This Report is made to the Welsh Ministers

It is laid before the National Assembly for Wales by Welsh Ministers pursuant to paragraph 21 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007

The AJTC and its Scottish Committee publish their own separate annual reports

November 2010
Chair’s Foreword

As promised in last year’s annual report, this year the Welsh Committee of the AJTC completed our Review of Tribunals Operating in Wales. Over the twelve months, we looked at the patchwork of Welsh devolved tribunals, asking questions about their organisation, administration and judiciary. We also took a more strategic look at the system and compiled 21 recommendations for reform.

We were concerned that our initial view that the system appeared to be characterised by complexity, lack of coherence and lack of independence was substantially confirmed. Our main worry was the lack of separation of powers evident throughout the system: departments and authorities manage the processes through which appeals are made against them. It is imperative that when individuals seek redress the processes are seen to be truly independent. To remedy this lack of separation, our main recommendation was the creation within the Welsh Assembly Government of an Administrative Justice Branch. We hoped that such a branch would act as a focal point and would look at policy, practice, guidance and overall administration. Its creation would allow for the separation of powers while also helping to ensure that administrative justice in Wales develops in a coherent and coordinated fashion.

The report of our Review was laid before the National Assembly for Wales in January 2010. We were pleased with the way in which the report was received, and the speed with which the Welsh Assembly Government created the post of Head of Administrative Justice Branch, in the Department of the First Minister and Cabinet. Cabinet is due to consider a draft Action Plan for the implementation of the recommendations made in our Report. We look forward to the forthcoming plenary debate of the Action Plan and will work with the Welsh Assembly Government to offer advice and assistance on the process of reform. It must not be forgotten that the Review was only the first step towards change and modernisation, and we hope that the rest of this process will be tackled with diligence and consistency.

At a time of so much change, it has emerged that the future of the AJTC is in doubt. The loss of the AJTC at such a pivotal moment in the development of administrative justice in Wales must not mean that the need for reform is pushed to one side. Our functions of keeping the system under review and considering ways to make it more accessible, fair and efficient are essential to ensuring that the citizen receives fair treatment in its dealings with the state. Over the past few years we have built up a deep knowledge of the system and we very much hope that this knowledge will be put to use in discussions over the future of the organisation or to help shape any successor organisation.

Professor Sir Adrian Webb
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Introduction and Summary

1. This is the second Annual Report of the Welsh Committee of the Administrative Justice and Tribunals Council (AJTC). The AJTC was established under the Tribunals, Courts and Enforcement Act 2007 (‘the Act’). The Welsh Committee came into existence on 1 June 2008. Its first Annual Report covered the period up to March 2009. This report covers the period from 1 April 2009 until 31 March 2010.

2. The Welsh Committee has its own separate identity and takes the lead in overseeing administrative justice in Wales in both devolved and non-devolved jurisdictions. Members also play an important part in the AJTC’s work as a whole. For example, our Chair sits as a member of both the Welsh Committee and the AJTC, and members are actively involved in the AJTC’s UK-wide project work. The key functions of the AJTC and the Welsh Committee are set out in the Act.

3. The work of the Committee in 2009-10 has been informed by its three strategic objectives:
   a. To keep under review and influence the development of administrative justice and tribunals in Wales
   b. To keep under review devolved and non-devolved tribunals, and the work of the Tribunals Service as it affects Wales
   c. To respond authoritatively to emerging issues and proposals that affect or involve administrative justice, tribunals and inquiries in Wales.

   These objectives were further elaborated on in a detailed work programme setting out priority areas for stakeholder engagement and tribunal visits.

4. The Committee’s particular priority for 2009-10 has been to focus on:
   • The need for a coherent policy for administrative justice
   • The need for separation of powers relating to policy, funding and administration of tribunals
   • The need to improve original decision making by government and other public bodies.
5. Since our last Report, we have:

- Further developed our understanding of the administrative justice landscape, meeting with user groups and representatives, policy makers and members of the judiciary
- Continued to keep administrative justice in Wales under review by visiting tribunals and meeting ombudsmen and complaint handlers
- Offered advice on the system by responding to consultations
- Held our first Welsh Committee Conference, bringing together representatives from across the administrative justice system in Wales
- Published our Review of Tribunals Operating in Wales (the ‘Review’), which was laid before the National Assembly for Wales on 29 January 2010
- Received confirmation that the Welsh Cabinet has accepted our findings in principle, and that there will be a Plenary debate on the Review later in 2010.
Objective 1: Keeping under review and influencing the development of administrative justice

OUR ROLE

We have been appointed by the Welsh Ministers to undertake the following statutory functions:

- keeping the administrative justice system in Wales under review
- considering ways to make the system accessible, fair and efficient
- advising the Welsh Ministers and others on the development of the system in Wales
- referring proposals for changes in the system to the Welsh Ministers and others
- making proposals for research into the system in Wales.

The Welsh Ministers or the Lord Chancellor can ask us to report on particular issues, or we can initiate reports of our own volition.

