

Administrative Justice – A Cornerstone of Social Justice in Wales

Reform priorities for the Fifth Assembly

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Foreword

What is Administrative Justice?
Does it matter to the people of Wales?

These were questions we posed when our predecessor Committee of the Administrative Justice and Tribunals Council (AJTC) was set up in June 2008. We return to those questions in this, the final report of the CAJTW, the successor Committee for Administrative Justice and Tribunals Wales, whose life comes to an end in March 2016 after two years of work.

Merely to understand the administrative justice landscape in Wales is not straightforward. It is a landscape made complex by the intertwining of devolved and non-devolved systems. We are therefore delighted that a research paper, *'Understanding Administrative Justice In Wales'* commissioned by the Committee and published by the University of Bangor School of Law in November 2015, provides the first comprehensive overview of a Welsh system that is becoming increasingly distinct.

Our predecessor Committee focused first on the world of tribunals and published a report making a series of recommendations for reform in 2010. The Welsh Government immediately accepted it in its entirety and looking back it is remarkable to see the progress that has been achieved in response to those recommendations, although of course some challenges remain.

However, tribunals are but one part of a wide landscape. Administrative justice is not only about citizen redress but also about learning lessons from what goes wrong and incorporating them into a vision of good public administration. Focusing on improving initial decision-making in government is an essential aspect of improving the experience of users of the system. It should lead to a better result for citizens, less work for appeal systems, lower costs for government and enhanced social justice.

In this report we look more widely over the whole administrative justice landscape in Wales, recommending new goals for the period to 2021 so that the current rate of progress can be maintained. Public service satisfaction levels in Wales remain high but our public services face considerable challenges and the Welsh Government has made improvement a priority. We describe how the administrative justice system can contribute towards meeting the challenges against a background of diminishing resources.

Although we are a Committee of the Welsh Government we have also taken the liberty of making some recommendations directed at other bodies, including the National Assembly. In a comprehensive report it is difficult to avoid considering the role of the legislature as good law and effective scrutiny are such key components of the administrative justice system and this is an area of the justice system that is devolved to a large extent. We have also sought to demonstrate how this subject matter is linked closely with the issues which many citizens bring to the constituency surgeries of elected representatives.

We make this report to the Welsh Ministers and invite them to consult stakeholders on its contents, but the report is also written with the practice and research communities in mind.

We hope it will provide a useful addition to the still very limited literature concerning these issues in Wales.

Professor Sir Adrian Webb
Chair, CAJTW

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Executive Summary

This is the legacy report of the Committee for Administrative Justice and Tribunals Wales whose life comes to an end in March 2016 after two years of work. The report is informed by the Committee's own work and by a research project commissioned by the Committee and conducted by Bangor Law School. The research report, entitled '*Understanding Administrative Justice In Wales*' ('the Bangor report'), was published in November 2015 and provides the first comprehensive overview of the administrative justice system in Wales.

'Administrative justice' is not a well understood term and is of far greater significance than is often realised. It concerns administrative decision making and formal systems of redress - complaints and appeals - through which citizens can seek to right wrongs, and mainly concern disputes between citizen and state. It is best understood as a cornerstone of social justice in Wales, giving citizens a voice other than through the ballot box and the means through which public services can be held to account.

Administrative justice is more fully devolved than is generally realised. In areas such as housing, education, health and planning, Wales now largely has its own administrative law and the Welsh Government has responsibility for relevant justice policy and daily administration. We consider that the establishment of a centre of expertise and commissioning of further research will help to support the continued development of an increasingly distinct Welsh approach to administrative justice.

From the citizen's point of view it is much better for public services to get things right in the first place than to find themselves involved with redress mechanisms. However, the Williams Commission on Public Services Governance and Delivery set up by the Welsh Government, which reported in January 2014, highlighted a number of challenges for Welsh public services in maintaining and improving service standards. Complaints by Welsh citizens about public services have been rising. The Welsh Government has prioritised public service improvement and has sought to improve complaints handling through initiatives such as *Complaints Wales*. Strengthening redress mechanisms and better training have a valuable role to play in driving up public service standards alongside improvements to audit, regulation and inspection regimes.

Most tribunals still operate on an England and Wales basis but some tribunals, including the Special Educational Needs Tribunal for Wales (SENTW); the Agricultural Land Tribunal for Wales; Adjudication Panel for Wales Mental Health Review Tribunal for Wales and the Residential Property Tribunal for Wales are devolved. In 2014 the first tribunal created by the Welsh Government under legislation enacted by the National Assembly, the Welsh Language Tribunal, was set up. These tribunals are all administered by the Welsh Government and since 2010 a great deal of work has taken place to rationalise their administrative arrangements. All these tribunals are now supported by a single Welsh Tribunals Unit (WTU). A Justice Policy team was also established in the Welsh Government in 2014 to improve its policy capability in this area. While administrative rationalisation has been a considerable success there remain issues concerning the status of the judiciary in the devolved tribunals. The judiciary in the devolved tribunals are not a fully integral part of the judiciary for England and Wales and there remains a lack of clarity concerning some

arrangements for their appointment, training, conduct and discipline. Statutory responsibilities for these matters are not clear in all cases. Good working relationships are being developed between Welsh Government officials and judicial arm's length bodies and we consider that formal agreements need to be put in place so that there is no room for doubt about roles and responsibilities. We believe that arrangements in Wales for the aspects of the justice system that have been devolved should at least be on a par with the arrangements in England.

Some devolved tribunals are not administered directly by the Welsh Government. School admission and exclusion appeal panels are administered by local authorities. The Valuation Tribunal for Wales, although a national tribunal funded by the Welsh Government, retains a regional structure and close associations with Welsh local authorities which have a vested interest in its decisions. We consider that Wales-wide structures are the right way forward for these jurisdictions and recognise that legislative change is necessary in order to achieve this.

The availability of advice is a key issue for the effective operation of the administrative justice system. The Welsh Government established a National Advice Network which will publish an Advice Strategy for Wales later in 2016. We consider that the National Advice Network should be retained for the longer term together with a successor to our present Committee in order to promote a coordinated, strategic approach.

The Welsh Government has established various ad hoc redress schemes through legislation enacted by the Assembly which have some of the characteristics of a tribunal but which do not, and are not intended, to meet all the standards required of the tribunal in relation to such matters as the extent of their independence from Government, their structure, their openness to public scrutiny and their procedures. These include Independent Review of Determination Panels; The Discretionary Assistance Fund for Wales; Continuing Healthcare Review Panels. We have observed potential pitfalls both for in-house and outsourced ad hoc schemes and believe there are risks associated with setting up schemes that are not based upon clear principles and do not conform to minimum standards.

The research conducted by Bangor Law School included a short survey of elected representatives in Wales. Respondents were asked: "in order of most regular occurrence what are the four most common topics of concern presented to you by your constituents?" Twenty six replies were received and the most common issues were:

- Health
- Welfare benefits/reform
- Immigration
- Council services
- Education
- Planning-related issues

These are all issues for which the administrative justice system provides a voice for citizens *and routes for redress through complaints or appeals. Elected members have an important part to play in the system through the advice and support they offer to in their constituency work. Assembly Members have a particular role to play as legislators and as scrutineers as*

the volume of Welsh legislation increases. Although we are a Committee set up by the Welsh Government we have invited the Welsh Ministers to communicate certain recommendations to the Assembly as we recognise that the legislature has a crucial part to play in the administrative justice system.

We believe that a distinctive Welsh approach founded on a belief in social justice must rest on a clear set of principles. We offer the following as a template around which such principles could be formed for the Welsh Government to consider, offer its own proposals for consultation and, during the course of 2017, publicise a final version:

A FUNDAMENTAL RIGHT

Everyone has the right:

- to be notified, either specifically or by public notification, of any administrative decision affecting them;
- to express views on or voice complaints about any such decision; and
- to appeal against or require a review of any administrative decision adversely affecting them.

And to that end:

Decision Making

- All legislation under which administrative decisions are made should be reasoned, unambiguous and coherent and its implications should be effectively communicated to the public, those who advise them, the legal professions and those whose role it is to administer the decisions
- All administrative decisions should identify the legislation under which they are made and should be lawful, reasoned, unambiguous, coherent, clearly communicated to those whom they affect and should indicate how they may be appealed or reviewed.
- All administrative decisions should be underpinned by integrity and good governance and should be made by those with the expertise and up to date knowledge and experience needed to make fair, accurate and informed decisions.
- All decision making and redress processes should be grounded in continuous improvement and learning, including from the outcomes of complaints and appeal processes.

Systems and Procedures - *All appeal and review systems and procedures should:*

- include opportunities for reviewing decisions and for informal dispute resolution prior to any formal process of appeal, provided that the citizen's right to a fair and open appeal is not thereby impaired
- be prompt, accessible, independent, impartial and open
- be proportionate, efficient and effective
- demonstrate respect for human rights, equalities, sustainability and the needs of the most vulnerable

- ensure the interests of unrepresented parties are accommodated and that they are not disadvantaged.

Values and Behaviours

- Citizens' rights and needs should be treated with respect at all times
- Appellants should be kept informed throughout dispute resolution processes and enabled to seek resolution of their problems as expeditiously as possible
- All decisions, including decisions made on appeal or review, should ensure equal treatment of all citizens regardless of language preference between the English and Welsh languages.

List of recommendations

Recommendation 1) the Welsh Government continues to build upon the work of the CAJTW and Bangor Law School by encouraging the establishment of a centre of administrative justice expertise in one or more Welsh Universities, to continue to promote wider understanding of the unique characteristics of the Welsh administrative justice system, to promote further research in Wales and to highlight new opportunities for reform already within the powers available to the National Assembly;

Recommendation 2) the Welsh Government promotes future research into the Welsh administrative justice system to include 'mapping' of the system, following similar recent exercises in Northern Ireland and Scotland, both to promote better understanding of the system and to inform policy making and scrutiny;

Recommendation 3) That work to strengthen audit, inspection and regulation processes should be supplemented with work to promote 'right first time' decision making, effective redress mechanisms and organisational learning from complaints and appeals;

Recommendation 4) that leadership training in Wales should promote a better understanding of administrative justice issues, to include training for Council members directly involved in decision-making and the senior officers advising them in their role and responsibilities;

Recommendation 5) that the Welsh Government should evaluate if the Wales Complaint Board recommendations have been adopted by Public Bodies and to identify if they are being operated in the spirit in which they were made;

Recommendation 6) that the Welsh Government should review whether the complaints and appeals system in Wales, which has evolved in an ad hoc and piecemeal way, contains any significant gaps;

Recommendation 7) the Lord Chief Justice appoints an existing Welsh judge to act as Senior Judicial Lead for devolved Welsh tribunals;

Recommendation 8) that protocols are developed for WTU-administered tribunals to clarify relationships between tribunal Presidents, the Senior Judicial Lead (if appointed) and the administration;

Recommendation 9) all devolved Welsh judicial appointments should be subject to a standard procedure agreed between the Welsh Government and Judicial Appointments Commission;

Recommendation 10) a comprehensive set of formal agreements between the Welsh Government and the JAC, Judicial College and JCIO, or a single comprehensive agreement with the Judicial Office, is reached so that roles, responsibilities and relationships are clear in all cases;

Recommendation 11) the Welsh Government should undertake a 'parity test' covering all devolved Welsh judicial appointments, training, appraisal and disciplinary arrangements to

ensure that satisfactory standards at least as demanding as elsewhere in the UK are consistently in place;

Recommendation 12) a forum for senior administrators in Welsh Government-sponsored or funded tribunals and appeals schemes, chaired by a senior official in the Welsh Government, should be established to promote greater collaboration, sharing of best practice and the identification of opportunities for administrative efficiencies;

Recommendation 13) that information about PINS Wales and PINS Wales' annual reports are made available via the Law Wales website;

Recommendation 14) all Annual Reports of Welsh Government sponsored tribunals be presented to the Welsh Ministers, publicised effectively and also made available via the Law Wales website;

Recommendation 15) the Welsh Government presents commentary on the performance of devolved tribunals in a format enabling proper scrutiny by the Assembly;

Recommendation 16) arrangements are made for reports concerning ad hoc Welsh appeal schemes to be made available to the National Assembly in an informative and accessible way;

Recommendation 17) the Justice Policy capability of the Welsh Government be further expanded to promote greater consistency across all policy areas;

Recommendation 18) the Law Wales website be further developed to include information for practitioners and citizens on all devolved Welsh tribunals and ad hoc appeal schemes, and access to annual reports of statistical data for all tribunals and schemes should be available through the site;

Recommendation 19) that the Valuation Tribunal for Wales Regulations 2010 Regulations be amended to reform the governance arrangements for the tribunal so that the tribunal is able to adapt to a more economical operating model reflecting current financial constraints and is able to demonstrate greater independence from the Welsh local authorities which have a vested interest in the tribunal's decisions;

Recommendation 20) VTW senior staff should have the opportunity to participate in a forum for senior tribunal administrators established by the Welsh Government and the VTW President should have the opportunity to participate in meetings of the Welsh devolved tribunal judiciary;

Recommendation 21) the Welsh Government, in consultation with the Children's Commissioner, should take responsibility for the provision of training for appeal panel chairs, members and clerks on a national basis and maintain a list of approved and suitably trained panel chairs for use by local authorities;

Recommendation 22) the Welsh Government and Children's Commissioner should consider whether as part of the Children's Commissioner's role in undertaking service evaluations and looking at the implementation of policy, the Commissioner's office should take on the role of

the former Welsh Committee of the AJTC and observe school admission and exclusion appeal hearings from time to time to monitor compliance with Welsh Government guidance;

Recommendation 23) the Welsh Government should produce information and guidance for parents and young people concerning school admission and exclusion appeals (including an explanation of the role of the Children's Commissioner) and make it available on the Law Wales website;

Recommendation 24) The Welsh Government should explore the merits of extending the jurisdiction of the Special Educational Needs Tribunal for Wales (suitably renamed as the Education Tribunal for Wales) to create a national tribunal for school admissions and exclusion appeals within the next 5 years;

