appeal  Point of law	With Leave to the Lands Chamber of the Upper Tribunal  To the High Court

<sup>71</sup> These panels do not make binding decisions.

<sup>72</sup> These panels do not make binding decisions.

## Annual Reports

57. Four of the Welsh tribunals surveyed indicated that they produced annual reports, which are published in hard copy and on their websites, and sent to relevant Welsh Ministers and other stakeholders (SENTW, Adjudication Panel for Wales, Valuation Tribunals for Wales, Traffic Penalty Tribunal). However, most of the tribunals indicated that they do not publish annual reports: (ALT (Wales); MHRT for Wales; Independent Social Services Complaints Panel; Independent Review of Determinations Panel; School Exclusion Appeal Panels; School Admission Appeal Panels and Residential Property Tribunal).

## Representation and Legal Aid

58. With the exception of SENTW, all the tribunals responded that there are no restrictions on the parties being legally or otherwise represented. In the case of SENTW, there is a restriction to one representative per party, who may be legally qualified or otherwise, unless the President or tribunal gives permission for the LEA to be represented by more than one person.
59. The only Welsh tribunal where legal aid is available for applicant representation is the MHRT for Wales. However, in some cases legal advice and assistance may be available to help with preparation for the hearing, for example, in SENTW. While legal aid is not available for persons appearing before the Adjudication Panel for Wales, local authorities have powers under the 'Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006' to provide indemnities or insurance for members. Such provision can, among other things, be made in respect of misconduct proceedings brought against a member under Part III of the Local Government Act 2000. A member must reimburse the authority or insurer any sums expended where a breach of the code of conduct is found to have taken place and disciplinary measures are taken against the member concerned.

## Information for Users

60. Tribunals were surveyed on the information that they provide to users, the results of which are presented in Table 10. Under half of the tribunals surveyed have comprehensive websites (SENTW, Adjudication Panel for Wales, Traffic Penalty Tribunal and Valuation Tribunals for Wales). The information available to users and the way it is presented on these websites is different for each tribunal. The MHRT for Wales only has a static webpage, giving details of the postal address and telephone numbers of the tribunal.
61. Information about School Admission Appeal Panels can be found on the Welsh Assembly Government website. Information on exclusion appeals is located on the Advisory Centre for Education website, which is an organisation funded by the Welsh Assembly Government to provide advice for parents and children and young people on exclusion. The Welsh Assembly Government website contains some basic information on the ISSCPs, but very limited information on the IDRPCs. The Residential Property Tribunal for Wales does not have a website, but some information is available on the Residential Property Tribunal Service for England website.
62. Only SENTW has a dedicated helpline for users. A number of other tribunals indicated that anyone requiring assistance or information can ring the tribunal helpline and will be assisted by a member of staff (MHRT for Wales, Adjudication Panel for Wales, Valuation Tribunals for Wales). The Traffic Penalty Tribunal provides appellants with the contact details of a Co-ordinator to whom they can address their queries.
63. Most of the tribunals indicated that leaflets and booklets are available to assist tribunal users. However, the type of information, the way it is presented, and how it is supplied to the user differs. SENTW produces an appeal booklet and form and a 'how to make a claim' booklet and form. The Rent Assessment Committee uses booklets produced by Residential Property Tribunal Service for England or by LEASE. The ALT produces guidance notes and the Traffic Penalty Tribunal has a leaflet explaining how to appeal on-line. Information for parents booklets should be available from each Local Authority for School Admission Appeal Panels.

**Table 10: tribunal information for users**

Tribunal	Website	Helpline	Leaflets
Adjudication Panel for Wales	Yes	No dedicated line	Yes
Agricultural Land Tribunal (Wales)	Information available on WAG and DEFRA websites	No dedicated line	Yes
Independent Review of Determinations Panels	No	No	Yes
Independent Social Services Complaints Panels	No	No	Yes
Mental Health Review Tribunal for Wales	Yes, but limited	No dedicated line	Yes
Residential Property Tribunal	No	No	No
School Admission Appeal Panels	No dedicated website, but some info available on WAG site and LA sites	–	Yes
School Exclusion Appeal Panels	–	–	–
Special Educational Needs Tribunal for Wales	Yes	Yes	Yes
Traffic Penalty Tribunal	Yes	No	Yes
Valuation Tribunals for Wales	Yes	No	Yes



## Welsh Language

64. The tribunals were asked:

- Whether they operate under a Welsh Language policy or scheme;
- How many appeals have been lodged in Welsh over the past 3 years;
- How many hearings have been conducted in Welsh over the past 3 years;
- How many tribunal members and judges are Welsh language speakers.

