

Committee for Administrative Justice and Tribunals, Wales (CAJTW)

Legacy Report, March 2016

| Recommendations   | Welsh Government Response  |
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| <p><b>R1. Encourage the establishing of a centre of administrative justice expertise in one or more Welsh Universities.</b></p> <p><b>R2. Promote future research into Welsh administrative justice system.</b></p>   | <ul style="list-style-type: none"> <li>• CAJTW commissioned Bangor University School of Law to undertake a research project on administrative justice in Wales, which led to the publication of its report ‘Understanding Administrative Justice in Wales’ in November 2015.</li> <li>• The Permanent Secretary has led a series of meetings with Welsh Law Schools since 2015 to consider opportunities for collaborative working, including initiatives to strengthen the legal profession and the judiciary in Wales.</li> <li>•</li> </ul>   |
| <p>That the following should be taken into account when implementing the Welsh Government’s Action Plan to improve public service delivery in Wales:</p> <p><b>R3. Work to strengthen audit, inspection and regulation should be supplemented with work to promote ‘right first time’ decision making, effective redress mechanisms and organisational learning from complaints and appeals.</b></p> <p><b>R4. Leadership training promotes better understanding of administrative justice issues to include training for council members directly involved in decision-making and senior officers who advise them.</b></p> <p><b>R5. Evaluate if Wales Complaint Board recommendations have been adopted by Public Bodies, in the right spirit.</b></p> <p><b>R6. Review whether the complaints &amp; appeals system in Wales contains any significant gaps.</b></p> | <p><b>Work to strengthen public administrative decision making systems within local authorities is already underway.</b></p> <ul style="list-style-type: none"> <li>• The performance framework for local government, including arrangements for effective review mechanisms, is being developed as part of the wider agenda for local government reform. The work aims to establish a new approach to performance management with the primary ownership and accountability for good performance resting with authorities themselves. The new approach, which is intended to simplify and strengthen the framework, will place emphasis on having in place effective systems that deliver good performance in the first instance and enable authorities to be responsive to potential performance issues as they emerge.</li> <li>• Leadership training for council members is promoted by the Welsh Government through Academi Wales. A national programme of development for elected members is provided for all councils on a rolling basis. The programme incorporates all aspects of public administration, scrutiny, accountability and governance.</li> <li>• The Wales Complaint Board Recommendations have been accepted by all local authorities and NHS Wales.</li> <li>• Providing the means for fair, effective and proportionate systems for dispute resolution is embedded into the Welsh Government’s initial stages of the policy assessment process. Given the complaints and appeals system has evolved over time, the network is complex and there is no mapped overview.</li> </ul> |

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| <p><b>R7. Welsh judge to act as Senior Judicial Lead for devolved Welsh tribunals.</b></p> <p><b>R9. Standard procedure for all devolved Welsh judicial appointments.</b></p>   | <p>These recommendations relate to previous recommendations for reform of the devolved tribunals and have been achieved either in full or in part.</p>  |
| <p><b>R8. Protocols developed for devolved Welsh tribunals administered by the Welsh Government’s Welsh Tribunals Unit (WTU) to clarify relationships (tribunal Presidents, Senior Judicial Lead and the administration).</b></p>   | <ul style="list-style-type: none"> <li>• WTU is progressing work to establish protocols that formally define the roles of independent tribunal members appointed to the devolved Welsh tribunals and administrative support provided by the Welsh Tribunals Unit.</li> </ul>  |
| <p><b>R10. Comprehensive formal agreements between the Welsh Government, the Judicial Appointments Commission (JAC), the Judicial College and the Judicial Conduct Investigation Office (JCIO) or a single comprehensive agreement with the Judicial Office, so that roles, responsibilities and relationships are clear.</b></p> <p><b>R11. A ‘parity test’ for all devolved Welsh judicial appointments, training, appraisal and disciplinary arrangements to ensure satisfactory standards comparable to UK.</b></p>   | <ul style="list-style-type: none"> <li>• A formal working arrangement was agreed between the Welsh Government and the JAC in April 2015 for the independent recruitment and selection of devolved Welsh tribunal members by the JAC on behalf of the Welsh Ministers. Work is in progress to develop formal working arrangements and agreements with the Judicial Office, the Judicial College and the JCIO to improve the support, training and conduct arrangements for the judicial members of the devolved tribunals.</li> <li>• Achieving standards that are comparable with the non-devolved tribunals operated by HMCTS is integral to ongoing work to reform the devolved tribunals.</li> </ul>   |
| <p><b>R12. A forum for senior administrators in Welsh Government-sponsored or funded tribunals and appeals schemes (collaboration, sharing of best practice, identification of opportunities for administrative efficiencies).</b></p> <p><b>R13. Planning Inspectorate in Wales (PINS) information &amp; annual reports on Law Wales website.</b></p> <p><b>R14. Annual Reports of the Welsh Government sponsored tribunals be presented to the Welsh Ministers and publicised and on Law Wales website.</b></p> <p><b>R20. Valuation Tribunal Wales (VTW) senior administrative staff</b></p> | <ul style="list-style-type: none"> <li>• Informal links have been established in a number of instances between WTU staff and those with responsibility for ad hoc appeals schemes and other devolved Welsh tribunals not administered by WTU (including links with the VTW).</li> <li>• Annual reports and information is published on individual websites which already exist for the PINS and Welsh Government sponsored tribunals. In some instances the reports are also submitted to the Welsh Ministers by the judicial leader of the tribunal.</li> <li>• The primary focus of the Law Wales/Cyfraith Cymru website, hosted by the Welsh Government, is to make accessible information about areas of law devolved to Wales. The website currently provides information about devolved and non-devolved tribunals operating in Wales. The Law Commission will shortly (expected 30 June) be publishing their report <i>Form</i></li> </ul> |

