Administrative Justice & Tribunals Council
Welsh Committee
ANNUAL REPORT 2011/2012
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
March 2013
Foreword

It strikes me that this Committee has never been so pertinent. I say this at the beginning of what will probably be its final Annual Report and whilst abolition legislation proceeds through the Westminster Parliament. It is ironic that it will be over forthcoming years that the diverse roles of courts, tribunals, ombudsmen, internal review schemes and other ways of preventing and resolving administrative disputes will come increasingly under scrutiny, as this will only serve to reinforce the need for an independent and authoritative commentator to make links between different parts of the landscape and to offer suggestions for improvement. It now falls to the Welsh Government to see that such a commentator is preserved.

We recognise the dedication and efforts of judges and support staff across all tribunals, who seek to deliver a fair administrative justice system under difficult circumstances. Continued tribunal reform does however remain a priority. Whilst progress against the recommendations made in our 2010 Review of Tribunals Operating in Wales has been strong, there are still a number of tribunals operating outside of the Administrative Justice Unit. In an age of austerity the case for them to work together as a coherent whole is especially compelling. The large caseload of the non-devolved tribunals meanwhile emphasises the important role they still play within Wales whilst the likes of social welfare remain reserved matters. Any successor body will have to join up the tapestry of devolved and non-devolved tribunals, addressing the various nuances of devolution whilst seeking to encourage overall cohesion. Such is vital to securing the interests of the Welsh tribunal user.

Perhaps the most significant developing trend has however been the shift in focus from ‘tribunals’ to ‘justice’. This has been led as much by circumstance as design. The question of whether Wales should have its own justice system has for instance been overtaken to some extent by Westminster’s increasing transfer to Wales of responsibility for the provision of public services. Each such transfer requires a means for citizens to challenge decisions; and so gradually a distinctively Welsh system is growing – but, crucially, in a way which is innocent of any overarching strategy for it to do so insofar as administrative justice is concerned. These circumstantial developments present many opportunities for an innovative and joined-up approach to justice, but in order to capitalise on them and to deliver a cohesive and accessible system, the appropriate strategy and institutions must be in place to start with. A suitably experienced successor body could help the Welsh Government to design and implement these, including following a survey of existing procedures to see that they are tailored and proportionate to the issues at stake.
Our abolition could secure an ultimate benefit if the Welsh Government were now to step forward and approach the entire concept of administrative justice in a new and systematic way, thereby reflecting how administrative justice encapsulates (in the words of our founding legislation) “the overall system” by which executive decisions are made in relation to individuals – thus being something that incorporates much more than statutory tribunals alone. Part 3 of this Annual Report highlights our latest work in seeking to cement a culture within government of using effective operational procedures to get decisions ‘right first time’. Further work in the field must surely be a priority both of the Welsh Government and whatever may succeed us.

We welcome the support and interest the Welsh Government has shown in what we have done since we were established in 2008. The continued commitment of the Government and its officials to implementing our 2010 Review signifies a recognition and understanding of the pivotal role of administrative justice in delivering a fair society. It is now time for that pivotal role to be fully recognised.

Professor Sir Adrian Webb
Chair, AJTC Welsh Committee
Contents

Foreword i

Introduction 1

Priority 1: Implementation of the Review of Tribunals Operating in Wales 2

Independence and Impartiality 2
- Focal Point 2
- Transfer of responsibilities 2
- Efficiency and Effectiveness 3

Coherence 4
- Welsh Language Tribunal (WLT) 4
- Social welfare and administrative justice in Wales 5

Priority 2: Coherent Administrative Justice Policy and Practice 6

Visits 6
- Fair hearings 6
- Administrative issues 7
- Venues 7
- Delay 7
- Use of the Welsh language 8
- Availability and quality of representatives 9
- ATOS assessments 9
- Devolved tribunals 10

Meetings 11
- Mark Swales, HMCTS 11
- Peter Burley, Planning Inspectorate 12
- Simon Hill, Valuation Tribunal for Wales 12
- Chris Gittins & Ellie McNeil, Welsh Government 14
- Carol Cobert, President of the VTW 14

Consultations 15
- Consultation on the Social Fund in Wales 16
- Making Things Better and the Social Services (Wales) Bill 17
- A Welsh jurisdiction 18
- SEN consultation. Forward in Partnership 19
- School Admission Appeals Code consultation 19
- Statutory consultation 20

Priority 3: Right First Time 21

Right First Time in local government within Wales 21
Right First Time in Welsh Government 21
Overarching context 22
Conclusion
Appendix A: Welsh Committee Tribunal Visits
- Welsh Committee Tribunal Visits
- Stakeholder meetings and events
Appendix B: Committee Member Biographies
Introduction

1. This is the fourth Annual Report of the Welsh Committee of the Administrative Justice and Tribunals Council, which was created under the Tribunals, Courts and Enforcement Act 2007. This report is made to Welsh Ministers under paragraph 21, sub-paragraph 3 of Schedule 7 to that Act and will be laid before the National Assembly under sub-paragraph 6 of the same paragraph.

2. In 2011 the UK Government announced its intention to abolish the AJTC and its Welsh and Scottish Committees. It had been anticipated in the light of this announcement that the previous Annual Report would be the Committee's last. That report covered our work during the 2010-2011 period and up until October 2011.

3. The AJTC was then listed under Schedule 1 to the Public Bodies Act 2011 and an abolition Order was laid before Parliament in accordance with that Act’s provisions on 18 December 2012. This report, covering work undertaken between September 2011 and March 2013, is therefore likely to represent the Committee’s final Annual Report. It is to be noted that much of our work over this period has taken place whilst our future has been uncertain and whilst we have had decreasing levels of available resources.

4. For ease of reference, the report follows the same format as the 2010-2011 report.
Priority 1: Implementation of the Review of Tribunals Operating in Wales

5. In our last report we commented on the progress made with devolved tribunals in Wales since we published our Review of Tribunals Operating in Wales, noting in particular the evolution of a central focal point for the administration of those tribunals and the related appointments of a Head of Administrative Justice and a Tribunals Operations Manager. We now set out a number of key developments in this area since the last report was published.

Independence and Impartiality

Focal Point

6. Over the past twelve months the Administrative Justice Unit (AJU) has become a larger and more established feature on the Welsh administrative justice landscape. As responsibility for the administration of tribunals has transferred from sponsoring departments to the AJU, so too have the relevant staff. The Unit now has 29 members of staff and is expected to increase in size over the coming years.

7. In view of its expansion, the Unit has prepared a Business Plan for 2012-2014, setting out its: purpose, vision and values; operating context; resources; and business priorities. The Business Plan describes the Unit’s purpose as two-fold: (i) to support and coordinate the operation of its tribunals as distinct and independent judicial bodies; and (ii) to work with Legal Services to develop relevant policy and to support Welsh Ministers on issues relating to administrative justice and tribunals. In view of this double function, the Unit will concentrate on building both its operational and policy capacity over the coming two years.

8. We welcome this commitment to develop both operational and policy expertise and consider that it will be central to ensuring that both the letter and spirit of our 2010 Review are used to shape a fair and efficient administrative justice system in Wales.