The responses are presented in Table 11 below. It appears that most tribunals are equipped to deal with Welsh language appeals (some more than others), even though there is limited demand for Welsh language services.

**Table 11: Welsh language in tribunals**

Tribunal	Welsh language policy or scheme?	Number of appeals lodged in Welsh	Number of Welsh language hearing	Number of Welsh speaking tribunal members
Adjudication Panel for Wales	Yes, applies WAG Welsh Language Scheme	Nil	Nil*	President, legal members and one lay member
Agricultural Land Tribunal (Wales)	Simultaneous translation is available	Nil	Nil	Chair/Deputy Chair and landowner members do not speak Welsh. 8 Farmer members and 2 drainage members speak Welsh
Independent Review of Determinations Panels	Yes	Nil	Nil	Unknown
Independent Social Services Complaints Panels	WAG policy	2	1	6

\* The language preference of tribunal participants is established in advance. While no tribunal has been held entirely in Welsh, a number of participants have given evidence in Welsh. A simultaneous translation is provided.

Tribunal	Welsh language policy or scheme?	Number of appeals lodged in Welsh	Number of Welsh language hearing	Number of Welsh speaking tribunal members
Mental Health Review Tribunal for Wales	Yes	No formal record, but not more than 2 or 3 in the past 3 years	No formal record, but about 4 in the past 3 years	Approx. 10, including 7 legal members and at least 2 judges
Residential Property Tribunal	Yes	A few	Nil	A few
School Admission Appeal Panels	Local authorities bound by their own Welsh Language schemes	–	–	–
School Exclusion Appeal Panels	Local authorities bound by their own Welsh Language schemes	–	–	–
Special Educational Needs Tribunal for Wales	Yes, Welsh Language Scheme	Under 10 in the past three years	Under 10 in the past three years	President 2 Chairs 3 tribunal members
Traffic Penalty Tribunal	Forms and leaflets in Welsh and the tribunal is in process of translating website	Less than 10	Less than 10	3
Valuation Tribunals for Wales	Yes	Less than 3%	Less than 1%	45

## Engagement with Users

65. As part of the survey, tribunals were asked:
- What interaction the tribunal has with tribunal users (including applicants, government departments, legal and other representatives etc);
  - Whether there is there a tribunal user group and, if so, how is the group supported, and what function it performs;
  - Whether the tribunal meets with other devolved administration tribunals.
66. SENTW responded that parties are invited, post case, to complete a satisfaction form. The Adjudication Panel for Wales indicated that the President of the Panel maintains regular contact with stakeholder and other appropriate organisations, including the Welsh Assembly Government, the Public Services Ombudsman for Wales, local authority monitoring officers, the AJTC and its Scottish and Welsh Committees and the Adjudication Panel for England. Contact with local authority members tends to be at the point of delivery in terms of responding to information requests and in conducting tribunal hearings.
67. The Traffic Penalty Tribunal holds induction days with new local authorities to increase their understanding of the tribunal and its procedures. The tribunal conducts internal evaluation of new initiatives and from time to time commissions independent research; for example Birmingham University conducted a user survey for the tribunal. The Chairman of the MHRT for Wales sits on a number of committees and bodies where interaction with user representatives and other stakeholder groups takes place. The other tribunals surveyed indicated that there is no formal interaction with tribunal users.
68. Only SENTW and the Traffic Penalty Tribunal operate tribunal user groups. SENTW indicated that it has regular structured user group meetings held twice a year at regional locations in Wales. The Traffic Penalty Tribunal holds appellant user groups with representatives from motoring, advisory and disability organisations and others at least once a year. It also holds user group meetings with local authorities once a year to which operational and legal officers are invited. While there is no specific user group for the Valuation Tribunals for Wales, representatives participate in the Valuation Office Agency Ratepayers Forum. Recently, the ISSCP has involved users in an independent review of its complaints process.