Recommendation 25) the main provisions of the Draft Public Services Ombudsman (Wales) Bill be enacted by the next Assembly;

Recommendation 26) the Welsh Government retains the National Advice Network beyond the summer of 2016 to support the strategic coordination of advice services for the longer term;

Recommendation 27) the Welsh Government retain a specialist advisory body on administrative justice issues with powers to observe the operation of redress systems and practice for the longer term (perhaps as a subgroup of a successor body to the Justice Stakeholder Group which was set up by the Minister for Public Services in July 2015 and is due to complete its present remit shortly);

Recommendation 28) the Welsh Government introduce general guidance and minimum standards for the operation of ad hoc redress schemes in Wales; ensure that all proposed new redress schemes are reviewed by the Welsh Government's Justice Policy team, with the necessary legal support; and that appropriate monitoring mechanisms to ensure conformity and consistency are in place;

Recommendation 29) that the governance arrangements for ad hoc schemes ensure that responsibilities for the effective operation of the scheme are straightforward and clear and ensure consistency on a Wales-wide basis;

Recommendation 30) the Welsh Government's Continuing NHS Healthcare National Framework for Implementation in Wales, 2014 should be updated without delay to provide clearer guidance on the conduct of appeal panels and that consideration be given to the appointment of a legally qualified Senior Panel Chair;

Recommendation 31) the Welsh Government provide more widely available information about the DAF scheme for research and wider policy purpose; and that Welsh Ministers and the PSOW consider whether onward appeals from the Discretionary Assistance Fund for Wales should be transferred to the Public Services Ombudsman for Wales when the scheme is next reviewed;

Recommendation 32) we invite Welsh Ministers to communicate the following recommendations to the National Assembly and the Assembly Commission, that:

- professional development in administrative justice issues is made available for Committee chairs and the commission staff supporting them;
- cross-party focus groups be offered for AMs to examine the links between their constituency work and the operation of the administrative justice system in Wales;
- Assembly Commission advice to members supports a coherent, principle-based approach to new and existing redress and appeal mechanisms;
- the National Assembly considers nominating a Committee to scrutinise the operation of devolved Welsh tribunals and ad hoc Welsh appeal schemes;

Recommendation 33) the Welsh Government works with MoJ, HMCTS, DWP, UKBA, HMRC and other UK Government departments to ensure that data concerning Wales in UK or GB redress systems can be separately identified and made available to elected representatives in Wales;

Recommendation 34) that the Welsh Government consults stakeholders generally on the recommendations contained in this report;

Recommendation 35) that the Welsh Government considers our suggested principles template, offer their own proposals for consultation and, during the course of 2017, publicise a final version that will stand the test of time as the cornerstone of a distinctively Welsh approach to Administrative Justice.

The purpose of this report

1. This is the final report of the Committee for Administrative Justice and Tribunals, Wales (CAJTW). The Committee as presently constituted will cease to exist in March 2016. The report sets out the Committee's recommendations for ongoing monitoring, reform and evolution of the administrative justice system in Wales over the life of the Fifth Assembly from 2016 to 2021. The report highlights the significance of administrative justice, which is best understood as a cornerstone of social justice, and focuses on the following themes:
 - promoting administrative justice as a driver for public service improvement;
 - enabling the voice of Welsh citizens to be better heard through the system of redress;
 - next steps in Welsh tribunal reform; supporting the Welsh Government in the continuation of its reform agenda for the devolved Welsh tribunals;
 - adopting a principle-based approach to development of the administrative justice system in Wales;
 - achieving greater political engagement with administrative justice issues;
 - the Assembly's legislative and scrutiny roles (National Assembly for Wales and Assembly Commission).
2. This report is informed by a research project commissioned by the CAJTW and funded by the Welsh Government¹ with a contribution from the UK Administrative Justice Institute.² The research was undertaken by Dr Sarah Nason of the University of Bangor, School of Law. The findings of the research are set out in a report by Dr Nason entitled '*Understanding Administrative Justice in Wales*' ('the Bangor report') published on 17 November 2015. The Bangor report provides the first comprehensive overview of the administrative justice system in Wales and should be seen as a companion document to this report. We have drawn upon the research findings in this report but to complement Dr. Nason's comprehensive analysis we have taken a selective approach in order to highlight particular issues and to make a series of recommendations which we believe are appropriate, realistic and achievable goals for Wales over the next 4-5 years. Our proposals imply quite a lot of work and some resource. As a purely advisory Committee we have not conducted a cost benefit analysis and regard this as a matter for the Welsh Government. However the potential for embarrassment is very real if the rate of progress achieved in recent years is not maintained.

¹ The research took place during 2015 and included a stakeholder analysis, literature review and a series of workshops and conferences for the policy, practice and research communities

² <https://ukaji.org/>

About the CAJTW

3. The CAJTW was set up by the Welsh Ministers on 1 November 2013 for a 2 year period which the Welsh Ministers subsequently extended to 31 March 2016, to act as a ‘guardian of the public interest with regard to administrative justice in Wales’, to provide expert advice and seek to ensure that the needs of the user of the administrative justice system in Wales continued to be paramount. It had a remit to advise on the administrative justice system in Wales, ensure that the interests of users of the system are represented, and promote good practice amongst practitioners (see Appendix 1). The CAJTW is the successor body to the Welsh Committee of the Administrative Justice & Tribunals Council (AJTC), which was set up in 2008 and abolished by the UK Government in 2013. The Welsh Government opted for continuity of membership when it set up the CAJTW and this report is informed by the Committee’s work since November 2013 but also by experience gained by the members through their work for the AJTC since 2008.

What is administrative justice and does it matter?

4. Understood narrowly, administrative justice is about the formal systems of redress available to citizens who feel they have been wronged, most commonly by the state³, especially by the public services it provides and/or sponsors. It is about justice being done and being seen to be done for such people through such processes. Viewed more expansively, it also has a broader “preventive” aspect: it is about getting things right from the outset or putting them right at the earliest opportunity such that formal appellate processes are not needed. From this perspective it is about the clarity of legislation, the quality of initial decision making, systems of review and reconsideration that promptly correct errors, prompt and proportionate ways of handling complaints and appeals, and systematic learning from complaints and appeals such that systems are constantly improved in the interests of users. Even viewed narrowly, administrative justice is clearly important to any philosophy of public service which values social justice. However, an approach to public service that places social justice at its core, as is the case in Wales must inevitably and wholeheartedly embrace the broader view of administrative justice and see it as a vital tool in holding public services to account and improving them so that they constantly give primacy to the interests of users. In short, administrative justice matters a great deal.

³ While many of the tribunal address public service matters, the Residential Property Tribunal for Wales and the Agricultural Tribunal for Wales also address landlord and tenant and some other disputes.

Welsh system of administrative justice?

5. The Bangor report highlights the unique Welsh context and the considerable extent of devolved powers over the administrative justice system in Wales. Underlining the broader view mentioned above it notes that the system:

“extends from ensuring that decisions taken by public bodies are correct at first instance, to ensuring that where incorrect, unlawful or poor decision-making occurs there are avenues to have this redressed in as swift and appropriate manner as possible, and that where things have gone wrong, public bodies and others learn and improve. Administrative justice in Wales should be seen in light of devolution, a developing distinct Welsh legal jurisdiction, and reform of local government and public service delivery.

The UK has at least three systems of justice: private civil justice (relationships between private individuals and between corporate bodies), criminal justice, and administrative justice (typically relationships between individuals and the state). Whilst private civil justice and criminal justice remain non-devolved (with law and administration largely shared with England) much of administrative justice is devolved. The National Assembly for Wales (the Assembly) has competence to make laws in 21 devolved subjects, each of which concerns the relationship between citizens and the state. Alongside these competencies the Assembly and Welsh Government have developed various redress mechanisms to ensure that laws are enforced and that maladministration is addressed. In areas such as housing, education, health and planning, Wales now largely has its own administrative law and the Welsh Government has responsibility for relevant justice policy and daily administration.”

6. However, there is a risk that the opportunity to develop a distinctive Welsh approach will not be taken due to a limited understanding of the issues and the extent to which powers are already devolved. The Bangor report noted that:

“There is a lack of understanding about the breadth of administrative justice ... [it] ... extends to the roles of public bodies, ombudsmen, commissioners, statutory complaint handlers, politicians and advice service providers (among others).”

“In Wales this lack of awareness includes a limited appreciation (among professionals as well as the wider public) of which aspects of the administrative justice system are devolved and which are not. It is necessary to raise awareness of administrative justice in Wales as part of a broader account of social justice defining relationships between citizens and the state. This is particularly important due to specific characteristics of Wales such as its comparatively large public sector, political commitments, demographic make-up and the as yet limited development of its public administrative law advice services sector.”

7. We recommend that:

- **(Recommendation 1) the Welsh Government continues to build upon the work of the CAJTW and Bangor Law School by encouraging the establishment of a centre of administrative justice expertise in one or more Welsh Universities, to continue to promote wider understanding of the unique characteristics of the Welsh administrative justice system, to promote further research in Wales and to highlight new opportunities for reform already within the powers available to the National Assembly;**
- **(Recommendation 2) the Welsh Government promotes future research into the Welsh administrative justice system to include ‘mapping’ of the system, following similar recent exercises in Northern Ireland and Scotland, both to promote better understanding of the system and to inform policy making and scrutiny.**

Public service performance in Wales – the challenges

8. Administrative justice begins with good initial public decision-making. In June 2011 the AJTC published a report, *Right First Time*, which highlighted the fact that public bodies can save money and improve the quality of service to citizens by making fewer mistakes and learning more from those they do make. It said:

“It must be better to get things right in the first place rather than having to put them right through expensive and stressful appeal and complaint processes.”

9. In April 2013 the Welsh Government set up the Williams Commission on Public Services Governance and Delivery. The Commission, which reported in January 2014, described the challenges the public sector in Wales faces: the sustained pressure on public sector budgets; fundamental and long-term changes in service demand: and in increase in public expectation for quality services.
10. Overall, the Commission concluded that the public sector is too crowded and too complex to cope with the severe pressures that will continue to be placed on it; many public organisations in Wales are too small; many organisations are slow to respond to pressure for change; values and cultures within the Welsh public sector are not aligned to meet current and future challenges; and that the performance of our major public services is “poor and patchy.” The Commission went on to say that the problems are systemic, affect the whole of the public sector, and must be understood and addressed accordingly. It recommended a shift in the emphasis of public service towards co-production and prevention: designing and implementing solutions which sustain long-term well-being and which prevent rather than respond to critical situations.
11. Complaints about public services in Wales have been rising. There may be many explanations for an increase in complaints and recent data suggest that satisfaction with public services in Wales remains high. Nevertheless, the reasons for rising

complaint levels need to be analysed if they are to be properly understood. It is important to respond to all complaints by assessing whether there are underlying systemic causes that should be addressed. To respond in this way requires an organisation wide culture of learning from complaints that does not see them as a problem - and especially not as a basis for allocating blame (except in a relatively few instances) - but as an opportunity to see services from the user perspective and as a platform for continuous improvement. However, the Bangor report noted that:

“Examples of defensiveness by public bodies were given by a range of respondents to the current research including legal practitioners, other advice providers, and elected representatives. The most common cited examples were of defensiveness in health and education bodies, local government and the police.”

12. Work has been taking place in Wales to improve complaints handling. *Complaints Wales*, a telephone and web based signposting service offering advice on how to complain about a public service, was launched in 2011. Originally an idea of the Welsh Government the service is provided independently by the office of the Public Services Ombudsman for Wales. In 2011 the Welsh Government also introduced new arrangements for the management of concerns relating to the NHS in Wales: *Putting Things Right*. It aimed to make it easier for patients and carers to raise concerns and introduced a single more integrated approach bringing together the management of complaints, incidents and claims, based on the principle of ‘investigate once, investigate well’. The new arrangements were reviewed in 2014⁴ and a number of recommendations were made with a view to helping the NHS in Wales to use complaints as an opportunity to improve the way it provides healthcare in the future.

Towards a ‘right first time’ approach and ensuring the voice of the citizen is heard

13. Public service improvement remains a priority for Wales and in this report we seek to illustrate how the administrative justice system has a key role to play in embedding continuous improvement: a role that has not yet been fully recognised. In October 2014 the Welsh Government published its Response to the Williams Commission’s report, entitled *Devolution, Democracy and Delivery - Improving public services for people in Wales*. In addition to outlining an action plan the response set out a ‘vision’ for public service reform in Wales which included the following:

“Our public services rely fundamentally on strong democracy for their governance. Those ultimately making decisions on the provision of public services are chosen by, and accountable to, the people who elected them. It

⁴ Review of concerns (complaints) Handling within NHS Wales – “Using the Gift of Complaints,” conducted by Keith Evans

is essential that people use their vote and their voice actively to influence the services they benefit from. People need to be confident that those responsible for making and scrutinising decisions are acting in their interests, are able to provide effective leadership to the delivery of the services and are representative of the communities they serve.”

14. The Welsh Government also published a 20 point Action Plan (Appendix 2) to support its vision. We share this vision and believe that an effective administrative justice system in Wales can contribute to the Welsh Government's plans to drive up standards of performance of public services and enable Welsh people to use their voice to influence service provision and decision-making. The administrative justice system gives Welsh citizens an opportunity for their voice to be heard concerning the operation of public services more frequently than through the ballot box. The strengthening of redress systems should therefore be seen as an important element in addition to audit, inspection and regulation processes to strengthen performance management. The administrative justice system can be strengthened by taking a principle-based approach to its operation which should be considered alongside work on performance measurement and performance indicators. The Bangor report proposed a draft set of principles for administrative justice in Wales (Appendix 3). They are most helpful. We have taken the liberty of re-working them, and shall set them out later in this report.
15. Welsh councils have a central part to play in improving public services. In November 2015 the Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC) published a report entitled *Making Decisions Fairly - Developing excellence in administrative justice in Scottish councils*. The report highlighted the volume of administrative justice decisions made by devolved public bodies in Scotland and focused specifically on decisions made by local authorities. In addition to emphasising the importance of frontline staff having the necessary knowledge and skills, the report also focused on the key role Council members have in councils administrative justice processes. It said:

“Council members have a key role in improving administrative justice in setting policy, helping constituents and holding officers to account. They are involved in administrative justice decisions in four main areas:

- they make council policy decisions, usually based on a statutory power, but with locally determined policy priorities. Council staff decisions need to be made within relevant legal parameters and consistently in line with the policy set by members;*
- they provide advice and support to their constituents and local businesses on administrative justice issues at their local surgeries;*
- they hold council officers to account for the effective delivery of council services in line with council policy;*
- they may make administrative justice decisions directly in some areas, for example planning, and as part of appeals processes, for example in social care. Where council members are directly involved in decision-*

making, it is important that they receive specific training to ensure that they are fully aware of their roles and responsibilities.”