Transfer of responsibilities

9. Our last report noted that the transfer of responsibility for the administration of devolved Welsh tribunals from sponsoring departments to the central Unit had commenced, with the Special Educational Needs Tribunal for Wales, the Registered Inspectors of Schools Appeal Tribunal and the Registered Nursery Education Inspectors Appeal Tribunal all transferring on 1 April 2011. Since then, a further three tribunals have joined the central Unit: the Agricultural Lands Tribunal (April 2012), the Mental Health Review Tribunal for Wales (May 2012) and the Residential Property Tribunal (August 2012). It is anticipated that the Adjudication Panel for Wales will transfer into the Unit sometime in 2013.
10. We also noted last year that there was still work to be done in relation to the transfer of the Valuation Tribunal for Wales (VTW), School Admission Appeal Panels and School Exclusion Panels. Work has commenced on feasibility studies in respect of the latter two, whilst a study considering the issues affecting a transfer of the VTW has now been conducted by Welsh Government officials. However, the VTW will take on a new jurisdiction in respect of council tax reduction scheme appeals in April and this change will generate significant management challenges in 2013 and beyond. In the short term, this issue will have direct relevance to the question of the transfer of the tribunal into the AJU.

11. This issue of the new jurisdiction is discussed elsewhere in this report, but it remains the case that we very much hold the view that the VTW should transfer to the central focal point when the time is right. We consider that such a move would allow the tribunal to progress its modernisation agenda – both in terms of administrative and judicial reform – and to realise efficiencies, whilst allowing it to share some of its expertise with other tribunals already in the central Unit.

**Efficiency and Effectiveness**

12. We noted in our last report that the Unit had just appointed a Tribunals Operations Manager. Shortly after her appointment, we met with the new Manager to discuss her role, namely to identify, develop and implement improvements to business processes, standard operating models and procedures. The Manager has established and led a working group with representatives from the different tribunals to promote the smooth transfer of tribunals into the Unit and to begin to bring them closer together in terms of their operations and procedures. It is clear to us that this coordinated approach is central to the success of devolved tribunals and we very much welcome the progress that has been made over the past year.

13. In our Review we asserted that the quality and expertise of tribunal members has a significant direct impact on the experience of tribunal users and the quality of judicial decision-making. We recommended that the Welsh tribunal judicial leaders and administrators ensure that tribunals have appropriate training, appraisal and monitoring systems in place to ensure that suitable standards are maintained.

14. We were pleased to learn that officials from the AJU and tribunal leaders had been working together with colleagues in UK judicial bodies (such as the Judicial College) to ensure that arrangements to provide training for members of Welsh tribunals were in place, and in particular for the Mental Health Review Tribunal for Wales and the new Welsh Language Tribunal. However, we understand that due to budgetary constraints the Judicial College may no longer be able to guarantee bespoke training courses to members of tribunals that do not form part of the central HMCTS system. We consider that this would constitute a regressive step for Welsh tribunals and urge those involved to take steps to ensure that judicial training remains available.
Coherence

15. In addition to remedying past difficulties, we wanted the 2010 Review to act as a blueprint for the future development of the administrative justice system in Wales. Set out below are a number of developments in relation to new redress mechanisms which have emerged since the last report.

Welsh Language Tribunal (WLT)

16. Our last report raised a number of concerns about the creation of a new Welsh Language Tribunal, relating in particular to potential incompatibilities between the statutes governing the Welsh Language Commissioner and the public services ombudsmen operating in Wales, as well as the likely public perception of the tribunal’s independence. We expressed a hope that a practical solution to the difficulties could be found.

17. In spring 2012 one of our members attended a workshop with Welsh Government officials in respect of the policy and operational matters surrounding the creation of the WLT. We were pleased to have this opportunity to explain our Review, the need for a principled and fair approach to administrative justice and tribunals, and thus how the issues raised in the Review applied to this new tribunal as to others. We look forward to being consulted on the WLT’s draft procedural rules once they are available.

18. A key theme of our Review was ensuring that tribunals in Wales both are, and are seen to be, independent. We are therefore pleased to note that the Welsh Government has given priority to ensuring the independence of the WLT. The appointments process for the President and other members is currently being finalised following discussions with the Judicial Appointments Commission and the wider judiciary. Feedback will also be sought from the Lord Chief Justice, thereby ensuring that the tribunal’s independence will be a key principle reflected throughout the process. Once these arrangements have been agreed, officials will lay an Order in the Assembly (in the expectation that the tribunal will be fully established by the time the Welsh Language Standards are in place).

19. We remain concerned, however, that the statutes governing the Welsh Language Commissioner and those of the public services ombudsmen (the Public Services Ombudsman for Wales and the Parliamentary and Health Services Ombudsman) may contain some incompatibilities, and that these could have repercussions for the ability of the ombudsmen to undertake their work in an independent and unfettered fashion. The ombudsmen are a significant part of the administrative justice system and are central to users’ ability to hold governments to account. As we noted last year, their independence is crucial to fulfilling their statutory obligations and ensuring public confidence in the integrity of their schemes. We continue to hope that a practical solution can be found to this issue and will monitor progress closely whilst we remain in existence.
Social welfare and administrative justice in Wales

20. The Committee has become increasingly aware of the ways in which the administrative justice landscape in Wales is likely to expand over the coming years. The issue has been brought to the fore not only by the consultations on the creation of a Welsh legal jurisdiction (see paragraph 103) but also by practical changes which have taken place. Whilst we are keen to ensure that the development of administrative justice and tribunals in Wales is in keeping with the principles set out in our Review, we also see the potential for Wales to provide innovative and user-focussed responses to those developments which are outside of its control.

21. Matters of social welfare are largely reserved to the Westminster Parliament. However, under the UK Government’s welfare reform and localism agendas Wales will shortly take on a number of responsibilities in this area. In April 2013, Wales will begin to administer its own version of what is currently the national Social Fund scheme. At the same time, the Welsh Government will begin to support the provision of council tax reduction in Wales. In order to ensure that Welsh citizens will not be subject to reduced legal protection as a result of the devolution of these functions, the Welsh Government intends to provide suitable redress mechanisms for the new schemes.

22. Carl Sargeant AM, Minister for Local Government and Communities, announced in November that the Welsh Government had secured a consortium, comprising Northgate Public Services (a provider of outsourced services) and Wrexham County Borough Council, to run the replacement of the Social Fund’s discretionary elements. Crucially, and as part of this, it was announced that Family Fund Trading (a charity overseeing the making of social welfare grants) would review the eligibility decisions made by the consortium where such is requested by disappointed applicants. The Committee welcomed the inclusion of redress mechanisms within this contracted-out scheme and is currently engaging with the Welsh Government to seek to input its views about them. We hope to be able to liaise with the new providers on issues including the need for Family Fund to operate independently of the consortium and to accommodate the needs of those requesting a review in the medium of the Welsh language.

23. Meanwhile, and as highlighted above, appeals concerning council tax support (now conceived as reduction schemes within the meaning of the Local Government Finance Act 2012) will be heard by the Valuation Tribunal for Wales (VTW). This is an issue about which we have particular concerns and have sought regular engagement with both the Welsh Government and the VTW. We will thus take a close interest in the implementation of these new arrangements.

24. We hope that there will in the future be scope to reconsider the most appropriate way of organising the redress mechanisms at work in Wales. In so far as we continue to operate, we will of course stand ready to provide support to the Welsh Government as it considers future developments.
Priority 2: Coherent Administrative Justice Policy and Practice

25. The focus of our work since the last report has continued to be on promoting the development of coherent administrative justice policy and practice which is suited to the particular needs of Wales. The breadth of our work has of course included consideration of the operations of the listed tribunals under our supervision but has also extended to encompass other aspects of administrative justice, including: initial decision-making, complaint handling, alternative redress systems and the work of ombudsmen.