OUR PRIORITIES

To meet Objective 1, our main priorities for 2009-10 were to:

- Establish an understanding of the administrative justice landscape in Wales
- Run an administrative justice conference in Wales
- Deliver our Review of Tribunals Operating in Wales to Welsh Ministers
- Continue to participate in strategic meetings affecting administrative justice in Wales.

6. As we noted in our 2008-09 Annual Report, administrative justice in Wales is characterised by its complexity. While ‘justice’ is not a devolved area, many of the substantive areas of government that have been devolved have brought their administrative justice machinery with them. This has meant that tribunals relating to health and education, for example, have been devolved to the Welsh Assembly Government whereas tribunals relating to most welfare benefits are still operated on an ‘England and Wales’ or ‘UK-wide’ basis by the Tribunals Service.

7. The impact of the Tribunals, Courts and Enforcement Act 2007 on non-devolved tribunals has been significant. Tribunals that were once managed by individual government departments in widely varying ways have been drawn together in unified judicial and administrative structures independent of the government departments about whose decisions they hear appeals.

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2 Tribunals, Courts and Enforcement Act 2007, Schedule 7, para 7.
8. This reform programme has not affected the majority of tribunals that have been devolved to the Welsh Assembly Government. For that reason, the Welsh Committee of the AJTC has given priority this year to promoting recommendations for change to ensure that Welsh citizens have access to a modern, independent and fair administrative justice system in devolved jurisdictions.

AJTC WELSH COMMITTEE CONFERENCE

9. The Conference “Administrative Justice in Wales: Citizens at the Centre” was held in Cardiff on 18 June 2009. It was a timely opportunity to bring stakeholders together to discuss the strategic context of, and specific issues facing, devolved administrative justice in Wales. Andrew Davies, the then Minister for Finance and Public Service Delivery, gave the keynote speech. He explained the importance of ‘citizen focus’ and explained that it meant, among other things, a need to adapt public services to suit citizens and not vice versa. He stressed that this approach was not just democratically important but that it could also lead to more efficient and responsive services by empowering frontline staff and learning from the best innovations elsewhere. Dame Gillian Morgan, Permanent Secretary for the Welsh Assembly Government, used an example of patient experience in the NHS to demonstrate the importance of understanding and responding to individual needs, getting away from any notion of ‘batch processing’ people.

10. Peter Tyndall, Public Services Ombudsman for Wales and an ex officio member of the Welsh Committee, emphasised the complexity of administrative justice from the citizen’s perspective. He indicated that there was strong government support for the development of a streamlined complaints procedure encompassing all public services in Wales, coupled with far better signposting for citizens seeking help and advice.

11. Mr Justice Lloyd Jones, Presiding Judge for Wales, explained that from April 2009 the Administrative Court had been able to sit in Cardiff. This regionalisation process was intended to make it easier for citizens seeking judicial review of government decisions to gain access to justice. Mr Justice Nicholas Warren provided an update on the unified tribunal structure, focusing particularly on the Upper Tribunal. He noted that Welsh devolved tribunals were largely outside this arrangement, but that the principles of independence and judicial expertise were applicable across borders.

12. Sir Adrian Webb, our Chair, introduced the planned Review of Tribunals Operating in Wales, setting out issues with devolved tribunals that most concerned the AJTC.

13. The Conference also provided for sessions allowing attendees to work together on analysing the problems and issues facing administrative justice in Wales and to start to frame potential solutions to these problems. The intelligence gathered in these sessions proved invaluable in the development of the key recommendations in our Review of Tribunals Operating in Wales.
REPORT OF THE REVIEW OF TRIBUNALS OPERATING IN WALES (‘REVIEW’)

14. In November 2008, we initiated a review of devolved tribunals in Wales in response to:
   • Our observations of the complexity and fragmentation of tribunals in Wales, with significant differences in the way the various devolved tribunals operate and are administered
   • Instances of reform relating to devolved tribunals being considered in an ad hoc and disjointed way
   • An apparent lack of independence of Welsh tribunals, with responsibility for tribunals and their administration lying with those whose decisions it is the tribunals’ duty to consider
   • Discussions with users.

15. The Terms of Reference were to review tribunals in Wales to determine whether:
   • administrative and practical arrangements are independent and impartial
   • they are accessible to users
   • they are properly resourced and organised
   • tribunals overall constitute a coherent structure.

16. In the first half of 2009-10 the Committee was primarily concerned with developing and distributing detailed questionnaires to gather data and intelligence from Welsh tribunals. The information provided enabled us to draw up a complete picture of the disparate arrangements in place in the different Welsh tribunals.

17. Our Review was laid before the National Assembly for Wales on 29 January 2010. This was the culmination of over twelve months of preparation, research and report production. The Committee particularly wishes to express its gratitude to Carly Sheen, Secretary to the Committee from its inception in June 2008 until October 2009, for all of her hard work in bringing the Review to fruition.