16. STAJAC also explained that:

“councils can take action to improve customer satisfaction and experience. By doing so, councils can improve the quality of services, reduce the number of appeals and complaints, reduce risks to their reputation and reduce costs. They can do this by:

- providing service users with good information on the decision-making process;*
- employing skilled front-line staff and empowering them to make decisions within clear policy and legal limits;*
- having an accessible and easy-to-understand appeals process*
- resolving appeals in a timely manner;*
- providing service users with alternative means of resolving disputes, including mediation, dispute resolution and advocacy services;*
- learning lessons from complaints and appeals and using these to improve service.*

17. We believe that the STAJAC analysis applies equally to the Welsh context and can make a valuable contribution to Welsh plans. We recommend that the following should be taken into account when implementing the Welsh Government’s action plan (see Appendix 2) to improve public service delivery in Wales:

- (Recommendation 3) that work to strengthen audit, inspection and regulation processes should be supplemented with work to promote ‘right first time’ decision making, effective redress mechanisms and organisational learning from complaints and appeals;**
- (Recommendation 4) that leadership training in Wales should promote a better understanding of administrative justice issues, to include training for Council members directly involved in decision-making and the senior officers advising them in their role and responsibilities;**
- (Recommendation 5); that the Welsh Government should evaluate if the Wales Complaint Board recommendations have been adopted by Public Bodies and to identify if they are being operated in the spirit in which they were made;**
- (Recommendation 6) that the Welsh Government should review whether the complaints and appeals system in Wales, which has evolved in an ad hoc and piecemeal way, contains any significant gaps.**

Devolved tribunals in Wales - developments since 2010

18. In January 2010 the predecessor of the present committee, the Welsh Committee of the AJTC, published a *Review of Tribunals Operating in Wales* concerning devolved tribunals operating in Wales. The Foreword to the 2010 report explained that:

“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.”

19. The core recommendations of the report were that:

- the Welsh Assembly Government (as it then was) establishes a focal point for administrative justice in the Department for the First Minister and Cabinet;
- 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;
- 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;
- the Welsh Assembly Government and Local Authorities consider the appropriate amalgamation of Welsh tribunal jurisdictions according to subject matter;
- the judicial leaders and administrators of each Welsh tribunal work together on issues of common interest and towards implementing the recommendations in [the AJTC’s 2010] report;
- the National Assembly scrutinise and monitor the Welsh Assembly Government’s implementation of the recommendations in this report, including holding a debate in plenary.

20. The Welsh Government was supportive of the report and its recommendations and a new unit (WTU) was immediately set up in 2010 to support the operation of most

Welsh Tribunals and to be a focal point for developing policy. In a phased programme the administrative functions of a series of Welsh Tribunals were transferred to the AJTU between 2011 and 2013: the Special Educational Needs Tribunal for Wales (SENTW); Registered Inspectors of Schools Appeal Tribunal; Adjudication Panel for Wales; Registered Nursery Education Inspectors Appeal Tribunal; Agricultural Land Tribunal for Wales; Mental Health Review Tribunal for Wales and the Residential Property Tribunal for Wales. In 2014 the first tribunal created by the Welsh Government under legislation enacted by the National Assembly, the Welsh Language Tribunal, was located administratively within the new unit.

21. The key recommendation of the 2010 report, the creation of a focal point within the Welsh Government, had therefore been achieved and the programme of consolidation between 2011 and 2013 brought together most of the tribunals for which Welsh Government provides the administrative support. This had the major advantage of rationalising a series of very small administrative units and enabling a variety of operational improvements to be made. Ministerial portfolios in relation to justice issues are now clearer, with the First Minister responsible for all tribunals and the Minister for Public Services responsible for justice policy.

Devolved tribunals in Wales - next steps

22. The Welsh Government conducted a review of devolved Welsh tribunals between October 2013 and February 2014. Tables showing the Constitution and Functions of the Welsh Tribunals and a summary of their respective roles (prepared by the Welsh Government) are at Appendices 4 & 5. One of the first achievements arising from the review was the separation of policy and administrative functions, with the WTU retaining functions focused on tribunal administration and a new Justice Policy team being established. The review generated a number of other policy and operational recommendations to inform the further development of devolved tribunals over the longer term. Some of the recommendations have been implemented and are now business as usual; others are currently in the process of implementation. Others will remain potential goals about which decisions need to be made in the longer term informed by wider developments concerning the Welsh devolution settlement.
23. The Welsh Government's review took place at a time when significant developments were taking place in tribunal reform in Scotland. The Scottish Government has sought to modernise devolved tribunals and the Tribunals Scotland Act 2014 created a two-tier framework for tribunal reform (along similar lines to that created for tribunals operating in England and Wales and on a Great Britain and UK-wide basis in the Tribunals Courts and Enforcement Act 2007). The aim was to establish an efficient and effective Scottish Tribunals Service by merging the administration of devolved tribunals and through the further devolution of reserved tribunals. There are of course significant differences between the administrative justice systems in Wales and Scotland and we do not envisage that a comparable restructuring is necessarily appropriate or a realistic prospect for devolved Welsh tribunals over the life of the

next Assembly. However, in this report we outline the areas we regard as priorities and achievable goals for the period 2016-2021.

24. *Judicial leadership, judicial appointments, training and discipline* - The AJTC's 2010 report made a number of subsidiary recommendations that it envisaged would be carried forward through collaboration between Welsh 'judicial leaders' and senior tribunal administrators in Wales. However, the absence of effective collaboration has been one of the most disappointing aspects of the reform process since 2010 and in our view is a priority for further reform in 2016 and beyond. Progress has been made but has been hampered by three main issues, which are still in the process of being resolved:

- the absence of a judicial leader in the devolved tribunals able to represent all the devolved jurisdictions with whom the Welsh Government needs to engage on practical justice administration issues;
- the absence of an effective forum for judicial leaders in Wales;
- the only partial existence of formal agreements between the Welsh Government and the Judicial Office (JO), Judicial Appointments Commission (JAC), the Judicial College and Judicial Conduct Investigations Office (JCIO) concerning links with or support for the devolved tribunals.

25. A Welsh Tribunal Contact Group (WTCG) was set up in April 2011 with secretariat support by the Welsh Government to enable judicial and administrative representatives from both devolved and non-devolved tribunals operating in Wales to meet and discuss matters of common interest and concern. The WTCG was chaired by the Senior Tribunals Liaison Judge for Wales (nominated by the Senior President of Tribunals). It was intended to meet three or four times a year and the Senior President of Tribunals was to attend annually. However, issues of common interest between the presidents of devolved Welsh tribunals and the regional chairs of GB tribunals appeared to be limited, so meetings were of limited value. The Contact Group did not meet at all in 2015. An additional forum for the judicial leaders of most of the devolved tribunals (i.e. those directly administered by the Welsh Government) with secretariat provided by the WTU, was initiated in the autumn of 2015. Terms of reference for this forum are under discussion and this may provide a valuable step forward.

26. We believe it is important that the users and the legal professions should have confidence that systems in Wales deliver at least as good a quality of justice as in England. This implies that the Welsh approach to such matters as judicial appraisal and discipline should be consistent across all Welsh tribunals and capable of passing a 'parity' test against arrangements in England. Arrangements need not be the same but those in Wales should be at least of equivalent standard. The anomalous position of devolved tribunals has caused problems for the tribunal judiciary as although the Welsh judiciary are in effect 'tied in' to the England and Wales institutions (the Judicial Office, Judicial Appointments Commission, Judicial College and Judicial Conduct Investigations Office) it has not been clear in all cases whether a relationship with devolved tribunals existed or how the relationship should

work. The Committee has been concerned that the small relative size of the devolved tribunals and the relative complexity of their position have hampered progress in putting formal arrangements in place.

27. However, we are pleased that good progress has begun to be made in this area. The creation of the Justice Policy team within the Welsh Government in 2014 has enabled some issues to begin to be progressed. At official level in the Welsh Government good working relationships are being established with the Judicial Office. The Lord Chief Justice has certain statutory duties in respect of a number of judicial office holders appointed to the devolved Welsh tribunals and, in recognising that there should not be a divergence in standards between those judges sitting in devolved tribunals and those sitting in courts and reserved tribunals, is exploring ways in which resources and services can be aligned. The Judicial Office provides support to devolved Welsh tribunal members in a number of ways including, promoting and facilitating engagement with other arm's length bodies, and providing tribunal members with access to the judicial portal and secure communication networks, making available judicial office guidance and support to tribunal members. The WTU is also working with the Judicial College and the JCIO to establish formal working arrangements concerning training and handling of complaints concerning conduct. The Welsh Government has established an agreement with the Judicial Appointments Commission for the independent selection and recruitment of devolved Welsh tribunal members on behalf of Welsh Ministers. We welcome the progress that has been made in this area although the agreement with the JAC extends only to appointments on behalf of the Welsh Ministers, to bring those appointments in line with Lord Chancellor appointments which the JAC has a statutory duty to undertake. We wish to see a consistent arrangement for all Welsh tribunals. The Valuation Tribunal for Wales (VTW), referred to later in this report, is a significant exception as the President of the tribunal is elected rather than appointed on behalf of the Welsh Ministers.
28. Judicial training in England and Wales is provided or facilitated by the Judicial College and the College has a Wales Training Committee. Welsh language issues have been a priority for the Committee in the past but it is now responding to the increased legislative activity by the National Assembly in order to identify the consequential training needs of members of the judiciary who sit in Wales. The current terms of reference of the Wales Training Committee are limited to the training needs of the 'HMCTS judiciary' i.e. the judiciary sitting in the courts and in the non-devolved tribunals, and do not formally extend to the devolved tribunals although we understand that in practice the Committee does provide some support to the devolved tribunals. We welcome this but believe that arrangements need to be put on a more formal footing so that the nature of the relationship between the Judicial College and the devolved tribunals is clear. However, in any event we do not think it is realistic for devolved tribunals to be wholly reliant on the Judicial College, a body based outside Wales and with other priorities, for identifying training needs and for fulfilling all training requirements. The Judicial College operates in a mainly facilitative role and would not expect to be the sole provider of training. A more proactive Wales-based approach needs to be taken so that Welsh training priorities are being identified in Wales, perhaps in collaboration with Welsh law

schools. A training strategy developed in Wales could take account of needs arising both from new legislation and turnover of post holders and provide greater clarity in discussions with the Judicial College as to the nature of the support required. It may also be the case that training materials should be increasingly developed within Wales in consultation with the Judicial College to ensure that standards are maintained. There will also be an increasing need for members of the judiciary and practitioners in England and Wales to understand the impact of changes in Welsh law. There will be a valuable role for Welsh law schools and others in Wales to produce explanation and commentary aimed at audiences in both England and Wales on legislative changes emanating from the Assembly.

29. There are also gaps in the formal arrangements concerning the handling of complaints about a judicial officeholder's personal conduct in devolved tribunals. The Judicial Conduct Investigations Office (JCIO) (formerly the Office for Judicial Complaints) supports the Lord Chancellor and the Lord Chief Justice in their joint responsibility for judicial discipline. The JCIO operates in accordance with the Judicial Discipline (Prescribed Procedures) Regulations 2014 and the supporting rules. Its jurisdiction extends to the GB tribunals operating in England and in Wales, to those members of the judiciary in the devolved tribunals who are appointed by the Lord Chancellor, the Welsh Language Tribunal and the Valuation Tribunal for England. However, its remit does not extend to the Adjudication Panel for Wales or to the Valuation Tribunal for Wales. These gaps need to be addressed.

30. We have argued that Wales needs a Senior Judicial Lead, an existing Welsh judge exercising the relevant functions on an occasional basis, who would fill the gaps in the current arrangements and:

- act as a focus for necessary discussions with government, utilising his/her overview of the system in Wales to offer informal advice to the Welsh Government when, for example, a new tribunal is being developed;
- provide structure and support for the Welsh tribunal judiciary;
- encourage judicial development and effectiveness and if necessary directing best practice;
- chair a forum of devolved Welsh tribunal leaders;
- support work to ensure that formal agreements are in place concerning judicial appointments, judicial discipline and judicial training.

31. We therefore recommend that:

- **(Recommendation 7) the Lord Chief Justice appoints an existing Welsh judge to act as Senior Judicial Lead for devolved Welsh tribunals;**
- **(Recommendation 8) protocols are developed for WTU-administered tribunals to clarify relationships between tribunal Presidents, the Senior Judicial Lead (if appointed) and the administration;**
- **(Recommendation 9) all devolved Welsh judicial appointments should be subject to a standard procedure agreed between the Welsh Government and Judicial Appointments Commission;**

- **(Recommendation 10) a comprehensive set of formal agreements between the Welsh Government and the JAC, Judicial College and JCIO, or a single comprehensive agreement with the Judicial Office, is reached so that roles, responsibilities and relationships are clear in all cases;**
- **(Recommendation 11) the Welsh Government should undertake a ‘parity test’ covering all devolved Welsh judicial appointments, training, appraisal and disciplinary arrangements to ensure that satisfactory standards at least as demanding as elsewhere in the UK are consistently in place.**

32. *Greater transparency and Wales-wide collaboration between administrators* - significant improvements in the administration of devolved Welsh tribunals have been achieved since 2010. An effective and unified management structure is now in place for the 30 staff supporting the consolidated devolved tribunals administered by the Welsh Government and collaboration with HM Courts and Tribunals Service (HMCTS), including the secondment of a member of staff, has given the WTU access to valuable specialist expertise. IT systems and management information capability is being upgraded and the Welsh Government has also created websites for several WTU-administered tribunals. Resources have been provided to the Presidents of those tribunals to enable the production of Annual Reports.