26. The Public Services Ombudsman for Wales, Peter Tyndall, is an ex-officio member of the Committee and an active participant in its work. The Committee is regularly briefed on the work of his office and the wider initiatives he is engaged in. Following its development by a committee chaired by the Ombudsman, in 2011 the Model Complaints Policy was issued by the First Minister to all public services providers within the scope of the Welsh Government’s devolved powers. The Committee has worked with the Ombudsman in promoting its wider adoption.

Visits

27. In respect of the work of tribunals, visits and accompanying feedback at our meetings have remained a significant part of our programme, helping us to stay in touch with practical issues facing tribunal users and providing the opportunity to learn more about the manner in which the wider administrative justice system is operating.

28. In our 2011-12 Action Plan we indicated that our visits programme would be based on the continuing need to understand the operation of non-devolved tribunals, in particular following the merger in April 2011 of the Tribunals Service with Her Majesty’s Courts Service. On this basis, we have sought to attend hearings at different venues across Wales. Due to the volume of appeals in the Social Security and Child Support Chamber and the impact of the issues raised by these hearings for people in Wales, our visits have been largely directed at this jurisdiction, although we have also attended a number of employment tribunal hearings.

Fair hearings

29. The visit reports from this year were unanimous in praising the judges, medical (social security) and lay (employment) members charged with hearing appeals. We have been clear that users received a fair hearing, and considered that the majority of them would have felt that they had been given the opportunity to make their case.

30. We were particularly encouraged by the way in which panel judges and medical members made the users feel at ease. Whilst some panels were more inquisitorial in their approach than others, there was no excessive formality and, where possible, users were guided through the hearings.
Administrative issues

31. As ever, members found the tribunal clerks and other staff accommodating. However, we came across a number of administrative complications which gave rise to concerns that HMCTS support staff may be struggling under the burden of the high case load. We wonder also whether the current arrangement of organising hearings from a central unit in Cardiff is in practice compatible with the geography of Wales. Staff undertaking the listings work may have limited knowledge of the practicalities of the venues and areas under their control and the issues facing them. Regular site visits, or discussions with local clerks who attend those venues, could pay dividends.

32. For example, on one occasion a Committee member was sent to the incorrect venue, as was the translator for the hearing. It was reported that this was not an uncommon occurrence. On a separate occasion, a number of cases were scheduled to be determined on the papers, but the judges had not been provided with them and so it was necessary to adjourn the decisions until another date. A further example of human error included a Committee member attending a hearing only to be told that it had been cancelled due to a failure to book a room.

33. We appreciate that these are only examples from our experience and recognise that they may of course have been isolated incidents. However, we remain concerned that these types of problems, even if isolated, risk impacting on the efficient and effective delivery of justice in Wales and could therefore have adverse consequences for users.

Venues

34. Since the last report we have attended hearings at the increasing number of venues in which tribunals are co-located with courts. We recognise that shared venues can bring advantages in terms of efficiencies and have attended a number of shared venues that provide a good environment for a tribunal hearing.

35. While the appropriateness of the venue varied from location to location, we noted that most of the shared venues did not have signage making clear that tribunal hearings were also held in that venue. When a building is labelled as a “court” (especially a criminal one) and has no signs to explain that tribunals also operate there, it is quite easy to cause confusion – even apprehension - for an unfamiliar user.

36. This is a significant yet simple concern that can be resolved without too much effort on the part of HMCTS and we will continue to report back to them where we see opportunities for improvement.

Delay

37. A common theme from visits is that there is often a significant length of time between appellants lodging their appeal and the actual date of the hearing. In one instance, 8 out of 10 appellants had waited over six months for a hearing, with one individual waiting for three months and another for thirteen and a half months. During the course of that visit, we observed a hearing attended by the wife of an appellant because the appellant had died during the eleven month wait between making an appeal and the hearing date.
38. The AJTC’s Principles for Administrative Justice state that a good administrative justice system should lead to well-reasoned, lawful and timely outcomes. The delays currently being faced by a number of users are therefore somewhat worrying. Not only is it wrong in principle to keep users waiting for so long, but holding appeals so long after the initial application was made can also create practical difficulties. It is sometimes difficult for individuals to recall how their symptoms manifested at the time the decision was made, whilst as a result of their condition they may also have faced distress, discomfort or deterioration in the intervening time, making the hearing a difficult experience which the tribunal has to seek to manage.

39. We welcome the steps that HMCTS is taking to reduce the delays faced by individuals, such as scheduling hearings on Saturdays.

Use of the Welsh language

40. In our 2010 Review of Tribunals Operating in Wales we highlighted the need for consistent and adequate Welsh language schemes across tribunals in Wales. While the report was aimed at devolved tribunals, this assessment applies equally to non-devolved tribunals administered by HMCTS.

41. We have attempted to attend hearings in the Welsh language but this has proved difficult. On a visit it was suggested to us that hearings in the Welsh language are relatively rare, and that one reason for this could be the phrasing of HMCTS forms. We understand that HMCTS appeal forms ask claimants first, whether they speak English, and second, whether they require translation at a hearing. The form does not however specifically address the question of whether users would like the appeal to be conducted in Welsh.

42. This creates a number of tensions. First, the Welsh language has equal status to the English in Wales and public bodies are under an obligation to treat them as such. There is a risk that the current approach may not meet this obligation. Second, the lack of clarity surrounding this issue may lead to users going through an appeals process in English when they would be better able to make their case in Welsh. During the course of a recent visit, the tribunal clerk remarked that he had observed the appellant outside the hearing room and noted that the individual had been much more relaxed and fluent in Welsh than in English. The tribunal panel felt that in this particular case the individual had managed to make his points with sufficient clarity. However, it may not always be the case that the clerk can highlight the issue or that a fair process will result.

43. When we met with the HMCTS Area Director for Wales in 2011 he explained that work on a new Welsh Language Scheme was a forthcoming priority. We look forward to seeing the new scheme and hope that it will help to address our concerns. We understand that the Lord Chancellor’s Standing Committee on the Use of the Welsh Language (on which we are represented) is aware of these and is monitoring developments by HMCTS.
Availability and quality of representatives

44. In our 2010 Review we also observed that it is far from clear that the advice and assistance available to tribunal users is adequate, accessible and comprehensive across Wales. We recommended that the Welsh Government undertake a mapping exercise to track the availability and quality of independent advice and guidance. We are pleased to note that the foundations have been laid for this as part of the Welsh Government’s on-going review of the satisfactory availability of advice services within Wales. The review comes at a decisive time, since 2013 will mark the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), as a result of which legally aided advice and representation will no longer be available in most aspects of civil and private family law.

45. Even before the introduction of LASPO a number of our recent visits had highlighted the urgent need for the review. In addition to the longstanding problem of users struggling through hearings without advice or representation, we have also observed a number in which the quality of the representatives fell below an acceptable standard. For example, in one case we observed a representative incorrectly advise an individual on his entitlements and in another the representative’s interventions were deemed by the tribunal members to be unhelpful to the appellant’s case. Despite the best efforts of judges to adopt an inquisitorial approach and to ensure that the claimant has a fair hearing, these deficiencies in the advice and guidance sector threaten fair access to justice for users (although, of course, we have equally noted various instances of good representatives considerably assisting the work of the tribunal).