18. In his foreword to the Review, Sir Adrian Webb makes clear that the Review “raises matters of serious concern – but also opportunities for improvement in the cost-effectiveness of tribunals and of the administration of public services to which they relate”. He acknowledges that the issues raised “are not of Wales’ making, but the solutions lie wholly within our hands”.

19. The Review makes 21 recommendations for change. Most importantly, it advocates the creation of a focal point for administrative justice policy in the Department of the First Minister and Cabinet, which would also provide an independent locus for tribunal administration in Wales. It further recommends that all appointments to tribunals should be open, fair and based on merit and that there should be far greater co-ordination and co-operation between judicial leaders and administrators of Welsh tribunals.

3 The document can be downloaded in English or Welsh at www.ajtc.gov.uk/welsh/publications.htm
20. The Review makes a series of detailed recommendations for reform in the following areas:

- **Accessibility** – including engagement with users, access to advice and representation and better complaints policies and procedures
- **Efficiency and Effectiveness** – including resourcing, administrative support, training and appraisal for tribunal members
- **Coherence** – including a better approach to establishing new tribunals, a more coherent approach to appeals and work to improve the quality of original decision making by government departments.

21. The Welsh Assembly Government Cabinet considered the Report of the Review in March 2010, and committed to two actions:

- To hold a plenary debate at the beginning of the autumn term
- To scope the internal actions needed for substantive consideration of the recommendations, resulting in a draft action plan for Ministerial approval.

22. The Committee was pleased to receive a response from John Griffiths, Counsel General, on behalf of the First Minister on 8 April 2010. This welcomed the Review and indicated that the Assembly Government ‘want to respond positively to its findings and recommendations’. The letter went on to announce that:

- The Head of Administrative Justice Branch had been appointed and is located within the Department of the First Minister and Cabinet
- The Welsh Assembly Government intended to manage the transition of the Welsh Tribunals with associated staff and budgets to the Department of the First Minister by April 2011

23. The Committee welcomes the rapid and positive response to the Review by the Welsh Assembly Government. We look forward with great anticipation to the reforms planned over the coming year, and stand ready to provide whatever help and support it can in the process of transition.

**COMMON COMPLAINTS HANDLING**

24. Although the focus of much of the Committee’s work has been the devolved tribunals, over the past two years we have become increasingly aware that complaints about public services, as opposed to formal redress machinery such as tribunals, constitute an important area of administrative justice. We were encouraged when Peter Tyndall, Public Services Ombudsman for Wales and member of the Welsh Committee, was appointed to chair a working group to look at this topic. Peter discussed his ideas at our Conference in June.
Since then the working group has developed a model complaints framework based on a set of principles that can be adopted by a range of public services to achieve a more streamlined approach to complaints handling.

**REPRESENTATION ON STRATEGIC GROUPS**

**Lord Chancellor’s Standing Committee for the Welsh Language**

25. One of our members sits on the Lord Chancellor’s Standing Committee for the Welsh Language, meetings of which took place in April and October 2009. The purpose of the Standing Committee is to ensure that the various bodies concerned with the administration of justice in Wales adopt similar policies towards the Welsh Language and the implementation of the Welsh Language Act 1993. It is a vehicle by which to minimise costs and difficulties as well as to ensure that proper and uniform practices are in place. The Committee promotes a coordinated approach to training across the organisations involved with the administration of justice in Wales; facilitates the sharing of best practice between agencies and individuals; and provides advice to the Lord Chancellor on issues relating to the use of the Welsh language in the administration of justice.

**Welsh Tribunals Contact Group**

26. The first meeting of the Welsh Tribunals Contact Group took place in November 2009. This Group, initiated by the Tribunals Service, is designed to bring together tribunal stakeholders from both devolved and non-devolved jurisdictions to discuss issues of common interest. Its terms of reference are as follows:

- Act as a high level contact group for issues that affect devolved and non-devolved tribunals in Wales
- Offer a focal point for gathering and identification of emerging issues
- Provide a forum for initial discussion of relevant policy issues
- Feed into the development of Tribunals Service policy in Wales.

27. Chaired by Elisabeth Arfon-Jones, representative of the Senior President of Tribunals, the meeting provided an excellent opportunity for attendees to update each other on recent developments. The fifth recommendation of our Review was “That the judicial leaders and administrators of each Welsh tribunal work together on issues of common interest and towards implementing the recommendations of this report.” In view of this, we have suggested that the composition and terms of reference of the group be expanded.
Objective 2: Keeping under review the work of the tribunals and inquiries operating in Wales

OUR ROLE

We have been appointed by the Welsh Ministers to undertake the following statutory functions:

- keeping under review, and reporting on, the constitution and working of listed tribunals operating in Wales in general, and of each such tribunal
- considering and reporting on any matter relating to listed tribunals operating in Wales that we determine to be of special importance
- considering and reporting on any particular matter relating to tribunals that is referred to us by the Welsh Ministers or the Lord Chancellor.

We have similar functions in relation to statutory inquiries.