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| <p><b>to be able to participate in a forum for senior tribunal administrators. VTW president to be able to participate in meetings of the Welsh devolved judiciary.</b></p>  | <p><i>and Accessibility of the Law in Wales</i>, which will include recommendations for strengthening the information and use of Law Wales/Cyfraith Cymru website. Recommendation 13 will be considered in that context.</p> <ul style="list-style-type: none"> <li>• Arrangements for liaison between the VTW and the forum for the judicial leads of devolved Welsh tribunals operated by the Welsh Government will be discussed with the forum.</li> </ul>  |
| <p><b>R15. The Welsh Government presents information on the performance of devolved tribunals in a format enabling proper scrutiny by the Assembly.</b></p> <p><b>R16. Reports on ad hoc Welsh appeal schemes to be made available to the National Assembly in an informative and accessible way</b></p> | <p>Annual reports of the tribunals operated by the WTU are provided on the tribunals' web sites.</p> <p>Further work is needed on the cost and feasibility of reports on ad hoc appeal schemes.</p>  |
| <p><b>R17. The Welsh Government's Justice Policy capability be further expanded to promote greater consistency across all policy areas.</b></p>  | <p>We will keep under review.</p>  |
| <p><b>R18. Law Wales website be further developed.</b></p> <p><b>R23. The Welsh Government produces information and guidance concerning school admission and exclusion appeals and publicises on Law Wales website.</b></p>  | <p>Law Wales/Cyfraith Cymru is a collaboration between the Welsh Government and Westlaw UK. Developed as part of the Welsh Government's initiatives to improve access to information on Welsh legislation, it aims to provide explanatory narrative and commentary on all areas of law devolved to Wales. The website was launched in 2015, the development of the content is work in progress.</p> <p>The Law Commission will shortly (expected 30 June) be publishing their report <i>Form and Accessibility of the Law in Wales</i>, which will include recommendations for strengthening the information and use of Law Wales/Cyfraith Cymru website. Recommendations 18 and 23 will be considered in that context.</p> <p>Information and guidance about school admissions and exclusion appeals is already published by the Welsh Government on its website.</p> |
| <p><b>R19. Valuation Tribunal Wales (VTW) Regulations 2010 amended to reform governance arrangements to improve operational practices to make economic savings and establish greater independence from Local Authority's.</b></p>  | <p>The Welsh Government has initiated work to review governance provisions in the 2010 Regulations.</p>  |
| <p><b>R21. The Welsh Government (with the Children's Commissioner) should take responsibility for provision of national training for appeal panel chairs, members and clerks and maintain a list of them.</b></p>  | <p>Individual appeal panels already have their own training programmes. The Welsh Government will bring recommendation 21 to the attention of the Children's Commissioner for Wales.</p>   |
| <p><b>R22. The Welsh Government (with Children's Commissioner) to</b></p>  | <p>Whilst there may be benefits to having national arrangements and arrangements for observation, the</p>  |