46. It is against such a background that Bob Chapman, one of our members, represented the Committee at a meeting with Welsh Government officials Chris Gittins and Ellie McNeil in September. In general terms there is an evident need for a coherent access to justice strategy across Wales and we strongly recommend that the judiciary, government and advice sector work urgently together on the Welsh Government’s review to ensure that citizens are not denied meaningful access to the legal system in forthcoming years.

ATOS assessments

47. An issue of real concern arising from our visits relates to the inadequacy of the incapacity assessments carried out by ATOS on behalf of the Department for Work and Pensions (DWP). This issue has been covered in depth by other organisations but we consider it important to set our concerns on record.

48. We witnessed accounts of ATOS assessments from numerous individuals who felt that their assessor failed to understand the nature of their illness and its impact on their ability to work or undertake other daily activities. The findings of medical panel members appeared to substantiate these views and in our discussions with them their perception of the poor quality of the assessment process was made clear.

49. We are concerned about the impact of these poor quality assessments on both the users and the system. It is unfair for users to have to go through often lengthy and difficult appeal processes due to the persistent inability of the DWP to put in place the
processes to ensure that decisions are ‘right first time’. This failure is also putting the tribunals system under significant pressure as unprecedented volumes of users now appeal, and once again it is those users who suffer as a result of consequent delays. The importance of getting decisions ‘right first time’ is considered later in this report, but it is clear to us that the consequences of failure in this area are severe and increasing.

Devolved tribunals

50. Although our visits programme has largely focussed on non-devolved tribunals, we have also attended a number of devolved tribunal hearings.

51. We attended a hearing of the Valuation Tribunal for Wales (VTW) which had been scheduled to determine a number of cases. Unfortunately, on the day none of the appellants attended. The clerk noted that the tribunal had been contacted the day before by one of the appellants to explain that an agreement had been reached with the Valuation Officer. It was explained that this is a regular occurrence and happens as a result of the system of automatic appeals. The tribunal must nevertheless meet in order to close the case formally. It was agreed that this process created an excessive administrative burden for the tribunal, and that the time of tribunal members would be better spent dealing with disputed cases. We understand that the Regulations for the counterpart tribunal in England have been changed such that cases can be closed without having to convene the tribunal for this formality, and certainly see the obvious value of such a principle being replicated in Wales.

52. In order for us to ascertain the likely preparedness of the VTW for the new council tax reduction jurisdiction it will acquire from April 2013, we have decided to undertake a series of further visits to the tribunal in advance of that date. We expect that our observations and discussions with members will inform the response we give to the Welsh Government on the feasibility of transferring the VTW into the Administrative Justice Unit in the near future.

53. We also attended a hearing of the Special Educational Needs Tribunal for Wales (SENTW). The administrative arrangements for the hearing appeared to be very well organised, in that it took place in a hotel local to both the appellant and other witnesses, allowing them to attend with little difficulty. When the child concerned asked to speak during the hearing, the panel members dealt with this in a sensitive manner, asking neutral questions and encouraging the child to tell them everything that he wanted to say.

54. Following the introduction of new Regulations for the SENTW giving the child the direct right of appeal (rather than through an adult) we were very much encouraged by the ability of the panel in this case to put the child at ease and to ensure that his participation in the hearing was well-facilitated.

55. We visited an Independent Review Panel (IRP) for fostering determinations in September. IRPs were set up in 2005 to enable prospective fosterers and adopters to seek a second opinion on their suitability following decisions by the local authority not to
register them for the role or to continue to do so. They are not appellate bodies but exercise an important review function in that they make recommendations to the authority either to uphold or amend their original decision.

56. Previous visits to IRPs between 2008 and 2010 had shown alarming inconsistency and irregularity of practice. Panel members had commented on the limited training and guidance they had received and a number were not confident in applying the procedural rules. Significant errors were observed. Our visit reports highlighted the need for improvements which would minimise confusion in this important jurisdiction of potentially life-changing implication both to the prospective adopters/fosterers and the children concerned.

57. Our September 2012 visit to a panel in Llandrindod Wells revealed the substantial progress which had been made in addressing earlier problems. The Welsh Government had in the meantime awarded the administration of the panels to the Welsh team of the British Association of Adoption and Fostering (BAAF Cymru), which modelled the organisation and training of panels on its equivalent English scheme.

58. We wrote to Gwenda Thomas AM, the Deputy Minister for Children and Social Services, highlighting the progress the panels had made and the suitability of BAAF Cymru’s arrangements. We felt able to conclude that “future IRP hearings are likely to be well run, fair, open and impartial”. This represents no small success in improving the administrative justice system within Wales.

Meetings

Mark Swales, HMCTS

59. As noted earlier, we have since the last report especially monitored the progress of non-devolved tribunals in Wales, and in particular in light of the merger of the Tribunals Service with Her Majesty’s Courts Service.

60. We were grateful to Mark Swales, (then) Wales’ Delivery Director for HMCTS, for joining us to discuss his role and the challenges and opportunities facing non-devolved tribunals in Wales. We explained that we were anxious that the merger of the administration of courts and tribunals should not serve to reduce the distinct identity of tribunals and outlined concerns in relation to the use of shared venues. We also discussed matters such as caseload forecasts, the use of Welsh in hearings and the potential scope for synergies between devolved and non-devolved tribunals.

61. Mr Swales explained that he was taking time to meet with the judiciary and administrators from the HMCTS jurisdictions operating in Wales to learn about the distinct needs and priorities in each. He added that his strategy would be to retain separate identities for each stream of work, but to bring the administrative staff together where possible. He also outlined his vision for the use of venues across the tribunal and court estate by explaining that he would try to ensure that venues had separate identities for civil (including tribunal), criminal and family proceedings.
62. Mr Swales noted that the use of the Welsh language in tribunals and the development of a HMCTS Welsh Language Scheme were issues under review and that he hoped progress could be made in respect of each.

63. We were also able to offer feedback from some recent tribunal visits and Mr Swales agreed to look into a number of issues raised.

Peter Burley, Planning Inspectorate

64. The AJTC is charged with keeping the working of statutory inquiries, including planning inquiries, under review. Relevant public bodies in this field include the Planning Inspectorate (a body exercising review functions in both Wales and England) and the Infrastructure Planning Commission (IPC), an independent body created in 2009 to streamline the planning system for nationally significant infrastructure projects. Under the provisions of the Localism Act 2011, the Planning Inspectorate absorbed the responsibilities of the IPC in April 2012. In view of these and other significant changes facing both the Welsh and English planning systems, we invited Peter Burley, Head of the Planning Inspectorate in Wales, to join us at our final meeting of 2011.

65. We welcomed the opportunity to learn more about how the Planning Inspectorate operates and to hear Mr Burley’s views on how best to accommodate different developments in the Welsh and English planning approaches within a single organisation. He explained that he did not expect the new structure to impact on casework, since inspectors are experienced in applying different policies in the different parts of the country.

66. In discussions on ensuring fairness for users, Mr Burley explained that it was important to combine efficient decision-making with the principles of natural justice. He noted that there are currently different procedural rules for different types of planning appeals and that consideration was being given to creating one set of rules. As part of this consolidation process, the needs of the different users of the system would be taken into account. He added that the Planning Inspectorate offers the possibility for all inquiries to be conducted in Welsh, and that a new Welsh Language Scheme was being prepared.

