

Thank you for the invitation to participate in the conference. I am speaking today particularly in my role as a member of the Welsh Committee of the AJTC.

The Welsh Committee was created as part of the Leggatt reforms and was formally constituted in 2008. **Professor Sir Adrian Webb** chairs the committee, and was appointed to the post along with three members by the First Minister for Wales following an open recruitment. Sir Adrian Webb sends apologies as he is unable to be here today. Ann Abraham, the Parliamentary Ombudsman is an ex-officio member, as am I in my role as PSOW.

Since its instigation, the committee has been busy and lively. It has helped to bring an initial focus on the Administrative Justice landscape in Wales and earlier this year it held its successful first conference in Cardiff.

I will concentrate today primarily on the Committees work on tribunals, but want to briefly place this in a wider perspective. The devolution settlement in Wales is a complex one. The Welsh Assembly Government is responsible for a range of devolved areas including key public services such as education, health, social services and housing.

Broadly speaking, administrative justice remedies follow the devolved/non-devolved split. For most services which are devolved, people in Wales have access to my office, or to such appropriate other remedies as exist. For non-devolved services, in general, people have access to the Parliamentary Ombudsman or other relevant UK-wide or England and Wales remedies. Unlike Scotland, justice is not a devolved area, and this has particular impacts which I will return to later.

The devolution settlement is particularly complex in the way that Wales acquires law making powers. This can either be through legislation being passed for England which specifically allows the Welsh Assembly to legislate in the same field or through legislative competence orders which are scrutinised by Parliament. Competence can only be granted within defined fields which correspond with the responsibilities already devolved. Clearly, this diffuse and complex process of devolution has implications for the administrative justice field, which will need to respond to the transfer of powers with equivalent transfers of access to administrative redress. Interestingly, the first field in which the Welsh Assembly was granted legislative competence using its new powers was health redress.

Within this broader context, the Main work of the Committee to date has been its review of tribunals in Wales, and the draft report is currently at an advanced stage. The work has been undertaken primarily by AJTC staff – and particular credit is due to Carly Sheen.

The research for the report found that the tribunals landscape is diverse. It includes both devolved and non-devolved tribunals. In general, it found that the devolved tribunals are substantially unchanged since Sir Andrew Leggatt's review in 2002. The majority of cross-border tribunals, however, are now within the remit of the Tribunals service.

As the arrangements are similar to elsewhere in the UK I don't intend to dwell on them here. However, it is important to note that joint upper tribunal and administrative court facilities have been established in Cardiff and venues for tribunals have been identified around Wales. The service is also provided bilingually. It is also helpful to note in passing that the administrative court has made considerable endeavours to secure access for people in Wales and in both principal languages.

A small number of cross border tribunals remain outside the Tribunal Service, and there are issues which could usefully be addressed.

The Welsh Assembly Government decided that devolved tribunals would not join the Tribunals Service nor would they form part of the unified structure. The Committee's survey of the Welsh tribunals reveals a fragmented system which has developed in an ad hoc fashion.

The devolved tribunals are diverse and include those convened by the Adjudication Panel for Wales which consider cases where it is alleged that members of local authorities in Wales have breached their Code of Conduct, Independent Review of Determination Panels considering decisions on adoptions, independents social services complaints panels, school admission and exclusions panels, the mental health review tribunal for Wales, the Special educational needs tribunal for Wales, and land and valuation tribunals amongst others. In the Committee's regular work of reviewing the tribunals, it is evident that there is a broad spread of practice and quality, and this was reflected in the results of the survey undertaken by the Committee. The means of appointing members, the process for training and assessing member performance, remuneration, access to advisers, procedural matters, support arrangement and leadership all vary greatly. In some instances, the variation is clearly an appropriate response to the work of particular tribunals and the needs of their users. In others, it appears to be largely a product of historical accident.

Appeal routes also vary from none at all to judicial review. Some of the tribunals are within my jurisdiction, and in some instances, I can consider the original matter, as is the case with social service independent reviews, whereas in others my role is confined to administrative matters. In some cases, appeals can be made to the Upper Tier Tribunal.

One of the key findings relates to independence. Many of the tribunals are appointed and supported by the bodies responsible for the services from which cases arise. The need to address this not surprisingly underpins some of the emerging recommendations.

The Committee has set out a number of principles which it believes should underpin the reform of tribunals in Wales. These draw on earlier work including that of the former Council on Tribunals.