We also have the right to attend (as observer) proceedings of a listed tribunal or a statutory inquiry, including hearings held in private and proceedings not taking the form of a hearing.

OUR PRIORITIES

To meet Objective 2, our main priorities for 2009-2010 were to:

- Agree a programme of visits and stakeholder meetings to inform members and bring the existence of the Committee to the attention of tribunal stakeholders
- Observe both devolved and non-devolved tribunal hearings.

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4 Tribunals, Courts and Enforcement Act 2007, Schedule 7, para 7.
5 ‘Listed tribunals’ are the First-tier Tribunal and Upper Tribunal established by the Tribunals, Courts and Enforcement Act 2007 and tribunals listed by orders made by the Lord Chancellor, the Scottish Ministers and the Welsh Ministers. The AJTC must be consulted before procedural rules are made for any listed tribunal except the First-tier Tribunal and Upper Tribunal. The AJTC is represented on the Tribunal Procedure Committee that makes procedural rules for the First-tier Tribunal and Upper Tribunal.
7 Tribunals, Courts and Enforcement Act 2007, Schedule 7, para 15. ‘Statutory inquiry’ means an inquiry or hearing held by or on behalf of the Welsh Ministers in pursuance of a statutory duty, or a discretionary inquiry or hearing held on behalf of the Welsh Ministers which has been designated by an order under the Tribunals and Inquiries Act 1992.
OUR ACTIVITIES

Observation of Hearings

28. In 2009-10 we undertook visits to a range of devolved and non-devolved tribunals, as listed in Appendix C. We focused on particular jurisdictions to a greater extent than in 2008-09 as our knowledge of both potential problem areas and areas of best practice developed.

Social Security Appeals

29. On completion of the Review of Tribunals Operating in Wales, we turned our attention to non-devolved tribunals in Wales, and in particular to social security appeals. We were grateful that first Mrs Jackie Hankins, Welfare Rights Manager from Neath Port Talbot Welfare Rights Unit and then Judge Jim Wood, Regional Judge, First-tier Tribunal (Social Security and Child Support) were able to meet with the Committee in December 2009 to discuss social security appeals.

30. Mrs Hankins had consulted widely in the Welfare Rights community, and presented a comprehensive perspective on tribunal appeals against benefits decisions. She noted a number of concerns about processes before, during and after tribunal hearings although she was generally complimentary about the way that tribunals themselves are conducted. Her particular concerns were:

- There can be considerable delays in getting cases listed
- Notice and provision of papers to welfare rights representatives is variable
- Too many adjournments occur because the Tribunal doctor knows the patient -- this should be checked in advance
- There is a common perception that the Department for Work and Pensions (DWP) ‘reconsideration’ process just ‘goes through the motions’ with few decisions changed due to new evidence. This same evidence often forms the basis of a successful appeal at tribunal
- DWP continues to use the medical evidence obtained to assess one benefit to make judgments about another, despite the fact that the legal tests are very different
- There is concern that the Examining Medical Practitioner report is treated as ‘independent evidence’ when in fact it has been commissioned by DWP on DWP forms
- Leave to appeal is rarely granted by the tribunal Judge but almost always granted on further request to the Upper Tier.
31. Judge Wood provided the Committee with a clear statement of how the current tribunal arrangements had come about following the creation of the Tribunals Service and the First-tier and Upper Tier Tribunal Judiciary. He explained that hearings took place at venues across Wales, noting that due to significant increase in the number of hearings there was now some trade-off between accessibility and quality of venue. He noted that the number of sessions required had nearly doubled between 2007-08 and 2009-10.

32. We were concerned to hear that the number of doctors available to support tribunals was far too low, and that attempts at further recruitment had been only marginally successful (69 appointments to fill 219 vacancies). The lack of medical members has led to regular cancellation of tribunal sessions, ultimately to the disadvantage of appellants for whom justice is delayed.

33. We were also concerned to hear that DWP representation at hearings continues to be in decline. Judge Wood noted that it used to be the case that the DWP would always be represented at tribunal hearings, but that attendance had slipped from roughly 40% in 2000-2001, 22% in 2007-2008 to about 16% in the current year. He was convinced that this non-attendance had led to a failure by the DWP to learn lessons from their mistakes. He pointed to the Annual Report of Judge Robert Martin, President of the Social Entitlement Chamber, which noted that tribunals were now routinely hearing for the first time evidence that should have been collected by DWP decision makers.

34. In response to this evidence, the Committee undertook three visits to Social Security tribunals in early 2010. Based on our observations, we were able to confirm the accuracy and insight offered by our two guests:

- Concerns arose on more than one occasion about the quality of medical reports and the use of them for unrelated benefit claims
- The decreasing availability of medical members was raised as a pressing issue by all of the panels we saw
- DWP presenting officers did not appear at any of the tribunals we visited.

35. Disability Living Allowance applicants must be able to give an account of their health as it was at the time of application. We were concerned that substantial delays meant that this requirement placed too onerous a burden on claimants. In one case, the original date of application was 18 months before the hearing.