67. In terms of evaluation of user satisfaction, he noted that in the past an annual customer satisfaction survey had been undertaken, but that recently a more focussed piece of research had been conducted. This new system entailed approaching all parties to a planning case to obtain their feedback. He suggested that this new approach was likely to be continued in the future.

Simon Hill, Valuation Tribunal for Wales

68. The VTW came into existence as a result of new Regulations in 2010 which unified the previously separate four regional tribunals. We were pleased that Simon Hill, Chief Executive of the tribunal, was able to join us at one of our meetings to discuss the operational and policy issues affecting it.
Judicial issues

69. VTW members are volunteers who are appointed by joint panels made up of representatives of the tribunal and local authorities. Mr Hill explained that the tribunal has no budget for advertising member vacancies and that due to the unpaid nature of the role it often seemed difficult to recruit members from a diverse range of ages, backgrounds and experiences. We agreed with him that it would be preferable for the tribunal membership to reflect the diversity of Wales. We also shared with him our concerns that the appointments process lacked the independence mandated by a judicial appointment. We consider that this issue could be resolved by the development of a Welsh judicial appointments scheme, and hope that as Wales continues to develop its own administrative justice system the matter will be resolved.

70. Mr Hill explained that the tribunal has a dedicated training budget and that new members receive full induction training on appointment. He added that all members then receive additional programmed training twice per year and that panel chairs have further annual training, which, on occasion, is held by the Judicial College. Chairs have meanwhile continued to receive appraisal by the College, with the VTW sending a select number per year on a rota basis for assessment.

71. We welcomed the tribunal’s commitment to training and development but remain concerned that members do not have the opportunity to participate in hearings with sufficient regularity. Training plays an essential part in the development of the skills and knowledge necessary to sit on a tribunal, but members also have a real need for regular practical experience of conducting hearings and making decisions. We suggested that one way of ensuring this is through a reduction in the number of tribunal members.

Appeals Direct

72. Following our experience at visits to the VTW in recent years, we were also interested to learn more about how the tribunal’s administration works. Mr Hill thus described the way in which appeals are made and handled in detail. Under the current process, the Valuation Office Agency (VOA) sets the council tax band for dwellings (or rateable value for non-domestic properties) and users then have the opportunity to query these assessments. No later than six months after a query is raised it automatically turns into an appeal and is passed to the tribunal. Often, before the hearing takes place, the user and the Valuation Office Agency reach an agreement. Not only can this process cause confusion for the user, who is only aware that they have made an appeal when they receive a letter from the tribunal informing them of this fact, but it also creates an unnecessary (and significant) administrative burden for the tribunal administrators who organise hearings which the appellants need not attend.

73. In England, a process of ‘appeals direct’ has been adopted for council tax cases, whereby there is a set period of time for VOA to consider a query, after which time the user has the opportunity of appealing. There is no automatic transfer of cases and users appeal directly to the tribunal themselves. This process reduces the administrative burden placed on the tribunal and is in keeping with the approach to appeals adopted in most other jurisdictions.
74. Mr Hill explained that there would be downsides to adopting this approach, but that the potential for improving user experiences and delivering a more focussed service would outstrip the negatives. The current situation means that tribunal administrators spend a significant amount of time organising a workload of cases that do not in fact turn into actual appeals, and that the tribunal panels must then hold hearings to formally ‘close down’ cases which by that time are not disputed. However, he explained that a change of this kind would require amendment to the 1993 and 2005 Alteration of Lists and Appeals Regulations.

75. We agreed that an ‘appeals direct’ approach would be preferable to the current system.

Chris Gittins & Ellie McNeil, Welsh Government

76. As discussed earlier, in September 2012 Bob Chapman attended a meeting with Chris Gittins and Ellie McNeil, Welsh Government officials, to discuss on-going developments in the Welsh Government’s review of advice services. The first stages of the review have been completed, with the voluntary and legally aided advice sectors being surveyed to understand how services are offered in Wales on a day to day basis at the present time (and before the implementation of the new legal aid regime from April 2013).

77. Meanwhile Mr Gittins and Ms. McNeil were able to outline the work of the internal reference group which the Welsh Government is establishing between those of its departments funding legal and related advice services. The group will seek to ensure that maximum operational efficiency is used in harnessing the increasingly depleted resources of the near future. It will be supported by an external advisory group made up of interested representative parties currently at work in the advice sector.

78. Carl Sargeant AM, the Minister for Local Government and Communities, is expected to report the initial findings from the review to Cabinet in March 2013 after which they will be published.

79. The meeting emphasised the importance of access to justice being maintained as a matter of principle, but equally how innovative solutions might be adopted to combat the malign effects of forthcoming, radical changes. These might include more intensive regional collaboration between local authorities and other funders linked to the implementation of a single quality standard, or else the creative use of referral processes between organisations to ensure that the services which remain available operate most effectively in the client’s interests.

80. We hope that we or a successor body will be able to continue inputting into the review and assist in implementing its findings.

Carol Cobert, President of the VTW

81. As previously mentioned, changes to the jurisdiction of the VTW – leading to it determining appeals on reduction schemes replacing council tax benefit – are of significant concern to the Committee. As part of our consideration of the matter we invited Carol Cobert JP, the newly-elected President of the tribunal, to discuss her thoughts on its preparations for this change.
82. The context of her visit derives from the UK Government’s welfare reforms, as a result of which the current system of council tax benefits is to be abolished by the implementation of the Local Government Finance Act 2012. The Welsh Government will now be given a set (and reduced) budget to devise and establish its own system of liability reductions. Regulations outlining this Welsh Government ‘reduction scheme’ were passed in December after considerable earlier difficulties in the passage of the legislation through the Senedd. As a further consequence of this reform programme the VTW will be given jurisdiction to hear the associated council tax reduction appeals (as will the equivalent tribunals in England and Scotland).

83. Appeals against council tax benefit determinations are currently heard by specialist salaried and fee-paid judges in the First-tier Tribunal (Social Security and Child Support). This tribunal has a GB wide jurisdiction. Under the new system, however, appeals will be made to valuation tribunals composed of voluntary, non-legal members who are (at best) unlikely to have particular expertise in social welfare law. Due to this lack of expertise, the Committee is not satisfied that the VTW is an appropriate forum for the determination of these appeals, and fully supports the content of the AJTC’s submission to the inquiry by the Communities and Local Government Select Committee of the House of Commons in which the same point was made.

84. We were grateful for the opportunity to meet with Ms. Cobert to discuss these matters with her. She explained that some preliminary training in the relevant principles of council tax reduction had been offered to tribunal members, in some cases with the support of the Judicial College.

85. Since the meeting, we have corresponded with the First Minister in relation to these issues. He explained that the capability and capacity of the tribunal to handle appeals had been carefully considered. He expects to work closely with the Ministry of Justice and HMCTS to ensure that the VTW receives the necessary support. He added that a working group has been set up to manage the development of an appeals process. The Committee hopes to be able to contribute constructively to the activities of this group as time goes on.

86. Against this background, we were pleased to note the announcement by the Welsh Government in January 2013 that it would meet the immediate shortfall in the council tax support budget deriving from Westminster funding cuts. So far as the VTW is concerned, the likely effect of this is that the tribunal will have more time in which to implement new processes and procedures governing reduction scheme appeals, but without any considerable increase in the number of appellants over and above the level currently appealing council tax benefit decisions.