69. The extent to which Welsh tribunals interact with their English and Scottish counterparts varies. SENTW takes part in an annual presidents and secretaries meeting with its Scottish, English and Northern Irish equivalent tribunals. The MHRT for Wales participates, on an informal basis, in a Presidents' group convened by a representative of the First-tier tribunal that meets on an *ad hoc* basis. Networking often takes place at conferences and other events. The ALT (Wales) indicated that there is an annual meeting of ALT England and Wales Chairmen and Secretaries and that the annual AJTC conferences are an opportunity to network with English counterparts. The Valuation Tribunals for Wales indicated that they have less interaction with the English Valuation Tribunal than previously, except at events such as the AJTC conference. The Chief Adjudicator of the Traffic Penalty Tribunal has met with other traffic and parking tribunals. The Adjudication Panel for Wales does not meet with its English and Scottish counterparts, but in the past members have attended joint training sessions.

### **Complaints**

70. Tribunals were asked whether they have a complaints policy, keep a record of complaints, and if so, how many complaints were received in the past three years. A summary of the responses is at Table 12. SENTW's complaints policy is available to the public on request and on its website, as is the Traffic Penalty Tribunal's policy.

**Table 12: Tribunal complaints policies**

Tribunal	Complaint Policy?	Record of complaints?	How many complaints over past 3 years?
Adjudication Panel for Wales	Yes	Yes	0 (2005/06) 1 (2006/07) 0 (2007/08)
Agricultural Land Tribunal (Wales)	Yes	Yes	Nil
Independent Review of Determinations Panels	No	Yes	Nil
Independent Social Services Complaints Panels	No	Informally only	8 (2006/07) 5 (2007/08)
Mental Health Review Tribunal for Wales	Yes	Yes	Not more than 1 per year
Residential Property Tribunal	No	No	1 in past 3 years
School Admission Appeal Panels	–	–	–
School Exclusion Appeal Panels	–	–	–
Special Educational Needs Tribunal for Wales	Yes	Yes	1 (2005/06) 4 (2006/07, 3 of which were from the same party and related to the same issue) 0 (2007/08)
Traffic Penalty Tribunal	Yes	Yes	1 (2006) 0 (2007) 1 (2008)
Valuation Tribunals for Wales	Yes	Yes	3 (2005/06, West Wales) 4 (2006/07, 1 East Wales, 3 West Wales) 2 (2007/08, 1 East Wales, 1 West Wales)

## Links to the Ombudsman

71. Some of the tribunals surveyed had very obvious links to the Public Services Ombudsman for Wales (PSOW). For the Adjudication Panel for Wales, the Ombudsman is the first point of contact in misconduct cases. Any person may make an allegation to the PSOW that a member of a local authority has failed to comply with their authority's code of conduct. It is for the Ombudsman to determine whether the allegation should be investigated and whether such investigation should be undertaken by his office or the relevant local monitoring officer. Where the PSOW undertakes the investigation, he may send his report to the local standards committee or, generally in more serious cases, to the Adjudication Panel. It is a function of the Adjudication Panel to form tribunals to consider reports from the PSOW and to determine whether there has been a breach of the code of conduct.
72. The PSOW is also an integral part of the investigation of social services complaints. On completion of Stage 2 of the statutory procedure, complainants have the option of taking their complaint to Stage 3: the ISSCP (with the right to go to the PSOW thereafter) or direct to the Ombudsman.
73. For School Admission and Exclusion Appeal Panels, a parent or pupil can complain to the PSOW on the grounds of maladministration by the appeal panel. The PSOW has the power to make recommendations, but no powers to direct reinstatement or to order a fresh appeal hearing, though a fresh appeal hearing could be recommended. It would be for the LEA to decide whether to accept the Ombudsman's recommendation, although it would normally be expected to comply.
74. Similarly, the PSOW can investigate complaints of maladministration against the Valuation Tribunal Service for Wales. The jurisdiction only concerns administration of appeals and does not extend to the judicial decision making function.
75. Other tribunals indicated that they did not have any links with the PSOW. For example, the PSOW does not have jurisdiction over detained patients, and thus does not have links to the MHRT for Wales.