33. However, no apparent collaboration yet takes place concerning justice administration issues across the different Directorates within the Welsh Government. Precise numbers are not known but there are thought to be around 80 staff in total in Welsh Government posts or Welsh Government-sponsored posts working full-time on the administration of justice either supporting individual tribunals or ad hoc redress schemes. These include the 20 staff of the Valuation Tribunal for Wales and the 24 Welsh staff of the Planning Inspectorate (PINS), a joint Executive Agency of the Department for Communities and Local Government (DCLG) and the Welsh Government. In Wales PINS has responsibility to the Minister for Natural Resources for delivering key elements of the planning system under planning, housing and associated legislation. It also administers appeals on behalf of other departments or agencies of government on a range of topics, such as Rights of Way, Commons, Wayleaves, and Highways. The inquiries conducted by Planning Inspectors are an integral part of the administrative justice system in Wales and have many characteristics in common with tribunals (differences from devolved include its joint sponsorship arrangements and the sharing of its administrative resources with Department for Communities and Local Government (DCLG)-sponsored unit for England based in Bristol. A joint Annual Report is published and brought to the attention of both DCLG Ministers and the Welsh Ministers.) Notwithstanding its unique features, PINS Wales has valuable experience in the administration of justice closely related to the work of tribunals and as such is a valuable potential resource for Welsh Government colleagues.

34. We understand that the Welsh Government has established an internal Justice Forum, bringing together officials from across the organisation to share information on justice policy matters. We believe that a comparable forum for senior tribunal administrators, focused on operational matters, needs to be put in place. The

absence of wider collaboration means that opportunities for efficiency gains, for example through the sharing of administrative resources or hearing venues, are not being taken. Welsh expertise is also not being effectively shared. For example, PINS Wales has expertise of online appeals processes, recent pilot schemes to expedite cases, a user survey, a complaints system and work on quality that could usefully be shared. Colleagues in the VTW and WTU also have valuable expertise to share and a variety of issues and challenges will be common across jurisdictions.

35. Although the improved web presence and the introduction of Annual Reports has been a valuable step forward there is scope for further progress to be made. The web pages for tribunals administered by the Welsh Government are not easy to locate on the Welsh government website and the VTW has a separate website and produces stand-alone Annual Reports. Data on the local authority based system concerning school admissions and exclusions appeals are simply not available on a Wales-wide basis as they are held in local authorities and are not collated nationally.
36. Better information concerning volumes and patterns of appeals to devolved tribunals would presumably be of interest to National Assembly members and commentators in Wales and inform work to improve standards. As the volume of cases in Wales is low, readership for an Annual Report relating to a single jurisdiction is likely to be limited. In the England and Wales system, a unified Annual Report covering the performance of all court and tribunals is produced by HMCTS and the Senior President of Tribunals produces an Annual Report covering all tribunal jurisdictions and including commentary from individual Chamber Presidents. We believe that a similar unified approach would be valuable in Wales to promote a better understanding of the Welsh administrative justice system. We also believe that the Assembly should be better informed about issues and trends within the devolved tribunals so that it is able to perform a scrutiny function and that better data should be available to inform policy-making.
37. The Law Wales website, established by the Welsh Government in collaboration with Westlaw in July 2015, is a valuable step forward and a potentially valuable source for citizens, practitioners, elected members and their advisers but it is still a work in progress. Although the tribunals administered by the WTU and the VTW almost all have a web presence and produce Annual Reports these are not yet referred to on the Law Wales website and are not yet linked to it. The website also has potential to provide information concerning both devolved tribunals and ad hoc appeals schemes established by the National Assembly including the Retrospective Continuous Healthcare Appeal Panels, and Discretionary Assistance Fund appeals.
38. The Bangor report produced the first detailed description of the administrative justice system in Wales but it appears that there are few incentives for Welsh universities to promote academic work which will help support the development of the Assembly as an effective legislature. It will be important to maintain and build upon the effectiveness of the National Assembly as a legislature both by ensuring the effectiveness of the implementation of new legislation and by learning through the review of past successes and failures. New legislation needs to be accompanied by awareness and guidance materials and the academic community should be

incentivised to contribute to the development of a Welsh literature providing commentary on Welsh legislative initiatives as they apply both in and beyond Wales.

39. We therefore recommend that:

- **(Recommendation 12) a forum for senior administrators in Welsh Government-sponsored or funded tribunals and appeals schemes, chaired by a senior official in the Welsh Government, should be established to promote greater collaboration, sharing of best practice and the identification of opportunities for administrative efficiencies;**
- **(Recommendation 13) that information about PINS Wales and PINS Wales' annual reports are made available via the Law Wales website;**
- **(Recommendation 14) all Annual Reports of Welsh Government sponsored tribunals be presented to the Welsh Ministers, publicised effectively and also made available via the Law Wales website;**
- **(Recommendation 15) the Welsh Government presents commentary on the performance of devolved tribunals in a format enabling proper scrutiny by the Assembly;**
- **(Recommendation 16) arrangements are made for reports concerning ad hoc Welsh appeal schemes to be made available to the National Assembly in an informative and accessible way;**
- **(Recommendation 17) the Justice Policy capability of the Welsh Government be further expanded to promote greater consistency across all policy areas;**
- **(Recommendation 18) the Law Wales website be further developed to include information for practitioners and citizens on all devolved Welsh tribunals and ad hoc appeal schemes, and access to annual reports of statistical data for all tribunals and schemes should be available through the site;**

40. *Other tribunals in Wales* - The Welsh Government has carried out feasibility studies to explore whether three other significant devolved tribunals, the VTW and School Admission and Exclusion Appeal Panels, should also be administered by the WTU. No decisions have been made by the Welsh Government in this regard and we set out below our recommendations for these three jurisdictions.

41. The VTW is a devolved Welsh tribunal sponsored by the Welsh Government. The governance arrangements for the tribunal are set out in the Valuation Tribunal for Wales Regulations 2010 as amended in 2013 and 2014 ('the 2010 Regulations'). The jurisdiction of the VTW includes appeals against the valuation of property for non-domestic rates, council tax and drainage rates. It is funded by the Welsh Government on an annual budget basis under a framework agreement. The budget of the tribunal for 2015-16 is approximately £1.2 million and it has 20 staff based in three locations in Llandudno, Swansea and Newport. Although the tribunal receives a relatively large number of cases from the Valuation Office Agency (VOA) only a small proportion of these need to be decided by the tribunal, as "appeals" are automatically generated by the VOA system rather than lodged by the affected

citizen. In 2014-15 a total of 1433 cases were decided by the tribunal but 6652 cases were settled without recourse to the tribunal. It is inappropriate and creates unnecessary administrative burden for all cases to be handled as if they were to generate a tribunal hearing. Significant administrative cost savings could be made. While Wales may or may not choose to follow the same path as England, considerable savings have been made in the Valuation Tribunal for England in recent years and the merits of the steps taken to achieve these should at least be considered.

42. The members of the tribunal are volunteers and numbers vary between a minimum of 186 and maximum of 236 required by regulations. The President of the tribunal, the members of the Governing Council, the tribunal's Committees dealing with particular policy areas and tribunal Chairs are all elected by the membership. It would seem that there is no realistic prospect that the VTW could be transferred to and administered by the Welsh Tribunal Unit within the next five years. There are substantial logistical hurdles linked, inter alia, to the tribunal's IT system which is linked to the VOA and to the pension arrangements of the VTW staff. However closer working relationships between the VTW and the WTU could ensure a more efficient use of the total resource, particularly where staff are co-located. The Committee believes that other steps can also be taken, in particular that the 2010 Regulations can and should be amended.
43. There are several problems with the current governance arrangements of the tribunal. Local authorities have a role in the appointment of members and this undermines the appearance of independence of the tribunal as local authorities clearly have an interest in the outcome of cases. Although the Welsh Government is entitled to be represented on the Governing Council it presently nominates a Councillor as its representative, further undermining the appearance of independence of the tribunal from local authorities. Also, although the membership is unpaid there are significant staff costs associated with the cumbersome election procedures and the travel, subsistence and training costs incurred by the membership - which is kept artificially large in comparison with the number of cases to be decided due to constraints set out in the regulations.
44. There are also concerns about the age profile of the membership in a tribunal which unusually has no retirement age (it was abolished in 2004⁵). Nearly half the membership is currently over 70 and the percentage of members who are over 80 (6.4%) is substantially larger than the percentage of those under 40 (1.1%). Age itself may not be a definitive criterion, but the age and gender profile of the tribunal is not at all representative of the user population. The minimum complement of members set by regulations (182) is also clearly a problem for a tribunal that is currently only deciding around 1500 cases a year. Revaluation work for 2017 currently being undertaken by the VOA is expected to generate a future increase in caseload but there is a difficulty in ensuring that the membership remains "match fit" with little opportunity for all members to sit on a regular basis.

⁵ The Valuation Tribunals (Wales) (Amendment) Regulations 2004, 2004 No. 1312 (W. 138) removed the previous provision that a member of a tribunal will cease to hold office once attaining the age of 72 years.

45. The system of election of valuation tribunal chairs, the tribunal presidents and members of the Governing Council is an anachronism and, as far as we are aware, unique in tribunals in England and Wales. They should be replaced by a merit-based appointment system in keeping with modern good practice. Furthermore, although the 2010 regulations introduced a national tribunal for Wales they retained the organisational structure of the four previously independent discrete Welsh valuation tribunals. Each of the four regions has a Regional Clerk, responsible for planning and controlling the appeal work arising in their geographical area and supervising their own small teams of staff. This results in a top-heavy management structure for the tribunal staff and increases accommodation costs as staff are not co-located. The Governing Council comprises representatives of each region, each of whom must be elected along with the deputy, generating administrative costs.
46. We also believe that the seniority and experience in tribunal administration of the VTW staff needs to be recognised as a valuable Welsh resource and that there should be greater collaboration between administrators of the devolved Welsh jurisdictions. Indeed, we would argue that even though formal incorporation of the VTW into the WTU is problematic an informal arrangement flexibly and efficiently to deploy staff across the two bodies should be possible.

47. We recommend that:

- **(Recommendation 19) the 2010 Regulations be amended to reform the governance arrangements for the tribunal so that the tribunal is able to adapt to a more economical operating model reflecting current financial constraints and is able to demonstrate greater independence from the Welsh local authorities which have a vested interest in the tribunal's decisions. Reforms to the tribunal should include the:**
 - **appointment of a part-time (up to 5 days per month), remunerated President of the tribunal by Welsh Ministers using Judicial Appointments Commission procedures;**
 - **removal of any local authority involvement in the appointment of members;**
 - **removal of a statutory minimum and maximum number of members;**
 - **reintroduction of the retirement age of 72 for members;**
 - **introduction of fixed terms of appointment for members;**
 - **replacement of the current regional administrative structure with three offices with a structure reflecting the national nature of the tribunal;**
 - **efficient use of administrative staff across the VTW and WTU;**
 - **appointment of a Welsh Government official to a reformed management board in place of a Councillor;**
 - **introduction of a merit based system for appointing Panel chairs based on an effective appraisal system;**

- flexibility for the tribunal to dispose of settled cases as an administrative process rather than by ‘rubber stamping’ by a panel;
- as soon as an opportunity for legislative change arises, the abolition of automatic listing of “appeals” in favour of appeals being initiated by affected citizens, thereby reducing the artificially large administrative burden.

48. We also recommend that:

- **(Recommendation 20) VTW senior staff should have the opportunity to participate in a forum for senior tribunal administrators established by the Welsh Government and the VTW President should have the opportunity to participate in meetings of the Welsh devolved tribunal judiciary.**

School admissions and exclusions appeals

49. The Welsh Government carried out a study in 2013 into the feasibility of transferring administration functions for school admission appeals and school exclusion appeals currently discharged by the 22 Welsh local authorities into the Welsh Government. A report by Edinburgh University⁶ for the Welsh Government had earlier recommended that a National Appeal Panel should be established in the interests of equality and consistency. The Education (Admission Appeals Arrangements) (Wales) Regulations 2005 as amended set out the requirements for the constitution of panels and a School Admissions Appeals Code issued by the Welsh Government provides additional guidance to local authorities. In 2013 it was estimated that there were approximately 600 school admission appeals in Wales per annum. We are told that data are routinely collected but that they cannot be relied upon as accurate and they are therefore not helpful to policy makers or the Assembly.

50. School exclusion appeals are governed by legislation including the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003 and the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003 as amended. As with school admissions appeals, legislation is supplemented by guidance issued by the Welsh Government to schools and local authorities and the guidance was last updated in April 2015. Panels are chaired by a lay person and the panel (comprising either 3 or 5 members) comprises education practitioners and school governors. The guidance states that panel members must be impartial and should not for example have worked closely with the head teacher or governing body of the excluding school. There were 24 exclusion appeal panel hearings in 2011-12 according to the feasibility study but, again, data are not routinely collected.