36. The AJTC submitted evidence on these issues to the House of Commons Work and Pensions Committee Inquiry into decision making and appeals in the benefits system. Many of these issues were then highlighted in the Committee’s final report.

37. We will continue to monitor Social Security tribunals in 2010-11, but our observations suggest that this is a system where tribunal members are trying to do their best to provide a fair and timely hearing to clients in the face of ever-increasing workload, delays and resource shortages.

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10 The number of Social Security and related benefit appeal sessions held in Wales in 2007/8 was 2941, 2008/9 3021, in 2009/10 it was 4691 and in 2010/11 it is estimated to be 5275. Year on year increases are expected until 2013.
Part III of the Local Government Act 2000 established a new framework to ensure the observance of consistent standards by local government members in England and Wales. The Act created local standards committees, allowed for the investigation of alleged misconduct by the Public Services Ombudsman for Wales or local authority monitoring officers and also for the adjudication of any such investigations by local standards committees or a tribunal drawn from the Adjudication Panel for Wales.

On an earlier visit in 2008-2009, we had noted the difficulty faced by tribunals when there was no Presenting Officer from the local authority, as this meant that tribunal members were sometimes required to go beyond what might be regarded as their normal inquisitorial role when seeking to probe or challenge evidence and submissions before them. This caused some concern, as it risked bringing the impartiality of the tribunal into question. During our first visit this financial year we learned about draft revised Regulations. It was intended that these Regulations would widen the role of the Public Services Ombudsman for Wales at tribunal hearings by allowing him or his representative to attend a hearing either at their own volition or at the request of the panel, and by allowing them to participate to such an extent as the standards committee or tribunal considered appropriate. Previously, the Public Services Ombudsman for Wales had only attended hearings for the purpose of presenting his report on the matter under consideration.

We replied to the public consultation on the matter, welcoming the provisions in the draft Regulations. We felt that in view of the increasing tendency for legal representation at hearings it was important that the Public Services Ombudsman for Wales and his officers were able to play a more active role. We agreed that the new Regulations would assist the tribunal or standards committee in conducting a balanced and thorough consideration of the report and evidence.

We attended a tribunal hearing following the introduction of the Regulations, although before any final guidance had been issued by the President of the Adjudication Panel. Despite some confusion as to the exact implications of the new Regulations, we considered that the changes were an improvement on the previous regime. The Public Services Ombudsman for Wales’ representative was able to set out the case for both sides, and his technical knowledge and ability was a clear help to the tribunal. This not only meant that the hearing was completed in a reasonable and fair time scale but also reduced any perception that the tribunal was not impartial.

The Committee was also invited to attend the training session for Panel members, at which interpretation of the new Guidelines was discussed.
Education Appeal Hearings

43. We have taken the opportunity to attend a School Exclusion Appeal hearing session and School Admission Appeal hearing session this year. We were glad to note that both hearings were fair and open, with well prepared panels.

44. In both instances we had some concerns about the perception of the independence of the appeals process. At one hearing, panellists were also governors of schools administered by the local authority which was party to the appeal. While this is not proscribed by the relevant codes, such a situation does risk creating a perception of bias.

45. Similarly, we were concerned by the use as clerks of employees of the local authority concerned. Paragraph 3.13 of the Education Admissions Appeal Code states:

“Local Authorities and governors should normally look outside their own staff for people who have relevant experience working as a professional committee clerk or legal adviser or who have experience in the conduct of enquiries or disciplinary hearings.”

46. We will continue to visit both types of hearing in the coming year and to work alongside local authorities to ensure that they meet their obligations to ensure the neutrality of the appeals process.

Tribunal User Groups

47. Committee members were pleased to be invited to attend User Group meetings on Special Educational Needs and Employment in 2009-10.
Objective 3: Responding authoritatively to emerging issues and proposals

OUR ROLE

We were appointed by the Welsh Ministers\(^9\) to do the following in the exercise of our statutory functions:

- respond to consultations on procedural rules for tribunals with jurisdiction in Wales\(^10\)
- respond to consultations on procedural rules for statutory inquiries held in Wales\(^11\)
- scrutinise and comment on legislation, existing or proposed, relating to tribunals operating in Wales\(^12\).

A significant element of our work is reactive, in response to work produced by others concerning the administrative justice system, tribunals and inquiries. In fulfilling our role of advising Welsh Ministers and the Lord Chancellor on administrative justice, tribunals and inquiries in Wales, we will respond constructively and authoritatively to relevant statutory and other consultations.

OUR PRIORITIES

To meet Objective 3, our main priorities in 2009-10 were to:

- Identify and respond as appropriate to draft legislation in and pertaining to Wales
- Respond to public consultations and other initiatives in Wales.

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\(^9\) Tribunals, Courts and Enforcement Act 2007, Schedule 7, s7.