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| <p><b>consider if the Commissioner should take on role of former Welsh Committee of the AJTC and observe school admission and exclusion appeal hearings.</b></p>  | <p>role proposed in recommendation 22 is not within scope of the Commissioner's remit.</p>  |
| <p><b>R24. The Welsh Government explores merits of extending the Special Educational Needs Tribunal for Wales (SENTW) jurisdiction (suitably renamed as the Education Tribunal for Wales) to create a national tribunal for school admissions and exclusion appeals.</b></p>  | <p>The ALN Bill proposes to rename SENTW the Education tribunal. The feasibility of school admissions and exclusion has been explored in response to recommendations in previous reviews of the devolved tribunals. The Welsh Government has concluded that SENTW is not the appropriate vehicle for admissions and exclusions appeals.</p>   |
| <p><b>R25. The main provisions of the Draft Public Services Ombudsman (Wales) Bill be enacted by the next Assembly.</b></p>   | <p>This work is being delivered through the proposed Bill.</p>  |
| <p><b>R26. Welsh Government retains the National Advice Network beyond the summer of 2016.</b></p>  | <p>The National Advice Network has submitted advice to the Cabinet Secretary for Communities and Children regarding the continuation of the Network.</p>  |
| <p><b>R27. The Welsh Government retains a specialist advisory body on administrative justice issues with powers to observe the operation of redress systems and practice for the longer term.</b></p>   | <p>Specialist independent advice of the reform of devolved Welsh tribunals and the administrative justice system in Wales was provided by CATJW between November 2013 and March 2016. Prior to CAJTW, statutory oversight fell to the Welsh Committee of the Administrative Justice and Tribunals Council (AJTC Welsh Committee). Funding for both Committees was provided by the Ministry of Justice.</p> <p>The CAJTW legacy report provides a substantial work programme. The Welsh Government's priority is to take forward this programme of work as set out in this response. At present, there is no budget for setting up a successor independent advisory committee.</p>   |
| <p><b>R28. The Welsh Government introduces general guidance, standards for the operation of ad hoc redress schemes, that new redress schemes are reviewed by the Welsh Government's Justice Policy Team (JPT) with legal support and that monitoring is in place to ensure conformity and consistency.</b></p> <p><b>R29. Straightforward, clear, consistent Wales-wide basis governance arrangements for ad hoc schemes.</b></p> | <ul style="list-style-type: none"> <li>• Providing the means for fair, effective and proportionate systems for redress is embedded into the Welsh Government's initial stages of the policy assessment process. The Welsh Government's Justice Policy and Legal Services teams are involved in this process.</li> <li>• Consideration needs to be given to the benefit to developing and introducing generic guidance and standards and Wales-wide arrangements. Operationally schemes are administered under separate arrangements with the flexibility to tailor schemes to specific needs.</li> <li>• There are in place monitoring systems to review the operational arrangements of individual schemes. There is no mapped overview of the administrative arrangements in place for schemes so it is not possible to say whether monitoring extends to cover all redress schemes.</li> </ul> <p>These recommendations are substantial and would need further exploration involving costs and</p> |

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| <p><b>R30. NHS Healthcare National Framework for Implementation in Wales, 2014 should be updated without delay to provide clearer guidance on the conduct of appeal panel; consideration be given to the appointment of a legally qualified Senior Panel Chair.</b></p>  | <p>benefits analysis.</p> <p>The Welsh Government has discussed this recommendation with the Public Service Ombudsman's office and it is now undertaking engagement with health boards and panel members in order to determine what potential revisions to the Framework might be required by way of interim guidance. This work will be completed by the summer.</p> <p>The existing framework was introduced in 2014 and we have already committed to review it from next year. It would therefore make sense to consider the merits of any Senior Panel Chair, as part of that work.</p>   |
| <p><b>R31. Discretionary Assistance Fund – more information to be provided, more widely and should onward appeals be transferred to Public Services Ombudsman Wales</b></p>  | <p>The current Discretionary Assistance Fund (DAF) has a partner network of 290 organisations and these help support individuals apply to the DAF. Work has progressed on building this network since the time the CAJTW looked at the DAF. A greater emphasis has been placed on training for partner organisations with 269 individuals being trained in 2015/16. In addition, the online presence of DAF has been revised and a new page established on the MoneyMadeClear Website which shows the path for applying for the DAF in more detail. This also includes information on the other support available.</p> <p>The current contract for the DAF is due to end in March 2017 and future options for support will be provided to Cabinet Secretary for Communities &amp; Children. Current feedback from the monitoring of the Fund is the existing appeals process works well. The Fund falls within the jurisdiction of the Public Services Ombudsman Wales, so he can consider any complaints against the Fund.</p> |
| <p><b>R32. Invite the Welsh Ministers to communicate the following recommendations to the National Assembly and the Assembly Commission:</b></p> <p><b>Professional development in administrative justice issues is available for Committee chairs and supporting commission staff.</b></p> <p><b>Cross-party focus groups be offered for AMs (re links between constituency work and the operation of the administrative justice system in Wales).</b></p> <p><b>Assembly Commission advice to members supports a coherent, principle-based approach to new and existing redress and appeal mechanisms.</b></p> <p><b>National Assembly considers nominating a Committee to scrutinise the operation of devolved Welsh tribunals and ad hoc Welsh appeal schemes.</b></p> | <p>For consideration by the Assembly Commission and the National Assembly.</p>  |
| <p><b>R33. The Welsh Government works with other UK Government departments to secure disaggregated data.</b></p>   | <p>The Welsh Government is liaising with the relevant UK Government departments and the Inter Administration Committee on statistics. The newly revised Concordat on statistical work commits UK Government departments and devolved administrations to share data to meet the needs of</p>   |

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|   | departments and also to work together to ensure published statistics are available that meet the needs of users.   |
| <b>R34. The Welsh Government consults stakeholders on the recommendations contained in this report.</b> | A formal consultation is not planned at present. The Welsh Government is focusing work on continuing to take forward its reform programme, informed by CAJTW's recommendations.  |
| <b>R35. Suggested template for Administrative justice Principles brought forward (Doc 3 page 49).</b>   | <p>The Administrative Justice Principles for Wales proposed by CAJTW were developed as part of the research study undertaken by Bangor University Law School.</p> <p>The proposed principles closely reflect existing values and legislative provisions that inform working practices. The CAJTW formulation will provide a helpful source of guidance for the Welsh Government.</p> |