Consultations

87. The Committee has had the opportunity to respond to a number of important consultations about the future of various aspects of the administrative justice landscape in Wales.
Consultation on the Social Fund in Wales

88. In the December 2010 White Paper *Universal Credit: Welfare that Works* the UK Government made known its intention to decentralise the discretionary elements of the Social Fund to local authorities in England and the devolved administrations in Wales and Scotland. In our previous Annual Report we noted our disappointment that this would lead to the abolition of the Independent Review Service provided by the Social Fund Commissioner and that this would entail a real loss of expertise.

89. In spring 2012 we responded to the Welsh Government’s consultation on options to replace the discretionary elements of the Social Fund. Whilst we recognised that the decision to transfer responsibility was outside the control of the Welsh Government, we expressed a number of concerns about the way in which the matter had been handled. We were surprised that, despite the delay in publishing the consultation paper, it contained few concrete ideas. Appropriate early consultation could have assisted the Government in developing its plans and would have prevented a number of deficiencies and misunderstandings from permeating into the consultation paper. In particular, we considered that the lack of early consultation with the offices of the Social Fund Commissioner and the Public Services Ombudsman for Wales represented a missed opportunity. We were also concerned that the delay in publishing the paper left the Government with a short timeframe for the creation and implementation of the framework to support the new scheme.

90. We noted that the AJTC’s *Principles for Administrative Justice* and the practical recommendations from our *Right First Time* report could helpfully inform the creation of both the new scheme and the associated redress mechanism.

91. In terms of the organisation of the scheme itself, we supported the Government’s proposals to have nationally set criteria and suggested that administration on a national rather than regional level would help to ensure consistency in applying the scheme and fair treatment for users in different parts of Wales. We also felt that a nationally organised scheme offered more scope for realising efficiencies and developing expertise based on experience.

92. We took the firm view that the right of access to an independent redress process would be an integral part of a fair scheme, and cited our Principle that “a good administrative justice system should enable people to challenge decisions and seek redress using procedures that are independent, open and appropriate for the matter involved”. We added that any new redress mechanism should be in keeping with the spirit of the recommendations of our 2010 *Review of Tribunals Operating in Wales*.

93. Under the current system, rather than an appeal, individuals can request an independent review of a decision made about their entitlement, as conducted by the Independent Review Service (IRS) overseen by the Social Fund Commissioner. This has become a cost and time efficient way of dealing with reviews for vulnerable individuals who need a speedy decision. Our response reiterated that there would be considerable merit in approaching the Social Fund
Commissioner to discuss this approach and to investigate whether it would be possible to directly transfer parts of the IRS to Wales.

94. Again, we took the view that a national rather than local redress scheme would be the correct approach. We explained that a single redress mechanism would have a number of advantages, including: helping to give users certainty as to the correct organisation to approach; ensuring a critical mass of decisions reviewed, allowing reviewers to develop the necessary expertise; and facilitating systemic analysis of decisions and feedback to the decision-making organisation.

95. We noted the announcement by Carl Sargeant AM in November 2012 (paragraph 22) relating to the provision of a successor scheme provided by a consortium of Northgate Public Services and Wrexham County Borough Council, complete with a review mechanism overseen by Family Fund Trading. In broad terms, the proposed scheme appears to mirror the way in which the current Fund is administered (and then reviewed in individual cases through the IRS). We will be working to try and ensure that there is institutional independence between the consortium and the reviewer, and that both are able to accommodate the needs of Welsh speakers without any implied pressure being placed on them to communicate in English when it would not be their instinctive choice to do so.

Making Things Better and the Social Services (Wales) Bill

96. In spring 2012 the Welsh Government published two consultation papers in relation to Welsh social services. The Social Services (Wales) Bill proposes wide-ranging reforms to the social services system, whilst the Making Things Better paper concentrated on reform of complaints processes. The Social Services Bill will be introduced into the National Assembly early in 2013.

Making Things Better

97. We have long taken the view that the procedures for making complaints about social service provision in Wales need coherent reform in order to make them clearer for users and more demonstrably independent from those involved in service delivery. We were not satisfied that previous pieces of piecemeal reform had altered the system sufficiently to negate our concerns.

98. We have repeatedly argued that any changes to the complaints process should be aligned with the development of a common complaints policy for public services in Wales. We were therefore very supportive of the proposals contained in the paper, the implementation of which would have brought the social services complaints process into line with the two-staged approach devised by the All Wales Complaints Group.

99. We did suggest that there would be a need for more detailed guidelines on how the policy should be implemented, for example as regards: the definition of ‘independent’ parties; the circumstances in which their independence would be required; and how, and within what timescales, organisations will have to decide who is to take the lead in handling the complaint.
100. The paper also suggested that people funding their own social care would like to be able to make complaints to the Public Services Ombudsman for Wales (PSOW) and asked for views on extending the jurisdiction of the PSOW to cover such complaints. We were unable to comment on how many people would seek this option, but agreed that the proposal would certainly create a more straightforward system for them in resolving their concerns.

Social Services (Wales) Bill

101. An issue raised in the Bill consultation was the possibility of extending the remit of the PSOW to include complaints about independently provided palliative care. We recognise that the complex connections between independently provided palliative care and NHS clinical care may confuse patients and their families if complaints about these linked areas cannot be made to the same body. For this reason we agreed with the proposal.

102. We strongly welcomed the importance placed in both the Social Services (Wales) Bill consultation and Making Things Better on the provision of advocacy and support for users, so as to make it easier for them to navigate the system successfully. Whilst local authorities should always provide clear and accessible information about services, users should also ideally have access to independent advice and assistance throughout. Councils should have clear protocols for directing them to those advice agencies and other similar organisations able to impart that independent advice.

A Welsh jurisdiction

103. Early in 2012 we submitted written evidence to the National Assembly’s inquiry into the creation of a separate Welsh jurisdiction and subsequently responded to the Welsh Government’s consultation on the creation of a legal jurisdiction for Wales.

104. As we explained in our submission and consultation response, we do not take a view on whether it is desirable for Wales to have its own jurisdiction but we are clear that the need for Wales-only redress mechanisms is only likely to increase over time and that Wales must have the appropriate strategy and institutions in place to handle administrative justice fairly and efficiently.

105. We set out that, although under the Government of Wales Act 2006 justice is not a devolved matter, in fact there are a number of aspects of the administrative justice system which are devolved. Not only are there a range of devolved tribunals operating in Wales but there is also a separate Public Services Ombudsman. Following publication of our Review of Tribunals in 2010, which recommended that the administration of all devolved tribunals should be brought into a central unit, there is increasingly greater coherence in the operation of Welsh tribunals and it is to be hoped that in future they will continue to work in a more integrated fashion.

106. There is also scope for Wales to begin to create its own aspects of a justice system, thereby forging opportunities for difference and innovation in Welsh tribunals. The forthcoming establishment of the Welsh Language Tribunal represents the first judicial institution created by Wales since 2006. But whilst the creation of new
tribunals or other redress mechanisms provides an opportunity for innovation, it also carries risks. We wish to ensure that, regardless of whether a separate jurisdiction is created, a strategy for providing fair and efficient administrative justice will be available.