\(^10\) Tribunals, Courts and Enforcement Act 2007, Schedule 7, para 24

\(^11\) Tribunals and Inquiries Act 1992, s9, as amended by the Tribunals, Courts and Enforcement Act 2007, Schedule 8, para 28

\(^12\) Tribunals, Courts and Enforcement Act 2007, Schedule 7, para 14(2)
CONSULTATION RESPONSES

Joint Complaints Handling in Health and Social Care
Draft Guidance

48. The Committee was approached by officials from the Welsh Assembly Government (WAG) concerning new guidance for dealing with joint complaints at Stage 1 of the NHS and Social Services complaints procedures. An increasing number of people have been using services that cross the health and social care sectors. The different complaints processes in these sectors risked causing confusion to users who wished to make a complaint. WAG looked at how to achieve better co-ordination in handling cross service complaints, and consulted on draft guidance on how to handle such complaints.

49. We warmly welcomed the general approach promoted in the guidance. In particular we welcomed the suggested single point of contact for the user, and the offer to make those elements which are compatible between the two complaints systems appear seamless to the complainant.

50. We considered that it might be useful for the guidance to contain information on which agency should take the lead in handling a complaint (for example, the agency with the most interest or the agency requested by the complainant). We also considered that the guidance needed to include procedures to ensure the sharing of findings and recommendations across the agencies.

51. A number of incompatibilities between the health and social services complaints systems continue to exist, preventing an entirely seamless approach. We considered this divergence to be unsustainable, and recommended that the issues ought to be considered by WAG and the Public Services Ombudsman for Wales as part of the proposals for a single complaints process for public services in Wales.

Review of Social Services Complaints Process

52. The Public Services Ombudsman for Wales is currently undertaking a wide-ranging review of the various complaints processes across public services in Wales, and it is expected that this review will clarify the future role of the Stage 3 complaints process used for complaints about social services in Wales. WAG had previously initiated and consulted on a review of the social services complaints process. Our main consideration, in responding to the consultation, was to ensure that no action should be taken that might cut across the conclusions or implementation of the wider Review. We considered that only problems of an “urgent and significant” or “quick and inexpensive” nature should be addressed.
53. We were pleased to note that some of the proposed actions could be easily co-ordinated with the Public Services Ombudsman for Wales in advance of his Review. For example, the action looking at “Learning from Complaints” and to “ensure that the reason for decisions made are explained more clearly” could be coordinated with the Public Services Ombudsman for Wales in the move towards developing common complaints approaches.

54. Several actions proposed by the consultation were identified to be of a medium or long term nature. These included: reviewing panel membership; developing better liaison between NHS and social services complaints systems; and considering structural changes to the complaints system. We advised that such actions should only be undertaken, if appropriate, as part of the Public Services Ombudsman for Wales led review.

55. The consultation also proposed that the review would undertake to clarify the Social Services Complaints Procedure Regulations. These Regulations are drafted in very general terms, according broad discretion to the Panel. We felt that clarification of these Regulations could not be carried out without a full-scale revision, which would be inappropriate at this stage.

Independent Review of Determination Panels – Adoption Panels Guidance

56. Independent Review of Determination Panels were established under the Independent Review of Determinations (Adoption)(Wales) Regulations 2006. The Regulations create for individuals the right to request an independent review should they not be approved as prospective adopters. Members of the Committee observed several early proceedings and initially raised a number of serious concerns. We followed up our concerns with two visits during 2009-2010 and remained concerned about the lack of procedural guidance to panels. We welcomed the opportunity this year to take another look at the operation of these Panels and in summer 2009 submitted comments on the draft Guidance to Panel Members.

57. We suggested that a formal process of case management should be developed, allowing for the identification of key issues and consideration of the need for any additional evidence in advance of the panel meeting. We felt that such issues would be best resolved prior to the hearing. We also suggested that the Guidance should indicate the time-scales for the production of additional evidence.

58. We were concerned that the Guidance did not contain an explicit statement as to whether or not legal advisers take part in the decision making of the panel. We felt that such a clear statement was necessary to avoid an ambiguity.

59. A further point related to the indication in the Regulations that the whole review process should take no more than three months. The Guidance made reference to the possible adjournment of the process. We considered, in view of the impact of delay on the lives of those concerned, that any such adjournment should not take the review over this three month limit.
60. A more general point was that it might be useful to provide some guidance on how the review hearing itself ought to be conducted. Although we appreciate that the exact manner in which a hearing is conducted will depend on the parties and facts involved, some basic guidance on matters such as whether parties can be called by the Panel more than once would be helpful.

61. This Guidance has since been superseded by new Regulations and WAG has outsourced the provision of the mechanism to British Association for Adoption and Fostering (BAAF).

Independent Review of Determination Panels – Fostering

62. The new Regulations as mentioned above include provisions for independent reviews of fostering decisions in addition to those concerning adoption. In September 2009 the Committee responded to a consultation on this matter, and agreed with the general approach of giving proposed foster carers similar appeal rights as proposed adopters.

63. We expressed concern at the proposal to charge fostering service providers a contribution towards the cost of a review, as we were concerned that this might create a perverse incentive to fostering service providers to approve borderline applications in order to avoid the cost of a review.