⁶ ‘Evaluation of Education Provision for Children and Young People Educated Outside the School Setting,’ a report by Dr. Gilleen McCluskey, Dr. Gwynedd Lloyd, Professor Sheila Riddell, Dr. Elisabet Weedon and Dr. Mariela Fordyce, Welsh Government Social Research, 2013 978-0-7504-9115-0

51. In the Committee's response to the feasibility study we expressed the view that reform of this local authority based appeal system should follow any local government reforms arising from the Williams Commission report. However, the Committee regards this appeal system as exhibiting the characteristics that were criticised by the Williams Commission in the Welsh public sector in general: a system with such a low volume of exclusion appeals is unlikely to be performing optimally when it is administered by 22 different local authorities who each will rarely experience a case. Welsh Government guidance requires that local authorities should ensure that chairs, panel members and clerks receive suitable training and that in appointing a chair local authorities should look to individuals with prior experience in appeal panel work. However, it is difficult to see how local authorities can realistically achieve this requirement given the low number of cases. The Welsh Government issues and maintains guidance for schools and local authorities and provides guidance material schools can offer learners following exclusion but does not produce guidance for parents. It would surely be more effective for local authorities to have access to training in relation both to school admissions and exclusions appeals that is planned and developed centrally and for a central source of information for parents to be publicised by the Welsh Government.
52. The Committee is concerned that although the Welsh Government issues guidance concerning the conduct of appeals, neither policymakers nor Assembly Members have the information to assess compliance and information is not available at a national level about the performance of panels or the geographical spread of cases. Without systematic monitoring of local performance there is a considerable risk that the performance of Panels will not be consistent.
53. In view of the small number of school exclusion appeals and the high proportion of school exclusion cases where special educational needs are also present there is a strong case for adding the school exclusions appeals jurisdiction to the Special Educational Needs Tribunal for Wales, which may in any event be re-named as the Education Tribunal for Wales under the provisions of the current draft Additional Learning Needs and Education Tribunal (Wales) Bill. Such an arrangement has the potential to ensure a professional and independent cadre of panel chairs, and the Annual Reports produced by the tribunal would enable an account of the national picture concerning school exclusion appeals be available. There are presumably a variety of possible models for such a tribunal, ranging from a fully integrated arrangement to one in which the local panels were largely preserved but operated under the oversight of a national tribunal President. Our preference would be to bring both schools appeals systems into a national Education Tribunal but we recognise that this would be a significant challenge.

54. We recommend that:

- **(Recommendation 21) the Welsh Government, in consultation with the Children's Commissioner, should take responsibility for the provision of training for appeal panel chairs members and clerks on a national basis and maintain a list of approved and suitably trained panel chairs for use by local authorities;**

- (Recommendation 22) the Welsh Government and Children's Commissioner should consider whether as part of the Children's Commissioner's role in undertaking service evaluations and looking at the implementation of policy, the Commissioner's office should take on the role of the former Welsh Committee of the AJTC and observe school admission and exclusion appeal hearings from time to time to monitor compliance with Welsh Government guidance;
- (Recommendation 23) the Welsh Government should produce information and guidance for parents and young people concerning school admission and exclusion appeals (including an explanation of the role of the Children's Commissioner) and make it available on the Law Wales website;
- (Recommendation 24) The Welsh Government should explore the merits of extending the jurisdiction of the Special Educational Needs Tribunal for Wales (which may be suitably renamed as the Education Tribunal for Wales) to create a national tribunal for school admissions and exclusion appeals within the next 5 years.

The Public Services Ombudsman for Wales

55. The Public Services Ombudsman for Wales is a key institution in the administrative justice system in Wales, operating under the Public Services Ombudsman (Wales) Act 2005 and the Local Government Act 2000. He has two roles: to investigate complaints made by members of the public who believe they have suffered hardship or injustice through maladministration or service failure on the part of a body in the Ombudsman's jurisdiction; and to consider complaints alleging that members of local authorities have broken their Code of Conduct. The Committee has been pleased to work closely with the present Ombudsman, Nick Bennett, and his predecessor Peter Tyndall, both of whom have attended our meetings as observers.
56. The National Assembly for Wales Finance Committee has recently conducted a consultation exercise concerning the Ombudsman's powers. It has subsequently consulted on a new Draft Public Services Ombudsman (Wales) Bill. We regard the work of the Finance Committee as valuable for two reasons: firstly it is an excellent example of National Assembly Committee engagement with and scrutiny of an aspect of the Welsh administrative justice system; secondly the draft Bill provides for a significant extension to the Ombudsman's powers to include "own initiative" investigations which do not rely on the receipt of complaints from individuals. We share the Ombudsman's view that these additional powers will enhance the effectiveness of the role of the Ombudsman, although we anticipate that additional powers are likely to be used sparingly and based on robust evidence.

57. We recommend that:

- **(Recommendation 25) the main provisions of the Draft Public Services Ombudsman (Wales) Bill be enacted by the next Assembly.**

User perspectives and advice services in Wales

58. The Bangor report suggested that Welsh citizens may have a relationship with public services that is distinct from that pertaining elsewhere in the UK. It said that:

“Research respondents proposed that the people of Wales have historically put great store by the ability of the state to provide for them and have put their trust in the state. It was suggested that there is a culture of assuming the benevolence of public bodies. It was further suggested that people in Wales are proud of their public services and want to work with them rather than against them and that this inevitably has an impact on whether and how people complain. This is not helped by an apparent ‘culture of defensiveness’ on the part of public service providers. In addition to this the economic environment of Wales was noted, most specifically, high levels of deprivation (with higher rates of both in and out of work benefits as compared to Great Britain as a whole). That the Welsh population is comparatively less affluent might also be a factor in low rates of complaining against public bodies, especially through formal legal channels. Deprivation could be connected to more limited education and awareness of rights, and less confidence in pursuing complaints or appeals processes.”

59. The Bangor report also noted that:

“Advice service providers in Wales face a number of challenges, especially in the context of funding cuts and the economic climate more generally, but also in light of the growing divergence in the public administrative law of Wales and England respectively. ... Research respondents argued that Wales lacks a developed public administrative law advice services sector particularly from the complainant’s perspective. However, it was contrarily argued that there is a diverse range of advice services provision in Wales: from smaller agencies providing advice on specialist issues, to more generalist larger scale providers such as Citizens Advice Cymru.”

60. There is a risk that the ‘diverse range’ of advice services in Wales may in fact be a symptom of an unnecessary complexity. However, efforts to fill advice gaps through rationalisation of the sector are unlikely to be universally welcomed. The Bangor report noted that:

“Many advice agencies operating in Wales receive at least part of their funding from the UK Government and this needs to be borne in mind when considering whether limited funding might be a partial cause of some perceived advice gap in Wales (if there is such a gap). Ultimately funding for

access to justice is a problem, and given that the legal aid budget is not devolved there might be limitations on what can be achieved on a Wales only basis. It was also noted (in the context of advice services reform generally) that any notion of pooled budgets across particular advice providers might be cynically viewed. Wherever greater co-operation or integration between different service providers and redress mechanisms is encouraged there is a concern over budgets.”

61. In 2012 the Welsh Government commissioned a Review of Advice Services in Wales. The Review was published in March 2013 and recommended, amongst other things that “Welsh Government should establish a resourced National Advice Network to ensure strategic coordination of advice services, increase shared learning and make best use of available resources.” It further recommended the need for local and/or regional advice networks whose role would include:

- developing joint commissioning approaches for specialist advice services;
- identifying and applying for funding to meet identified gaps in advice provision;
- working together as funders and providers to understand and eliminate the root cause of people seeking advice for areas within their control;
- improving sector wide knowledge and understanding through shared learning;
- improving delivery, e.g. through making better use of new technology, shared referral processes between providers, and targeting resources to reflect the levels and type of advice identified as needed;
- other recommendations included the need for a single quality framework for advice service providers.

62. The Welsh Government subsequently established a National Advice Network in early 2015 and, following advice from the Network, has:

- commissioned an exercise to map the providers of advice in social welfare law, to be completed by the end of 2015 – the results are due to be publicly available on a website from Spring 2015;
- begun an exercise to understand in a consistent and coherent manner the need for advice services across Wales, by client group, subject area and geography;
- commissioned the development of a Quality Framework for Information; Guidance and Advice Services which will build on the existing Quality Schemes used by many existing advice providers – to be completed by February 2016.

63. The Network is expected to publish an “Advice Strategy for Wales” which will be available shortly after the National Assembly elections in May 2016, and which will inform the funding decisions of the Welsh Government, and hopefully other funders, from April 2017. This work will be carried forward after this Committee has ceased to exist but we welcome this initiative and believe that both the establishment of the National Advice Network and the development of an Advice Strategy are important steps to promote the accessibility of the administrative justice system in Wales to

Welsh citizens. Appeals do have a significant effect on issues such as the amount of welfare support received and in light of such major changes in welfare system this has implications for local economies in the poorest areas of Wales. Access to good advice is therefore vital. The National Advice Network is currently expected to conclude its work in autumn 2016. We believe that the strategic coordination of advice services will continue to be important to make best use of resources and we believe that the Network or a comparable body should be retained for the longer term.

64. We also believe that a body comparable to our present committee should be retained for the longer term. It is notoriously difficult to engage with actual users of redress systems and we believe that the observation of redress systems in action and resulting feedback by a committee such as ours has an important role in highlighting problems and maintaining standards. As we explained earlier, our Committee was set up by Welsh Ministers in 2013 for a two year period to act as a 'guardian of the public interest with regard to administrative justice in Wales.' Our predecessor body, the Welsh Committee of the Administrative Justice & Tribunals Council (AJTC), was set up in 2008 and its advice to the Welsh Government led to the significant reforms which we have described. We hope that our own work since 2013, our collaboration with Bangor Law School and the advice in this report demonstrate the value of retaining specialist advice in Wales in a policy area that is important but not widely understood within policy, practice and research communities. The work of a successor body could potentially include work to:

- continue observing the operation of Welsh tribunals and ad hoc schemes and provide feedback on their operation on behalf of system users;
- continue building a community of interest in tribunal reform and administrative justice issues in Wales;
- provide advice, guidance and commentary on consultations, new developments and issues of concern;
- work with the judiciary to continue raising standards in Welsh tribunals;
- provide advice concerning initiatives relating to GB tribunals with an impact in Wales;
- continue promoting a research agenda to inform the strategic development of the administrative justice system in Wales;
- continue providing advice from time to time on the operation of the Discretionary Assistance Fund and other ad hoc schemes;
- work to ensure the needs of citizens wishing to use the Welsh language within the administrative justice system are satisfactorily met;
- seek to ensure that the users of the system are listened to and their interests are represented;
- encourage networks and the sharing of good practice amongst practitioners;
- promote greater awareness of and engagement in the current challenges for Wales in the administrative justice system;
- promote greater scrutiny by the Assembly of administrative justice issues and better information for commentators and AMs;

- promote the potential for administrative justice to support implementation of the Welsh Government's vision for the improvement of public service in Wales.

65. We therefore recommend that:

- **(Recommendation 26) the Welsh Government retain the National Advice Network beyond the summer of 2016 to support the strategic coordination of advice services for the longer term;**
- **(Recommendation 27) the Welsh Government retain a specialist advisory body on administrative justice issues with powers to observe the operation of redress systems and practice for the longer term (perhaps as a subgroup of a successor body to the Justice Stakeholder Group which was set up by the Minister for Public Services in July 2015 and is due to complete its present remit shortly).**

Ad hoc redress schemes in Wales

66. The Welsh Government has created only one new tribunal through legislation enacted by the Assembly, the Welsh Language Tribunal, but has established various ad hoc redress schemes which have some of the characteristics of a tribunal. These do not, and are not intended, necessarily to meet all the standards required of tribunals in relation to such matters as the extent of their independence from Government, their structure, their openness to public scrutiny and their procedures. In some examples a secretariat has been established in the public sector to administer the scheme and in others the scheme has been outsourced. It is right that individual schemes are tailored to meet specific needs but problems do arise for citizens if the standards for such ad hoc redress schemes are not sufficiently high. At Appendix 6 we give brief descriptions of some ad hoc redress schemes that have been established in Wales under devolved powers, namely the Independent Review of Determination Panels; the Discretionary Assistance Fund for Wales and Continuing Healthcare Review Panels.

67. Our predecessor Committee took a particular interest in the Independent Review of Determinations Panels when they were set up and provided advice that contributed to significant improvements in the way the Panels operated. The British Association for Adoption and Fostering (BAAF) Cymru set up an Independent Review Mechanism (IRM) for Wales in 2010, under contract to the Welsh Government. A new contract was awarded to BAAF in 2014, but BAAF went into administration a few months later and urgent work was necessary to make alternative arrangements to ensure the IRM continued to function without a break. The Welsh Government is currently grant funding Children in Wales to manage the IRM up to 31 March 2017. It is the Welsh Government's intention to undertake a functional review of the IRM during the first half of 2016-17, to determine how the service should be delivered in the future.

68. Over the last two years we have taken an interest in more recent schemes: the Discretionary Assistance Fund for Wales, which is also outsourced, and Continuing Healthcare Review Panels which are managed within the public sector. The Discretionary Assistance Fund scheme administers Welsh Government funds and provides Emergency Assistance Payments and Individual Assistance Payments to meet urgent needs and support vulnerable people to live independently. The scheme is being managed, under contract, by Northgate Public Services, working in partnership with the Family Fund, based in York, and Wrexham Borough Council (which supported the establishment of a call centre in Wrexham). We think the Discretionary Assistance Fund scheme in Wales is generally operating well and good statistical and other information about the scheme and pattern of applications is made available to the network of advisers. However, information and narrative about arrangements for the scheme are less easily accessible to commentators and researchers. The data collected about the scheme could have a wider application in policy initiatives and research. We were impressed with the standard of work of the partner organisation, the Family Fund in York, but also noted that in Scotland under the provisions of the Welfare Funds (Scotland) Act 2015 the Scottish Public Services Ombudsman acquired jurisdiction over comparable appeals. This is an example of a possible alternative appeals structure, and is an option the Welsh Government and PSOW may wish to consider when the scheme is next reviewed. We express no view as to the merits of such an approach but wish to highlight this as an example of the policy choices available in Wales that we refer to later in this report.
69. Continuing Healthcare Review Panels provide a review process to check that proper procedures have been followed in reaching decisions about the need for continuing NHS healthcare and NHS Funded Nursing Care. The Review Panel procedure is intended as an additional safeguard for individuals who consider that the eligibility criterion for CHC has not been correctly applied in their case, or that appropriate procedures have not been followed. The Procedure is governed by the Welsh Government's Continuing NHS Healthcare National Framework for Implementation in Wales, June 2014. If the original decision is upheld by the Review Panel and the individual still wishes to challenge the decision, the individual still has access to the Public Services Ombudsman⁷. This is potentially misleading as it may imply to some that an appeal route to the Ombudsman on the merits of the decision (rather than the opportunity to make a complaint concerning maladministration) may be available.
70. We have had the opportunity to observe some Panel hearings and make some preliminary enquiries of the Ombudsman's office and the Welsh Government concerning some issues we have identified. These include:
- the potential for misunderstandings concerning the role of the PSOW if an individual wishes to challenge the decision of a Panel;
 - variation in the standard of drafting of decision documents and clarity of reasoning, particularly where the Panel decides to depart from the clinical assessor's advice;

⁷ Continuing NHS Healthcare National Framework for Implementation in Wales, June 2014 para.5.12

- the practice of tape recording the deliberations of the Panel and the impact this may have on the decision making process;
- variation in practice concerning the respective roles of the Panel and clinical assessor;
- the drafting of Panel decisions by the clinical assessor rather than the Panel chair;
- the use of the clinical assessor, usually a nursing specialist, in a clerical capacity to produce transcripts of tape recordings.