107. Wales must also stand ready to take on responsibility for matters which the UK government devolves to it in a constructive or de facto fashion. As discussed elsewhere in this report, the localism and welfare reform agendas of the current UK Government mean that Wales is taking on responsibility for providing a number of welfare services. It will be vitally important that Welsh citizens have the opportunity to challenge decisions taken under these and any other devolved schemes.

**SEN consultation: Forward in Partnership**

108. The Committee responded to the Welsh Government consultation entitled “Forward in partnership for children and young people with additional needs: proposals for the reform of the legislative framework for special educational needs”. This laid out proposals for the harmonisation and streamlining of services provided to children with “additional needs”, that is, further requirements which need not necessarily relate to education alone.

109. The Committee welcomed the general themes of the paper, including the emphasis on children with additional, as opposed simply to special educational, needs, and noted the desirability of a system which offered parents and older children cohesive provision targeted at meeting their particular requirements (whether relating to educational, social or other needs of the child in question). The Committee was however concerned by the consultation’s apparent lack of detail on how such a cohesive provision would be brought about, and equally by its limited recognition of how ambitious the plans actually are.

110. We considered that risks were actively posed to users by attempted reforms which lacked particularisation, and especially given the complex nature of the field and the imperative of cross-departmental working. Distinctions which the consultation drew between certain terms, such as ‘complaint’ and ‘appeal’, were not always explained with sufficient clarity for the Committee to understand what they meant, whilst proposals for ‘registration of disagreements’ and mandatory mediation processes did not appear to be explained to the extent necessary for meaningful comment to be made on whether they represented sound proposals or instead indirect fetters on the exercise of appeal rights.

111. Our response outlined these concerns in various places. We were pleased to note that the Children’s Commissioner for Wales emphasised similar points in the response he gave to the consultation.

**School Admission Appeals Code consultation**

112. Late in 2012 the Welsh Government consulted on a new version of the Code governing school admission appeals. The Code is a particularly important document in that it has binding effect as regards how the powers of Admission Appeal Panels are to be exercised.
The Committee was satisfied that the proposed Code is clear, navigable and understandable, and as such is likely to be of genuine value in admission appeal hearings. We recommended, however, that it should emphasise the equality of Welsh as a medium for communication, since there might otherwise be a risk of the preference of parents to use English being simply assumed if the local area contained few Welsh speakers.

The response outlined the Committee’s concerns about the appropriate use of venues. The draft Code appeared to allow Appeal Panels to make use of local authority accommodation where this is not generally utilised by admissions staff, but we considered that such a rule is not robust enough to prevent appellants from perceiving bias in the arrangement of appeals, and especially if the County or Town Hall were to be chosen for their hearing. Moreover, we urged that the Code should prevent school governors from sitting on panels where they are governors of other schools in the same local authority area as the school of concern to the appeal. We considered that the use of local governors also risked instilling a perception of bias, and especially in rural areas where alternative schools are few in number, such that governors of other schools might well be perceived as having an interest in the outcome of the case.

The Committee used the consultation as an opportunity to assert its previous recommendation that Wales would benefit from a co-ordinated Education Tribunal overseeing all cases regarding schooling and educational needs in respect of which there are currently separate appeal jurisdictions. This insight was offered further to the third of the Committee’s recommendations in the 2010 Review, namely that there should be “appropriate amalgamation of Welsh tribunal jurisdictions according to subject matter”. The Committee also drew attention to the AJTC’s recent Best Practice Guidance for Admission Appeal Panels, and encouraged the Code to reflect that Guidance in particular areas where there are differences between the two documents.

Statutory consultation

Under the Tribunals, Courts and Enforcement Act 2007, there is an obligation to consult with the Committee on changes that will impact upon listed tribunals. Since the last report, we have been approached under this statute as regards proposals to transfer jurisdiction for disputes in Welsh park home sites to the Residential Property Tribunal, as well as in relation to:

- Amendments to the SEN Regulations 2012;
- Amendments to the Contaminated Land (Wales) Regulations 2006;
- The Designation of Features Appeal Regulations 2012;
- The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013;
- The Transfer of Tribunal Functions Order 2013;
- The Civil Enforcement of Parking Contraventions (County Borough of Bridgend) Designation Order 2013;
- The Civil Enforcement of Parking Contraventions (County of Vale of Glamorgan) Designation Order 2013.
Priority 3: Right First Time

117. In our *Review of Tribunals* we identified improving original decision-making as a priority for administrative justice. Our previous Annual Report noted our contribution to the AJTC’s *Right First Time* project in that regard.

118. We were keen to begin considering how the report and its recommendations could be applied to Wales. To discuss this, we met with David Richard, Head of Governance for the Welsh Government, Steve Thomas from the Welsh Local Government Association (WLGA) and Gareth Chapman representing SOLACE Cymru (the Welsh arm of the Society of Local Authority Chief Executives and Senior Managers).

Right First Time in local government within Wales

119. It was explained that, in local government, decision-making encompasses a variety of actors, in that there are decisions made by elected members and then those made by administrative officers. Embedding a *Right First Time* culture across these different persons and bodies would therefore require a sophisticated approach.

120. The roles of WLGA and SOLACE in improving decision-making were considered, and it was suggested that the identification and dissemination of examples of good practice could be led by SOLACE.

121. It was also suggested that an important first step in promoting a ‘right first time’ approach would be through ensuring widespread distribution of our report across local authorities in Wales. It was agreed that the WLGA would include *Right First Time* on the agenda at its next meeting.

122. It was pointed out that the collection of management information and other data would make it easier to identify systemic weaknesses in decision-making processes. It was noted that the widespread adoption of the All Wales Common Complaints System would start to generate useful comparative data about the operation of local authorities within Wales.

Right First Time in Welsh Government

123. Mr Richard commented that the *Right First Time* report had the full support of the Welsh Government. He agreed that improving decision-making would require a number of changes, and that ensuring that the civil service is a learning organisation, willing to admit and learn from mistakes, would prove to be particularly important.

124. Mr Richard, Mr Thomas and Mr Chapman all agreed to give further thought to various contextual matters which would assist in cementing a ‘right first time’ culture, including: the due availability of relevant data and information; leadership within decision-making bodies; the training of officers; and the introduction of mechanisms for internal review. We hope that we will be able to consider
progress on these and other issues at future meetings, ideally with additional input from our previous visitors.

**Overarching context**

125. As mentioned in the Foreword to this report, the impending abolition of the AJTC and the Welsh Committee could ironically represent a new and ultimately positive opportunity for Wales. This is because abolition provides a decisive point from which the Welsh Government could take forward its own agenda for the improvement of the complex administrative justice system at work within its borders. Such would certainly involve taking continuing steps to rationalise that system’s disparate and poorly connected parts.

126. A successor body to the Committee which had oversight of the entirety of Welsh administrative justice (including its devolved and HMCTS tribunals, its review mechanisms and complaint-handling systems) would provide the authoritative and independent steer which the Welsh Government needs to cement a strong, cohesive system with user interests at its heart. Certainly we believe that the attainment of this goal must be the logical forerunner of any subsequent Welsh legal jurisdiction, which is unlikely to materialise without a strategic approach to administrative justice matters.