64. Although we agreed that the panel should be made up of 5 members, we queried the decision not to require that the panel include a registered practitioner.

65. As with adoption determination panels, fostering review panels are now being run by BAAF. We will continue to monitor how both processes operate.

Education (Wales) Measure 2009

66. In June 2009 we responded to a consultation on the proposed Education (Wales) Measure. The proposed Measure aimed to give children the right to appeal to the Special Educational Needs Tribunal for Wales (SENTW) themselves and the right to make a disability discrimination claim to the SENTW themselves, which the Committee fully supported. We think it is important that children have this right, especially where the children concerned are ‘looked-after’ children.

67. We also welcomed the requirement in the proposed Measure for local authorities to inform children of their right to appeal and make a claim, to make arrangements for partnership and disagreement resolution services and specialist independent advocacy services. We felt that unless a child had adequate help and support it would be unlikely that they would be able to exercise their right of appeal. Therefore, we noted that adequately resourced advocacy, support and representation services would be essential.
68. Under the Education (Wales) Measure 2009, a child will have the right to make disability discrimination claims regarding temporary exclusion from a maintained school to SENTW but will have no such corresponding right in relation to disability discrimination claims regarding a permanent exclusion from a maintained school. We understand that section 52 of the Education Act 2002 and regulations made under that provision currently require local authorities to make arrangements to enable a person to appeal to a panel against permanent exclusion from a maintained school. We further understand that claims of disability discrimination in relation to permanent exclusion from a maintained school must be dealt with under those arrangements. The Committee considers that SENTW, as an independent tribunal, would be best placed to have overall jurisdiction for claims of disability discrimination, as it includes a legally qualified chair, supported by lay members requiring experience and knowledge of SEN and/or disability, and is thus well equipped to deal with the complex nature of these types of cases. Exclusion Panels, however, are exclusively lay in their constitution and may have difficulty in dealing with the complicated issues that are in discussion at such appeals. We will continue to seek changes in this part of the system.

**Review of the Regulations for the Valuation Tribunal for Wales**

69. In January 2009 we responded to a WAG consultation on draft Regulations for Valuation Tribunals in Wales. While welcoming the proposal for a single Valuation Tribunal for Wales, we did not feel that the proposed changes were sufficient to meet modern expectations of judicial independence.

70. We raised three particular points relating to this concern. First, we felt strongly that the roles of President and Regional Representatives should be filled on the basis of openly and independently assessed merit, and not simply on the vote of tribunal members. Second, tribunal members themselves should also be recruited through an independent merit selection process. Third, we considered that the process of reducing the number of panel members – as discussed in the consultation – would not be robust enough to ensure that members sit sufficiently to ensure development of expertise and consistent decision making.

71. We also expressed concern that the provisions relative to the structure and functions of the Governing Council would not allow for independent oversight of the tribunal, given that only one member of the Council would be appointed from outside the system. Additionally, the provisions allowing the Chief Executive also to be the Clerk to the tribunal would create a potential conflict of interest.

72. We were disappointed that the changes implemented did not include responses to our very real concerns. We remain of the view that Valuation Tribunals, as presently organised in Wales, do not conform with the expectations of well managed tribunals advocated by the AJTC and believe that further reform is needed as a matter of priority if the possibility of user challenge is to be avoided.
Appendix A: Membership of the Welsh Committee of the AJTC

**Professor Sir Adrian Webb (Chair):** First Vice-Chancellor of the University of Glamorgan from 1992-2005. Chair, Pontypridd and Rhondda NHS Trust; Non-executive Director Welsh Assembly Government until March 2008. Chair of the Wales Employment and Skills Board and Wales Commissioner on the UK Commission for Employment and Skills. Member of the AJTC from May 2008 and Chair of the Welsh Committee from June 2008.

**Bob Chapman:** Part-time management consultant working mainly in the legal sector and a member of the Board of Consumer Focus Wales. Following 25 years in advice work at Citizens Advice Bureaux and local authority Welfare Rights Units he joined the Legal Services Commission where he became the Acting Wales Director before taking early retirement.

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

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

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

**Ann Abraham:** UK Parliamentary Ombudsman and Health Services Ombudsman for England. Ex officio member of the AJTC and its Welsh and Scottish Committees. Ex officio member of the Commission for Local Administration in England.
Appendix B : The Costs of the Welsh Committee

The Welsh Committee’s funding is made available via the Administrative Justice and Tribunals Council, which in turn is funded by the Ministry of Justice. Certain costs, such as accommodation, IT and accounting/payroll services are funded centrally and do not feature in the account below. Other costs, such as staff pay rates, are determined centrally but paid from the Administrative Justice and Tribunals Council budget. The Committee is supported from London and staff costs below are based on a best estimate of salaries/agency staff costs apportioned by time devoted to the Committee. 2008-2009 costs cover a 10 month period.