71. It is unlikely that the Welsh Government will be in a position to publish a revised National Framework before 2018. However, we think that the issues we have begun to identify need earlier attention and could be dealt through the issue of interim guidance to Health Boards from the Welsh Government. In order to explore the issues more fully than we have had the opportunity to do, we invite the Welsh Government to conduct an informal consultation exercise to include Panel Chairs, clinical assessors and others to identify priority issues for any interim guidance. If the life of the Committee had been longer we would have carried out a fuller exploration with a view to publishing a special report about this aspect of the scheme. Our observations so far have been limited but suggest that problems are arising due to the treatment of the scheme as wholly administrative in nature and insufficient recognition being given to the quasi-judicial nature of the work of the Panels. This is leading to misunderstandings concerning relationships and the precise roles of the Panels, the administration, the clinical advisors and the PSOW. We think that it would be very helpful for a legally qualified Senior Panel Chair to be appointed act as a focus for necessary discussions with the Welsh Government, the PSOW and administrators concerning the Panel and to promote consistency and best practice in their work.

72. If our Committee had a longer lifespan one of our next priorities would have been to develop and consult on general standards for ad hoc redress schemes and we invite any successor body to consider this as a possible, and important, piece of work. We have observed a variety of potential pitfalls both for in-house and outsourced schemes and believe there are risks associated with setting up schemes that are not based upon clear principles and do not conform to agreed minimum standards. Failure so to do exposes officials to legal challenge, but worse: it does not give citizens a fair and independent system of redress, the outcomes of which will eventually promote better decision-making in government. We believe it is important that when redress schemes are established they are recognised to be component parts of the administrative justice system in Wales, usually involving a dispute between citizens and the State, and not simply an administrative process.

73. For example:

- where a judicial appointments process is not used, the public appointments process must ensure that panel chairs for redress schemes have the appropriate level of independence and the experience and expertise to

ensure that decision-making processes are properly structured, fair and expeditious;

- where procedural rules are not in place, the procedure to be adopted must nevertheless be clear from the start, appropriate to the nature of the dispute and properly understood by those responsible for implementing the procedure;
- those implementing a new scheme should take responsibility for ensuring that adequate training is available to support decision-makers;
- arrangements should be in place to monitor the performance of the scheme to ensure that standards are maintained and consistently applied;
- statistics and commentary about the scheme should routinely be made available to National Assembly members and the public, whether the scheme is administered in-house or outsourced, and the operation of the scheme should be subject to scrutiny by the Assembly;
- secretariat arrangements for a new scheme should not add unnecessary complexity to the Welsh public sector and administration should be given to an existing justice administration unit in most cases.

74. We recommend that:

- **(Recommendation 28) the Welsh Government introduce general guidance and minimum standards for the operation of ad hoc redress schemes in Wales; ensure that all proposed new redress schemes are reviewed by the Welsh Government's Justice Policy team, with the necessary legal support; and that appropriate monitoring mechanisms to ensure conformity and consistency are in place;**
- **(Recommendation 29) that the governance arrangements for ad hoc schemes ensure that responsibilities for the effective operation of the scheme are straightforward and clear and ensure consistency on a Wales-wide basis;**
- **(Recommendation 30) the Welsh Government's Continuing NHS Healthcare National Framework for Implementation in Wales, 2014 should be updated without delay to provide clearer guidance on the conduct of appeal panels and that consideration be given to the appointment of a legally qualified Senior Panel Chair;**
- **(Recommendation 31) That the Welsh Government provide more widely available information about the DAF scheme for research and wider policy purpose; and that Welsh Ministers and the PSOW consider whether onward appeals from the Discretionary Assistance Fund for Wales should be transferred to the Public Services Ombudsman for Wales when the scheme is next reviewed.**

The role of the Assembly in administrative justice

75. Although the CAJTW was set up by the Welsh Government and we make this report to the Welsh Ministers, we hope this report will be a useful addition to the available literature in Wales and helpful to practitioners, researchers and commentators and promote a wider understanding of the issues. Against this background we have not restricted our comments to those aspects of the system that are strictly within the portfolios of Ministers. In particular, the work of the Assembly is a key feature of the administrative justice system in Wales and we have therefore included recommendations which we hope the Assembly Commission will find helpful.

76. In a 2012 report the Commons Public Administration Select Committee (PASC) said of administrative justice :⁸

“This subject may seem obscure and technical, but it touches upon the lives, the standards of living, and rights of millions of citizens every year. Administrative justice includes decision-making in relation to matters such as individuals’ taxes, benefits, and child support and immigration rights.”

77. It may be that elected members sometimes regard administrative justice as an issue for lawyers and theorists, divorced from the day-to-day concerns of their constituents. PASC (as it then was) sought to demonstrate that this is not the case and their views were reflected in a short survey of Assembly Members and Welsh MPs conducted by Bangor Law School as part of the recent research project. Respondents were asked: “in order of most regular occurrence what are the four most common topics of concern presented to you by your constituents?” Twenty six replies were received and the most common issues were:

- Health
- Welfare benefits/reform
- Immigration
- Council services
- Education
- Planning-related issues

78. These are all issues for which the administrative justice system provides a voice for citizens and routes for redress through complaints or appeals. Elected members have an important part to play in the system through the advice and support they offer in their constituency work. Assembly Members have a particular role to play as legislators and as scrutineers as the volume of Welsh legislation increases. The extent of the existing devolution of powers in relation to administrative justice means there are opportunities to create a distinctly Welsh administrative justice system based on shared Welsh principles and to create a coherent, integrated redress

⁸ “Future oversight of administrative justice: the proposed abolition of the Administrative Justice and Tribunals Council” 21 February 2012

system. An alternative possibility, if action is not taken, is that the lives of people in Wales will be complicated by the creation of ineffective or inappropriate new schemes arising from a lack of expertise on the part of officials and a lack of effective scrutiny by elected members. The Bangor report noted that:

“Many respondents to the current research were of the opinion that administrative justice (both in terms of the quality of first instance decision-making and later redress mechanisms) has developed on an ‘ad hoc’ basis in Wales,” and:

“Given the devolution context, we ought to be asking specifically, does Wales need such a variety of grievance redress mechanisms, is there scope for rationalisation between them or across them, are some better at resolving grievances than others, and what is the way forward for Wales? More research is needed to consider if administrative justice redress mechanisms in Wales are incoherent, too numerous, and too burdensome, and whether particular mechanisms are disconnected and non-complementary.”

79. The National Assembly is still a relatively new legislature and, as we have described earlier, the Welsh Government has only relatively recently developed a justice policy function. Although significant aspects of the administrative justice system have been devolved an understanding of what is and what is not devolved is not widely shared. Legislators have a range of political choices when considering new methods of redress. These include, for example:

- a new outsourced scheme;
- a new scheme administered by the Welsh Government;
- giving new powers to the PSOW;
- creating a new Commissioner or giving new powers to an existing Commissioner;
- adding jurisdiction to an existing devolved Welsh tribunal;
- creating a new devolved Welsh tribunal;
- adding a new jurisdiction to a court or tribunal in the England and Wales system.

80. Accordingly, the National Assembly and Assembly Commission need to have the capacity to:

- effectively scrutinise proposals for new or reformed redress mechanisms in Government bills and ensure that potential alternatives are properly examined;
- draft non-government bills containing redress mechanisms which take full account of guiding principles and the need for a rational, systematic approach;
- effectively scrutinise the operation of existing redress mechanisms to ensure that the voice of Welsh citizens is being heard, that services being offered are

cost-effective, timely and efficient, and that data from address mechanisms are being used to inform the development of policy;

- ensure that adequate data concerning appeals to GB tribunals by citizens in Wales are available to Welsh policymakers.

81. We invite Welsh Ministers to (Recommendation 32) communicate the following recommendations to the National Assembly and the Assembly Commission:

- that professional development in administrative justice issues is made available for Committee chairs and the commission staff supporting them;
- that cross-party focus groups be offered for AMs to examine the links between their constituency work and the operation of the administrative justice system in Wales;
- that Assembly Commission advice to members supports a coherent, principle-based approach to new and existing redress and appeal mechanisms;
- that the National Assembly considers nominating a Committee to scrutinise the operation of devolved Welsh tribunals and ad hoc Welsh appeal schemes.

82. We recommend that:

- (Recommendation 33) the Welsh Government works with MoJ, HMCTS, DWP, UKBA, HMRC and other UK Government departments to ensure that data concerning Wales in UK or GB redress systems can be separately identified and made available to elected representatives in Wales.

A Distinctive approach: Principles of Administrative Justice in Wales

83. We noted above that there is an opportunity to develop a new, bold and distinctive approach to administrative justice in Wales that would stand the test of time and prove an exemplar for other jurisdictions. We believe that this opportunity should be approached with imagination and excitement: administrative justice should be central to the reform of public services founded on the search for social justice; it should not remain a marginalised element in the governmental system.

84. One feature of recent developments is the steady reduction of funding for advice, guidance and especially for representation. Self-representation at redress procedures is a daunting prospect which has increasingly become a necessity. This in turn may be part of the explanation for the dramatic decline in the rate of appeals in social security (and other) tribunals – a decline which could impact on the local economies of the poorest parts of Wales given that an appeal significantly increases the likelihood of favourable decisions on the level of individuals' benefits. One, necessary, response is to deliver the best guidance possible to prospective appellants. Another is to informally modify hearing procedures away from a purely

adversarial approach in the direction of a more investigative style. This may become an increasingly necessary trend, albeit within the limits set by a system that is not designed to be investigative. However, Wales could take a bold and justifiable leap: it could intentionally recast the devolved tribunals as investigative in principle and practice and thereby create a benchmark for the future of administrative justice in the UK and beyond.

85. This is but one example of how Wales could take an imaginative approach. More fundamentally however, we believe that a distinctive Welsh approach founded on a belief in social justice must rest on a clear set of principles. We offer the following as a template around which such principles could be formed:

A FUNDAMENTAL RIGHT

Everyone has the right:

- *to be notified, either specifically or by public notification, of any public administrative decision affecting them;*
- *to express views on or voice complaints about any such decision; and*
- *to appeal against or require a review of any administrative decision adversely affecting them.*

And to that end:

Decision Making

- *All legislation under which administrative decisions are made should be reasoned, unambiguous and coherent and its implications should be effectively communicated to the public, those who advise them, the legal professions and those whose role it is to administer the decisions;*
- *all administrative decisions should identify the legislation under which they are made and should be lawful, reasoned, unambiguous, coherent, clearly communicated to those whom they affect and should indicate how they may be appealed or reviewed;*
- *all administrative decisions should be underpinned by integrity and good governance and should be made by those with the expertise and up to date knowledge and experience needed to make fair, accurate and informed decisions;*
- *all decision making and redress processes should be grounded in continuous improvement and learning, including from the outcomes of complaints and appeal processes.*

Systems and Procedures - All appeal and review systems and procedures should:

- *include opportunities for reviewing decisions and for informal dispute resolution prior to any formal process of appeal, provided that the citizen's right to a fair and open appeal is not thereby impaired;*
- *be prompt, accessible, independent, impartial and open;*
- *be proportionate, efficient and effective;*
- *demonstrate respect for human rights, equalities, sustainability and the needs of the most vulnerable;*
- *ensure the interests of unrepresented parties are accommodated and that they are not disadvantaged.*

Values and Behaviours

- *Citizens' rights and needs should be treated with respect at all times;*
- *appellants should be kept informed throughout dispute resolution processes and enabled to seek resolution of their problems as expeditiously as possible;*
- *all decisions, including decisions made on appeal or review, should ensure equal treatment of all citizens regardless of language preference between the English and Welsh languages.*

The Committee for Administrative Justice and Tribunals, Wales

The Committee

The Committee for Administrative Justice and Tribunals Wales (CAJTW) is a non-statutory body created by the Welsh Government on 1 November 2013. The committee ceases its work on 31 March 2016.

Remit

The CAJTW has a remit to:

- Advise on tribunal reform in Wales;
- Identify to Welsh Ministers any issues affecting the administrative justice system in Wales* which may require Government attention;
- Ensure the users of the system are listened to and their interests are represented; and
- Encourage networks and the sharing of good practice amongst practitioners.

Membership

Committee members:

Professor Sir Adrian Webb (Chair)
Rhian Williams-Flew
Bob Chapman
Gareth Lewis

Committee Secretary:

Ray Burningham

Summary of Actions listed in the Welsh Government's Response ('Democracy and Delivery: Improving Public Services') to the Report of the Williams Commission

We will take action to improve the performance and long-term sustainability of public services, in line with the conclusions of the Commission on Devolution in Wales and the Commission on Public Service Governance and Delivery. Actions will include:

Working for a stronger, more stable devolution settlement for Wales within the UK

1. Use the borrowing and taxation powers made available in the current Wales Bill to invest in transport and other infrastructure priorities, and develop a simpler, fairer tax system which supports growth and jobs;
2. Work with the UK Government to strengthen our devolution settlement to enable more decisions affecting Wales to be made democratically in Wales, including devolving areas, such as policing, recommended by the Silk Commission.