127. Any successor body would in turn be relying upon the Welsh Government to support and implement its recommendations, thereby advancing the next stages of improved administrative justice within Wales. Building upon the 2010 Review of Tribunals will remain of key importance, but so too will the fostering of a culture within the public sector that engages users, seeks to accommodate their requirements, and better prevents the escalation of disputes and complaints. A strong sense of internal direction within the Welsh Government in implementing the recommendations of Right First Time would, in our view, represent the best foundation for this desirable outcome.
128. The Westminster Government first announced its intention to abolish the AJTC and thereby this Committee in 2010. Between then and now, and including during the passage of the Public Bodies Act 2011, we have been continuing to work in the exercise of our statutory responsibilities to secure the best interests of the administrative justice user in Wales.

129. Much of that work has been detailed in this report. All of it since we last reported has been done against the backdrop of an uncertain future and often under the constraints of limited resources.

130. Much has been achieved in what will seemingly prove to be the Committee’s short history. The publication of the 2010 Review and the subsequent policy initiatives aimed at implementing its recommendations together represent a high point of that achievement. A lot of improvement has also been secured through smaller and more particular projects, as seen for example in the context of Independent Review Panels (Fostering and Adoption Determinations) described at paragraph 55.

131. And yet we are not complacent. The Committee is well aware of the difficulties that continue to exist within the administrative justice system in Wales, whether deriving from disparate management procedures, lack of rationalisation, or the divergence of responsibilities for devolved and non-devolved tribunals. There is equally the all important issue of improving administrative decision-making, in order to see that it is correct in as many first instances as possible, and, where disputes arise, that they are quickly, suitably and proportionately resolved. These will be core goals of any successor body working to support and advise the Welsh Government.

132. We are proud of the modest but useful contribution we have been able to make to the development of administrative justice in Wales and hope that Wales will continue to progress towards a systematically improved system, supported both by publicly accessible internal decision-making and by coherently governed appeal routes which exist independently of those departments whose decisions are under review. In the fullness of time, such a system might well provide a forerunner of a Welsh legal jurisdiction. And even if it does not, it would still be to the great benefit of Wales and its citizens.
# Appendix A: Welsh Committee Tribunal Visits

<table>
<thead>
<tr>
<th>Date</th>
<th>Tribunal Type</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 2011</td>
<td>First-tier Tribunal (Social Security &amp; Child Support)</td>
<td>Port Talbot</td>
</tr>
<tr>
<td>October 2011</td>
<td>First-tier Tribunal (Social Security &amp; Child Support)</td>
<td>Haverfordwest</td>
</tr>
<tr>
<td>December 2011</td>
<td>First-tier Tribunal (Social Security &amp; Child Support)</td>
<td>Bridgend</td>
</tr>
<tr>
<td>January 2012</td>
<td>Mental Health Review Tribunal for Wales</td>
<td>Cardiff</td>
</tr>
<tr>
<td>March 2012</td>
<td>Special Educational Needs Tribunal (Wales)</td>
<td>Cardiff</td>
</tr>
<tr>
<td>March 2012</td>
<td>First-tier Tribunal (Social Security &amp; Child Support)</td>
<td>Wrexham</td>
</tr>
<tr>
<td>April 2012</td>
<td>First-tier Tribunal (Social Security &amp; Child Support)</td>
<td>Merthyr Tydfil</td>
</tr>
<tr>
<td>May 2012</td>
<td>Valuation Tribunal (Wales)</td>
<td>Barry</td>
</tr>
<tr>
<td>July 2012</td>
<td>Employment</td>
<td>Cardiff</td>
</tr>
<tr>
<td>September 2012</td>
<td>First-tier Tribunal (Social Security &amp; Child Support)</td>
<td>Colwyn Bay</td>
</tr>
<tr>
<td>October 2012</td>
<td>First-tier Tribunal (Social Security &amp; Child Support)</td>
<td>Newtown</td>
</tr>
<tr>
<td></td>
<td>Independent Review of Determinations (Fostering)</td>
<td>Llandrindod Wells</td>
</tr>
<tr>
<td>January 2013</td>
<td>Cardiff</td>
<td></td>
</tr>
<tr>
<td>----------------------------------</td>
<td>--------------------------------</td>
<td></td>
</tr>
<tr>
<td>Valuation Tribunal (Wales)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>February 2013</td>
<td>Cardiff</td>
<td></td>
</tr>
<tr>
<td>Valuation Tribunal (Wales)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>First-tier Tribunal (Social</td>
<td>Neath</td>
<td></td>
</tr>
<tr>
<td>Security &amp; Child Support)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>First-tier Tribunal (Social</td>
<td>Aberystwyth</td>
<td></td>
</tr>
<tr>
<td>Security &amp; Child Support)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>First-tier Tribunal (Social</td>
<td>Port Talbot</td>
<td></td>
</tr>
<tr>
<td>Security &amp; Child Support)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>First-tier Tribunal (Social</td>
<td>Bridgend</td>
<td></td>
</tr>
<tr>
<td>Security &amp; Child Support)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>School Admission Appeal Panels</td>
<td>Vale of Glamorgan</td>
<td></td>
</tr>
<tr>
<td>(six hearings)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Stakeholder meetings and events

<table>
<thead>
<tr>
<th>January 2012</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Welsh Tribunal Contact Group</td>
<td></td>
</tr>
<tr>
<td>April 2012</td>
<td></td>
</tr>
<tr>
<td>Welsh Language Tribunal Workshop</td>
<td></td>
</tr>
<tr>
<td>Meeting to discuss a consultation on a Welsh legal jurisdiction</td>
<td></td>
</tr>
<tr>
<td>September 2012</td>
<td></td>
</tr>
<tr>
<td>Welsh Tribunal Contact Group</td>
<td></td>
</tr>
<tr>
<td>Employment Tribunal User Group</td>
<td></td>
</tr>
<tr>
<td>Lord Chancellor’s Standing</td>
<td></td>
</tr>
<tr>
<td>Committee on the use of Welsh</td>
<td></td>
</tr>
<tr>
<td>Meeting with Welsh Government</td>
<td></td>
</tr>
<tr>
<td>(Communities Division, Department</td>
<td>regarding the Welsh Government’s review of advice services in Wales</td>
</tr>
<tr>
<td>for Local Government &amp; Communities)</td>
<td></td>
</tr>
<tr>
<td>March 2013</td>
<td></td>
</tr>
<tr>
<td>Employment Tribunal User Group</td>
<td></td>
</tr>
</tbody>
</table>
Appendix B: Committee Member Biographies

Professor Sir Adrian Webb
First Vice-Chancellor of the University of Glamorgan from 1992-2005. Chair of the Pontypridd and Rhondda NHS Trust and Non-Executive Director of the Welsh Assembly Government until March 2008. Chair of the Wales Employment and Skills Board and Welsh 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 an independent Chairman of the retrospective review of continuing healthcare funding decisions (for the National Assembly for Wales). He was previously a part-time Director of the Office of Higher Education Wales; a 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
Registered social worker having qualified as a registered mental nurse. She is a Mental Health Act Reviewer for Healthcare Inspectorate Wales and a specialist member of the First-tier Tribunal (Mental Health) in England. She was previously a Mental Health Act Commissioner for the Care Quality Commission; a freelance investigator of complaints made by social service users/carers; and a Regulatory Inspector for the Commission for Social Care Inspection.

Peter Tyndall
Public Services Ombudsman for Wales and 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.

Dame Julie Mellor DBE
Parliamentary Commissioner for Administration and the Health Service Commissioner for England (Parliamentary and Health Service Ombudsman) since 3 January 2012. An ex officio member of the AJTC Welsh Committee.