<table>
<thead>
<tr>
<th>The Costs of the Welsh Committee</th>
<th>2008/09 (10 months)</th>
<th>2009/10</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff Costs(^1)</td>
<td>47,315</td>
<td>50,479</td>
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<tr>
<td>Members’ Retainers(^2)</td>
<td>14,242</td>
<td>19,385</td>
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<tr>
<td>Members’ Travel etc(^3)</td>
<td>4,076</td>
<td>4,840</td>
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<tr>
<td>Meeting Costs(^4)</td>
<td>2,430</td>
<td>2,581*</td>
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<tr>
<td>Conference Costs(^5)</td>
<td>–</td>
<td>4,101*</td>
</tr>
<tr>
<td>Administrative Costs including office supplies, postage(^6)</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>68,063</strong></td>
<td><strong>81,386</strong>*</td>
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</table>

1. Member of staff based in London acting as Secretary to the Welsh Committee and other administrative support.
2. Members of the Welsh Committee receive, as at 1st August 2009, a retainer of £6,408 based on 22 days work per year. The Committee Chairman receives a salary of £28,025 including his service on the AJTC and is accounted for in its Annual Report.
3. Members’ expenses for attending Committee meeting, visits to tribunals and other events.
4. Cost of hiring rooms etc for meetings of the committee.
5. Cost of the Welsh Committee Conference ‘Administrative Justice in Wales: Citizens at the Centre’.
6. Administrative costs are met by the AJTC and cannot be separately identified.

* Due to the constraints of different reporting formats the expenditure under footnotes 4 and 5 is not specified separately within the costs table in the AJTC’s Annual Report for 2009/10, but rather is included within the overall total for the AJTC’s “other admin costs”.

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### Welsh Committee meetings

<table>
<thead>
<tr>
<th>Date</th>
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<tbody>
<tr>
<td>19 June 2009</td>
</tr>
<tr>
<td>17 and 18 September 2009</td>
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<tr>
<td>2 December 2009</td>
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<td>23 March 2010</td>
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### Tribunal Visits

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<tr>
<th>Date</th>
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<tr>
<td>May 2009</td>
<td>Traffic Penalty Tribunal</td>
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<td>May 2009</td>
<td>Adjudication Panel for Wales</td>
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<td>May 2009</td>
<td>National Health Service Inquiries</td>
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<td>May 2009</td>
<td>Independent Review of Determination Panel</td>
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<tr>
<td>August 2009</td>
<td>School Admission Appeal Panels</td>
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<tr>
<td>October 2009</td>
<td>Independent Review of Determinations Panel</td>
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<td>October 2009</td>
<td>Adjudication Panel for Wales</td>
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<tr>
<td>October 2009</td>
<td>School Exclusion Appeal Panels</td>
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<tr>
<td>January 2010</td>
<td>Social Security and Child Support Appeals Tribunal</td>
</tr>
<tr>
<td>February 2010</td>
<td>Social Security and Child Support Appeals Tribunal</td>
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<tr>
<td>March 2010</td>
<td>Social Security and Child Support Appeals Tribunal</td>
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### Stakeholder Meetings

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
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<tbody>
<tr>
<td>April 2009</td>
<td>Public Services Complaints Review Meeting</td>
</tr>
<tr>
<td>April 2009</td>
<td>Head of Welsh Local Government Association</td>
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<td>April 2009</td>
<td>Lord Chancellor’s Standing Committee on the Welsh Language</td>
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<td>May 2009</td>
<td>Public Services Policy and Delivery Team, WAG</td>
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<td>June 2009</td>
<td>SENTW User Group</td>
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<td>June 2009</td>
<td>Office of Social Research</td>
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<td>June 2009</td>
<td>Children’s Commissioner</td>
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<td>June 2009</td>
<td>School Exclusion policy officials, WAG</td>
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<tr>
<td>July 2009</td>
<td>Deputy Director, Social Research Division</td>
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<tr>
<td>September 2009</td>
<td>Employment Tribunal User Group</td>
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<td>September 2009</td>
<td>Chief Executive Valuation Tribunal Service for Wales</td>
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<td>September 2009</td>
<td>Children’s Commissioner</td>
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<tr>
<td>October 2009</td>
<td>Minister for Health and Social Services</td>
</tr>
<tr>
<td>October 2009</td>
<td>SENTW Use Group</td>
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<td>October 2009</td>
<td>First Minister for Wales</td>
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### Conferences and Events

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
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<tbody>
<tr>
<td>May 2009</td>
<td>Special Educational Needs Tribunal Wales Conference</td>
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<td>May 2009</td>
<td>Legal Services Board Events</td>
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<td>July 2009</td>
<td>Welsh Justice Network Seminar</td>
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<td>December 2009</td>
<td>Adjudication Panel for Wales Training Event</td>
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<td>March 2010</td>
<td>Public Law and Judicial Review Administrative Justice in Wales</td>
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<tr>
<td>March 2010</td>
<td>All Wales Complaints Officer Group Meeting</td>
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