Strengthening the democratic governance and delivery of devolved public services

3. Implement a programme of local authority mergers to help sustain and improve local services, supporting authorities which wish to secure the benefits more quickly by enabling voluntary mergers, and seeking to ensure the fair treatment of the workforce through establishing a staff commission;
4. Improve the democratic leadership, diversity and governance of local authorities, to increase transparency and accountability and better connect authorities to their communities, including strengthening the way audit, inspection and regulation supports effective democratic scrutiny to ensure performance is improved;
5. Align existing collaborations with the boundaries of the new local authorities and other delivery partners to support the delivery of integrated services;
6. In recognition of the acute rural delivery challenges faced by the Powys Teaching Health Board and Powys County Council, explore ways to strengthen and integrate service delivery in Powys including a possible merger of the two bodies;
7. Make improvements to the governance arrangements for local health boards and community health councils to support delivery of patient-centered health services;
8. Continue to improve the integration of health and social care services more broadly, and support closer working between public service partners such as the fire and ambulance services;

9. Update the governance and boundaries of Fire and Rescue Authorities to clarify accountabilities and support alignment of their services with those of partners;
10. Establish a refreshed role for National Park Authorities, as part of a renewal of the arrangements to safeguard and maximise the benefits of our national parks and protected natural landscapes;
11. Streamline partnerships to more effectively and efficiently integrate public services, including putting Local Service Boards on a statutory footing with a duty to develop an integrated plan to improve well-being based on local needs and priorities, as set out in the Well-being of Future Generations (Wales) Bill;
12. Develop over time a shared services capability across the devolved public sector in Wales, covering functions such as finance, HR and transactional services;
13. Improve digital services and work together across the public sector to achieve efficiencies and improve services through more co-ordinated use of ICT;
14. Strengthen leadership across public services in Wales through refocusing and strengthening collective governance of the Academi Wales leadership centre, ensuring its programmes are used by all devolved public service organisations;
15. Explore options for strengthening the process for senior public sector appointments, including developing a common framework of principles and considering the potential role of a public sector appointments commission;
16. Develop a set of values shared at all levels across all devolved public services;
17. Strengthen performance management across public services through developing a common framework for performance measurement focused on outcomes, as well as rationalising and aligning performance indicators;
18. Support performance improvement through exploring opportunities to reduce complexity, simplify funding and governance arrangements, share good practice, encourage innovation and flexibility to achieve outcomes, and raise ambitions;
19. Develop a new relationship between people and public services, including supporting co-production, recognising shared responsibility and establishing more preventative public services focused on outcomes and people's needs;
20. Work with public service partners through the Partnership Council for Wales and other fora to implement this reform agenda, in particular ensuring its delivery reflects our vision for public services.

Draft Administrative Justice Principles for Wales

From ‘*Understanding Administrative Justice In Wales*’ Report by ‘Dr. Sarah Nason. Bangor School of Law, November 2015)

Administrative justice is concerned with public decision-making at all levels in Wales.

The Welsh administrative justice system should:

1. Make citizens and their rights and needs central, treating them with fairness and respect at all times;
2. Ensure that decisions are based on appropriate procedures, and that people have a right to challenge such decisions including seeking redress using procedures that are accessible, independent, impartial, open and appropriate for the matter involved;
3. Ensure people are treated as partners in the resolution of their disputes, keeping them fully informed and enabling them to resolve their problems as quickly and comprehensively as possible;
4. Ensure that decisions are well-reasoned, lawful and adequately democratic, and that outcomes are communicated in an appropriate and timely manner;
5. Ensure that decisions are coherent, consistent and of sufficient clarity. The system itself must also be coherent from the citizen perspective and ensure that these principles of administrative justice are applied consistently throughout;
6. Work proportionately, efficiently and effectively;
7. Adopt the highest standards of integrity, public administration and good governance, and be designed to learn from experience and continuously improve, including fostering communication between various decision-makers and redress mechanisms;
8. Where possible, provide an opportunity for informal dispute resolution, which may include online dispute resolution where appropriate;
9. Minimise any disadvantages to unrepresented parties;
10. Ensure that decisions are taken by those with appropriate expertise and encourage accurate and accountable decision-making;
11. Ensure respect for human rights, equality, sustainability and the protection of vulnerable groups including children and older people;
12. Ensure appropriate respect for the Welsh language including compliance with Welsh Language Standards where applicable.

Table of Constitution and Functions of the Welsh Tribunals

(Prepared by the Welsh Government)

Special Educational Needs Tribunal for Wales				
<i>Functions</i>	<i>Established by</i>	<i>Appointment</i>	<i>Procedural Rules</i>	<i>Appeals</i>
<p>Appeals by parents and children under Education Act 1996 (EA 1996) against local education authorities in relation to special educational needs.</p> <p>Disability discrimination claims under section 116 Equality Act 2010.</p>	Section 333(1ZA) EA 1996.	<p>Legal chair and two members. President and chair appointed by Lord Chancellor under section 333(3) EA 1996.</p> <p>Lay panel appointed by Welsh Ministers under section 333(4) EA 1996 with the agreement of the Secretary of State.</p> <p>Section 334 EA 1996 sets out requirements in relation to the President and members of the panel.</p>	Special Educational Needs Tribunal for Wales Regulations 2012 (SI 2012/322).	Section 336ZB EA 1996. Appeal on a point of law can be made to the Upper Tribunal.

Mental Health Review Tribunal for Wales				
<i>Functions</i>	<i>Established by</i>	<i>Appointment</i>	<i>Procedural Rules</i>	<i>Appeals</i>
To deal with applications and references by and in respect of patients who are detained under the Mental Health Act 1983 (as amended by the Mental Health Act 2007) or living in the community subject to a conditional discharge, community treatment or guardianship order.	Section 65 MHA 1983.	<p>Schedule 2 MHA 1983 – Lord Chancellor may appoint:</p> <p>(a) legal members;</p> <p>(b) medical members;</p> <p>(c) other persons having experience or knowledge of social services or other experience as Lord Chancellor thinks appropriate.</p> <p>One legal member must be appointed as Chairman of the Tribunal.</p> <p>One legal member must be appointed as President.</p>	Mental Health Review Tribunal for Wales Rules 2008 (SI 2008/2705).	<p>Section 78A MHA 1983 – appeal to the Upper Tribunal on a point of law.</p> <p>Permission must first be sought from the Tribunal.</p>

Adjudication Panel for Wales				
<i>Functions</i>	<i>Established by</i>	<i>Appointment</i>	<i>Procedural Rules</i>	<i>Appeals</i>
<p>Adjudications to hear references by the PSOW under sections 71(3) and 72(4) Local Government Act 2000 (LGA 2000) about whether local authority members have breached the local authority's statutory code of conduct. Such references are conducted by "case tribunals" and "interim case tribunals" within the meaning of section 76 LGA 2000.</p> <p>Adjudications to hear appeals against determinations of a Standards Committee that local authority members have breached the local authority's statutory code of conduct. Such appeals are conducted by appeals</p>	Section 75(2) LGA 2000.	<p>Legal chair and two members.</p> <p>Appointed by Welsh Ministers under section 75(5) LGA 2000.</p> <p>One of the members must be appointed as President and one of the members may be appointed as Deputy President under section 75(6) LGA 2000.</p>	<p>Adjudication of references to case tribunals and interim case tribunals (section 76 LGA 2000) in accordance with Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 (SI 2001/2288) (as amended by SI 2009/2578).</p>	<p>Section 78(10) LGA 2000 – appeal to High Court against decision of interim case tribunal.</p> <p>Section 79(15) LGA 2000 – appeal to High Court against decision of case tribunal.</p>

tribunals drawn from the Panel, in accordance with regulations made under section 73(1) LGA 2000 (the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 (SI 2001/2281)).				
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Agricultural Land Tribunal Wales				
<i>Functions</i>	<i>Established by</i>	<i>Appointment</i>	<i>Procedural Rules</i>	<i>Appeals</i>
Determining disputes between agricultural landlords and tenants under Agricultural Holdings Act 1986, drainage disputes under Land Drainage Act 1991.	Section 73 Agriculture Act 1947 (AA 1947) with jurisdiction for the geographic region of Wales.	<p>Appointment of Chairman and Deputy Chairman by Lord Chancellor.</p> <p>Legal chair.</p> <p>One member from “Farmers’ Panel” other from “Landowners Panel”.</p> <p>By Lord Chancellor under Schedule 9 AA 1947.</p>	Agricultural Land Tribunals (Rules) Order 2007 (SI 2007/3105).	<p>Paragraph 32 of the Schedule to the Agricultural Land Tribunals (Rules) Order 2007. The Tribunal can review its own decision on its own initiative or on application by a party.</p> <p>Under section 6(1) of the Agriculture (Miscellaneous Provisions) Act 1954 an appeal on a point of law from a decision of the Tribunal may be made to the Upper Tribunal.</p>

Registered School Inspectors Appeal Tribunal				
<i>Functions</i>	<i>Established by</i>	<i>Appointment</i>	<i>Procedural Rules</i>	<i>Appeals</i>
Appeals under section 27 Education Act 2005 (EA 2005) against decisions of the Chief Inspector of Her Majesty's Inspectorate for Education and Training in Wales in relation to registration.	Formerly established by Schools Inspection Act 1996, but power of Welsh Ministers now in Schedule 3 EA 2005.	Chair is appointed by Lord Chief Justice after consulting the Lord Chancellor. Two other members appointed by Welsh Ministers. Paragraph 1, Schedule 3 EA 2005.	Education (Registered Inspectors of Schools Appeal Tribunal and Registered Nursery Education Inspectors Appeal Tribunal) (Procedure) Regulations 1999 (SI 1999/265).	Regulation 29, Education (Registered Inspectors of Schools Appeal Tribunal and Registered Nursery Education Inspectors Appeal Tribunal) (Procedure) Regulations 1999. The tribunal can review its decision on the application of a party or on its own initiative.

Registered Nursery Education Inspectors Appeal Tribunal				
<i>Functions</i>	<i>Established by</i>	<i>Appointment</i>	<i>Procedural Rules</i>	<i>Appeals</i>
Appeals under section 27 Education Act 2005 (EA 2005) against decisions of the Chief Inspector of Her Majesty's Inspectorate for Education and Training in Wales in relation to registration.	Formerly established by Schools Standards and Framework Act 1998, but power of Welsh Ministers now in Schedule 3 EA 2005.	Chair is appointed by Lord Chief Justice after consulting the Lord Chancellor and two other members by Welsh Ministers under paragraph 1 Schedule 3 EA 2005.	Education (Registered Inspectors of Schools Appeal Tribunal and Registered Nursery Education Inspectors Appeal Tribunal) (Procedure) Regulations 1999 (SI 1999/265).	Regulation 29, Education (Registered Inspectors of Schools Appeal Tribunal and Registered Nursery Education Inspectors Appeal Tribunal) (Procedure) Regulations 1999. The tribunal can review its decision on the application of a party or on its own initiative.

Valuation Tribunal for Wales				
<i>Functions</i>	<i>Established by</i>	<i>Appointment</i>	<i>Procedural Rules</i>	<i>Appeals</i>
<p>Appeals against local authority under Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2005 (SI 2005/758), section 16 Local Government Finance Act 1992 (LGFA 1992), Council Tax (Alteration of Lists and Appeals) Regulations 1993 (SI 1993/290) as amended by (SI 2005/181).</p> <p>Appeals against decisions relating to council tax benefit</p>	<p>By regulation 4 Valuation Tribunal for Wales Regulations 2010 (SI 2010/713).</p>	<p>Regulation 9 Valuation Tribunal for Wales Regulations 2010 provides members to be appointed by local authority jointly with the President of the Tribunal (as in Schedule 1).</p> <p>Regulation 11 provides for a President to be appointed by election procedure in Schedule 2.</p> <p>Regulation 12 provides for appointment by election of chairpersons by the members of the Valuation Tribunal.</p> <p>Regulation 13: appointment of regional representatives.</p>	<p>Part 5 Valuation Tribunal for Wales Regulations 2010.</p>	<p>Regulation 42 Valuation Tribunal for Wales Regulations 2010. Allows for the Appeal Panel to review its decision on application by a party.</p> <p>Regulation 44 Valuation Tribunal for Wales Regulations 2010 allows an appeal in relation to a council tax matter to the High Court on a point of law.</p>

School Admission Appeal Panels for Wales

<i>Functions</i>	<i>Established by</i>	<i>Appointment</i>	<i>Procedural Rules</i>	<i>Appeals</i>
Appeals under section 94 School Standards and Framework Act 1998 (SSFA 1998) against decisions by local education authority (LEA) refusing a child admission to a school.	Appeal panels constituted by regulation 3 of Education (Admission Appeals Arrangements) (Wales) Regulations 2005 (SI 2005/1398).	<p>Members appointed by LEA under paragraph 1, Schedule 1 Education (Admission Appeals Arrangements) (Wales) Regulations 2005:</p> <p>1 lay member;</p> <p>1 person experienced in education;</p> <p>1 parent.</p> <p>Panel may consist of 3 or 5 members.</p> <p>LEA to appoint Chair.</p>	<p>Education (Admission Appeals Arrangements) (Wales) Regulations 2005 and Welsh Government guidance circular 081/2012.</p> <p>“Exclusions from Schools and Pupil Referral Units”.</p>	No provision to appeal the decision of the panel. Section 94(6) SSFA 1988 states that the decision of an appeal panel is binding.

School Exclusion Appeal Panels for Wales

<i>Functions</i>	<i>Established by</i>	<i>Appointment</i>	<i>Procedural Rules</i>	<i>Appeals</i>
Appeals under section 52(3)(c) Education Act 2002 against decision by LEA to exclude a pupil.	Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003 (SI 2003/3227).	<p>Appointed by LEA under paragraph 2 of the Schedule to the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003.</p> <p>Three or five members comprising at least the following:</p> <p>1 lay member;</p> <p>1 person experienced in education;</p> <p>1 governor or ex-governor of a maintained school.</p> <p>Panel must be chaired by lay member.</p>	Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003 and Welsh Government guidance Circular 081/2012 "Exclusions from Schools and Pupil Referral Units".	No provisions to appeal the decision of the panel. Regulation 7(4) states the decision of an appeal panel is binding.