The principles are

- Independence and impartiality
- Accessibility to users
- Efficiency and effectiveness, and
- Coherence.

The recommendations which are emerging are premised on the assumption that there needs to be a rational and comprehensive approach to administrative justice in Wales in place of the ad-hoc and piecemeal system which has developed over time.

There is a clear need for democratic scrutiny which is most appropriately provided by the National Assembly for Wales. It will be a matter for the Assembly to determine how best to achieve this within the constraints of its committee structure.

The Assembly Government needs to create a focal point for administrative justice in Wales. Because justice has not been devolved, there is no natural locus for this in the shape of a justice ministry. The Committee is therefore likely to suggest that this locus could be created within the First Minister's department, as this does not have direct responsibility for service delivery.

It is also expected to recommend that policy and responsibility for tribunals should transfer here, away from service providing departments.

In addition, it believes that all tribunal members should be recruited using open, fair and transparent processes based on merit, and that appointments should be made by Welsh Ministers, or by the Lord Chancellor as appropriate.

The relative scale of tribunals in Wales does not provide a persuasive case for a thoroughgoing rationalisation along the UK model. However, the Committee has identified potential mergers and amalgamations which would tackle some of the existing inefficiencies.

The Committee has also identified a need for best practice to be shared between tribunals and will recommend a specific role for judicial leaders in this regard.

On the issue of accessibility, the committee has identified particular shortfalls in access to information and has believes that there is a case for a review designed to identify best practice and to raise standards across the board to reflect this.

The Committee has also identified a need for improvements to tribunal procedures, which seeks to ensure that procedures are neither so formal nor so costly as to create an inequality of arms between government agencies and tribunal users.

The survey identified considerable variation in the advice and advocacy available to tribunal users. In some instances, the arrangements were evidently appropriate to the needs of tribunal users and the issues under consideration. In others, the support available was not of an appropriate standard and work will be required to achieve consistently high standards.

Standards of engagement with tribunal users also varied considerably, with some having well considered structures for receiving on-going feedback while others have no formal arrangements whatsoever. Once again, the Committee believes that all tribunals should be reaching the standards of the best.

The Committee looked at Tribunal's complaints policies and concluded that there should be a standard approach adopted by all. This is consistent with other work I am leading to develop a common approach to managing complaints across the devolved public sector in Wales.

The Committee has also considered the advantages of working with the Welsh Language Board to produce a standard Welsh language scheme to be adopted by all tribunals.

The Committee has been aware of considerable variation in practice concerning hearing venues, and at its worst, creating barriers of access and perceptions of bias. I have to say that this issue has also been reflected in complaints to my office. The Committee wants to see a standard policy on venues, based on the needs of users.

The survey revealed that there is inconsistency in the way in which performance management data is collected and published by tribunals in Wales. Not all, for example, issue annual reports and some report on a calendar year basis while others use the financial year. The Committee wants to see consistent reporting standards and regular reports from all.

The diffuse arrangements for supporting tribunals inevitably raise questions about the efficiency with which resources are deployed and a focus on value for money is one which will need to be adopted by as part of any new rationalised arrangements.

The issue of judicial quality is a hugely significant one. A raft of issues needs to be addressed including determining appropriate numbers of members for panels to ensure that each member has sufficient opportunities to sit in order to maintain skill levels, a consistent approach to training and development with budgets sufficient to support this across all tribunals and proper appraisal mechanisms for all leaders and members which inform the development of training programmes.

The Committee has also been persuaded of the case for guidelines to be put in place by the Welsh Assembly Government on the establishment of new tribunals.

There is a major inconsistency in the appeal rights from existing tribunals. Where this inconsistency is not justified, the Committee will be calling for a more consistent approach.

Finally, and of particular importance, is the need to ensure that the lessons from appeal outcomes are learnt. The Committee is committed to seeking improvements in original decision making which is one of the key components of the work of ombudsmen but which is less embedded within the work of tribunals. A clear consistent support mechanism within the Welsh Assembly Government could help to promote learning in a way which the current arrangements cannot.

Inevitably, a review of this kind tends to highlight areas for improvement, and does not fully reflect some of the existing excellent work being undertaken by tribunals in Wales. The review has shown that by making some straightforward and practical changes it will be possible to build on the existing good practice to ensure that devolved tribunals in Wales can offer access to administrative justice for the people of Wales of a standard that will stand comparison with the rest of the UK and beyond.