Independent Review of Determinations Panels in Wales

<i>Functions</i>	<i>Established by</i>	<i>Appointment</i>	<i>Procedural Rules</i>	<i>Appeals</i>
Adoption and Children Act 2002 provides for a panel to review qualifying determinations by adoption agencies.	Regulation 5 Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010 (SI 2010/746).	By Welsh Ministers under regulation 5 Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010 (SI 2010/746) drawn from “central list” of social workers, registered medical practitioners and other persons with experience. Panel chair appointed by the Welsh Ministers under regulation 10.	Part 3 Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010.	No provision in the Regulations for an appeal against the decision by the Independent Review of Determinations Panel.

Social Services Independent Complaints Panels				
<i>Functions</i>	<i>Established by</i>	<i>Appointment</i>	<i>Procedural Rules</i>	<i>Appeals</i>
To further consider complaints under regulation 22 Social Services Complaints Procedure (Wales) Regulations 2005 about social services by any person to whom the local authority has a power or duty to provide services.	Panel established by regulation 21 Social Services Complaints Procedure (Wales) Regulations 2005 (SI 2005/3366).	Regulation 21 provides for appointment by Welsh Ministers from two lists. Panel consists of one member from list of persons who have social services experience and two members from a list of lay people (regulation 21).	Part VI Social Services Complaints Procedure (Wales) Regulations 2005.	Regulation 28 Social Services Complaints Procedure (Wales) Regulations 2005 – no specific appeal provisions, but complainants must be notified of their right to complain to the Public Services Ombudsman for Wales.

Board of Medical Referees				
<i>Functions</i>	<i>Established by</i>	<i>Appointment</i>	<i>Procedural Rules</i>	<i>Appeals</i>
To hear appeals under Schedule 1, Part 8, paragraph 4 of Firefighters' Pension Scheme (Wales) Order 2007 made under sections 32, 60 and 62 Fire and Rescue Services Act 2004 against a fire authority's decision on an issue of a medical nature.	Schedule 1 Firefighters' Pension Scheme (Wales) Order 2007.	Paragraph 3 of Annex 2, Schedule 1 to Firefighters' Pension Scheme (Wales) Order 2007. Appointed by or in accordance with arrangements of Welsh Ministers. Board must consist of three medical practitioners: one must be a specialist in medical condition relevant to the appeal.	Annex 2 Firefighters' Pension Scheme (Wales) Order 2007.	No provision in the Order to appeal the board of medical referees' decision.

Forestry Committees for Wales				
<i>Functions</i>	<i>Established by</i>	<i>Appointment</i>	<i>Procedural Rules</i>	<i>Appeals</i>
To advise Welsh Ministers on reviews of refusals or conditions of a tree felling licence and appeals against a restocking notice under Forestry Act 1967 (FA 1967). Note Welsh Ministers make decision.	Section 27 FA 1967.	Chair and two other members appointed by Welsh Ministers under section 27(1) FA 1967.	Forestry (Felling of Trees) Regulations 1979.	No provision in the Act or Regulations for the decision of the Minister following advice from the Committee to be appealed.

Residential Property Tribunal for Wales				
<i>Functions</i>	<i>Established by</i>	<i>Appointment</i>	<i>Procedural Rules</i>	<i>Appeals</i>
<p>Appeals between landlords and tenants in the private sector under a variety of legislation, including the Housing Acts 1985 and 2004, the Landlord and Tenant Acts 1985 and 1987, the Rent Act 1977 and the Mobile Homes (Wales) Act 2013.</p>	<p>Section 229 Housing Act 2004 provides that jurisdiction conferred on a residential property tribunal is exercisable by a rent assessment committee constituted under Schedule 10 Rent Act 1977.</p> <p>Section 173 of the Commonhold and Leasehold Reform Act 2002 provides that jurisdiction conferred on a leasehold valuation tribunal is exercisable by a rent assessment committee constituted under Schedule 10 Rent Act 1977.</p>	<p>Paragraph 2, Schedule 10, Rent Act 1977 provides for appointment of members by Lord Chancellor and Welsh Ministers.</p> <p>Paragraph 3 provides for Welsh Ministers to nominate president and vice-presidents from the members appointed by the Lord Chancellor.</p> <p>Paragraphs 5 and 6 provide that each committee shall consist of a chairman and one or two other members, but in certain circumstances can consist of the chairman alone.</p>	<p>Rent Assessment Committees (England and Wales) Regulations 1971 (SI 1971/1065), Leasehold Valuation Tribunals (Procedure) (Wales) Regulations 2004 (SI 2004/681) and Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012 (SI 2012/531).</p>	<p>Appeal may be made to the Upper Tribunal under section 231 Housing Act 2003.</p> <p>Appeal from a leasehold valuation tribunal may be made to the Upper Tribunal under section 175 Commonhold and Leasehold Reform Act 2002 and appeal from a rent assessment committee on a point of law may be made to the Upper Tribunal under section 65A Rent Act 1977.</p>

Traffic Penalty Tribunal				
<i>Functions</i>	<i>Established by</i>	<i>Appointment</i>	<i>Procedural Rules</i>	<i>Appeals</i>
Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (SI 2013/359) provide for appeals against penalty charges by civil enforcement authority.	Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI 2013/362).	<p>Section 81(1) Traffic Management Act 2004 provides for Lord Chancellor to make regulations about appointment and specified qualification criteria.</p> <p>Regulation 16 Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 provides for Welsh Ministers with consent of the Lord Chancellor to appoint such number of adjudicators as they may decide.</p>	Regulation 12 and the Schedule to the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013.	Paragraph 12, Schedule 1 Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013. Allows for a review of an adjudicator's decision.

Welsh Language Tribunal				
<i>Functions</i>	<i>Established by</i>	<i>Appointment</i>	<i>Procedural Rules</i>	<i>Appeals</i>
To hear appeals against decisions by the Welsh Language Commissioner under the Welsh Language (Wales) Measure 2011.	Section 120 Welsh Language (Wales) Measure 2011.	<p>Section 120 and Schedule 11 Welsh Language (Wales) Measure 2011. The members of the Tribunal are appointed by the Welsh Ministers. The Tribunal consists of a President, legally qualified members and lay members.</p> <p>Section 121 provides that at least three members of the Tribunal must deal with particular proceedings. At least one of these must be legally qualified and at least one must be a lay member.</p> <p>Under paragraph 9, Schedule 11 to the Measure, the Welsh Ministers may make regulations regarding the appointment of members to the Tribunal.</p>	<p>Part 7 Welsh Language (Wales) Measure 2011.</p> <p>Section 123 Welsh Language (Wales) Measure 2011 allows for the President of the Tribunal to make rules governing the practice and procedure of the Tribunal, including a power for the Tribunal to review its own decisions.</p>	Section 123(4)(i) of the Measure states that the Tribunal Rules may make provision for the Tribunal's power to review its decisions.

Role of the Welsh Tribunals administered by the Welsh Government

Agricultural Land Tribunal Wales (ALTW)

ALTW settles disputes between agricultural tenants and landlords about tenancy, drainage and other matters.

Adjudication Panel Wales (APW)

APW was set up under Part III of the Local Government Act 2000, which provides for investigation of allegations of misconduct in Wales by the Public Services Ombudsman for Wales or local authority monitoring officers and the adjudication of such investigations by local standards committees or, generally in more serious cases, a tribunal formed by APW. APW also adjudicates upon appeals against the decisions of local authority standards committees.

Mental Health Review Tribunal Wales (MHRTW)

MHRTW has responsibility for hearing applications or references concerning patients detained under the Mental Health Act 1983, patients who are detained in psychiatric hospitals are entitled to have their cases reviewed to ensure no-one is held without good cause.

Residential Property Tribunal (RPT)

RPTW was set up under the Rent Act 1965 with responsibilities for:

- Rent Assessment Committees and Rent Tribunals to consider appeals over rent levels and to fix an appropriate rent where there are disputes between landlords and tenants in the private rented sector.
- Leasehold Valuation Tribunals to settle disputes between leaseholders and freeholders.
- Service charge cases within the social and private housing sectors.

Special Educational Needs Tribunal Wales (SENTW)

SENTW deals with appeals from parents against decisions by local authorities in Wales, and to hear and decide on claims of disability discrimination in schools in Wales

Registered School Inspectors Appeal Panels

Deals with appeals by registered school inspectors to remove their name or alter their conditions of registration from the register.

Registered Nursery Education Inspectors Appeal Panels

Deals with appeals by registered nursery inspectors to remove their name or alter their conditions of registration from the register.

The Welsh Language Tribunal (WLT)

The WLT deals with applications about the Welsh Language Commissioner's decisions in relation to the Welsh Language Standards.

AD HOC REDRESS SCHEMES IN WALES: SOME EXAMPLES

Independent Review of Determination Panels

Independent Review of Determination Panels were established under the Independent Review of Determinations (Adoption)(Wales) Regulations 2006. The Regulations created for individuals the right to request an independent review should they not be approved as prospective adopters and the process was later extended to fosterers.

Discretionary Assistance Fund

As part of the UK Government's programme of welfare reform, the discretionary elements of the UK Government's Social Fund (Community Care Grants and Crisis Loans) were abolished. In April 2013 the Welsh Government set up the Discretionary Assistance Fund. The scheme is being managed under contract by Northgate Public Services (Northgate) working in partnership with The Family Fund and Wrexham County Borough Council. Within the scheme there are two types of non-repayable grant support:

- Emergency Assistance Payments - to provide assistance in an emergency or when there is an immediate threat to health or wellbeing. Anyone over the age of 16 can be considered eligible for these payments to help meet expenses due to an emergency or because of a disaster.
- Individual Assistance Payments - to meet an urgent identified need that enables or supports vulnerable citizens to establish themselves or remain living independently in the community. To be eligible applicants must be:
 - entitled to and be in receipt of income related welfare benefits. Income related welfare benefits refer to: Income Support; income-based Job Seeker's Allowance; income-related Employment and Support Allowance; Pension Credit; or
 - due to leave an institution or care home within 6 weeks, that they are likely to be entitled to receive income related welfare benefits on leaving.

Northgate Public Services operates a call centre in Wrexham employing around 25 staff to deal with applications under the scheme. A further five staff are employed at the Northgate Local Government Business Centre in Wynyard Park in County Durham, where similar schemes for some English authorities are administered, and where calls are diverted to in the event of any business continuity issues in Wrexham. There is also a quality team in County Durham which checks a percentage of the calls to the Wrexham team. The Family Fund (an organisation based in York) is responsible for the fulfilment of many awards through the scheme through, for example, the provision of Argos vouchers or the installation of white goods. Goods are unpacked and installed as part of the service to reduce the risk of the goods being sold on for cash.

Decision making about claims is based on guidance produced by the Welsh Government. A two stage appeal system is in place under which a cases first reviewed by a senior officer in Wrexham and onward appeals are dealt with by specialist decision-makers based at the Family Fund in York.

Independent Appeals Process for Farmers and Forest Owners

In 2001 an independent appeals process was established for farmers in Wales. The process is intended to enable farmers to challenge Welsh Government decisions in relation to a Common Agricultural Policy (CAP) scheme claim or application. Decisions are reviewed to ensure that Welsh Government officials have been objective and have applied the rules correctly in reaching their decision. The process initially considered only appeals against decisions under the Integrated Administration and Control System (IACS) 2001 (and subsequent years) but has since been extended to cover a range of other schemes. The process consists of two stages:

- review by officials within the group responsible for administering the scheme and agreed by a senior official, (e.g. Divisional Executive Officer or Grants and Licences Operations Manager for FCW);
- review by an Independent Panel which makes recommendations to the Minister for Natural Resources, who in turn takes the final decision which concludes the process.

The independent element of the current process was established under regulation 3 of the Agricultural Subsidies and Grants Schemes (Appeals) (Wales) Regulations 2006. Independent Appeals Panels comprise a maximum of three members, who are selected from a group appointed under the rules governing Public Appointments. Panels make a report of their conclusions in relation to appeals submitted to them, and make recommendations to the Minister for Natural Resources concerning those appeals. Each Panel considers the representations made by an appellant, but is bound by the Single Payment Scheme (SPS) rules and the relevant Community legislation.

Continuing NHS Healthcare (CHC) Review Panels

CHC is a package of ongoing care arranged and funded by the NHS through Local Health Boards (LHBs), where an individual's primary need has been assessed as health-based. CHC can be provided in any residential or non-residential setting and is part of the continuum of care and support that an individual with complex needs may move in and out of. There are around 5,500 people in Wales who receive CHC at an annual cost to the LHBs of approximately £278 million.

Patients are entitled to contest LHB decisions concerning eligibility for CHC. In the first instance NHS organisations should deal promptly with any request to reconsider decisions about eligibility for CHC. In the first instance NHS organisations are expected to work closely with the individual to review decisions. An individual may thereafter apply to the relevant LHB for a review of the decision if they are dissatisfied with the procedure followed by the LHB in reaching its decision on the individual's eligibility for CHC, or the application of their primary health need consideration.

Local Health Boards must have access to a standing panel, an Independent Review Panel comprising as a minimum an independent chair, representative of a LHB and a local authority in order:

- to check that proper procedures have been followed in reaching decisions about the need for continuing NHS healthcare and NHS Funded Nursing Care;
- to ensure that the primary health need approach in determining eligibility for continuing NHS healthcare and NHS Funded Nursing Care are properly and consistently applied.

The role of the Panel is advisory. Its decisions are not formally binding but the expectation is that its recommendations will be accepted. If a LHB decides to reject a panel's recommendation in an individual case, it must put in writing to the patient and to the chair of the panel its reasons for doing so.

Procedure is governed by the Welsh Government's Continuing NHS Healthcare National Framework for Implementation in Wales, June 2014.